CropLife AUSTRALIA

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGULATION

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ATTACHMENTS

1. EXECUTIVE SUMMARY

CropLife Australia (CropLife) is the peak body representing the plant science industry in Australia. CropLife welcomes the opportunity to make this submission to the Productivity Commission Study of Chemicals and Plastics Regulation and to provide the Commission with the views of CropLife members on the regulation of agricultural chemicals (also known as pesticides).

In summary, CropLife's recommendations are:

- That a new model be developed for the regulation of agricultural and veterinary chemicals in Australia incorporating the following primary objectives and features:

    - Vertical integration of the Agvet Code to include control of use and appropriate secondary legislation.
    - Rationalisation and harmonisation of secondary legislation on agricultural and veterinary chemical handling, transport, storage, environment and food in all jurisdictions, and integration with national primary control of use legislation.
    - A revised cost recovery framework, including Commonwealth Government funding for regulatory activities that are for the public good, to ensure that the Australian Pesticides and Veterinary Medicines Authority (APVMA) is funded in a manner that is equitable and that minimises cross-subsidisation between registrants and products, and between agricultural and non-agricultural products.
    - Retention of the risk-based system for assessment and labelling of agricultural and veterinary chemicals.
    - Achievement of high levels of compliance with all mandatory chemical product label instructions through appropriate national legislation and regulation, monitoring and enforcement to ensure efficacy, safety, environmental protection and data protection.
    - Development of a mandatory national database for reporting of adverse experiences with agricultural chemicals.
    - Streamlining of the MRL-setting process by eliminating the sequential processes currently utilised by the APVMA and Food Standards Australia New Zealand.
    - Increased adoption of appropriate co-regulatory mechanisms.
    - Simpler, faster and cheaper assessment of applications for low-risk chemicals without compromising science-based decisions.
    - Removal of the APVMA default responsibility for regulation of non-agricultural products, by providing appropriate resources to other agencies to assess and manage the risks of these products.

- That the APVMA maintain a priority focus on working cooperatively with registrants to address their concerns about the inefficiency, inconsistency and timeliness of registration and other approval processes.

- That regulators take action to minimise the burden of unnecessary new regulations that have minimal or no net benefit for the agricultural sector or the Australian community.

- That the regulatory system be streamlined to facilitate the legitimate use of pesticides for minor and specialty crops, particularly by addressing issues of registration, labelling, permits, liability and data protection.

- That the responsible Commonwealth Government agencies make consistent and persistent representations to ensure that pesticide residue levels in produce are not used as non-tariff trade barriers by trading partner nations.

- That state and territory governments enter into formal agreements with Agsafe to empower Guardian to undertake relevant compliance checking and guidance on their behalf.

- That coordination and communication between state, territory and federal government agencies be improved to avoid duplication and overlap of reviews of pesticide regulation, possibly extending to a "whole of governments" plan and timetable for reviews.

2. INTRODUCING CROPLIFE AUSTRALIA

CropLife Australia (CropLife) is the voice and advocate of the plant science industry in Australia. As the industry's peak body, CropLife progresses the interests of member companies by engaging with decision-makers and other stakeholders, and influencing the development and implementation of government policies.

CropLife's members invent, develop, manufacture and market most of the crop protection (pesticide) and crop biotechnology products used by Australia's primary producers. These products protect plant yields and improve productivity by controlling weeds, pests and diseases, leading to the production of high quality, affordable and abundant food, fibre and other crops.

Sales of the industry's products contribute in excess of $1.2 billion annually to the Australian economy. They are a vital input to Australia's agriculture industry, which is worth $39 billion each year and they help agricultural commodities to remain internationally competitive.

CropLife and its member companies are committed to safety, stewardship and quality. We lead industry efforts to demonstrate this commitment with the following practices:

- **Safety** – protecting human health and the environment through a rigorous and science-based regulatory process, the adoption and promotion of Good Agricultural Practice and the correct use of products according to label directions.
- **Stewardship** – responsibly and ethically managing industry products throughout their lifecycle.
- **Quality** – consistently producing products of the highest standards that meet registration specifications.

CropLife advocates science-based and risk-based legislative frameworks that are consistent in approach and application across the industry, and promote competitiveness through innovation, the protection of intellectual property and the introduction of new technologies and practices.

CropLife Australia has adopted the Council of Australian Government (COAG) principles of good regulation[1] *as a framework for development of best practice regulation of the pesticides industry in Australia. These principles are consistent with national competition policy.*

3. BACKGROUND

CropLife welcomes the opportunity to make this submission to the Productivity Commission Study of Chemicals and Plastics Regulation, and to provide comments on the Issues Paper. This submission provides the views of CropLife's members on chemicals regulation, and while reference will be made in some instances to agricultural **and** veterinary chemicals, the views expressed are those of agricultural chemical manufacturers.

CropLife has significant concerns about Australia's current regulatory system for agricultural chemicals (also known collectively as pesticides). A principle concern is the inefficiency evident in the state and territory governments' regulatory control of the use of pesticides and the resulting regulatory burden on the agricultural sector.

[1] *Council of Australian Governments. Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Endorsed by COAG in 1995, amended 1997 and 2004*

3. BACKGROUND (cont.)

CropLife's views on state control of use regulations were the focus of our submission to the Productivity Commission Annual Review of Regulatory Burdens on Business – Primary Sector. The recent draft report of the Review has referred all regulatory issues on pesticides to this study, and consequently CropLife's views are repeated in this current submission, along with our concerns relating to other regulatory issues.

CropLife Australia proposes a new model for regulation of pesticides which we believe will resolve most of the problems discussed in this submission and improve the efficiency, efficacy, cost-effectiveness and outcomes of the system in line with the COAG principles of good regulation.

3.1 Role of pesticides in the agricultural sector

Pesticides are used to protect crops and other plants from weeds, pests and diseases. There are three main categories of pesticides – herbicides, which are used to combat weeds, insecticides which are used to eradicate insects and fungicides which help to avoid or eliminate plant diseases. Pesticides help agricultural industries to be more productive and competitive on world markets, and to improve the quality of produce. Agricultural and veterinary chemicals (including fertilisers) comprise 7-10% of total farm inputs.

In the wider primary sector and community, pesticides are used to control weeds, pests and diseases in forests, national parks, nature reserves, gardens and aquaculture and to control disease-carrying insects such as mosquitoes.

3.2 Current regulatory environment for pesticides

3.2.1 Regulation

Australia's system for managing agricultural and veterinary chemicals is a science-based risk management system designed to give confidence that the chemicals are safe to use and to ensure that they are used responsibly. Registration is regulated at the national level, but control of use is regulated by various agencies at the state and territory level.

At the national level, the Australian Pesticides and Veterinary Medicines Authority (APVMA) administers the National Registration Scheme (NRS) for Agricultural and Veterinary Chemicals. The NRS was established in 1991 by agreement between the Commonwealth, states and territories to place under one national umbrella the assessment and registration of all agricultural and veterinary chemicals. The Scheme registers and regulates the manufacture and supply of all pesticides and veterinary medicines used in Australia, up to the point of supply. Before being registered for sale, all products must go through a risk assessment process. The registration process is governed by Commonwealth legislation in the *Agricultural and Veterinary Chemicals Code Act 1994*. Other Australian Government agencies also help the APVMA to evaluate agricultural and veterinary chemical products:

- The Office of Chemical Safety (Department of Health and Ageing) advises on toxicological issues and worker safety.
- The Department of the Environment and Water Resources advises on whether products might harm the environment, and how to avoid this.
- State/territory primary industry/agriculture departments, environment protection authorities and independent reviewers advise on how well the chemicals control pests and diseases.
- The National Drugs and Poison Schedule Committee classifies certain chemicals as poisons, which can result in states and territories imposing additional use and labelling requirements.

3. BACKGROUND (cont.)

3.2.1 Regulation (cont.)

The APVMA also approves pesticide product labels, which must contain instructions on how to use the product correctly and safely, as well as other important information.

The APVMA invites members of the public to participate in its programs such as reporting adverse chemical experiences through the Adverse Experience Reporting Program and contributing to chemical reviews.

The APVMA also determines maximum residue limits (MRLs) and recommends them to Food Standards Australia New Zealand (FSANZ). MRLs are the highest concentrations of agricultural and veterinary chemical residues permitted in food or animal feed, and are set well below the level that could harm health. These standards are set at levels that are not likely to be exceeded if pesticides are used according to their label instructions. MRLs are used to monitor the correct use of pesticides, ie. Good Agricultural Practice, and are not used as a measure of risk to public health from pesticide residues. The APVMA recommends the MRLs to FSANZ for consideration for listing in the Food Standards Code.

The APVMA's role is that of regulator of the pesticides and veterinary medicines industry, and it does not establish policy for the NRS. The APVMA is guided by the Commonwealth, state and territory governments' policy directions as developed by the Product Safety and Integrity Committee (PSIC), a sub-committee of the Primary Industries Standing Committee that provides advice to the Primary Industries Ministerial Council (PIMC). PSIC consists of representatives from each of the states and territories and other Australian Government agencies involved in the NRS.

State and territory governments regulate the use of agricultural and veterinary chemicals after they have been sold. The control of use regulations cover:

- Basic training requirements for users.
- Licensing of commercial pest control operators and ground and aerial spray operators.
- Residue monitoring.
- Arrangements to enforce the safe use of chemicals, including the use of codes of practice, spray drift guidelines and other initiatives to raise user awareness.

State and territory regulations use a national model (developed by the Australian Safety and Compensation Council) to regulate dangerous substances in the workplace and via Dangerous Goods legislation for transport. State and territory government primary industry, health and environment agencies also advise on agricultural and veterinary chemical use and promote other means of controlling pests and diseases.

The Australian Quarantine and Inspection Service tests for contamination of agricultural exports and also monitors imported food to ensure that it complies with Australian food import legislation.

The Federal Department of Agriculture, Fisheries and Forestry (DAFF) conducts the National Residue Survey, which regularly monitors pesticide and other chemical residues in raw food commodities to ensure that the food is safe to eat. FSANZ undertakes the Australian Total Diet Survey, which screens food prepared to table-ready state. The survey estimates the dietary intake of a range of pesticides and contaminants, based on food consumption data from national dietary surveys. Residue testing programs are also run by the states and territories, agricultural commodity organisations and some marketing organisations as part of their quality assurance programs. Any food with residues above the MRL is investigated by government agencies in trace-back programs.

3. BACKGROUND (cont.)

3.2.2 Industry self-regulation

While supporting the importance of a strong regulatory system, the pesticides industry has also initiated co-regulatory and self-regulatory programs to deliver full lifecycle stewardship of its products. The most significant of these are the programs managed by CropLife's wholly-owned subsidiary, Agsafe.

Agsafe manages three successful self-funded stewardship programs (see *Attachment 1*). The Guardian program trains and accredits personnel and premises that handle agricultural and veterinary chemicals. The Guardian accreditation process involves checking a premises' compliance with all relevant state regulations and then providing guidance to improve that compliance so as to achieve accreditation. It is a condition of CropLife membership that member companies only sell their products to Agsafe-accredited distribution companies. Authorisation for this market arrangement was recently renewed for another three years by the Australian Competition and Consumer Commission.

Guardian also manages the Fertcare® Training program which provides product stewardship for the fertiliser industry, focussing strongly on environmental issues.

Agsafe also manages two programs within the Industry Waste Reduction Scheme. ***drum****MUSTER* collects clean and empty agricultural and veterinary chemical containers for recycling and ChemClear® collects unwanted registered agricultural and veterinary chemicals for safe disposal.

4. REGULATORY REFORM TO DATE

Stakeholders from the broader chemicals industry have advocated the need for regulatory reform since they commenced work with the Commonwealth Government on the Chemicals and Plastics Action Agenda in 2000.

The Action Agenda's recommendations were acknowledged and supported by the Government but deferred to the Banks Review and then to the COAG Ministerial Taskforce on Chemicals Regulation which was established in February 2006. Once the Ministerial Taskforce is constituted sometime in 2008 it will receive the outcomes of this Productivity Commission study before it develops an implementation plan. A number of other reform processes are progressing in parallel to this.

There have been many overlapping reviews of the regulation of agricultural and veterinary chemicals since 2000 from multiple jurisdictions and government entities, including:

- Chemicals and Plastics Action Agenda – Underpinning Australia's Industrial Growth (2001).
- Chemicals and Plastics Leadership Group – Underpinning Australia's Industrial Growth – Final Report to the Australian Government (2004).
- Trans-Tasman Harmonisation (2004).
- Review of the National Pollutant Inventory (2005).
- A New Scheduling Model for Chemicals and Medicines, Therapeutic Goods Administration (2005).
- Corish Report (2005).
- Banks Review – Reducing Regulatory Burdens, 2006.
- Review of Australian Dangerous Goods Code (ADG7), 2006.
- Australian National Audit Office Review of the APVMA, 2006.
- PSIC Discussion Paper on Implications of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) for Agricultural and Veterinary Chemicals in Australia (2006).
- A National Framework for Chemicals Environment Management (NChEM) in Australia (2006).

- PSIC Discussion Paper on "The Scope of products in the National Registration Scheme and regulated by the APVMA" (2006).
- COAG Discussion Paper on the Control of Chemicals of Security Concern (2007).
- Bethwaite Review of Food Regulation System (2007).
- Australian Safety and Compensation Council National Code of Practice for the Labelling of Workplace Hazardous Chemicals, 2007.
- Productivity Commission Annual Review of Regulatory Burdens on Business – Primary Sector, 2007.
- Productivity Commission Study of Chemicals and Plastics Regulation, 2007 (this Review).
- COAG Ministerial Taskforce on Chemicals Regulation, scheduled for 2006, deferred to 2008.
- National Training & Accreditation Scheme for Higher Risk Agvet Chemicals, ongoing.
- Reviews of MRLs – APVMA & FSANZ, ongoing.
- State Control of Use reviews, periodical.
- State Occupational Health and Safety (OH&S) legislation reviews, periodical.
- State Poisons Schedule reviews, periodical.

This multiplicity of reviews has imposed a considerable resource burden on the pesticides industry and the agricultural sector in general, particularly in the time and cost of consultation and preparing submissions.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK

After years of regulatory reviews and buck-passing, pesticide manufacturers and the users of their products are suffering not only unnecessary regulatory burdens (and associated costs), but also review fatigue with little progress to be shown for the reviews to date. The burden of contributing to these reviews has diverted resources from core business and reduced profitability and competitiveness. Additionally, farmers have their own regulatory compliance burden and associated costs.

5.1 Policy setting

Policy development and strategic direction for the APVMA is primarily the responsibility of DAFF. PSIC, which includes representatives from Commonwealth and state/territory government agriculture departments, provides advice to governments on agricultural and veterinary chemical issues and works with non-government organisations at the national level to improve the agricultural and veterinary chemicals management system.

Government responses to industry's attempts to obtain new policies or policy improvements in the agricultural chemicals management system are often very slow. For example, for over twelve years industry has been advocating adequate data protection to protect the intellectual property of innovative companies. Improvement in some aspects of data protection was obtained in 2005 when legislation was linked to the US Free Trade Agreement, but attempts to improve that data protection in accordance with the originally agreed proposal have still not been successful and drafting of the new legislation has been repeatedly delayed. These delays have contributed to ongoing problems such as the dearth of registered minor crop uses for agricultural chemicals and limited data protection for pesticide manufacturers.

Another example of slow progress in introducing new policy is the proposal to introduce a national user training and accreditation scheme for higher risk agricultural and veterinary chemicals, which has been in development since 1999.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK (cont.)

5.1 Policy Setting (cont.)

Despite continual refinements to legislation and the plethora of recent regulatory reviews listed above, industry has been unable to obtain major regulatory reform in problem areas, such as control of use. The lack of significant progress from the reviews goes against the implied intent of the sixth COAG principle of good regulation (flexibility of standards and regulations).

5.2 Control of Use

CropLife considers state and territory regulation of control of use of agricultural and veterinary chemicals as a major contributor to the regulatory burden on agricultural industries, especially with respect to:

- Lack of harmonisation
- Lack of enforcement.

State and territory governments regulate the use of agricultural and veterinary chemicals after they have been sold. Each jurisdiction has its own primary legislation on control of use, which differs significantly between states (see table in *Attachment 2*), and is administered by different government departments in each jurisdiction (eg. Primary Industries in Victoria, Environment and Climate Change in New South Wales, Health in Western Australia). The regulation of agricultural and veterinary chemical use is further complicated by other relevant legislation under agriculture/primary industries (see *Attachment 3*), OH&S, health, environment, transport, food and other legislation at state, territory and federal levels.

This multiplicity of legislation has led to complexity, inconsistency, duplication and contradiction, causing confusion and unnecessary regulatory burden on pesticide manufacturers and the users of their products.

The impacts of these regulatory burdens are borne by farmers, agribusiness, the pesticides industry and government entities at all levels. In addition to the direct costs to users in complying with the volume and complexity of the regulations, many industry associations and government agencies spend considerable time and resources in negotiations and committees/working groups trying to accommodate the plethora of legislation, and preparing submissions to the numerous reviews.

The additional costs to the industry affect its competitiveness. Harmonisation of both state regulation of control of use and secondary pesticide legislation is needed to reduce the regulatory burden on the agricultural industry in accordance with the first COAG principle of good regulation (minimal impact of regulation).

The inconsistencies in state control of use primary legislation can be seen clearly in the table in *Attachment 2*. Compliance with different state and territory regulations is expensive, time-consuming, confusing and can create potential liability problems, particularly for cross-border pesticide applications in the event of adverse events. Major control of use issues are summarised below.

5.2.1 Off-label uses

In contrast to other Australian states and territories, Victoria (and Western Australia to a lesser extent) allows much freedom for off-label uses of pesticides. This threatens to undermine the whole NRS. At the national level, the APVMA conducts thorough scientific risk assessments of agricultural and veterinary chemicals to ensure that they are effective and safe before the products are registered for supply and use in Australia. The APVMA also regulates key information that must be put on product labels to ensure their safe use. However, Victoria allows chemical products to be used on crops and in situations where they are not approved by the APVMA and contrary to the approved product label, subject to certain restrictions and conditions. Some other states also allow pesticides to be used in certain circumstances on different pests or different crops not shown on the product label. South Australia, for example, allows the use of registered chemical products off-label in horticulture (under specific conditions) under the Horticulture Exemption Scheme.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK (cont.)

5.2.1 Off-label uses (cont.)

In allowing off-label use, these state governments raise the risk that users will lose confidence in the NRS and ignore directions for safe and effective use on product labels. Irresponsible use can, and occasionally does, lead to chemical residues in produce, which can cause serious damage to Australia's export trade. Furthermore, there is a risk that repeated use of some agricultural chemicals at a rate lower than that shown on the product label can lead to development of resistance to the chemical in certain pests. If adverse events occur because of off-label use, the product registrant should not be liable.

Off-label use also undermines data protection provisions. A company conducts trials and submits research data to the APVMA to support an application for product registration. If this data is relied upon by the APVMA for registration, it is granted data protection. This allows the registrant the opportunity to obtain some benefit from investment in the research required to develop new products and new uses for existing products, and encourages innovation in crop protection products. However, permitting off-label uses allows similar products of competing companies to be used without the competitor doing the research or obtaining consent for use of the data. This potentially reduces the benefit of data protection, discourages innovation and gives an unfair advantage to companies that do not innovate. The end result is a reduction in the development of new crop protection products for farmers.

5.2.2 Complexity

Security sensitive ammonium nitrate (SSAN) is a recent example of the complexity that results from lack of harmonisation of legislation across jurisdictions in Australia (refer to the case study at *Attachment 4*). COAG attempted to introduce a national system to regulate SSAN because of the terrorist threat. There was initial agreement between the Commonwealth and state/territory governments to put in place uniform regulation but no mechanism to manage uniform implementation. The result is seven different schemes being implemented around Australia.

There are inconsistencies in costs, processes, licensing requirements, mutual recognition, control mechanisms and reduced availability of the fertiliser to farmers. There is also a risk that loopholes created by the inconsistency and complexity across the states could render the whole system ineffective.

Another example of the complexity of secondary, complementary legislation (*Attachment 3*) is that in South Australia spray records are not required to be kept as part of the agricultural chemical legislation, but are required as part of the OH&S legislation. Licensing of commercial spray operators is not required under the agricultural chemical legislation in South Australia, but is required under health legislation.

5.2.3 Duplication

Inconsistent regulations for aerial application of pesticides in different jurisdictions are imposing unnecessary costs and burdens on aerial applicators and are largely preventing application by helicopters in Australia (refer to the case study at *Attachment 5*). Western Australia alone does not recognise Spraysafe pilot training for issuing a chemical distribution licence, and New South Wales alone does not accept it for aerial spray mixers. Licence fees also differ greatly between states. Aerial operators who work across state borders are required to obtain a licence in each state and may need to duplicate training. Burdens caused by inconsistencies in recognition of training, licences and insurance are detailed in *Attachment 5*.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK (cont.)

5.2.4 Contradiction

Incidents of spray drift of the herbicide 2,4-D across state borders due to different restrictions on its use in neighbouring states have caused off-target damage to sensitive crops (refer to the case study at *Attachment 6*). Such incidents have the potential for expensive litigation, loss of export or domestic markets due to residues in crops or environmental damage to plants and waterways. Victoria, Western Australia, Tasmania and Queensland currently have restrictions on the use of 2,4-D in certain geographical areas and/or time zones. Control of use regulations affecting 2,4-D application also vary between states. Because of ongoing spray drift problems with high volatile esters of 2,4-D, the APVMA has suspended the registration of products containing these esters and all associated label approvals until 30 April 2009 and imposed other restraints on their application.

5.2.5 Compliance and enforcement

A major concern of CropLife members is inadequate compliance with agricultural and veterinary chemicals legislation, particularly state and territory enforcement of state control of use legislation. Some jurisdictions admit to inadequate resources, particularly inspectorate/compliance staff, for enforcement of broad industry compliance. Questions of inadequate staff expertise and program priority arise in states where agricultural chemicals are regulated by a department other than agriculture/primary industries. There are also perceptions of buck-passing between states, departments and levels of government that lead to lack of action on issues of non-compliance.

The APVMA runs an Adverse Experience Reporting Program for agricultural chemicals. However, reporting is largely voluntary and there is no mandatory reporting of incidents by state and territory government to feed into a national database.

In the example of SSAN (*Attachment 4*), lack of harmonised regulation across jurisdictions in Australia threatens to undermine the whole system. Currently, legislation ranges from a total ban of all SSAN materials in Tasmania to no legislation for control in Western Australia. The end result has been inconsistent cost burdens on industry and even withdrawal of the fertiliser from the market, denying farmers legitimate access to this product.

Off-label uses of chemicals allowed in Victoria, and in some other states in certain situations, fail to enforce the requirements for effective and safe use specified on the product labels. Each label is approved after the APVMA has conducted a thorough scientific risk assessment for registration for supply and use in Australia. These off-label uses threaten to undermine safety, resistance management, data protection and export commodity residue limits.

5.3 Efficiency of registrations

The pesticides industry has had serious concerns for many years about inefficiencies, inconsistencies and timeliness of registration and approval processes in the national regulatory authority, the APVMA. Of particular concern are delays in the registration processes which increase the time taken to deliver new products to the market, causing commercial losses in some cases. Many of these issues were also raised by the Australian National Audit Office (ANAO) in its audit of the APVMA in 2006[2].

It is clear that improved efficiencies and reduced red tape in the APVMA would reduce the cost of registering pesticides and shorten the time taken for manufacturers to deliver new products to the market. Consideration should be given to allowing self-assessment of some aspects of applications by approved applicants to reduce costs and time of applications.

[2] ANAO (Australian National Audit Office) 2006. Regulation of Pesticides and Veterinary Medicines. 7 December 2006.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK (cont.)

5.3 Efficiency of registrations (cont.)

CropLife and other industry peak bodies are working with the APVMA to improve efficiency of registration and approval processes. Reducing the time and cost of registration of products would help Australian manufacturers to compete with imported pesticides in accordance with the second COAG principle of good regulation (minimal impact on competition).

Government policy in relation to the security of emails and other electronic communications introduces significant inefficiencies into regulatory processes. Despite requests from industry for electronic communication on routine registration matters, the APVMA is required by government policy to use the postal system, which greatly increases the time taken to register a product in situations where much liaison is required between the APVMA and the registrant. This can, and has in many cases, delayed getting products to market by many months.

CropLife members met with the APVMA in May 2007 to discuss concerns, particularly those with regard to registration efficiency, and a number of potential solutions were discussed. The APVMA has made several improvements to processes and staffing so far and some other suggestions are being implemented or investigated. CropLife and other stakeholders are continuing to work with the APVMA to improve the processes further to optimise efficiency. The following points summarise the main registration efficiency issues raised and progress to date in resolving the problems:

- **Reducing elapsed time for applications**: The APVMA recently developed a comprehensive paper that detailed its projects to reduce elapsed time for applications, including a review of key registration processes, reduced technical screening, process mapping, changes to some permits, electronic labels, streamlined label approval process, clock audits, flow charts of processes on website, improvements to *Manual of Requirements and Guidelines*, and meetings with industry to improve quality of applications.
- **Data waiver**: An APVMA working group will consider what data requirements for registrations can be waived before applications are submitted. The APVMA has not yet convened a meeting of the working group.
- **Time clock for applications**: The APVMA has released the Electronic Application and Registration System (EARS), including reporting clock times. The scope of EARS will be expanded.
- **Secure electronic communications regarding applications**: The APVMA has proposed setting up a bulletin board and will implement it when computing staff resources permit.
- **Tighter definitions and descriptions of requirements and processes**: Enhancements have been made to improve transparency and consistency.
- **Streamlining screening processes**: The APVMA is considering reducing preliminary assessments from a technical screening to a completeness check.
- **Reduced chemistry data requirements**: The APVMA has established a working group to consider how chemistry data requirements can be reduced.
- **Training of APVMA evaluators**: Some APVMA staff will gain practical training during visits to registrant companies.
- **Self-assessment of certain types of application**: Initially, the APVMA and CropLife will identify the scope of applications to which self-assessment could apply.
- **Performance monitoring and quality checks of external evaluators**: Measuring performance and quality has commenced and formal records of provider quality performance are being developed.

5. PROBLEMS WITH CURRENT REGULATORY FRAMEWORK (cont.)

5.4 Regulatory gaps

Current regulations do not adequately cover all needs of the pesticides industry and the Australian agricultural sector. Following are some examples of gaps in the current regulatory framework that reduce competitive innovation and the creation of a level playing field. Improved government regulation concerning these gap issues below is needed to remove disincentives for competition in minor crop uses, international trade, product development and safe use. Improving competition would be in accordance with the second COAG principle of good regulation (minimal impact on competition).

5.4.1 Minor use registrations and permits

The liability issues arising from the *Trade Practices Act 1974* are seriously hampering the support by pesticide manufacturers for minor crop use permits. This is having a negative impact on farmers, because they are prevented access to suitable chemicals for control of pests, weeds and diseases in minor and specialty crops.

As long as regulations place full responsibility on the supply company for the performance of products to be granted permits in the minor crop use program, pesticide manufacturers will continue to take a very conservative approach to the support of these permits.

5.4.2 Data protection

Current data protection provisions are inadequate to encourage pesticide manufacturers to invest in research to develop some new products and new uses for existing products, thus limiting innovation in new crop protection products and registration of minor uses. Some states that permit off-label uses also cause reduced benefits of data protection, thus discouraging innovation and giving an unfair advantage to companies that do not innovate. Attempts to complete and amend aspects of the data protection legislation have been continuing for four years.

5.4.3 Compliance

Inadequate compliance with agricultural and veterinary chemicals legislation has created an uneven playing field. Part of the problem relates to inadequate state and territory enforcement of their legislation due to insufficient resources, and conflicting priorities in states where pesticides are regulated by a department other than agriculture/primary industries.

Much better use could be made by the state and territory governments of the Agsafe Guardian program, which accredits personnel and premises that handle agricultural and veterinary chemicals. The Guardian accreditation process involves checking a premise's compliance with all relevant state regulations and then providing guidance to improve that compliance so as to achieve accreditation. While not all distribution premises in Australia participate in Guardian, the vast majority do. By achieving compliance levels of almost 100% within Guardian participants, the program is achieving a level of compliance with state regulations to which state governments could only aspire. CropLife suggests that by entering into a formal arrangement with Agsafe, state and territory governments could empower Guardian to check and improve compliance on their behalf.

5.4.4 National monitoring

There is no comprehensive national adverse experience reporting program for agricultural and veterinary chemicals. Reporting to the APVMA's Adverse Experience Reporting Program is largely voluntary, except for product registrants, and there is no mandatory reporting of incidents by state and territory governments to feed into a national database. Even some states do not have a centralised system for reporting and recording adverse experiences, eg. Western Australia is implementing a system of contact points in 11 different agencies for the public to report pesticide incidents.

5.4.5 Food standards

The APVMA recommends MRLs to FSANZ so that the MRLs can be considered for listing in the Food Standards Code. This dual system involving two Commonwealth Government agencies causes unnecessary delays of up to one year in formalising MRLs. It can lead to the situation where farmers can use a registered pesticide product according to the label and follow Good Agricultural Practice to meet the APVMA's recommended MRL, but still not meet the Food Standards Code because of delays in FSANZ assessing, approving and listing the MRL. Where no MRL has been set for a particular pesticide and food commodity, there must be no detectable residue. FSANZ consults with food industry and public stakeholders, which adds up to a year to the process of formalising an MRL for food, but virtually always accepts the APVMA's recommended MRL eventually.

5.4.6 Non-tariff trade barriers

The continuing problem of import residue tolerances in produce being used by trading partner nations as a form of non-tariff trade barriers needs to be taken up at a government to government level but in a coordinated manner.

Australia needs to ensure that MRLs are science-based and consistent, taking into account the MRLs set by the Codex Alimentarius Commission.

6. EMERGING NEW REGULATORY BURDENS

There is a real danger that international, national and state pressures from a multiplicity of government bodies will continue to add to the regulatory burden on the pesticides industry. The following are some examples of initiatives that could potentially add to the volume and complexity of pesticide regulation.

6.1 Globally Harmonised System of Classification and Labelling of Chemicals (GHS)

Introduction of the GHS threatens to impose unnecessary additional regulatory burdens on the pesticides industry with no offsetting benefit if the simplistic identification and communication of hazards is imposed on the current effective risk-based system for labelling, handling and use of these chemicals. Agricultural and veterinary chemicals have different requirements for safety assessment and end use than industrial and therapeutic chemicals, as discussed later in this submission, and therefore have different regulatory and labelling requirements.

6.2 Chemicals of Security Concern (CSCs)

The control framework being considered by Australian governments for CSCs has the potential to create an unnecessary additional regulatory burden for pesticide manufacturers, distributors and users. This concern has been emphasised by CropLife in its submissions to COAG on the most effective means available to manage security issues associated with those pesticides that may be of interest to terrorists in Australia.

Avoidance of unnecessary additional regulatory burden can be achieved through an approach that is based on a number of key principles. Such an approach would provide the transparency, certainty and credibility required to generate industry and community confidence in the outcome.

The control framework should be:

- Risk-based so as to recognise that potential hazards can be minimised through the adoption of effective risk management strategies.
- Nationally consistent to achieve efficiency.
- Built upon current appropriate (regulatory, co-regulatory and voluntary) measures.

6. EMERGING NEW REGULATORY BURDENS (cont.)

6.2 Chemicals of Security Concern (CSCs) (cont.)

- Focussed on cost-effectiveness to impose discipline upon governments and all other stakeholders to weigh the cost of the control framework against the beneficial security outcomes it is intended to deliver.
- Aligned with measures being implemented by international counterparts.
- Framed to allow access to legitimate users of the products and avoid measures that result in products being withdrawn from market.
- Based on industry-government partnerships and ongoing timely and genuine consultation with affected stakeholders.

CropLife believes it is appropriate to use a mix of regulatory approaches, including self-regulation, within an effective control framework. Industry self-regulation should be used, where appropriate, because this regulatory option generally has lower costs, is more flexible and directly involves those parties who have the best knowledge of the complex chemicals in question and the means to most efficiently deliver the required stewardship/security outcomes.

The pesticides industry has experience and a proven track record of responsible stewardship and self-regulation which can be demonstrated through CropLife's wholly-owned subsidiary, Agsafe. Agsafe manages three successful self-funded stewardship programs. The Guardian program trains and accredits personnel and premises that handle agricultural and veterinary chemicals. It is a condition of CropLife membership that members only sell their products to Agsafe-accredited distribution companies. The ***drum****MUSTER*® program collects clean and empty agvet chemical containers for recycling. The ChemClear® program collects unwanted registered agvet chemicals for safe disposal. More information on Agsafe is in *Attachment 1*.

Co-regulation may be appropriate where some parts of the industry elect not to be involved in self-regulatory schemes. As a last resort, full government regulation, accompanied by appropriate enforcement, may be relevant where absolute compliance is considered essential on security grounds, where industry self-regulatory or co-regulatory approaches are considered inadequate, and importantly, where the benefits of any new regulations can be proven to clearly outweigh any costs associated with their introduction.

While recognising the need to build on current control measures, CropLife has urged COAG to continue to work towards national harmonisation and coordination of these measures to minimise regulatory duplication (and unnecessary costs), achieve consistency across jurisdictions and deliver more effective outcomes.

This need is emphasised by the approach to SSAN where there was initial agreement between the Commonwealth and state/territory governments to put in place uniform regulation but no mechanism to manage uniform implementation. The result is considerable differences across jurisdictions on cost, process, mutual recognition and security requirements.

In implementing the SSAN principles agreed through the COAG process, each state/territory developed its own detailed regulations. Whilst some governments conducted reasonable local consultation, there was no apparent coordination between them on the detail. This is a critical issue for cost and compliance with most fertiliser suppliers operating nationally.

The SSAN experience also highlights some of the risks associated with using existing instruments for a purpose for which they were not designed. Having created a classification for SSAN, with a range of terms used by the various states, there have subsequently been numerous instances of dangerous goods requirements being confounded with security requirements. The two most significant SSAN products in terms of quantity sold are ammonium nitrate and calcium ammonium nitrate. Ammonium nitrate is a class 5.1 DG (oxidizing agent) but calcium ammonium nitrate is not classed as a dangerous good.

In a number of states, explosives legislation was used as the basis of regulating SSAN products. None of the SSAN products are explosives, but having been brought into explosives legislation, may then be subjected to controls, such as those on storage volume, that have nothing to do with security and that are inappropriate for a non-explosive material.

6. EMERGING NEW REGULATORY BURDENS (cont.)

6.3 National Framework for Chemicals Environmental Management in Australia (NChEM)

The pesticides industry is concerned that the NChEM initiative could inadvertently create a more burdensome, complex and uncertain regulatory environment and diminish the role of sound science in the identification, assessment and risk management of chemicals that are perceived to have environmental concerns.

Prioritisation is an important tool that is used by regulators to effectively and efficiently manage resources to achieve management objectives. Prioritisation will be an important tool within the NChEM framework to identify chemical management issues that may not be related to environmental concerns of a particular chemical.

In circumstances where the environmental effects of a particular chemical are used as justification for prioritising it under NChEM, those environmental effects should be based on sound science to ensure an accurate assessment of actual risk to the Australian environment. This approach enables management action to be appropriately targeted to chemicals with the highest potential environmental concerns while ensuring that those chemicals that can be used safely and effectively remain available for use in Australia.

A science-based approach to prioritisation is consistent with the existing chemical management frameworks in Australia including those of the APVMA and the National Industrial Chemicals Notification Assessment and Scheme (NICNAS).

While CropLife supports the general principles of improved coordination and communication between environment agencies to better manage the potential environmental risks and not just hazards of chemicals, CropLife believes that no final action on NChEM should be taken until the outcomes of the COAG Ministerial Taskforce and this study into chemicals and plastics regulation are implemented.

7. CROPLIFE PROPOSAL

7.1 The need for a new regulatory model

The APVMA spends significant resources liaising and negotiating with states and territories on control of use issues. Increasing costs of the APVMA may be unavoidable given that the regulator is also being asked to increase the level of monitoring for compliance and other worthwhile regulatory programs. As the APVMA operates on a full cost recovery basis, any additional costs due to the inconsistencies of state control of use legislation are eventually passed on to the agricultural and veterinary chemicals industry. In an increasingly competitive market, however, it is becoming difficult for the pesticides industry to absorb the increasing costs of regulation. As a consequence, it can be expected that these increasing costs will be passed on to the farmer. The costs of inefficient and complex regulation, including non-harmonised control of use legislation, ultimately make the Australian agricultural industry less competitive internationally.

The current cost recovery framework for the APVMA leads to cross-subsidisation between registrant companies who have products with large dollar sales and other companies' new products entering the market that may or may not be commercially successful. This places an unfair burden on products that are successful in the marketplace, as they pay for a competitor to enter the market at a subsidised cost. In addition, the APVMA carries out a number of activities for the general public benefit that should be financed by the government, or at least, not through cost recovery mechanisms from product registrants.

7. CROPLIFE PROPOSAL (CONT.)

7.1 The need for a new regulatory model (cont.)

The APVMA regulates many non-agricultural products (eg. pool and spa chemicals, pool sanitising devices and domestic pet repellants), partly because no other agency has the mandate or resources to assess and manage the risks of these products. Some of these products may be removed from the NRS as a result of the current review of its scope by PSIC, but cross-subsidisation of some non-agricultural products is likely to continue.

CropLife believes that the current regulatory system for pesticides in Australia is unnecessarily burdensome, complex, inconsistent and costly. The layers of national, state/territory and local government regulation are a key source of regulatory inconsistency in Australia with up to nine jurisdictions controlling the use of pesticides. Compliance and enforcement activities are also spread between each of these jurisdictions. Industry and government attempts over many years have failed to achieve harmonisation of state and territory regulation of chemicals, including control of use of pesticides.

In 2006, CropLife Australia adopted the COAG principles of good regulation[3] as a framework for development of best practice regulation of the pesticides industry in Australia. These COAG principles are:

1. Minimal impact of regulation.
2. Minimal impact on competition.
3. Predictability of outcomes.
4. International standards and practices.
5. No restriction of international trade.
6. Flexibility of standards and regulations.
7. Regular review of regulations.
8. Exercise of bureaucratic discretion.

CropLife believes that a new model is needed to achieve best practice regulation that meets these principles. The broad objectives of a new regulatory model are:

- National consistency (especially control of use).
- Simplification.
- Improved efficiency (including timeliness of registrations).
- Improved effectiveness (risk-based assessments).
- Better compliance (including enforcement and monitoring).
- Lower cost (including an appropriate funding model and co-regulation).

Chemicals regulators in different industries and sectors have distinct requirements, priorities and skills, but cooperate with the APVMA in the regulation of agricultural and veterinary chemicals. Agricultural and veterinary chemicals, unlike many industrial and therapeutic chemicals, are deliberately released into the environment, and are assessed thoroughly using a risk-based system before approval for use. They are assessed for efficacy and safety to human health, the environment and trade. Because of differences in safety assessment and end use, agricultural and veterinary chemicals require different OH&S and dangerous goods regulation than industrial and therapeutic chemicals. Their use is also highly regulated at the farm level.

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[3] *Council of Australian Governments. Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Endorsed by COAG in 1995, amended 1997 and 2004.*

7. CROPLIFE PROPOSAL (CONT.)

7.1 The need for a new regulatory model (cont.)

The APVMA is able to give priority to agricultural considerations. CropLife supports the recognition and maintenance of the APVMA's separate risk-based assessment system and sees no net benefit from amalgamation of diverse regulators at any jurisdictional level.

Adoption of GHS or NChEM for pesticides would have no net benefits, and could potentially place additional regulatory and cost burdens on agricultural industries.

However, harmonisation of control of use could be achieved by moving to regulation by one national body.

7.2 New regulatory model for agricultural chemicals

CropLife proposes a new model for regulation of pesticides in Australia. The primary objectives and features of CropLife's proposed model are:

- Vertical integration of the Agvet Code to include control of use and appropriate secondary legislation.
- Retention of the risk-based assessment and labelling process for agricultural chemicals.
- A revised cost recovery framework.
- Commonwealth Government funding for APVMA activities for public good.
- Streamlined MRL-setting process by APVMA and FSANZ.
- Increased co-regulation (eg. allow some industry self-assessment in registration process).
- Simpler, faster and cheaper assessment of applications for low-risk chemicals.

There is significant scope at the national level for the regulation of pesticides to become more streamlined through the vertical integration of Commonwealth and state and territory regulatory regimes.

7.3 Cost recovery

It is important to recognise the particular circumstances of the Australian Government's regulation of pesticides. In particular, this function is carried out by the APVMA on a full cost recovery basis. That is, the pesticides industry fully funds the registration, assessment and compliance functions of the APVMA.

Of the APVMA's $24 million annual budget, only $140,000 comes from Parliamentary appropriations.

There are sound policy reasons for the imposition of cost recovery fees and levies upon the pesticides industry. However, if the Productivity Commission considers extending Commonwealth responsibility to areas traditionally within the remit of states and territories, then increasing Parliamentary appropriations to cover additional activities, such as policy advice, control of use and international activities, will need to be carefully considered.

The Commonwealth Government has outlined the circumstances where cost recovery arrangements should be applied in the *Australian Government Cost Recovery Guidelines*. This document provides that cost recovery arrangements may be considered to recover the costs of products or services where it is efficient to do so, where it is consistent with the Government's policy objectives and where it does not unduly stifle competition or industry innovation[4].

[4] *Australian Government Cost Recovery Guidelines* (2005), p2.

7. CROPLIFE PROPOSAL (CONT.)

7.3 Cost recovery (cont.)

For agricultural and veterinary chemicals, cost recovery is currently applied for:

- Monitoring compliance with its existing regulations on the Manufacturers Licensing Scheme (a fee for service for veterinary products only).
- The Adverse Experience Reporting Program and the Chemical Review Program levy imposed across all registrants.
- Investigating reports that agricultural and veterinary chemicals may not be compliant with the NRS agricultural and veterinary chemicals legislation, including with respect to claims about a product's effectiveness.
- Participation in international activities including the Codex Alimentarius Commission and the Organisation for Economic Co-operation and Development working groups.
- Assessing, approving and registering agricultural chemicals for use in Australia (fee for service in combination with a levy).
- Issuing minor use permits (fee for service in combination with a levy) and research permits (fee for service in combination with a levy).[5]

While there are regulatory benefits associated with extending Commonwealth regulatory responsibility to control of use for pesticides, additional cost recovery fees and levies should not be imposed upon pesticide registrants in order to do so.

Extending Commonwealth regulatory responsibility could see the Commonwealth Government regulating the training, accreditation, transport, storage, preparation and use of pesticides. These functions are not directly related to the registration of agricultural chemicals, rather they are more closely related to their use. Regulatory responsibility for these activities, as well as monitoring and compliance activities for appropriate use of chemicals is currently performed by state and territory governments and usually funded from their general revenue.

There are sound practical and policy reasons why cost recovery should not be extended to cover control of use regulations for pesticides in Australia. These include:

- The monitoring and compliance activities of the APVMA are directly related to the functions of the agency. Extending regulatory responsibility may result in funding additional monitoring and compliance activities that are not directly related to agency functions and are not appropriate for cost recovery.
- While there are significant benefits to be achieved from greater consistency in the accreditation and training requirements between jurisdictions, it is not appropriate for registrants to fund this activity. States and territories are currently responsible for setting basic standards of accreditation and training for chemical use.
- The benefits from avoiding the misuse of pesticides are broad based and universal. They are not limited to any one sector of the Australian community. The costs of ensuring that pesticides are not misused should also be borne by the broader Australian community. Cost recovery for this activity from industry would add a significant inefficiency.
- That some aspects of cost recovery for investigation and enforcement activities (as currently applied by the APVMA) may undermine, and be inconsistent with, other Government policies.

[5] *Final Cost Recovery Impact Statement on the Proposed Cost Recovery Framework for the National Registration Scheme for Agricultural and Veterinary Chemicals* (March 2005), pp8-17.

7. CROPLIFE PROPOSAL (CONT.)

7.3 Cost recovery (cont.)

These issues are each discussed further below.

7.3.1 Monitoring and compliance activities

The APVMA currently investigates and deals with reports that indicate that agricultural and veterinary chemicals (active constituents and chemical products) may not be compliant with the requirements of Australia's agricultural and veterinary chemicals legislation. The costs associated with conducting these activities are recovered through the sales levy imposed on all registrants.

Cost recovery for monitoring and compliance activities for pesticides is undertaken on the basis that this activity primarily relates to their individual and collective product stewardship responsibilities. However, for monitoring and compliance activities associated with the use of pesticides, responsibility for compliance with transport, handling and storage and application regulations after the point of retail sale lies with the chemical user, not the registrant. Consequently a registrant levy is not appropriate for these activities.

Instead, monitoring and compliance activities at the chemical user level are more appropriately funded through a government appropriation. Regulations controlling the use of pesticides serve a number of purposes and are not only related to the pre-market registration of the chemical. Instead, registered pesticides that have shown to be safe and effective through the registration process may still have detrimental effects on human health, trade, or the environment if they are used in a manner that is contrary to labels.

In controlling the end uses of pesticides, registrants have responsibility for ensuring that current, accurate and appropriate information is provided to the users of their product. This responsibility is fulfilled by the provision of a product label and a Safety Data Sheet. These documents identify how to use a product safely and what actions a user must take to manage the risks associated with that chemical product.

Detrimental impacts on trade, human health or the environment may be due to a wide variety of factors, only some of which are associated with a product's manufacture and supply. Factors associated with possible detrimental impacts of pesticides, but not related to their supply or manufacture, include:

- Whether the user of the pesticide was appropriately trained and accredited to be able to apply the chemical appropriately in all the circumstances.
- Whether the pesticide was being applied "off-label" (off-label applications can also occur when state or territory regulation permits the use of a chemical in circumstances that are not recognised on the product label).
- Whether the pesticide was intentionally being misused.
- Whether the equipment used to apply the pesticide was in good working order and calibrated correctly.

Currently, the regulatory compliance work conducted by states and territories involves ensuring compliance with OH&S legislation, environmental requirements, storage of hazardous substances and dangerous goods transport codes. If regulatory responsibility controlling the use of pesticides was transferred to a national body such as the APVMA, with a corresponding increase in the costs recovered from the pesticides industry, this would result in an inequitable structural cross-subsidisation of compliance activities designed to manage risks and hazards that are not necessarily appropriate for funding by the pesticides registrants.

7. CROPLIFE PROPOSAL (CONT.)

7.3.2 Accreditation and training

Currently, states and territories are responsible for setting the training and accreditation standards for pesticides users. This training on chemical use varies considerably between states in both content and who is required to undertake the training.

As training and accreditation meets state and territory requirements for assurances that pesticides are being handled and applied by appropriately qualified individuals, compliance activities to ensure that only qualified people are applying pesticides should not be cost recovered from registrants.

7.3.3 Benefits from end-user compliance activities are broad and universal

Pesticide registrants do (indirectly) benefit from end-user compliance and enforcement activities. The broader Australian community also benefits as a whole through preventing excessive pesticide residues on food and avoiding environmental damage or other adverse effects from misuse. Consequently, as the benefits from end-user compliance activities are enjoyed by the whole community, these activities should be resourced by the whole Australian community through general taxpayer revenue.

Pesticide registrants do not have the direct cost-benefit link that would be necessary to support recovering the costs of these activities from them. Cost recovery from users may be appropriate to cover the administrative cost of processing licences or permits through an application fee. Cost recovery from users may also be appropriate to recover the costs of some compliance activities directly related to the functions of the regulatory agency.

Compliance and enforcement activities for end-users are currently resourced through state and territory general revenue. Costs from this activity should not be recovered from pesticide registrants. Imposing cost recovery would represent a significant shift of responsibility for funding activities with key public good characteristics from states and territories to a select and limited number of registrants.

End-user compliance and enforcement is not directly related to the functions of the APVMA. Rather, responsibility for compliance and enforcement activities is spread among a variety of agencies in different jurisdictions that may include health, environment, workplace safety and trade. The cost recovery guidelines state that cost recovery should only be applied in circumstances where there is clear legal authority for the imposition of cost recovery charges. In the absence of significant regulatory changes that alter the APVMA's purpose from an authorising agency to one with a compliance function with significantly expanded regulatory responsibilities, it is very likely that there will not be sufficient legal authority for the imposition of these charges.

Levelling cost recovery charges on registrants to recoup the costs for this function would add a significant inefficiency to the manufacture and supply of agricultural and veterinary chemicals in Australia. CropLife notes that this is inconsistent with the Commonwealth Government's first key principle for applying cost recovery mechanisms that provides that cost recovery charges should only be applied where it is efficient to do so[6].

[6] *Australian Government Cost Recovery Guidelines (2005), p2.*

7. CROPLIFE PROPOSAL (CONT.)

7.3.4 End-user compliance investigation and enforcement is not suitable for cost recovery

The APVMA's previous cost recovery statement discusses legal proceedings as the type of situation where applying cost recovery can undermine policy objectives[7]. The APVMA currently recovers the costs of its potential legal proceedings through a fixed fee at the time of registration renewal[8]. While the APVMA states that it would use voluntary measures to achieve compliance in preference to legal proceedings, these cost recovery provisions do make the APVMA more likely to seek prosecutions[9] as:

- If the action is unsuccessful, the court may direct the APVMA to pay the respondent's court costs. These costs are then recovered from industry, significantly diminishing the discouraging aspect of poorly prepared prosecutions.
- If the court found in favour of the APVMA, the Australian Government would have recovered the cost of the prosecution twice. Firstly, through the re-registration fees paid by the industry and secondly via the costs order. As these funds resulting from the costs order are not returned to the APVMA, the financial benefits from a successful prosecution will not accrue to the industry that funded it, instead returning to general revenue.

Courts may award costs for a variety of reasons, including to:

- Discourage vexatious or frivolous claims.
- Minimise the costs of bringing a successful action before the courts for decision.

As the APVMA suffers no benefit or loss from costs decisions, then the purposes behind the policy for the award of costs is significantly undermined. As such, cost recovery for funding legal proceedings should not occur. This would ensure that only the most necessary judicial interventions occur. The role of the APVMA could then be limited to providing information and education activities to promote the safe, effective and responsible use of chemicals.

8. CROPLIFE RECOMMENDATIONS

On the basis of the points made above, CropLife recommends that the Productivity Commission advocate the following actions in its findings:

- That a new model be developed for the regulation of agricultural and veterinary chemicals in Australia incorporating the following primary objectives and features:
  - Vertical integration of the Agvet Code to include control of use and appropriate secondary legislation.
  - Rationalisation and harmonisation of secondary legislation on agricultural and veterinary chemical handling, transport, storage, environment and food in all jurisdictions, and integration with national primary control of use legislation.
  - A revised cost recovery framework, including Commonwealth Government funding for regulatory activities that are for the public good, to ensure that the Australian Pesticides and Veterinary Medicines Authority (APVMA) is funded in a manner that is equitable and that minimises cross-subsidisation between registrants and products, and between agricultural and non-agricultural products.

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[7] *Final Cost Recovery Impact Statement on the Proposed Cost Recovery Framework for the National Registration Scheme for Agricultural and Veterinary Chemicals (March 2005), p11.*
[8] *Final Cost Recovery Impact Statement on the Proposed Cost Recovery Framework for the National Registration Scheme for Agricultural and Veterinary Chemicals (March 2005), p11.*
[9] *Formal prosecutions are not conducted by the APVMA. Rather, the APVMA would instruct the Director of Public Prosecutions (DPP) to conduct a prosecution on its behalf. Costs would be recovered from the instructing agency – in this case the APVMA.*

8. CROPLIFE RECOMMENDATIONS (cont.)

- Retention of the risk-based system for assessment and labelling of agricultural and veterinary chemicals.
- Achievement of high levels of compliance with all mandatory chemical product label instructions through appropriate national legislation and regulation, monitoring and enforcement to ensure efficacy, safety, environmental protection and data protection.
- Development of a mandatory national database for reporting of adverse experiences with agricultural chemicals.
- Streamlining of the MRL-setting process by eliminating the sequential processes currently utilised by the APVMA and Food Standards Australia New Zealand.
- Increased adoption of appropriate co-regulatory mechanisms.
- Simpler, faster and cheaper assessment of applications for low-risk chemicals without compromising science-based decisions.
- Removal of the APVMA default responsibility for regulation of non-agricultural products, by providing appropriate resources to other agencies to assess and manage the risks of these products.

- That the APVMA maintain a priority focus on working cooperatively with registrants to address their concerns about the inefficiency, inconsistency and timeliness of registration and other approval processes.

- That regulators take action to minimise the burden of unnecessary new regulations that have minimal or no net benefit for the agricultural sector or the Australian community.

- That the regulatory system be streamlined to facilitate the legitimate use of pesticides for minor and specialty crops, particularly by addressing issues of registration, labelling, permits, liability and data protection.

- That the responsible Commonwealth Government agencies make consistent and persistent representations to ensure that pesticide residue levels in produce are not used as non-tariff trade barriers by trading partner nations.

- That state and territory governments enter into formal agreements with Agsafe to empower Guardian to undertake relevant compliance checking and guidance on their behalf.

- That coordination and communication between state, territory and federal government agencies be improved to avoid duplication and overlap of reviews of pesticide regulation, possibly extending to a “whole of governments” plan and timetable for reviews.

ATTACHMENTS

1. Agsafe
2. State Control of Use – Case Study: Off-Label Uses
3. Legislative Requirements for the Use of Pesticides (Other than Control of Use Legislation)
4. State Control of Use – Case Study: Security Sensitive Ammonium Nitrate
5. State Control of Use – Case Study: Aerial Spray Application
6. State Control of Use – Case Study: 2,4-D Herbicide Application

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGUALTION

ATTACHMENT 1

INTRODUCTION

The agricultural chemicals industry has experience in, and a proven track record of responsible stewardship and self-regulation, which can be demonstrated through CropLife's wholly-owned subsidiary, Agsafe.

Agsafe manages three successful self-funded stewardship programs. The Guardian program trains and accredits personnel and premises that handle agricultural and veterinary chemicals. It is a condition of CropLife membership that members only sell their products to Agsafe-accredited distribution companies. The ***drum****MUSTER* program collects clean and empty agvet chemical containers for recycling. The ChemClear® program collects unwanted registered agvet chemicals for safe disposal.

The Agsafe Guardian program also has responsibility for managing the Fertcare® training program, which provides product stewardship for the fertiliser industry focussing strongly on environmental issues.

BACKGROUND

The Agsafe Guardian program is a nationally consistent co-regulatory (or self-regulatory) initiative that aims to ensure responsibility, regulatory compliance and duty-of-care throughout the agricultural and veterinary supply chain. The program has received authorisation from the Australian Competition and Consumer Commission to impose sanctions on members who do not meet their current obligations.

The Guardian program applies to the safe storage, handling, transport and sale of agricultural and veterinary chemicals from the place of manufacture to the point of supply. A flow-on effect from trained and accredited staff selling agricultural and veterinary chemicals is expected to positively influence their safe and effective end use.

Typically, Agsafe membership is comprised of retail stores or warehouses. The membership profile can be broken down into those that are members of a Buying Group, such as Elders or CRT, or those that are independent.

The direct market that represents Guardian Accreditation is as follows:

- 1,664 premises are currently registered with Agsafe for premises accreditation.
- Approximately 2,500 personnel trained annually – there is an estimated 6,000 personnel active within the Agsafe member base (based on 3 people per store).

All locations applying for accreditation are assessed against the Agsafe Code of Practice, a document based on current legislation and Australian Standards relevant to the agricultural and veterinary chemical industry. The program seeks to promote not only compliance with state, territory and Commonwealth legislation, but also industry best practice that ensures all organisations and individuals within the industry are using risk management as effectively as possible.

Positive outcomes of the Guardian program ensure that:

- Agricultural and veterinary chemicals continue to be stored, handled and transported in accordance with all statutory regulations and standards.
- Accredited individuals understand the relevant safety and regulatory requirements and can fulfil appropriate duty of care obligations.
- Accredited individuals can provide end-users with appropriate advice on chemical use consistent with legal obligations and with advice from relevant government department frameworks.

INDUSTRY CO-REGULATION

The Guardian program relies on the industry itself to maintain a safe environment. Whilst government regulation is accessible, it can be confusing for the business owner to decipher all that may be applicable without assistance. The Guardian program provides assistance and timely advice when and where it is required.

Co-regulation can be a low cost option to ensure industry safety and efficiency. By involving parties that have the best knowledge of the industry, co-regulation can provide an alternative to other forms of (government) regulation.

Co-regulation can be easily adapted to suit changes within a market, therefore making it an efficient choice for many industries.

The Guardian program operates on a cost recovery basis, which enables the provision of services for a minimum fee.

SUMMARY

In achieving accreditation, locations will have a positive attitude towards using best practice when storing and handling dangerous goods, scheduled poisons or hazardous substances.

Further information on the Guardian program can be found on our website www.agsafe.com.au

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGUALTION

ATTACHMENT 2

STATE CONTROL OF USE
CASE STUDY: OFF-LABEL USES

ISSUE

Australian states and territories vary greatly in what agricultural pesticide off-label uses are allowed in regard to application rates, target pests, crops and application equipment.

THE PROBLEM

CropLife Australia supports the adoption by all states and territories of the National Operating Principles of the National Registration Scheme for Agricultural and Veterinary Chemicals (NRS). Certain agricultural pesticide uses are allowed after extensive scientific research by the manufacturer and rigorous evaluation by the Australian Pesticides and Veterinary Medicines Authority (APVMA) to ensure safe and effective use. These permitted uses are printed on the product label. States allowing off-label uses undermine the NRS.

CropLife Australia opposes off-label uses on the following grounds:

- Use at a rate lower than the minimum rate specified on the label may increase the risk of selecting or developing resistance to the pesticide, which could threaten the long-term efficacy of the pesticide and limit options for control of the pest.
- The registrant should not be liable for adverse events arising from off-label uses.
- Off-label uses undermine data protection given to registrants to encourage innovation and reduce the incentive for manufacturers to put minor uses on labels. Effective data protection is essential to promote research and development investment in Australian agriculture by allowing registrants the opportunity to obtain some benefit from the research costs in developing new products and new uses for existing products.
- Label directions for pesticide use are the result of extensive and expensive scientific research by the manufacturer and rigorous evaluation by the APVMA to ensure safe and effective use.
- Use on a different crop, for which no maximum residue limits (MRLs) have been set, could lead to unacceptable pesticide residue levels in food or stock feed, which could lead to loss of export markets.

AGRICULTURAL PESTICIDE OFF-LABEL USE PROVISIONS
WHAT IS ALLOWED UNDER EXISTING STATE CONTROL OF USE?

CONTROLS		QLD	NSW	ACT	VIC	TAS	SA	WA	NT
RATES	Use a **lower rate** than that shown on the approved label	YES [1]	YES	NO	YES [2]	YES	YES	NO	YES
	Use at a **lower frequency** than that shown on the approved label	YES [1]	YES	NO	YES [2]	YES	YES	NO	YES
	Use a **higher rate** that that shown on the approved label	NO	NO	NO	NO	NO	NO	NO	NO
	Use at a **higher frequency** than that shown on the approved label	NO	NO	NO	NO	NO	NO	NO	NO
PESTS	Use on a **different pest** in a crop/situation already shown on the approved label	YES [1]	NO	NO	YES [2]	YES	YES	NO	YES
CROPS & SITUATIONS	Use on a **different crop or situation** not shown on the approved label	NO	NO	NO	YES [2]	NO	NO	NO	NO
APPLICATION EQUIPMENT	Use via **different application equipment** and/or method than shown on the approved label	YES [1]	NO	NO	YES [2]	NO	NO?	NO	NO

[1] Unless instruction states not to be used in this way

[2] Subject to conditions and certain restrictions.

Users of this table should check the information with their respective state legislation and use the information as a guide only, as requirements and legislation are subject to change. In addition, the information in this table is not to be taken as legal advice in any specific situation.

The states and territories' primary legislation on control of use of agricultural and veterinary chemicals is administered by different government departments in each jurisdiction (eg. Primary Industries in Victoria, Environment and Conservation in New South Wales, Health in Western Australia). The regulation of chemical use is further complicated by other relevant legislation under agriculture/primary industries (*Attachment 2*), OH&S, health, environment, transport, food and other legislation at state and federal levels.

COSTS TO INDUSTRY

National regulatory requirements for approved safe and effective uses on labels are a costly exercise for product manufacturers and government regulators. Label directions for pesticide use are the result of extensive and expensive scientific research by the manufacturer and rigorous evaluation by the APVMA. Off-label uses undermine these costly national requirements and are a disincentive to encouraging innovative products, safer products and new uses.

Off-label uses and lack of enforcement with label directions undermine data protection given to product registrants and reduce the incentive for registrants to apply for registration of minor uses, which are important for smaller and emerging industries, such as many horticultural crops. Without these minor uses for pesticides, many crops could not be grown economically. Data submitted by a company and relied upon by the APVMA for registration receives data protection. However off-label provisions in some states allow identical products of other companies to be legally used off-label and many cases even without regard to a registered use.

Compliance requirements for state legislation cause confusion and potential liability problems, particularly for cross-border applications if adverse events occur. The product registrant should not be liable for adverse events arising from off-label uses.

If MRLs are exceeded in food or stock feed because of off-label use, export or domestic markets could be lost, causing great damage to farmers, exporters and the pesticides industry.

Use at a rate lower than the minimum rate specified on the label may increase the risk of selecting or developing resistance to the pesticide, which could threaten the long-term efficacy of the pesticide and limit options for control of the pest. This then could lead to crop losses due to pests and weeds and demand for new pesticides, with associated development costs.

SOLUTION

A national initiative to ensure that state control of use legislation is harmonised and enforced so that pesticide use is consistent with the APVMA-approved label.

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGULATION

ATTACHMENT 3

LEGISLATIVE REQUIREMENTS FOR THE USE OF PESTICIDES (OTHER THAN CONTROL OF USE LEGISLATION)

CONTROLS		**QLD**	**NSW**	**ACT**	**VIC**	**TAS**	**SA**	**WA**	**NT**
RECORD KEEPING	**Records of use must be maintained**	YES (Commercial and contractors plus where required by Reg's only)	YES	NO	YES (S7, RCP's and Commercial only	YES (commercial and occupational only)	YES (commercial only)	YES (aerial only)	NO
TRAINING AND LICENSING OF USERS AND OPERATORS	General **user** **(farmer/commercial training required)**	NO	YES	YES (Commercial only)	YES (S7 & RCP only)	NO	YES (S7 & RCP only)	NO	NO
	Licensing of commercial operators required	YES	YES (Aerial & PCO's only	YES	YES	YES	YES	YES	YES
NEIGHBOUR NOTIFICATION	Required for general pesticide use	YES (only if required by label)	NO	YES (S7 only)	NO	NO	NO	NO	NO
	Required for vertebrate poisons	YES	YES (only if specified in a control order)	YES (only if required by label)	NO	YES (1080 only)	NO*	YES (1080 only)	NO

Users of this table should check the information with their respective state legislation and use the information as a guide only, as requirements and legislation are subject to change. In addition, the information in this table is not to be taken as legal advice in any specific situation.

* Required for 1080 under control of use legislation.

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGULATION

ATTACHMENT 4

STATE CONTROL OF USE
CASE STUDY: SECURITY SENSITIVE AMMONIUM NITRATE

THE ISSUE

The Council of Australian Government's (COAG) attempt to introduce a national system to regulate security sensitive ammonium nitrate (SSAN) because of the terrorist threat has resulted in seven different schemes being implemented around Australia. The result is inconsistencies in costs, processes, licensing requirements, mutual recognition, control mechanisms and reduced availability of the fertilisers to farmers. There is a risk that loopholes created by the inconsistency and complexity across the states could be exploited by those seeking to secure ammonium nitrate for terrorist purposes.

THE PROBLEMS

There was initial agreement between the Commonwealth and state governments to introduce uniform regulation but no mechanism to manage uniform implementation. However, COAG did not develop a national standard that states could adopt by template.

COAG established three principles on SSAN, none of which has been met in the regulation and administration established by the states. The principles are:

- A nationally consistent, effective and integrated approach to control access to SSAN for those with legitimate need.
- To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns.
- To establish a framework for control that may be applicable to other materials of security concern.

States' determination to implement their own different systems has seriously undermined the principle of a national approach.

The result is a series of differences between jurisdictions on cost, process, mutual recognition and security requirements. There are significant inconsistencies between the systems set up by each state with differences in terminology, licensing requirements, required documentation and control mechanisms.

There have been delays in states finalising their SSAN legislation (following the original COAG decision to do so in 2004).

Western Australia is yet to introduce SSAN legislation. Therefore, SSAN material could be procured in Western Australia and transported anywhere in the country with minimal detection potential.

Tasmania has banned all SSAN materials from sale to agricultural users, the only state to do this, and clearly against the desired outcomes from the COAG directive.

There are inconsistencies with the classification of SSAN in different states - some classify it as an explosive, others as a security sensitive substance or High Consequence Dangerous Goods, which causes confusion.

Most of the fertiliser manufacturers, importers and retailers in Australia operate in multiple states. The processes for applying for a licence or licences in each state have been developed separately so that, not only do companies have to make multiple applications, they also have to interpret and comply with multiple systems. Whilst early intentions were that there would be mutual recognition, this has not occurred in a uniform way.

There is no national process for people to gain security clearances.

There are no clear instructions/guidance notes for importers and exporters of SSAN.

The regulation of SSAN has had a much greater effect on reducing availability to genuine users than was originally intended. A retail outlet may eventually decide to no longer stock the product because of the difficulty of finding licensed transport. A farmer may wish to continue using the fertiliser but finds it no longer stocked by his local retailer.

Issues of the capacity of state governments to effectively and efficiently manage the complex SSAN requirements have also influenced decisions in the industry.

COSTS TO INDUSTRY

National businesses face considerable difficulty and cost in complying effectively with seven different sets of regulations. This has significant potential to undermine the system through poor compliance.

There is more than a 20-fold difference in licensing costs between the states, eg.:

- Storage licences range from $1,437 in Queensland to $45 in South Australia.
- Use licences range from $250 in New South Wales to $45 in South Australia.
- Police and the Australian Security Intelligence Organisation security checks range from $150 in New South Wales to $39 in Queensland.
- Manufacturing licences range from $2,500 in New South Wales to $45 in South Australia.
- Transport (vehicle) licences range from $2,000 in New South Wales to $45 in South Australia.

A large amount of time and resources have been required to come to grips with these inconsistencies, causing the cost of doing business with SSAN products rise.

The cost of getting a licence, and of the required storage and transport needed, is too high for small growers. Small farmers are currently reluctant to obtain licences, even if they wish to continue using SSAN products, due to large costs. The National Farmers' Federation identified that $3,000 is required (on average) to become compliant. This has meant larger organisations have been able to afford these costs and have an advantage over their smaller competitors.

SOLUTION

National consistency and coordination is absolutely necessary for any system put in place to manage chemicals of security concern.

The effective protection of Australia's security requires the states to relinquish their parochial approach to the management of chemicals of security concern and the adoption of a genuinely national approach.

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGULATION

ATTACHMENT 5

STATE CONTROL OF USE
CASE STUDY: AERIAL SPRAY APPLICATION

ISSUE

Inconsistent regulations for aerial application of pesticides in different states and territories are imposing unnecessary costs and obligations on aerial applicators and are largely preventing application by helicopters.

THE PROBLEMS

1. Training

All states except Western Australia accept Spraysafe pilot training, run by the Aerial Agricultural Association of Australia (AAAA), for issuing a chemical distribution licence. Spraysafe training has been independently mapped against national competencies. However, for aerial spray mixers (people who mix the chemicals before putting into the planes), New South Wales alone will not accept Spraysafe training as it is not conducted by a Registered Training Organisation. This training is for less than 50 people who previously received job-specific training. The other states are not concerned with mixers, as they work under the direct supervision of a licence holder (the pilot) and in some states (eg. South Australia) the AAAA works with the state regulator to provide specific regular training for mixers.

2. Licensing

Every state, while accepting Spraysafe as the de facto competence standard, has fees for licences that vary considerably. However, South Australia does not require licensing of commercial operators, except for applicators of Schedule 7 poisons and restricted chemical products.

3. Insurance

All states except South Australia and Queensland have a requirement for aerial agricultural operators to carry $30,000 insurance to cover potential spray drift damage. It is questionable whether state governments should regulate businesses for what should be a business decision.

4. Record keeping

All states except South Australia, Northern Territory and the Australian Capital Territory require some records of pesticide use to be maintained, but the requirements for different types of operators and different pesticides vary between states. Victoria requires record keeping only for Schedule 7 poisons, restricted chemical products and commercial operators.

5. Off-label use

States vary greatly in what off-label uses are allowed in regard to application rates, target pests, crops and application equipment.

COSTS TO INDUSTRY

1. Training

Total cost: probably about $15,000 (in New South Wales) every 5 years - obviously more depending on seasons, need to employ and train casuals, loss of casuals and consequent need to retrain. The effect is that in New South Wales alone, aerial spray mixers have to attend a *ChemCert* course or equivalent, be trained in competencies they never use (mixers never apply the chemical nor calibrate the aircraft), and the cost is of the order of several hundred dollars each. Although the cost is not great, the outcome is to require a lower standard of less relevant training at additional cost.

2. Licensing

Aerial operators who apply sprays across state borders are required to obtain a licence for each state, adding a financial burden that is not warranted because the Spraysafe training is run by AAAA. The highest level fees for aerial operators are Victoria's at about $250 per annum and the lowest are about $50 per annum.

3. Insurance

The costs of maintaining insurance are significant; some premiums apparently are as high as $15,000 for $30,000 cover. A related difficulty is that spray drift insurance is simply not available to helicopter agricultural operators because the main insurer (QBE Aviation with over 80% of the market) refuses to offer hull insurance and the spray drift insurance is bundled with that. Therefore, it is a barrier to entry for helicopter application of agricultural sprays. All states agreed to abolish the insurance requirement for aerial spray operators as part of their agreement with the National Competition Policy Review of agricultural chemical regulation a few years ago, but all states except South Australia and Queensland still have this requirement.

Cost to industry: there are about 130 aerial operators in Australia, so the cost of insurance could be nearly $2 million per annum, although some companies may maintain their insurance regardless of dropping the regulatory requirement. The insurance requirement for aerial spray operators also creates an unlevel playing field with ground operators who are not required to have it.

4. Record keeping

Victoria requires operators to record the batch number of the particular chemical used, but as AAAA members generally use computerised systems, this requires work to add another field. The costs of this and compliance with other state record-keeping requirements are difficult to quantify.

5. Off-label use

Compliance with different state regulations causes confusion and potential liability problems, particularly for cross-border applications.

SOLUTION

All of these problems could be alleviated by uniform national control of use regulations.

SUBMISSION IN RESPONSE TO PRODUCTIVITY COMMISSION STUDY OF CHEMICALS AND PLASTICS REGULATION

ATTACHMENT 6

STATE CONTROL OF USE
CASE STUDY: 2,4-D HERBICIDE APPLICATION

ISSUE

Different restrictions in various states on use of herbicides containing 2,4-D have increased the risk of spray drift and consequent damage to crops and the environment.

SUMMARY OF THE PROBLEM

Incidents of spray drift of 2,4-D across state borders (due to different restrictions on use of this herbicide in neighbouring states) have caused off-target damage to sensitive crops. Such incidents have potential for expensive litigation, loss of export or domestic markets due to residues in crops and environmental damage to plants and waterways.

A number of different forms of 2,4-D are currently registered in Australia. The high volatile ester formulations bear a higher risk of off-target movement compared to other forms of 2,4-D and there are numerous reports of crop damage, notably in cotton, grapes and other horticultural crops due to off-target movement.

CURRENT RISK MITIGATION MEASURES

The Australian Pesticides and Veterinary Medicines Authority (APVMA) has imposed national restrictions on the use of 2,4-D. In November 2005, the APVMA strengthened label warnings, and has since suspended the registrations and label approvals of 24 high volatile ester 2,4-D products until 30 April 2009. Applications of these products are prohibited between 1 September and 30 April and other restraints also apply.

The APVMA restrictions on the use of 2,4-D are also modified at the state level, where additional and inconsistent use restrictions are imposed. Victoria, Western Australia, Tasmania and Queensland currently have restrictions on use of 2,4-D in certain geographical areas and/or time zones:

- Queensland has declared three hazardous areas where a permit is required for ground application of certain herbicides, including ester formulations of 2,4-D.
- Western Australia controls use of restricted hormone herbicides (including 2,4-D) within a 10 km radius of commercial vineyards and tomato gardens. Use near other sensitive crops is not controlled but applicators should exercise a duty of care.
- Tasmania has banned use of 2,4-D products from spring to autumn, unless a permit is issued.
- Victoria has declared Agricultural Chemical Control Areas where there are restrictions on the types and methods of application of certain herbicides during different periods. Application of ester formulations of 2,4-D by all methods is prohibited in these areas to protect herbicide-sensitive and high value crops.
- New South Wales has no such restrictions on spraying 2,4-D, even just across the Murray River from sensitive horticultural areas in Victoria. This has led to spray drift across the state border and significant damage to vineyards.

COST TO INDUSTRY

The lack of consistent, scientifically justified national controls on the use of 2,4-D means its use in some situations is unnecessarily curtailed and in others, the potential for off-target damage incidents continues. This situation leads to crop losses in some instances and in others, the removal of a valuable weed control tool for farmers. There is a risk of a total ban on high volatile 2,4-D products if off-target spray damage incidents continue.

SOLUTION

Nationally uniform controls on the use of 2,4-D could manage the risk of off-target movement and minimise damage to crops and the environment and consequent losses to the agriculture industry without unnecessary restrictions on safe use.