



**Response to  
Productivity Commission Issues Paper on the  
Annual Review of Regulatory Burdens on Business  
– Primary Sector**

8 June 2007

(Revised 9 October 2007)

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## 1. EXECUTIVE SUMMARY

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CropLife Australia, the peak body representing the plant science industry, welcomes the opportunity to respond to the Productivity Commission Issues Paper on the Annual Review of Regulatory Burdens on Business – Primary Sector.

In summary, CropLife's recommendations are to:

- Monitor and improve coordination between government agencies to avoid duplication and overlap of reviews of agricultural chemicals.
- Develop a whole of government plan and timetable for reviews of agricultural chemicals.
- Embrace and monitor implementation of best practice regulation (eg. adopt COAG principles of good regulation).
- Harmonise control of use legislation and regulation for agricultural and veterinary chemicals across all states and territories.
- Ensure compliance with all mandatory chemical product label instructions through appropriate state/territory legislation and regulation, monitoring and enforcement to ensure efficacy, safety and data protection.
- Rationalise and harmonise secondary legislation on agricultural and veterinary chemical handling, transport, storage, environment and food in all jurisdictions, and integrate with primary control of use legislation.
- Introduce a more equitable cost recovery framework for the APVMA to minimise cross subsidisation between registrant companies and products, and between agricultural and non-agricultural products.
- Remove 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.
- Allow flexibility and agency discretion in using electronic communication for routine chemical registration queries.
- Streamline the regulatory system to allow minor uses of agricultural chemicals, particularly by addressing issues of registration, labelling, permits, liability and data protection.
- Make consistent and persistent Commonwealth Government representations to ensure removal of chemical residue levels in produce as non-tariff trade barriers by trading partner nations.

## **2. INTRODUCTION**

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CropLife Australia 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 85% of crop protection and 100% of the 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 agricultural industry, which is worth \$39 billion each year and they help these 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 Australia advocates science 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 COAG principles of good regulation as a framework for development of best practice regulation of the agricultural chemicals industry in Australia. These principles are consistent with national competition policy.

## **3. BACKGROUND**

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CropLife welcomes the opportunity to respond to the Productivity Commission Issues Paper on the Annual Review of Regulatory Burdens on Business – Primary Sector. CropLife has decided to restrict its comments in this submission mainly to the regulatory burden on agriculture, particularly agricultural chemicals. The focus is on state and territory control of use of agricultural chemicals. This submission provides the views of CropLife's members, and while reference will be made to agricultural and veterinary chemicals, the views are those of agricultural chemical manufacturers.

### 3. BACKGROUND (cont.)

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#### **Role of agricultural and veterinary chemicals in the agriculture sector**

Agricultural and veterinary chemicals are used to protect crops, livestock and other animals and plants from pests and diseases. They include pesticides, such as insecticides, fungicides and herbicides, and veterinary medicines. Agricultural and veterinary chemicals help agricultural industries to be more productive and competitive on world markets, and to improve produce quality. Agricultural and veterinary chemicals (including fertilizers) comprise 7-10% of total farm inputs.

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

#### **Current regulatory environment for agricultural and veterinary chemicals**

Australia's system for managing agricultural and veterinary chemicals is a risk management system designed to give confidence that the chemicals are safe to use and 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 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 evaluate agricultural and veterinary 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 or agriculture departments, environment protection authorities and independent reviewers advise on how well the chemicals control pests and diseases.

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 sets maximum residue limits (MRLs), which are the highest concentrations of agricultural and veterinary chemical residues permitted in food or animal feed, and notifies Food Standards Australia New Zealand (FSANZ) so that the MRLs can be considered for listing in the Food Standards Code.

### 3. BACKGROUND (cont.)

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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 Australian, states and territories 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 to regulate dangerous substances in the workplace. State and territory government primary industry/agriculture, health and environment agencies also advise on agricultural and veterinary chemical use and promote other means of controlling pests and diseases.

#### **Does anything fall through the cracks?**

Current regulations do not adequately cover all needs of the agricultural chemicals industry and agriculture in Australia and internationally. Two examples are registration and availability of agricultural chemicals for use on minor crops, and inconsistency of chemical residue tolerances being used as trade barriers.

- **Minor use registrations and permits**  
The liability issues arising from the Trade Practices Act are seriously hampering the support by agricultural chemical manufacturers for minor crop pesticide registrations and permits. This is having a negative impact on farmers, as they are prevented access to suitable chemicals for control of pests, weeds and diseases in minor crops. As long as regulations exist that place full responsibility on the supply company for the performance of products to be registered in the minor use program, agricultural chemical manufacturers will continue to take a very conservative approach to the support of these registrations and permits.
- **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 Maximum Residue Levels are science based and consistent, taking Codex MRLs into account.

### 3. BACKGROUND (cont.)

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#### Regulatory reform to date

Stakeholders from the chemicals industry have identified the need for regulatory reform since it commenced work with the Commonwealth Government on an Action Agenda in 2000. These recommendations were acknowledged and supported by the Government but were then deferred to the Banks Review and now to a COAG Ministerial Taskforce on Chemicals Regulation which will wait until the outcomes of a separate Productivity Commission study in 2008 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, eg.:

- Chemicals and Plastics Action Agenda 2001 - recommendations to reform regulations to foster innovation and improve productivity
- Banks Review – Reducing Regulatory Burdens, 2006
- COAG Ministerial Taskforce on chemicals regulation, 2006 (still not established)
- Productivity Commission Annual Review of Regulatory Burdens on Business – Primary Sector, 2007 (this Review)
- ANAO Review of the APVMA, 2006
- Bethwaite Review of Food Regulation System (2007)
- Corish Report (2005)
- Review of Australian Dangerous Goods Code (ADG7), 2006
- ASCC National Code of Practice for the Labelling of Workplace Hazardous Chemicals, 2007
- National Training & Accreditation Scheme for Higher Risk Agvet Chemicals, ongoing
- Reviews of MRLs – APVMA & FSANZ, ongoing
- State Control of Use reviews, periodical
- State OH&S legislation reviews, periodical
- State Poisons Schedule reviews, periodical.

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

#### Emerging new regulatory burdens

- **Globally Harmonised System of Classification and Labelling of Chemicals (GHS)**  
Introduction of the GHS threatens to impose additional regulatory burdens on the agricultural and veterinary chemicals 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.
- **Chemicals of Security Concern (CSCs)**  
It is possible that the new management regime for CSCs will create additional regulations for chemicals manufacturers, distributors and users. Any additional impost would be easier to bear if other regulatory reforms being sought by the chemicals sector since 2000 had been achieved.

### 3. BACKGROUND (cont.)

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- **National Framework for Chemicals Environmental Management (NChEM)**

The agricultural and veterinary chemicals industry is concerned that this initiative could inadvertently create a more burdensome, complex, duplicated and uncertain regulatory environment and diminish the role of sound science in the identification, assessment and risk management of “priority” chemicals, for example by the APVMA.<sup>1</sup>

### 4. CROPLIFE ARGUMENT/POSITION

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After years of regulation reviews and buck-passing, agricultural chemical manufacturers and 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 those reviews diverts resources from core business and reduces profitability and competitiveness. Additionally, farmers have their own compliance burdens (numerous and multi-faceted) and associated costs.

CropLife Australia intends to pursue this matter in considerable detail in its submission to the COAG Ministerial Task Force Productivity Commission study on chemicals regulation. In the meantime, this submission focuses on a major contributing factor to the regulatory burden - State and territory control of use:

- Lack of harmonisation
- Lack of enforcement.

#### **Control of Use**

##### **What is the problem?**

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 1*), and is administered by different government departments in each jurisdiction (eg. Primary Industries in Victoria, Environment and Conservation in NSW, Health in WA). 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.

This multiplicity of legislation has led to inconsistency, complexity, duplication and contradiction, causing confusion and unnecessary regulatory burdens on agricultural chemical manufacturers and users of their products. The impacts of these regulatory burdens are borne by farmers, agribusiness, the agricultural and veterinary chemicals industry and government entities at all levels. In addition to the direct costs to users in complying with the complexities of the regulations, many industry associations and government agencies spend considerable time and expense 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.

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<sup>1</sup> This initiative was incorrectly described in the original version of our submission as the “National Environment Protection (National Pollutant Inventory) Measure”

#### 4. CROPLIFE ARGUMENT/POSITION (cont.)

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##### Control of Use (cont.)

##### **How is the problem manifested?**

The inconsistencies in state control of use primary legislation can be seen clearly in the table in *Attachment 1*. Compliance with different state/territory regulations causes confusion and potential liability problems, particularly for cross-border applications in the event of adverse events.

- **Off-label uses**

Victoria allows off-label uses of chemicals, which threatens to undermine the whole NRS for Agricultural and Veterinary Chemicals. 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 in crops and situations for which 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 on different pests or different crops not shown on the product label, in certain circumstances. SA, for example, allows the use of registered chemical products off-label in horticulture (under specific conditions) under the Horticulture Exemption Scheme.

In allowing off-label use, there is a 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 resistance to the chemical developing 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 data to the APVMA to support an application for product registration, and if this data is relied upon by the APVMA for registration, it is granted data protection. This allows the registrant to obtain some benefit from investment in the research to develop new products and new uses for existing products, thus encouraging 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.

- **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 (*Attachment 3*). COAG attempted to introduce a national system to regulate SSAN because of the terrorist threat. There was initial agreement between the Federal and state governments to put in place uniform regulation but no mechanism to manage uniform implementation. The result is seven different schemes being implemented around Australia.

#### 4. CROPLIFE ARGUMENT/POSITION (cont.)

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##### Control of Use (cont.)

##### How is the problem manifested? (cont.)

- **Complexity (cont.)**

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

Some other examples of the complexity of secondary, complementary legislation (*Attachment 2*) are that in SA, 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 SA, but is required under health legislation.

- **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 (*Attachment 4*). WA alone does not recognise Spraysafe pilot training for issuing a chemical distribution licence, and NSW 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 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 (*Attachment 5*). Such incidents have the potential for expensive litigation, loss of export or domestic markets due to residues in crops and environmental damage to plants and waterways. Victoria, WA, Tasmania and Queensland currently have restrictions on 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.

##### **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 to ensure 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 separate Adverse Experience Reporting Programs for agricultural and veterinary 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.

#### **4. CROPLIFE ARGUMENT / POSITION (cont.)**

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##### **Control of Use (cont.)**

##### **Enforcement (cont.)**

In the example of security sensitive ammonium nitrate (SSAN) (*Attachment 3*), 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 WA. 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 fertilizer.

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.

##### **How can the control of use problem be remedied?**

- Harmonise control of use legislation and regulation across all states and territories.
- Ensure compliance with all mandatory label instructions through appropriate state/territory legislation and regulation, monitoring and enforcement to ensure efficacy, safety and data protection.
- Rationalise and harmonise secondary legislation on agricultural and veterinary chemical handling, transport, storage, environment and food in all jurisdictions, and integrate with primary control of use legislation.

##### **Regulatory efficiency**

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 chemical industry. In an increasingly competitive market, however, it is becoming difficult for the agricultural chemical 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 chemical industry and agriculture less competitive internationally.

The current cost recovery framework for the APVMA leads to cross subsidisation between registrant companies and products, and discourages innovation and competition. 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.

The APVMA regulates many non-agricultural products (eg. pool and spa chemicals, pool sanitizing devices and domestic pet repellants), partly because no other agency has the mandate or resources to assess and manage the risks of these products.

#### **4. CROPLIFE ARGUMENT / POSITION (cont.)**

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##### **Control of Use (cont.)**

##### **Regulatory Efficiency (cont.)**

Improved efficiencies and reduced red tape in the APVMA would reduce the costs of registering agricultural and veterinary products and shorten the time taken for manufacturers to deliver new products to the market. Self-assessment of some aspects of applications by approved applicants is one proposal to reduce costs and time of applications.

Government policy in relation to confidentiality of emails and other electronic communications introduces significant inefficiencies in the 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 when much liaison is required between the APVMA and the registrant. This can, and has in many cases, delay getting products to market by many months.

#### **5. CROPLIFE RECOMMENDATIONS**

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

- Monitor and improve coordination between government agencies to avoid duplication and overlap of reviews of agricultural chemicals.
- Develop a whole of government plan and timetable for reviews of agricultural chemicals.
- Embrace and monitor implementation of best practice regulation (eg. adopt COAG principles of good regulation).
- Harmonise control of use legislation and regulation for agricultural and veterinary chemicals across all states and territories.
- Ensure compliance with all mandatory chemical product label instructions through appropriate state/territory legislation and regulation, monitoring and enforcement to ensure efficacy, safety and data protection.
- Rationalise and harmonise secondary legislation on agricultural and veterinary chemical handling, transport, storage, environment and food in all jurisdictions, and integrate with primary control of use legislation.
- Introduce a more equitable cost recovery framework for the APVMA to minimise cross subsidisation between registrant companies and products, and between agricultural and non-agricultural products.
- Remove 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.

## **5. CROPLIFE RECOMMENDATIONS (cont.)**

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- Allow flexibility and agency discretion in using electronic communication for routine chemical registration queries where registrants are not concerned about confidentiality.
- Streamline the regulatory system to allow minor uses of agricultural chemicals, particularly by addressing issues of registration, labelling, permits, liability and data protection.
- Make consistent and persistent Commonwealth Government representations to ensure removal of chemical residue levels in produce as non-tariff trade barriers by trading partner nations.

## Attachment 1

### 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. 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 National Registration Scheme for agricultural and veterinary chemicals.

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

- Use at a rate lower than that minimum rate specified on the label would 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.
- Liability in the event of adverse events arising from off-label uses; the registrant must not be liable for off-label uses.
- Off-label uses undermine data protection given to registrants and reduce the incentive for manufacturers to put minor uses on labels. Effective data protection is essential to promote R&D investment in Australian agriculture by allowing registrants 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 Levels have been set, could lead to unacceptable pesticide residue levels in food or stock feed, which could lead to loss of export markets. Maximum Residue Levels could also be exceeded if a pesticide was used against a different pest and applied closer to harvest than the specified withholding period.

Attachment 1 – State Control of Use – Case Study: Off-label uses (cont.)

**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 <b>lower rate</b> than that shown on the approved label	YES <sup>1</sup>	YES	NO	YES <sup>2</sup>	YES	YES	NO	YES
	Use at a <b>lower frequency</b> than that shown on the approved label	YES <sup>1</sup>	YES	NO	YES <sup>2</sup>	YES	YES	NO	YES
	Use a <b>higher rate</b> than that shown on the approved label	NO	NO	NO	NO	NO	NO	NO	NO
	Use at a <b>higher frequency</b> than that shown on the approved label	NO	NO	NO	NO	NO	NO	NO	NO
PESTS	Use on a <b>different pest</b> in a crop/situation already shown on the approved label	YES <sup>1</sup>	NO	NO	YES <sup>2</sup>	YES	YES	NO	YES
CROPS & SITUATIONS	Use on a <b>different crop or situation</b> not shown on the approved label	NO	NO	NO	YES <sup>2</sup>	NO	NO	NO	NO
APPLICATION EQUIPMENT	Use via <b>different application equipment</b> and/or method than shown on the approved label	YES <sup>1</sup>	NO	NO	YES <sup>2</sup>	NO	NO?	NO	NO

<sup>1</sup> Unless instruction states not to be used in this way

<sup>2</sup> 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 NSW, Health in WA). 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 work against a level playing field.

Off-label uses undermine data protection given to product registrants and reduce the incentive for manufacturers 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 for the same uses without consent or paying compensation to the first company for the data used to support the original registered use.

Compliance with different state regulations causes confusion and potential liability problems, particularly for cross-border applications in the event of adverse events. The product registrant should not be liable for adverse events arising from off-label uses.

If Maximum Residue Levels 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 that minimum rate specified on the label would 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 development costs of new pesticides and/or crop losses due to pests and weeds.

## **SOLUTION**

National harmonisation to ensure state regulations are consistent with approved label uses would ensure safe, effective and fair use of agricultural pesticides.

## Attachment 2

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

CONTROLS		QLD	NSW	ACT	VIC	TAS	SA	WA	NT
RECORD KEEPING	<b><u>Records of use must be maintained</u></b>	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)	NO	YES (aerial only)	NO
TRAINING AND LICENSING OF USERS AND OPERATORS	General <b><u>user (farmer/commercial training required)</u></b>	NO	YES	YES (Commercial only)	YES (S7 & RCP only)	NO	YES (S7 & RCP only)	NO	NO
	<b><u>Licensing of commercial operators</u></b> required	YES	YES (Aerial & PCO's only)	YES	YES	YES	NO	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.

### Attachment 3

## STATE CONTROL OF USE

### CASE STUDY: SECURITY SENSITIVE AMMONIUM NITRATE

#### THE ISSUE

COAG's 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 fertilizer to farmers. There is a risk that loopholes created by the inconsistencies 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 Federal and State Governments to put in place 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 to 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 for other materials of security concern.

States' determination to implement their own different systems has seriously undermined the "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).

WA is yet to introduce SSAN legislation; therefore SSAN material could be procured in WA 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.

### **Attachment 3 – State Control of Use – Case Study: Security Sensitive Ammonium Nitrate (cont.)**

Most of the fertilizer manufacturers, importers and retailers in Australia operate in multiple states. The processes for applying for a license or licenses 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 fertilizer but finds it no longer stocked by his local retailer.

Issues of the capacity of the 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 a more than 20-fold difference in licensing costs between the states, eg.:

- Storage licences range from \$1,437 in Qld to \$45 in SA;
- Use licences range from \$250 in NSW to \$45 in SA;
- Police and ASIO security checks range from \$150 in NSW to \$39 in Qld;
- Manufacturing licences range from \$2,500 in NSW to \$45 in SA
- Transport (vehicle) licences range from \$2,000 in NSW to \$45 in SA.

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 go up.

The cost of getting a license and of the required storage and transport needed is too high for small growers. Small farmers are currently reluctant to obtain licenses, even if they wish to continue using SSAN products, due to large costs. The NFF identified that \$3000 is required (on average) to become compliant. This has meant larger organizations 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.

## Attachment 4

# 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 WA 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), NSW 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 (e.g. SA) 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 which vary considerably. However, SA does not require licensing of commercial operators, except for applicators of Schedule 7 poisons and restricted chemical products.
3. **Insurance**  
All states except SA and Qld have a requirement for aerial agricultural operators to carry \$30,000 insurance to cover 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 SA, NT and ACT 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 NSW) 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 NSW 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 p.a. and the lowest are about \$50 p.a.
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 SA 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 year, 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 chemicals 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.

## Attachment 5

# STATE CONTROL OF USE

## CASE STUDY: 2,4-D HERBICIDE APPLICATION

### ISSUE

Different restrictions in various states on use of the herbicide 2,4-D has 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 high risk of spray drift 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 use of 2,4-D. In November 2005, the APVMA strengthened label warnings, and has since suspended registrations and label approvals of 24 high volatile ester 2,4-D products until 30 April 2009. Applications are prohibited between 1 September and 30 April.

Spray drift risk is exacerbated by inconsistent state control of use regulations. Victoria, WA, Tasmania and Queensland currently have restrictions on use of 2,4-D in certain geographical areas and/or time zones. Control of use regulations also vary within states.

- Queensland has declared three hazardous areas where a permit is required for ground distribution of certain herbicides, including ester formulations of 2,4-D.
- WA controls use of restricted hormone herbicides within 10 km radius of commercial vineyards and tomato gardens. Use near other sensitive crops is not controlled but sprayers 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 to protect herbicide sensitive and high value crops.
- NSW has no such restrictions on spraying high volatile ester formulations of 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 viticulture.

## **COST TO INDUSTRY**

There is a risk of a total ban on some products if off-target spray damage incidents continue. This would cause loss of sales of 2,4-D and possible total loss of herbicide products for farmers to control weeds.

## **SOLUTION**

Nationally uniform regulation of high volatile ester formulations 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.