



NSW Farmers' Association
Submission in response to
draft Determination of the
Australian Competition and
Consumer Commission (ACCC)
re: drumMUSTER
November 2018



In brief...

Agriculture in New South Wales contributes \$15.4 billion to the state's economy;

The sector directly employs 77,700 people, or 2% of the total workforce;

Almost 1/3 of Australia's farm businesses are in New South Wales;



80% of land in New South Wales is devoted to agriculture;

The highest value crops and commodities in 2016-17 were wheat, beef cattle, horticulture and cotton.



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About NSW Farmers

A profitable and sustainable New South Wales farming sector

The NSW Farmers' Association is Australia's largest State farming organisation representing the interests of its farmer members.

Farmers across New South Wales produce more than \$15 billion worth of food and fibre every year, representing around one quarter of Australia's total agricultural output. Our state's unique geography means a wide variety of crops and livestock can be cultivated and nurtured. NSW Farmers is Australia's only state-based farming organisation to represent the interests of farmers of all agricultural commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and poultry.

Our focus is not just on issues affecting particular crops or animals – it extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future of agriculture; we are advocates for innovation in agriculture, striving to give our members access to the latest and greatest innovations in research, development and extension opportunities. Our industrial relations section provides highly specialised advice about labour and workplace matters.

Our 100-plus regional branch network ensures local voices guide and shape our positions on issues which affect real people in real communities. Members are the final arbiters of the policies of the Association – through our Annual Conference and elected forums such as Executive Council, members can lobby for the issues which matter to them and their community to become Association policy. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Executive summary

The NSW Farmers' Association opposes the draft Determination of the Australian Competition and Consumer Commission (ACCC) with respect to the application by AgStewardship Australia Limited to increase the voluntary levy charged for the drumMUSTER scheme.

The present draft Determination proposes the revocation of A91382 and the substitution of authorisation AA1000429; the draft Determination was made on 9 November 2018.

There are two issues which the ACCC is being asked to determine. The first is whether to continue to grant authorisation to collect a levy. On this question, NSW Farmers supports the request of AgStewardship Australia Limited to collect a levy for the purpose of collecting and recycling used chemical containers (consistent with the observation in paragraph 6.22 of the draft Determination). We note that this scheme, which has operated effectively for 20 years, is an industry-driven response to the challenge of recycling used chemical containers. Not reauthorising the levy would, as the ACCC has noted, give rise to issues of public good and stewardship in the use of agricultural chemicals.

However, NSW Farmers does not believe that the proposed 50 per cent increase in the levy is justified. While the proposals by AgStewardship Australia Limited with respect to increased collection, improved infrastructure and better communications are laudable, there is limited evidence in their application to the ACCC that demonstrates how individually or collectively these initiatives will result in improved drum collection in a way which can make the scheme financially and environmentally sustainable in the long-term.

We believe that while a voluntary levy should continue to be authorised by the ACCC, more evidence is required before the requested increase in the voluntary levy can be endorsed.

Recommendations

NSW Farmers calls for the ACCC to review its decision and to specifically:

- Continue the authorisation for AgStewardship Australia Limited to collect a voluntary levy on chemical containers, consistent with that under Determination A91382;
- Continue to authorise the levy of 4c/kg for a period of up to five years;
- Determine that a review of the Determination can be made at any time before the expiry of any remade authorisation; and
- Not grant the proposed increase in the levy from 4c/kg to 6c/kg until AgStewardship Australia Limited can demonstrate stakeholder support for any levy increase.

Overview and concerns

NSW Farmers supports the ACCC's finding that the drumMUSTER and ChemClear programs provide a clear public good.

With respect to the drumMUSTER program, encouraging the recycling of used chemical drums for repurposing/reuse has seen more than 32 million containers collected and not placed into landfill. In the case of ChemClear, knowing that old, withdrawn and/or out of date chemistry has a safe place for disposal recognises farmers' and chemical users' social licence with respect to food and community safety.

These are two stewardship schemes which are strongly supported by the agricultural community; the present application, however, has not sought to improve the rigour of them to ensure the ongoing social licence of farming, linked to safe and responsible chemical usage, can continue.

Consultation

NSW Farmers is disappointed in the lack of meaningful stakeholder engagement undertaken by AgStewardship Australia Limited in anticipation of the proposal being sent to the ACCC. In particular, we note and endorse the ACCC's finding at paragraph 5.5, which outlines the need for greater transparency and information to support the re-authorisation.

Prior to the lodgement of the request for re-authorisation, AgStewardship Australia Limited provided the industry with a single proposal: to increase the drumMUSTER levy by 50 per cent. There has been no discussion with industry about alternative arrangements which could deliver improved environmental outcomes and deliver improved stewardship in a financially sustainable fashion.

In seeking to develop a 'fit for purpose' scheme for the future, AgStewardship Australia Limited should prepare alternative proposals for industry consultation and consensus. While this is not directly the concern of the ACCC, NSW Farmers believes the ACCC could consider the merits of alternative opportunities under the public benefits test. Evidenced by the range of conflicting views amongst industry, it is clear that AgStewardship Australia Limited must engage more meaningfully if they are to provide a credible and supported levy model for the future.

Program uptake

In paragraph 4.5 of the draft Determination, the ACCC notes that:

"the program covers the cost of the containers collected, though only because collection rates are lower than, or equal to, 50 per cent of containers sold with the levy applied."

While NSW Farmers notes the steady decline in the proportion of drums being collected, AgStewardship can provide no evidence to support its claim that a 50 per cent increase in the levy will see a 10 per cent increase in drums collected, lifting collection rates to a level not seen in nearly a decade.

There is no evidence in the AgStewardship Australia Limited application of 16 August 2018 which can point to particular reasons for the steady decline in collection – we do not know, for example, whether the decline is due to inadequate or insufficient collection depots, farmer malaise or dissatisfaction more generally with the scheme and its objectives. AgStewardship Australia Limited claims that awareness of the scheme is high, yet this is not translating into consistent or climbing levels of engagement – rather, the opposite is occurring.

Farmers and chemical users are presently bearing the cost of the drumMUSTER scheme, yet fewer and fewer users are using the scheme on an annual basis. The question which this application does not answer is why? More than half of chemical users are presently not returning drums for recycling and no evidence has been presented that can demonstrate that increasing the cost to users of the scheme will result in improved compliance.

Further, advice from AgStewardship Australia Limited to NSW Farmers indicates that the costs of the drumMUSTER program have actually declined, with the unit collection cost per container falling from a high of \$1.70 in 2014-15 to \$1.41 in 2016-17. This same advice goes on to suggest that the projected increase in per container unit costs will rise to \$1.57 in 2018-19, yet no data has been supplied to justify the increase of more than 10 per cent on the previous year's costs.

While NSW Farmers supports the vital work of drumMUSTER and the environmental benefits which accrue, we note that the ACCC has not considered the impact of the increased cost on farmers and chemical users, the people who will bear the brunt of the cost increase. We note the advice of AgStewardship Australia Limited that the cost impact could be as low as 0.001 per cent, however there remains an issue of equity – drumMUSTER presently allows for up to seven per cent of drums collected to be non-drumMUSTER compliant drums, and is similarly using the levy to cover the cost of collecting used and withdrawn chemicals. It is clear that costs of accessing the scheme are falling disproportionately across the agricultural community – it is therefore time for a more equitable approach to be considered if the program is to be even more successful into the future.

Noting the changing trend in single trip container profile, particularly significant increases in 2-4 litre and 10-15 litre containers, NSW Farmers believes the time has come for AgStewardship Australia Limited to review the drumMUSTER arrangement to determine whether it remains fit for service now and into the future. If this work cannot be undertaken before the current Authorisation expires, then it should seek to continue the status quo until such time as an industry-supported model can be recommended and implemented.

With direct reference to our earlier concern about poor stakeholder engagement and consultation, NSW Farmers believes AgStewardship Australia Limited has an obligation to consider alternative schemes as part of any request for reauthorisation, particularly where that request includes a request to increase the charge on users by 50 per cent. Noting the change in behaviour of consumers toward larger chemical containers, particularly the use of intermediate bulk containers (IBC), we believe AgStewardship Australia Limited has an obligation to do more to justify their request for reauthorisation and ensure their scheme remains relevant to the needs of the end users.

Infrastructure

NSW Farmers notes that the increase in levies will fund infrastructure improvements for drumMUSTER collection sites, with \$600,000 being allocated over a three year period to improve collection depots across Australia.

While another commendable aim, NSW Farmers does not understand why farmers and chemical users should be expected to cover the cost of these infrastructure upgrades. Noting the relatively modest proposed additional expenditure, NSW Farmers believes that AgStewardship Australia Limited should approach the Federal and state governments and seek funding support for these infrastructure works before seeking additional funds from users. Having taken the necessary steps, and at their own expense, to establish a solution to chemical drum recycling, a modest investment by taxpayers to improve this project is warranted.

ChemClear

NSW Farmers is also concerned with the increasing costs of the ChemClear scheme, which is funded from the drumMUSTER levy. Financial information supplied by AgStewardship Australia Limited shows that the drumMUSTER scheme, as a discreet entity, is self-sustaining and able to operate within existing resources. The ChemClear program, on the other hand, is a financial liability on the organisation – it is clear that a sustainable, long-term approach is needed to properly resource the ChemClear program and the important work which it undertakes on behalf of the agricultural community.

In paragraphs 6.35 to 6.40 of the draft Determination, the ACCC has considered the situation of Group 1 and Group 2 chemical collection, and the fact that AgStewardship Australia Limited charges a fee to collect Group 2 chemicals which are not covered by the drumMUSTER levy. This demonstrates that the present arrangement demands a more forward-looking analysis of how to manage the future needs of the ChemClear program, particularly a way to safely dispose of all chemicals (as noted at Paragraph 6.39) in a cost-effective manner which delivers for the public good.

NSW Farmers believes AgStewardship Australia Limited has an obligation to investigate alternative cost recovery strategies to cover the cost of the ChemClear program, including the proposed increase in collection opportunities from two to three per year. It can be concluded that the present arrangements are delivering a public good but at disproportionate and inequitable cost to industry – a new pathway is needed to ensure the ongoing effectiveness of this scheme.

Funding

NSW Farmers notes the desire of AgStewardship Australia Limited to allocate additional financial resources for “research into emerging trends in packaging and the changing market for recycled material, particularly the use of recycled materials”.

NSW Farmers believes that AgStewardship Australia Limited should seek external funding assistance to undertake this work – in particular, we note that the work of the various research and

development corporations (including but not limited to the Grains Research and Development Corporation, Cotton Research and Development Corporation, Horticulture Innovation Australia and AgriFutures Australia) could be approached to jointly fund research into these trends and, importantly, strategies to reduce chemical usage in agriculture. While a long-term project, NSW Farmers does not believe it is the responsibility of farmers and chemical users to fund yet another body to undertake research into chemical usage when levies are already paid to research and development corporations for this purpose.

Finally, NSW Farmers notes the desire to of AgStewardship Australia Limited to increase the levy to cover the cost of a stakeholder roundtable to improve communication between stakeholders using the drumMUSTER and ChemClear programs. Recognising that this is another sound proposal, NSW Farmers does not believe that an additional \$60,000 is necessary in order to fund such a roundtable, particularly given the proposed Advisory Committee is yet to be given any terms of reference, responsibilities or basis for membership.

Conclusion



The drumMUSTER and ChemClear programs are globally-recognised for their excellence in stewardship. They have been responsible for the collection of more than 30 million plastic containers that may otherwise have ended up in landfill were it not for the commitment of industry to develop a stewardship program 20 years ago. Noting the financial situation of the body responsible for the program, and changes to agricultural practices, the time is now right for a wider analysis to be undertaken by AgStewardship Australia Limited into the purpose of the scheme and its ongoing efficacy.

For the reasons outlined above, NSW Farmers calls upon the ACCC to reconsider its draft Determination and to oppose the increased levy until such time as these fundamental questions about the future of this program are addressed.



Growing the best

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