



**Australian
Competition &
Consumer
Commission**

Determination

Application for Authorisation

lodged by

Agsafe Limited

in respect of the

**Renewal of authorisation of the Agsafe
agricultural and veterinary chemicals
accreditation program, Code of Conduct
and sanctions process**

Date: 22 May 2002

Authorisation number: A90681
File no: C2000/1219

Commissioners: Fels
Bhojani
Cousins

Executive Summary

On 3 February 1999, Agsafe Limited lodged applications A90680 and A90681 with the Australian Competition and Consumer Commission (the Commission). Authorisation was sought to make and give effect to a contract, arrangement or understanding, which may have the purpose, or effect, of substantially lessening competition within the meaning of section 45 of the *Trade Practices Act 1974* (TPA). Authorisation was also sought to engage in conduct that may constitute the practice of exclusive dealing under section 47 of the TPA. Following industry consultation by Agsafe on prospective changes to the arrangements the subject of the application the Commission received amendments to the applications on 2 February 2000.

Agsafe is a wholly owned, independent subsidiary of Avcare (the National Association for Crop Protection and Animal Health). The application seeks renewal of authorisation for Avcare members to supply products and services (agricultural and veterinary chemicals) to persons on condition that they are Agsafe accredited. The conduct for which authorisation is sought is the subject of seven previous Commission determinations.

Specifically authorisation is sought for Agsafe's accreditation scheme which requires persons and premises involved in the transport, handling and storage of agricultural and veterinary chemicals (agvet chemicals) which are hazardous substances, to be accredited. Authorisation is also sought for a Code of Conduct (the Code) which outlines the requirements for compliance with the accreditation programs and for the ability to apply trading sanctions to premises which fail to meet accreditation standards.

Agsafe has applied for two changes to the scheme previously authorised by the Commission. Firstly, a change in the definition of agricultural and veterinary chemicals which are the target of accreditation and secondly, a change in the obligatory threshold which determines if premises require accreditation.

The Commission considers that the arrangements may result in some lessening of competition. However, the Commission considers the anti-competitive detriments as a result of the proposed scheme are limited. In particular, the Commission considers that appropriate safeguards exist to ensure that Agsafe's powers to impose trading sanctions are not employed to the detriment of competition in the market. The Commission also finds that public benefits will flow from the arrangements – to users and the community generally – from the safe use of agvet chemicals and Australia-wide uniformity in the storage of agvet chemicals.

The Commission therefore concludes that the public benefits likely to result from the arrangements would outweigh any anti-competitive detriment that may arise, subject to certain conditions being complied with. Accordingly, the Commission grants authorisation in relation to applications A90680 and A90681, subject to the conditions outlined in section 10 of this determination. Authorisation is granted for 5 years.

On 30 March 1999, the Commission granted interim authorisation to the proposed arrangements. Interim authorisation was granted until the date of the Commission's final determination, or until the Commission decides to revoke interim authorisation.

The Commission has extended the interim authorisation granted on 30 March 1999, subject to the conditions outlined in this determination, until the date that this determination comes into force or until the Commission decides to revoke interim authorisation.

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1. The application

Introduction

- 1.1 Organisations who engage, or propose to engage, in certain anti-competitive business arrangements or conduct that could breach the *Trade Practices Act 1974* (TPA), may apply to the Australian Competition and Consumer Commission (the Commission) for authorisation of such arrangements or conduct. When an application for authorisation is made, the Commission is required under the TPA to make a determination in writing either granting or dismissing the application. It is also required to take into account any submission made to it in relation to the application. The Commission is first required to issue a draft determination in writing. The applicant or any interested party dissatisfied with the draft may request that the Commission hold a conference with the applicant and interested parties. At the conference parties can discuss the operation and effect of the draft determination. After any such conference the Commission reconsiders the application taking into account the comments made and further submissions received and publishes its final determination.
- 1.2 The Commission may grant authorisation where the public benefit of the subject arrangements or conduct outweighs the public detriment, including the anti-competitive detriment. If granted, an authorisation provides immunity from legal proceedings under the TPA in respect of the arrangements or conduct. This protection extends only from the time the authorisation is granted. Consequently, an organisation would not be protected from legal action under the TPA in respect of any business arrangements or conduct engaged in prior to the granting of authorisation of such arrangements or conduct.

The application

- 1.3 On 3 February 1999, Agsafe lodged applications A90680 and A90681 with the Commission. The applications were made under subsections 88(1) and 88(8) of the TPA¹. Authorisation is sought under subsection 88(1) to make and give effect to a contract, arrangement or understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the TPA. Authorisation under subsection 88(8) is sought to engage in conduct that constitutes or may constitute the practice of exclusive dealing under section 47 of the TPA.
- 1.4 The applications were lodged by Agsafe Limited, a wholly owned, independent subsidiary of Avcare (the National Association for Crop Protection and Animal Health).

¹ The applications have also been considered as applications under the State and Territory Competition Codes.

- 1.5 Following industry consultation by Agsafe on prospective changes to the arrangements the subject of the application the Commission received amendments to the applications on 2 February 2000.
- 1.6 Further amendments to the application were made on 31 October 2001.
- 1.7 The application seeks renewal of authorisation for Avcare members to supply products and services (agricultural and veterinary chemicals) to persons on condition that they are Agsafe accredited.
- 1.8 Specifically authorisation is sought for Agsafe's accreditation scheme which requires persons and premises involved in the transport, handling and storage of agvet chemicals which are hazardous substances to be accredited. Authorisation is also sought for a Code of Conduct which outlines the requirements for compliance with the accreditation programs and for the ability to apply trading sanctions to premises which fail to meet accreditation standards.

Interim authorisation

- 1.9 On 25 February 1999, the Applicant requested interim authorisation for the current application as previously authorised by the Commission on 8 June 1994, as the existing authorisation was due to expire on 30 May 1999.
- 1.10 On 30 March 1999, the Commission granted the Applicant's request for interim authorisation for the current application, effective until the date of the Commission's final determination, or until the Commission decides to revoke interim authorisation.

Draft Determination

- 1.11 On 29 August 2001, the Commission released a draft determination proposing to authorise the proposed arrangements subject to certain conditions. The Commission considered that the arrangements may result in some lessening of competition. However, the Commission considered the anti-competitive detriments as a result of the proposed scheme were limited. In particular, the Commission considered that appropriate safeguards existed to ensure that Agsafe's powers to impose trading sanctions are not employed to the detriment of competition in the market. The Commission also considered that public benefits would flow from the arrangements – to users and the community generally – from the safe use of agvet chemicals and Australia-wide uniformity in the storage of agvet chemicals.
- 1.12 The Commission therefore concluded that the public benefits likely to result from the arrangements would outweigh any anti-competitive detriment that may arise, subject to certain conditions being complied with. Accordingly, the Commission proposed, subject to any request for a pre-decision conference, to grant authorisation to applications, subject to certain conditions, for 5 years.
- 1.13 The Commission did not receive any requests for a pre-decision conference, however it did receive two further submissions in response to the draft

determination. The applicant was also afforded the opportunity to comment on the further submissions received.

2. Background to the industry²

- 2.1 Agricultural and veterinary chemicals are used in a number of areas including agriculture, horticulture, home use, and veterinary practices. In the agricultural and horticultural industries such chemicals are used to control pests and weeds, improve yields and promote animal health.
- 2.2 Agvet chemicals can be broadly defined in two classes, crop protection, and animal health products. Crop protection treatments are grouped into insecticides, fungicides and herbicides and are available in a variety of forms; namely sprays, dips, coatings or powders. Crop protection chemicals can be applied to land before planting, to crops as they grow, and to harvested produce to reduce deterioration. It has been estimated that for every dollar invested in crop protection products, the producer is likely to obtain an average return of \$3 to \$4. Crop protection chemicals also help keep the price of food down as they reduce labour costs, wastage and crop losses.
- 2.3 Animal health products include both internal (endo) and external (exo) treatments for cattle, sheep, pigs, poultry and companion animals.
- 2.4 The Australian market for agvet chemicals had an estimated total value of \$1,790 million in 2000. The sale of agricultural chemicals was \$1,340 million and the sale of veterinary chemicals was \$450 million.

Agvet Chemical Sales in Australia; 1996 - 2000

| Products | 1996 (\$Bil) | 1997 (\$Bil) | 1998 (\$Bil) | 1999 (\$Bil) | 2000 (\$Bil) |
|-------------------------------|--------------|--------------|--------------|--------------|--------------|
| Agricultural Chemicals | 1.013 | 1.157 | 1.280 | 1.480 | 1.340 |
| Veterinary Chemicals | 0.430 | 0.444 | 0.450 | 0.450 | 0.450 |
| Total | 1.443 | 1.601 | 1.73 | 1.930 | 1.790 |

- 2.5 The industry currently employs approximately 12,000 workers of which 2,000 are employed by manufacturing companies in the production and transportation of chemicals.

² Much of the information in this chapter is sourced from Avcare, *Supporting Sustainable Agriculture, Year in Review 1998-99*; Price Coopers Waterhouse, *National Legislative Review: Agricultural and Veterinary Chemicals, Final Report, 13 January 1999*; NOHSC/NRA Project Report, *Simplifying the Safe Use of Chemicals on Australian Farms, February 2001*.

2.6 The broad agvet chemical industry is characterised by a number of large multinational firms with overwhelming sales dominance (five major corporate distribution organisations, namely CRT/Town & Country, IAMA, Wesfarmers Dalgety Limited, Elders Limited and Independent Horticultural Distributors, dominate the industry), but accompanied by a long tail of smaller firms producing or distributing many products which are minor in comparison in terms of sales volume (but not necessarily of minor importance).

2.7 National Registration Authority for Agricultural and Veterinary Chemicals (NRA) registrations indicate a predominance of low dollar sales products amongst the 6242 agvet chemical products that held registration in 1996.

| Sales volume (\$) | Number of Products |
|---------------------|--------------------|
| 0 - 10,000 | 2567 |
| 10,000 - 50,000 | 1272 |
| 50,000 - 100,000 | 661 |
| 100,000 - 500,000 | 1080 |
| 500,000 - 1 million | 316 |
| >1 million | 346 |

2.8 NRA figures profiling the number of firms and products registered indicate a predominance of firms registering less than five products.

| Number of products | Number of registrants |
|--------------------|-----------------------|
| 1 | 296 |
| 2 - 5 | 238 |
| 6 - 10 | 97 |
| 11 - 25 | 75 |
| 26 - 100 | 48 |
| >100 | 13 |

2.9 The major users of agvet chemicals are businesses engaged in agriculture, which is a major individual contributor to Australia's economy. The gross value of agricultural production in 1998-99 was \$29 billion. Gross farm product (GFP), the value added in production contributed by businesses classified as

agricultural was \$16.8 billion or approximately 3% of gross domestic product. Agriculture is a major trading sector with around 80 per cent of production exported.

- 2.10 Whilst agriculture is the major user of agvet chemicals, there are many other industries in which agvet chemicals are used. These include forestry, especially plantation forestry where chemicals play a critical role in plantation establishment, aquaculture, pet care, swimming pool, household goods and horse and greyhound racing.
- 2.11 There are also a number of industries, largely comprising small businesses that are affected by measures controlling the availability of agvet chemicals and hence have a direct interest in those measures. These include service providers such as veterinary surgeons, spraying contractors, rural supply stores, pharmacies, fumigators, nurseries, gardening contractors, transport and handling, food wholesalers and retailers.

Industry regulation

- 2.12 Responsibility for the regulation and safe use of agvet chemicals is spread across jurisdictional boundaries and across several pieces of legislation.
- 2.13 The body responsible for regulating agvet chemicals up to and including point of retail sale is the NRA. The NRA also has responsibility for registering agvet chemicals throughout Australia.
- 2.14 The NRA regulates the manufacture, supply and sale of agricultural products through the Agricultural and Veterinary Chemicals Code (Agvet Code) which is a schedule to the *Agricultural and Veterinary Chemicals Act 1994*. Registration provided by the NRA ensures that the chemical meets prescribed standards. The Agvet Code requires that:
- all agricultural chemical products be registered before they can be sold, distributed or used;
 - all agricultural chemical products be sold with approved labels; and
 - all active constituents and the manufacturing plants used to make them (the sources) be approved by the NRA.
- 2.15 Control of use legislation in each of the states regulates the manner in which Agvet chemicals are used by the end user. The states have responsibility for control and use activities such as licensing pest control operators and aerial spraying, and ensuring that chemicals are used according to label instructions.
- 2.16 Additionally, Occupational Health and Safety Acts in each state and territory impose a duty of care on all employers to provide, so far as practicable, a workplace which is safe and without risk to the health of employees. The *National Model Regulations for the Control of Workplace Hazardous Substances 1994* (the hazardous substances regulations) details how employers' and employees' duty of care, set out in general OHS law, is to be fulfilled in the

context of using hazardous substances. Most, but not all, agricultural and veterinary chemicals are classified as hazardous and therefore subject to the regulations. The hazardous substances regulations, in general, apply to use of these chemicals on the farm.

- 2.17 The *National Standard for the Storage and Handling of Workplace Dangerous Goods* (the dangerous goods standard) also impacts on the handling and care of Agvet chemicals. In contrast to the hazardous substances regulations, the dangerous goods standard is relatively prescriptive, setting specific actions that must be taken by occupiers.
- 2.18 The dangerous goods standard is much broader in scope than the general duty of care in a state OHS Act. The dangerous goods standard covers persons, property and the environment whereas an OHS Act is usually limited to persons in a workplace and the public. The dangerous goods standard extends beyond the workplace to premises.
- 2.19 There are also a number of Australian Standards which provide guidance on hazardous substances and dangerous goods, in particular AS 2507 – 1998: *The Storage and Handling of Agricultural and Veterinary Chemicals*, which is the primary standard used in the industry in relation to storage risk.
- 2.20 Training is just as important as regulation to ensure that users understand the safe and responsible use of agvet chemicals. Increasing numbers of farmers are completing the Farm Chemical Users Training Course (Farmcare) designed specifically to address this need.
- 2.21 Equally, manufacturers and distributors are also required to train their staff to maintain safety standards in the production, transport and retailing of industry products. To this end, the Agsafe program was initiated in 1987 and applies from the point of manufacture to the point of sale.

Agsafe Accreditation Program – Participant Numbers

| | 1990 | 1995 | 2000 |
|---|-------|--------|--------|
| Personnel Trained | 2,566 | 11,185 | 16,439 |
| Premises Accredited | 0 | 1,053 | 1,457 |
| Trading Sanction Enquires | 0 | 1,365 | 5,423 |
| Businesses with imposed trading sanctions | 0 | 4 | 8 |

- 2.22 Since 1987 Agsafe has accredited and trained over 80% of all eligible people and over 77% of all eligible premises within the industry.

3. Background to the applications

The applicant

- 3.1 The application was lodged by Agsafe Limited, a wholly owned, independent subsidiary of Avcare Limited. Avcare is a peak chemical industry body representing 48 of Australia's major agvet chemical manufacturers and distributors. Avcare's 48 members represent around 90 per cent of Australia's annual sales of agvet chemicals.
- 3.2 Agsafe is a non-profit independent subsidiary of Avcare formed to implement the agricultural and veterinary chemical industry co-regulatory compliance program the subject of this application for authorisation (see section 5).

Previous authorisations

- 3.3 The conduct for which authorisation is sought is the subject of seven previous authorisations dated 16 November 1990 (A30131, A30132), 17 January 1992 (revocation and substitution of A30131, A30132) and 8 June 1994 (A90528, A90529, A90530).
- 3.4 AVCA (now Avcare Limited) initially applied for authorisation of a proposed accreditation scheme and Code of Conduct on 23 February 1989.
- 3.5 The accreditation scheme required that organisations involved in the transport, handling and storage of farm chemicals conform with all relevant state legislation. Staff employed at premises were required to gain accreditation by undergoing a training course administered by an independent Course Management Board and by complying with an AVCA Code of Conduct. Compliance with the Code was a condition of AVCA membership. Formal commitment of compliance with the obligations of accreditation was a condition of personnel accreditation. It was proposed that companies which failed to meet either the premises or personnel accreditation obligations would have trading sanctions imposed against them by other AVCA members.
- 3.6 The Commission concluded that the scheme would result in public benefit – to users and the community in general – from the safe use of farm chemicals, and that this public benefit was sufficient to outweigh any anti-competitive detriment resulting from the imposition of sanctions on non compliant firms, the entry requirement for individuals and the possible exclusion of firms from the industry.
- 3.7 Accordingly, on 16 November 1990 the Commission granted authorisation to the scheme for five years, subject to a number of conditions to ensure that the scheme was administered fairly and impartially.
- 3.8 AVCA subsequently advised the Commission, on 15 April 1991, that it was not able to comply with the condition of authorisation requiring it to meet the cost of the accreditation scheme. AVCA also suggested modifications to conditions

relating to the appointment of a person to monitor the scheme, and the condition restricting AVCA's members' rights to impose sanctions.

- 3.9 As required under s 91 (4) of the TPA, the Commission gave notice to AVCA and interested parties on 27 August 1991 of its intention to review the authorisation. In response to this notice, a number of parties made submissions in respect of the proposed modification of conditions of the 16 November 1990 authorisation.
- 3.10 On 17 January 1992 the Commission revoked its 16 November 1990 authorisation and substituted a further authorisation which modified certain conditions. The substituted authorisation was granted on the same terms as the original, to be in force until 31 December 1995.
- 3.11 A further application for authorisation was lodged by Avcare and Agsafe on 31 October 1991, proposing significant changes to the existing authorisation.
- 3.12 In effect, Avcare and Agsafe applied for the following changes to the previous authorisation:
- creation of a new legal entity, Agsafe, to administer the premises and personnel accreditation scheme;
 - use of nationwide, uniform limits (Worksafe limits for placarding) as the criteria for eligibility of storage premises for accreditation against the regulatory standards for storage, handling and transport of farm chemicals – thus introducing the aggregated approach in calculating the total risk environment within a premises;
 - approval of the definition of farm chemicals;
 - reduction of external monitoring meetings from twice yearly to annually;
 - introduction of an on-going personnel accreditation requirement;
 - an Agsafe code of conduct; and
 - setting of the annual registration fee at a level that would ensure the premises accreditation scheme was self-funding.
- 3.13 There was a significant delay in preparing the determination as Avcare consulted widely with industry regarding the proposed changes and given the need for Avcare to obtain legal advice concerning the establishment of Agsafe as a separate legal entity.
- 3.14 The Commission concluded that the scheme would result in public benefit – to users and the community in general – from the safe use of farm chemicals and Australia-wide uniformity in the storage of farm chemicals and that these public benefits were sufficient to outweigh any anti-competitive detriment resulting from the imposition of sanctions on non compliant firms, third line forcing by

Avcare and its members, the entry requirements for individuals and on-going training and the possible exclusion of firms from the industry.

- 3.15 Accordingly, on 8 June 1994 the Commission granted authorisation to the revised scheme, subject to a number of conditions until 30 May 1999.

Current application

- 3.16 On 3 February 1999 Agsafe lodged an application for renewal of the authorisation granted on 8 June 1994 on the same terms as that authorisation.
- 3.17 Given that the existing authorisation was due to expire on 30 May 1999, on 30 March 1999 the Commission granted interim authorisation to the current application, for a period until a final determination is issued.
- 3.18 On 2 February 2000, following a process of industry consultation, Agsafe submitted two changes to its application. First, a change in the definition of agricultural and veterinary chemicals which is the target of accreditation; and secondly, a change in the obligatory threshold for premises requiring accreditation. (see paragraphs 5.26 –5.33)
- 3.19 On 31 October 2002, Agsafe submitted a further change to its application. The change provided all premises captured by the existing premises accreditation threshold (as previously authorised) be classified in the future as Major Storage premises, and all premises now captured by the extension of the premises accreditation threshold, as proposed in the amended application, be classified as Minor Storage premises.
- 3.20 The change also detailed the accreditation benchmark for Minor Storage premise and the applicable accreditation fee. Accreditation standards for Major Storage premises (those currently captured by the scheme) remain unchanged (see paragraphs 5.34 – 5.39).

4. Statutory test

- 4.1 Applications A90680 and A90681 were made under sub-section 88(1) of the TPA in respect of arrangements which may substantially lessen competition, and sub-section 88(8) of the TPA in respect of conduct that would or may constitute exclusive dealing. The TPA provides that the Commission shall only grant authorisation if the applicant satisfies the relevant tests in sub-sections 90(6) and 90(8)(a) of the TPA.
- 4.2 Relevantly, sub-section 90(6) provides that the Commission shall grant authorisation only if it is satisfied in all the circumstances that:
- the provisions of the proposed arrangements would result, or be likely to result, in a benefit to the public; and
 - that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from the proposed arrangements.
- 4.3 Sub-section (90)(8) provides that the Commission shall grant authorisation only if it is satisfied in all the circumstances that:
- the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to; or
 - the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed conduct should be allowed to take place.
- 4.4 While there is some variation in the language between sub-sections 90(6) and (8), the Commission adopts the view taken by the Australian Competition Tribunal (and its predecessor the Trade Practices Tribunal) that in practical application the tests are essentially the same.³
- 4.5 In deciding whether it should grant authorisation, the Commission must examine the anti-competitive aspects of the arrangements, the public benefits arising from the arrangements, and then weigh the two to determine which is the greater. Should the public benefits or expected public benefits outweigh the anti-competitive aspects, the Commission may grant authorisation or grant authorisation subject to conditions.

³ Re Media Council of Australia (No2) (1987) ATPR at page 48 418.

5 The applications

- 5.1 Agsafe is seeking authorisation to continue the conduct of Avcare members supplying products and services to persons on condition that they are Agsafe accredited. Authorisation is also sought to continue the practice of implementing trading sanctions for premises which fail to meet accreditation standards.
- 5.2 Following a process of industry consultation, Agsafe is also seeking authorisation for two changes to the authorisation previously granted by the Commission: first, a change in the definition of agricultural and veterinary chemicals which are the target of accreditation; and secondly, a change in the obligatory threshold which determines if premises require accreditation.
- 5.3 The operation of the Agsafe scheme, including accreditation requirements and procedures for applying sanctions to non-compliant firms, is set out in a Code of Conduct for which authorisation is also sought.

The current accreditation program

- 5.4 The Agsafe accreditation program requires that premises involved in the transport, handling and storage of agricultural and veterinary chemicals which have dangerous goods in quantities that require Worksafe placarding be accredited. The accreditation process takes two forms, personnel accreditation and premises accreditation.
- 5.5 The personnel accreditation program is designed to ensure that those persons who handle agvet chemicals in the distribution chain (manufacture through to sale):
- understand relevant safety and regulatory requirements;
 - can fulfil appropriate duty of care obligations; and
 - can provide to end-users appropriate advice on chemical use, consistent with legal obligations and with advice from Departments of Agriculture or Primary Industries.
- 5.6 The personnel accreditation program involves:
- completion of the basic Agsafe training course;
 - at least one year's experience in the agricultural and veterinary chemicals industry;
 - a formal commitment to comply with an Agsafe Code of Conduct which outlines requirements for compliance with the industry accreditation program; and

- completion of at least one training unit every three years from a choice of three training modules, chemical storage and handling, emergency planning and response and principles of pest management.
- 5.7 Accreditation training applies to those who sell, advertise, recommend or handle agricultural and veterinary chemicals.
- 5.8 A training committee consisting of Avcare members, NSW TAFE and Agsafe (including Agsafe course providers) is responsible for reviewing course standards, feedback from industry, delivery, fee structure and approval of course content.
- 5.9 The premises accreditation program is designed to ensure that all storage premises for agvet chemicals minimise risk to persons, property and the environment by complying with:
 - relevant Australian Standards; and
 - relevant legislation in areas such as registration and use of agricultural and veterinary chemicals, occupational health and safety, and transport and handling of agvet chemicals.
- 5.10 Premises accreditation requires that premises which store, handle or sell agvet chemicals which exceed Worksafe placarding limits comply with relevant Federal and/or State regulatory requirements. These requirements are outlined in the *Agsafe Industry Standard for the Safe Transport, Handling and Storage of Agricultural and Veterinary Chemicals* which provides information on how these operations should be carried out safely, with care and in compliance with both Government regulations and Avcare's accreditation requirements.
- 5.11 Premises accreditation is first by self assessment. Applicants for accreditation order a copy of the Agsafe Industry Standard. The premises is then checked against the Industry Standard and a checklist is completed and sent to Agsafe together with a site plan, product manifest and copies of any relevant licences. Agsafe then assesses the compliance of the premises based on the submission. If Agsafe is satisfied that the premises complies with regulations, and once premises fees are paid, a certificate of accreditation by self assessment is issued (Silver Certificate).
- 5.12 The second phase of premise accreditation is by external assessment. Premises are inspected by an Agsafe employed and trained assessor for compliance with relevant regulatory obligations as outlined in the Agsafe Industry Standard. Accredited premises then qualify for the Gold accreditation certificate.
- 5.13 Every registered premises is assessed every two years by an Agsafe assessor. Premises are given 15 days (minimum) notice of an assessment. The assessor completes a checklist and in most cases produces a report which is checked by Agsafe prior to dispatch to the premises. Premises are given 30 days (minimum) to respond to outstanding items. Premises which do not complete their outstanding items or do not convince the assessor or Agsafe of a commitment to

an action plan to the satisfaction of the assessor/Agsafe run the risk of trading sanctions.

- 5.14 Currently more than 16,000 people and 1,400 premises are accredited through the Agsafe program.
- 5.15 End users are not required to be accredited by Agsafe, however the Agsafe program aims to positively influence end users through the quality of advice and the “duty of care” at the retail sales counter.

Trading sanctions

- 5.16 Trading sanctions may apply to those aspects of the Code of Conduct which apply to the industry accreditation program. Any business requiring accreditation of its personnel and/or premises which does not comply with the accreditation program and/or those sections of the Code of Conduct may have its accreditation suspended or withdrawn if the non-compliance is not corrected. Trading sanctions would then be applied and (where applicable) membership of Agsafe and/or Avcare revoked.
- 5.17 Businesses with trading sanctions applied to them are prohibited from purchasing from, or supplying to Agsafe members.
- 5.18 The procedures for the application of trading sanctions are as follows:
- Agsafe will write to the organisation involved seeking a written undertaking to both correct the breach and ensure its non-repetition. A response within 14 days, to correct the breach, is required. This represents the first warning.
 - In the absence of a satisfactory response, Agsafe will request the organisation to show cause why it should not be subject to denial or suspension of its accreditation until the breach is corrected. A response is required within 14 days. This represents the second warning.
 - In the absence of a satisfactory reason being provided as to why accreditation should not be denied or suspended, and if the breach continues, denial or suspension will be introduced after a further 7 days (minimum). This represents the third and final warning.
 - In the absence of a satisfactory reason being received as to why accreditation should not be denied or suspended, the organisation will be advised that its accreditation has been withdrawn. If the organisation is also a member of Agsafe, denial or withdrawal of premises accreditation would simultaneously result in loss of Agsafe membership.
 - Agsafe is required to inform its members and all accredited organisations of such denial or withdrawal of accreditation status or membership status within 7 days.
 - Agsafe members who continue to supply or purchase from business locations to which trading sanctions have been applied will, after being put

on notice to cease to supply or purchase, be suspended from Agsafe and, if the breach continues, will have their membership terminated and their premises accreditation removed, even if they satisfy the normal accreditation requirements.

- Should a business location to which sanctions have been applied, at some later date, correct the breach and hence comply with the requirements of accreditation, Agsafe will, within 7 days of correction of the breach, inform all interested parties and affected organisations of the reinstatement of that business and the consequent lifting of trading sanctions.

5.19 In its 10 years of operation Agsafe has imposed trading sanctions on 56 premises. 1455 premises are currently accredited and 5 are subject to trading sanctions.

Appeals process

5.20 Under the provisions of the Code of Conduct any person or organisation may appeal against Agsafe's refusal to grant accreditation or its withdrawal of a pre-existing accreditation, or against Agsafe's failure to levy trading sanctions in a situation where it appears that trading sanctions should be applied.

5.21 In the event of an appeal a mutually agreed solution is first sought. If a solution is not found within 14 days the matter passes to the Agsafe Board to seek a mutually agreeable solution. If no solution is found within a further 14 days the dispute is passed to a conciliator provided by the Australian Commercial Disputes Centre, where if a mutually agreeable solution is not found the conciliator will determine the outcome.

5.22 To date no party has made use of the appeals process.

External monitoring

5.23 The Commission's authorisation of 8 June 1994 requires external monitoring of the performance of the Agsafe scheme through regular meetings of interested parties under the Chairmanship of an industry monitor.

5.24 The four aspects of the scheme requiring monitoring and annual reporting are:

- The progress of personnel accreditation.
- The progress of premises accreditation
- The appeals process (in relation to trading sanctions).
- The views of user groups and non-members of Agsafe about the progress of the scheme.

5.25 The last annual monitoring meeting, Chaired by Mr Frank Blockey, Industry Monitor, was held on 11 May 2001. The eighth monitor's report was issued in July 2001. As was the case in previous years the report did not find any

significant concerns with the implementation of the Agsafe accreditation program over the preceding 12 months.

Proposed changes to the scheme

- 5.26 The application for authorisation received by the Commission on 3 February 1999 was for renewal of the authorisation granted on 8 June 1994 on the same terms as that authorisation.
- 5.27 On 2 February 2000, following a process of industry consultation, Agsafe submitted two changes to its application: first, a change in the definition of agricultural and veterinary chemicals which is the target of accreditation; and secondly, a change in the obligatory threshold for premises.
- 5.28 On 31 October 2002 Agsafe submitted a further change to its application to distinguish between requirements for premises accreditation for those premises covered by the existing scheme, henceforth known as Major Storage premises, and those premises which will be covered by the scheme as a result of the change in the obligatory threshold for premises accreditation, henceforth known as Minor Storage premises.

New target

- 5.29 In addition to those chemicals already covered by the scheme it is proposed that accreditation now target those agvet chemicals which are defined in the Agricultural and Veterinary Chemicals Code 1994 Section 4 (agricultural chemical product) and Section 5 (veterinary chemical product) and Section 7 and 8 of the Agricultural and Veterinary chemical code regulations which are:

- Schedule 5 Poisons;
- Schedule 6 Poisons;
- Schedule 7 Poisons;
- Hazardous Substances;
- Dangerous Goods;

and which are not:

- Dairy sanitisers or cleansers in outlets which do not supply any other agricultural or veterinary chemical products;
- Products exclusively for home use including those for companion animals when sold in outlets catering exclusively for home use;
- Products prescribed and used exclusively by veterinarians where a bona fide veterinarian/patient relationship exists and where these products in the supply chain are being wholesaled to these veterinarian practices;
- Nutritional pre-mixes and supplements for animals;

- Substance used in conjunction with an agricultural chemical product to identify areas treated with that product;
- Insect repellents for use on human beings;
- Substances listed in Schedule 3 of the Agricultural and Veterinary Chemical Regulations (examples are mould inhibitors used in paper and glue manufacture, fungicides, bactericide or deodorants in footwear or clothing, soil ameliorants if there is no claim to have effects as regulators of plant growth, invertebrate pest management lures based on food, cut flower preservatives, hay inoculants, predatory insects, industrial biocides; and
- Swimming pool products.

Premises accreditation threshold

- 5.30 It is proposed that premise accreditation be extended from those premises which stock Worksafe placarding levels of dangerous goods to all premises which stock any quantity of agricultural and veterinary chemicals which are hazardous substances.
- 5.31 It is not proposed that the new threshold target wholesalers of veterinary pharmaceutical products which are being sold to veterinary practices.
- 5.32 Agsafe estimates that there are between 1800 and 2200 premises in Australia which stock agricultural and veterinary chemicals for resale. 1450 premises are currently registered for premises accreditation or accredited with Agsafe. Consequently there are 350 to 800 premises currently outside the Agsafe program which may be effected by the change in the threshold.
- 5.33 Agsafe notes that the results of an Industry Consultation Report on the prospective changes indicated that 73.6% of respondents favoured a new target for accreditation and 57% favoured a reduced premises accreditation threshold to cover all premises which store targeted agricultural and veterinary chemicals.

Distinction between Minor and Major storage threshold

- 5.34 In light of the proposed extension to the premises accreditation threshold it is proposed that all premises which would now be covered by the extended threshold be classified into one of two categories.
1. Major Storage Premises; being those premises stocking quantities greater than 1000L of agricultural and veterinary chemicals (ie all premises covered by the existing program), and
 2. Minor Storage Premises; being those premises stocking quantities up to and including 1000L of agricultural and veterinary chemicals (ie all premises previously outside the scope of the program, now captured by the extension of the premises accreditation threshold).

- 5.35 It is proposed that for premises to have Agsafe premises accreditation for Major Storage they would be required to meet the accreditation standards of the current program. These premises accreditation requirements are detailed in paragraphs 5.10 to 5.13.
- 5.36 Agsafe propose a separate accreditation standard for those premises falling within the new Minor Storage premises classification. For applicants to have Agsafe premises accreditation for Minor Storage they would be required to demonstrate that they meet the requirements of Australian Standard 2507 (AS2507), as mandated in all states.
- 5.37 The principal requirements of AS2507 are that premises have an impermeable floor and a well ventilated area which is separated by 3 meters from unrelated work areas and by 5 meters from water courses.
- 5.38 Assessment would be initially by self assessment (a short check list) with premises also subject to random audits.
- 5.39 Under the proposed changes to the scheme those premises captured by the existing threshold would be classified as Major Storage premises and be required to pay a joining fee of \$370 (new premises) and an annual fee of approximately \$300. Those premises not captured by the existing threshold would be classified as Minor Storage premises and be required to pay an annual fee of approximately \$100. These premises will not be required to pay a joining fee.

6. Applicant's supporting submission

- 6.1 The Applicant contended that the public, the environment and overseas trade may be at risk unless:
- agricultural and veterinary chemicals are stored, handled and transported in accordance with statutory regulations and standards;
 - all individuals who sell or offer advice on agricultural and veterinary chemicals have received proper training in the principles of safe, effective and legal use of the products; and
 - there is due regard for the protection of the environment in these and any other activities relating to agricultural and veterinary chemicals which may be developed from time to time.
- 6.2 The Applicant contended that approximately 1000 people enter the industry annually. Consequently, they argued, Agsafe training and accreditation must continue to ensure the current level of awareness of regulations and duty of care is maintained.
- 6.3 The Applicant argued that industry co-regulation as a means of strengthening compliance has particular merit, particularly for the prevention of various incidents. While legal proceedings and subsequent prosecution are, it claimed, effective threats, they are costly and do not prevent accidents. The Applicant noted that there is already significant regulatory recognition of the Agsafe accreditation program, which, it argued, attains an effective compliance outcome at low cost.
- 6.4 The Applicant contended that while correct application and use of agvet chemicals lies ultimately with the user, practicality prevents policing of the entire industry. The Applicant argued that correct selection and use advice, as part of a wider education program, is the only effective mechanism available to ensure correct product use.
- 6.5 The Applicant contended that regulatory authorities have commented on the effectiveness of the program but indicated there is still room for improvement with accredited premises and the need to bring other premises into the program. The Department of Mines and Energy Western Australia (DMEWA) audit reported that overall the Agsafe accreditation program was effective but also made some negative observations on non-compliance. The Applicant noted that where such concerns are brought to its attention it liaises, as was the case in this instance, with the relevant regulator body to address these concerns.
- 6.6 The Applicant further noted that the Tasmanian Department of Primary Industries has stated that "continued success of this approach depends significantly on Agsafe's ability to sanction that small number of retailers that are not so willing."

- 6.7 The Applicant noted that a number of exemptions to regulations issued to premises (both general and individual) by regulatory authorities have Agsafe accreditation as a condition of the exemption. The Victorian WorkCover Authority has a general conditional exemption from the Victorian agricultural chemical retail industry for premises with Agsafe accreditation.
- 6.8 The Applicant submitted that some regulatory authorities, for example DMEWA, have audited Agsafe accredited premises against industry standards and have found that the Agsafe program has resulted in an improvement in overall compliance. For example, it submitted, statistics show compliance levels for Agsafe exceed those of the industry for placarding (59% versus 44%) and for secondary containment (89% versus 44%). The Applicant further noted the comments of the Chief inspector of Dangerous Goods in Western Australia, Mr Ken Price, that prosecution does not generate the effect, for example, in preventing accidents, that the Agsafe program can.
- 6.9 The Applicant argued that the Agsafe accreditation programs also allow regulatory authorities to more efficiently use their own resources. For example, in Victoria the requirement to hold a licence to sell by retail (Schedule 7 licence) was dropped because the Department of Health observed that the accreditation program was providing equivalent safety requirements and duplicating licensing requirements.

Benefits – staff accreditation

- 6.10 The Applicant argued that the Agsafe program through accrediting personnel who are involved in selling, advising, recommending, applying or handling of agricultural and veterinary chemicals, provides the following benefits;
- Sales, recommendations and advice are made only by trained people.
 - The national recognition and acceptance of training qualifications, the requirement for regular revision of contemporary information and the ability to disseminate such information.
 - Any proposed unauthorised or non-registered use is preventable at site of purchase.
 - Users are able to receive guidance on product use rather than just product access/purchase.
 - Additional information on safe use, appropriate protective gear and disposal guidance supplements label advice.
 - Encouragement of an emphasis upon correct use according to manufacturers' label directions improves operator safety, minimises environmental effects and maintains low residue levels in food for consumer protection.
 - The provision of advice on correct and safe use leads to accredited staff providing the essential nexus between the manufacturer and the user.

- 6.11 The Applicant argued that the stated objectives of industry training, the highest possible standard for health and safety, alertness to the hazards and precautions needed, awareness and influence over the environment, the development of a responsible use and handling attitude and an awareness of the role of agricultural and veterinary chemicals, as listed in the above-mentioned benefits are in the public interest.
- 6.12 The Applicant stated that the benefit of maintaining an on-going training program becomes even more paramount due to a trend for regulations to change and to become more performance based. The applicants contend that the on going training of personnel in the handling, storage and use of chemicals aims to update trainees in their regulatory responsibilities and to familiarise them with new Australian Standards.
- 6.13 Further, the applicant submitted that compliance with hazardous substances regulations is particularly difficult in the rural industry, that education is an important way to address these difficulties, and that the Agsafe stage II resource training material includes relevant information on this.

Benefits – premises accreditation

- 6.14 The Applicant argued that there currently exists a plethora of requirements, regulations, controls and conditions relating to premises which store and sell agvet chemicals, with requirements for licences, permits and related criteria varying from state to state. The Applicant argued that this lack of uniformity can lead to confusion within the industry, disadvantaging both sellers and customers.
- 6.15 Consequently, the Applicant argued, as part of its industry responsibility program, Agsafe has developed an overall accreditation system which combines individual accreditation with accreditation of premises used for agvet chemical storage.
- 6.16 The Applicant stated that since its inception the premises accreditation program has been effective in identifying, simplifying and communicating regulatory information to the industry. Further, it argued, regulators have also benefited from being able to use Agsafe to communicate their compliance programs.
- 6.17 The Applicant noted that at the onset of external assessments, regulatory compliance was observed to be in the order of 48 per cent of premises. Four years later, approximately 80 per cent of premises were found to be compliant with the industry standard. The Applicant argued that this indicates the value of the premises accreditation program in improving compliance levels and also indicates there is a need to ensure that the program continues in order to obtain 100 per cent compliance.
- 6.18 The Applicant argued that accreditation results in a reduction in incidents such as:
- product received below specification;

- spills during storage and handling;
- storage/warehouse fire;
- faulty product advice resulting in claims;
- contamination/accidental poisoning of people; and
- residues in food.

Overall public benefit

6.19 The Applicant argued that by combining the individual qualification of premises compliance – together with trading sanctions for non compliant operators – the industry is, by this self regulatory mechanism, able to demonstrate and enforce a system which provides significant public benefits including:

- Personnel who are accredited gain a professional qualification which is nationally recognised.
- The proprietor benefits in the knowledge that having satisfied accreditation standards, he has also met government and insurance criteria necessary for such a facility. The consequent reduction in risk of litigation further reduces the costs to government and the community.
- The user – principally the farmer – gains from having a trained and accredited resource to advise on availability, safe usage, disposal and product application. The user is instantly able to recognise accredited staff and premises and thus be certain of a reliable source for the best information and supplies for his agricultural and veterinary chemical needs.
- The local resident derives a benefit by improved agricultural and veterinary chemical warehousing, safer transport and optimal control in the event of a premises emergency.
- From the reduced risk of residues in food exceeding Maximum Residue Levels (MRLs) and via the process of education and direct advice to users, consumers ultimately benefit from the assurance of safe food.
- The agricultural and veterinary chemicals industry has the advantage of public recognition of the degree of responsibility it demonstrates and has in place an effective component of the educational forum for the safer use of agricultural and veterinary chemicals.
- 80 per cent of Australian agricultural output is exported. It is vital that all agricultural exports meet residue criteria set for international trade. Consequently, the provision of appropriate label advice by the accredited personnel is a vital link in the chain to ensuring safe and effective use of agricultural and veterinary chemicals.

6.20 The Applicant argued that the Agsafe program benefits:

- Industry -- through improved regulatory compliance and reduced costs of incidents and litigation.
 - Farmers – through the flow on effect of responsible advice and duty of care from resellers.
 - The Community – due to reduced incidents.
 - Government – through being able to substitute the program for their compliance programs and thus save costs, prevention being more effective than prosecution.
- 6.21 The Applicant presented a number of examples of situations where, they argue, the Agsafe accreditation program has prevented serious accidents including:
- Chemical segregation and separation requirements preventing chemical spillage when fire engulfed a Tasmanian premises.
 - The availability of Altopine Sulphate for organo phosphorous poisoning saving a life in Queensland.
 - Emergency shower facilities and an emergency plan for poisoning preventing serious injury when a loose cover on a drum of class 6 poison resulted in a person who was removing the drum from a top shelf being covered with the chemical in Western Australia.

Proposed changes to the scheme

Targets of accreditation

- 6.22 The current target for accreditation is based on the definition of agricultural and veterinary chemicals in section 4(1) of the *Commonwealth Agricultural and Veterinary Chemicals Act, 1988* which has been repealed and no longer applies.
- 6.23 The Applicant argued that under the proposed changes the definition and scope of chemicals targeted remains basically the same except that wetters and adjuvants (included in the Agvet Code) are now proposed to be included in the scope of Agsafe. The applicant argues that while dairy cleansers are included in the new definition it is proposed to exclude them from the scope of Agsafe accreditation.

Premises accreditation threshold

- 6.24 The Applicant noted that regulations apply to premises which stock any quantity of agricultural and veterinary chemicals. The Applicant contended that the industry and community is at risk from those premises which stock even small quantities.
- 6.25 The Applicant stated that there are indications from regulatory authorities that there are breaches in compliance by premises which are outside the current scope of premises accreditation.

- 6.26 The Applicant noted that premises which stock less than Worksafe placarding levels of dangerous goods are still subject to regulations (including dangerous goods regulations). They noted that there are a number of regulations which are invoked regardless of the quantity of substances which are kept, in particular hazardous substances, poisons and dangerous goods which exceed minor storage levels (but are below Worksafe placarding levels).
- 6.27 The Applicant noted that the Health Department of Western Australia's (HDWA) submissions to Agsafe monitoring meetings have indicated that they are not impressed by the limited scope of Agsafe premises accreditation. They note that Health Department of Western Australia inspections from 1995 to 1997 indicated that 49% of premises did not store Schedule 7 poisons safely and 67% did not keep adequate records.
- 6.28 The Applicant argued that the agricultural sector is having many difficulties in complying with hazardous substances regulations. Agsafe noted that compliance with hazardous substances regulations is a component of Agsafe training but that premises accreditations are still picking up compliance shortcomings. Agsafe argued that to the extent that premises currently covered by their program are facing difficulties in complying with regulations these difficulties are likely to be even more pronounced for those premises outside the scope of the current scheme.
- 6.29 The Applicant also argued that some dangerous goods can be stored in quantities which breach Australian Standards without breaching Worksafe placarding levels and therefore are not covered by the scheme.
- 6.30 The Applicant also noted that where staff at premises which do not fall within the current accreditation threshold do participate in staff accreditation, Agsafe currently has no way of assessing whether the skills and knowledge gained through the Agsafe training program are being put into practice.
- 6.31 The Applicant also noted that some participants in the program have argued that all premises being required to be accredited is a fairer system than requiring only those premises which store hazardous substances in quantities exceeding Worksafe placarding levels be accredited.
- 6.32 Additionally the Applicant argued that:
- Currently many premises which stock hazardous goods exceeding Worksafe placarding levels for a short time escape the Agsafe system.
 - Sharing of overheads over a larger number of premises would reduce fees to individual premises.
 - Average times for assessment should be reduced because there are potentially fewer items to assess in smaller premises. However, Agsafe noted that this could be offset by reduced levels of safety systems in place in small premises and consequent greater need for advice and assistance.

- Currently Agsafe is required to process statutory declarations on whether premises store agvet chemicals in quantities exceeding Worksafe placarding levels, which, it argued, is a complex process. In contrast, the Applicant argued, processing inquires which simply assess the presence or absence of agvet chemicals would be a much simpler process.

6.33 The Applicant further noted that a high proportion of the major buying groups premises which have less than placardable quantities of dangerous goods (eg Elders Limited, Wesfarmers Dalgety Limited, IAMA, CRT and IHD) already have premises accreditation.

Distinction between Minor and Major storage threshold

6.34 The Applicant argued that AS2507 was a useful benchmark against which to accredit Minor Storage Premises. The Applicant argued that the requirement for Minor Storage premises in complying with AS2507 were common sense, practical and not onerous.

6.35 The Applicant argued that the proposed Minor Storage classification would not compromise the integrity of the program compared to the alternative of small premises being required to meet the Major Storage premises accreditation standard. It argued that the proposed change would allow resources to be allocated more appropriately on the larger risk stores.

6.36 The Applicant contended that the community and the industry would benefit from a greater public demonstration of responsibility and the means to deal with businesses that potentially threaten community safety which are currently outside the scope of the program.

Anti-competitive detriments

6.37 The Applicant noted that the accreditation program may produce some detriment through the costs incurred in meeting the necessary standards. However, it noted that this cost should decline as premises become more compliant and the time taken to accredit the premises is reduced.

6.38 The Applicant noted that a reduction in the premises accreditation threshold may impose an additional impost on smaller businesses not previously covered by the program.

7. Submissions of interested parties

The Agsafe program

- 7.1 Combined Rural Traders (CRT)/Town & Country supported renewal of authorisation of the Agsafe program. They argued that the requirement of training and accreditation of all staff who handle agricultural and veterinary chemicals and the requirement for premises which stock agricultural and veterinary chemicals to be accredited ensures that staff are educated to provide proper advice and recommendations which are strictly in accordance with the product label. CRT/Town & Country argued that having an industry wide program ensures that other companies do not compromise this responsibility. CRT/Town & Country contended that authorisation has allowed the industry as a whole to enforce compliance in a manner that has been cost effective and exerted a positive influence on people's behaviour.
- 7.2 CRT/Town & Country believed that Agsafe accreditation has led to premises which are better equipped and managed to prevent incidents and to respond to them. They contended that the Agsafe industry standard has brought together all relevant regulations and standards and presented them in a form which facilitates implementation by CRT/Town & Country members. CRT/Town & Country argued that Agsafe assessment has led to a better understanding and adoption of safety measures than prosecution would have achieved.
- 7.3 The National Farmers Federation (NFF) supported continued authorisation of the Agsafe program under its current guidelines. This support was based on the need for enforcement of legal requirements for agricultural chemical storage's and resellers.
- 7.4 The Victorian WorkCover Authority supported the Agsafe program. It argued that the Agsafe program is beneficial to end users in terms of the provision of consistent, accurate and current information by re-sellers. Furthermore, it argued, the program is a means of re-sellers meeting some of their employer duties under legislation relating to the storage and use of dangerous goods and hazardous substances.
- 7.5 As an Agsafe assessor of premises and a course provider for a number of years Mabon's contended that it has seen many beneficial changes to the industry regarding attitudes towards safety, and the public concern directed at farm chemicals since the time of Agsafe's inception.
- 7.6 Mabon's contended that the Agsafe accreditation program has made a significant difference to the way in which chemicals are stored and transported by the industry. It argued that the accreditation program has increased the awareness of the participants at all levels of distribution to the dangers inherent in farm chemicals, some of which are scheduled poisons, dangerous goods and hazardous substances. Mabon's argued part of this success is due to the sanctions process, which it noted, has only been used as a last resort.

- 7.7 Mabon's noted that some government departments, such as the Queensland Department of Primary Industries, when asking for quotations for tenders for farm chemicals, now ask for proof of Agsafe accreditation and that some other industries are now holding up the Agsafe model as being the one to adopt.
- 7.8 The Department of Agriculture, Fisheries and Forestry Australia (AFFA) contended that a number of the public benefits identified by Agsafe as arising from the scheme, such as management of residues in food, are attributable to a number of other substantial risk management initiatives of industry and government.
- 7.9 Additionally AFFA stated that it has received anecdotal reports raising concerns at the level of adherence to the accreditation standards among accredited premises. AFFA argued that it would be concerned if some premises or groups were found to be benefiting from shortfalls in assessments. AFFA argued that there is a need for more open and effective external monitoring of compliance, and reporting of the findings of monitoring. AFFA contended that it may be necessary to review the current monitoring arrangements and adopt a more externally operated process. Accordingly, AFFA recommended that Agsafe be requested to provide further information for use in considering the renewal of the authorisation and thereafter on an ongoing basis, to allow a fuller assessment of the degree to which Agsafe is succeeding in ensuring widespread industry compliance with accreditation obligations.
- 7.10 Notwithstanding this, AFFA supported the application. AFFA did consider that the scheme provides important public benefits to the affected industry sectors, and the public, through ensuring better compliance with relevant government regulations and by reducing the cost of complying with these regulations compared with other potential means of doing so.
- 7.11 The Health Department of Western Australia noted that *The Poisons Act 1964* regulates the sale and use of poisons and other substances in Western Australia under the administration of the HDWA. The Poisons Act also provides for the Commissioner of Health to issue licences to access, use and sell poisons. The HDWA noted that most of the agricultural and veterinary chemicals included in the Agsafe program are covered by the Poisons Act.
- 7.12 The HDWA noted that under the Poisons Act, licences are required for retailers of Schedule 7 poisons and wholesalers of Schedules 6 and 7 poisons and that licences issued are monitored by the HDWA for compliance with the Poisons Act under an audit program.
- 7.13 The HDWA argued that, if there were no controls over the packing, labelling, storage or supply of agricultural and veterinary programs then the Agsafe program would result in a public benefit. However, the HDWA argued, in Western Australia controls do exist and the Agsafe program adds an additional level of industry imposed control with all its associated costs and lack of accountability. The HDWA argued that the duplication by Agsafe in Western Australia of some of the legislative requirements under the Poisons Act leads to a number of potential difficulties including:

- increased costs for retailers of agricultural and veterinary chemicals who are covered by Agsafe;
 - those businesses falling outside the Agsafe program not being subject to the same costs; and
 - Agsafe not being accountable to the people of Western Australia.
- 7.14 The HDWA noted the objective of the Agsafe scheme, to ensure that agricultural and veterinary chemicals are stored, handled, and transported in accordance with all statutory regulations and standards. However, the HDWA contended that, during the period March 1996 to November 1998 its officers visited 209 stores licensed to sell poisons included in Schedule 7 of the Poisons Act, many reputedly accredited by Agsafe. The HDWA stated that 49% of these stores did not comply with the storage requirements set out in the Poisons regulations, and 81% did not comply with record keeping requirements. The HDWA therefore argued that the stated objective of the program, complying with all statutory requirements, was not being achieved.
- 7.15 The HDWA argued that while Agsafe's training program has potential, provided that state legislative requirements are included and the outcome of an improvement in public health and safety through the safe appropriate distribution and use of these poisons is achieved, the program does not have any performance indicators and these should be developed if additional costs are to be incurred by consumers.
- 7.16 Further, the HDWA argued the accreditation process for personnel undertaking the Agsafe program should be integrated with the issuing of licences under the Poisons Act.
- 7.17 The HDWA supported the concept of co-regulation and the underlying philosophy of improved use of farm chemicals. However, given that a legislative structure exists in Western Australia for the control of farm chemicals, the HDWA did not support the accreditation obligations, including the imposition of trading sanctions, of the Agsafe program.

Proposed changes to premises accreditation program

- 7.18 CRT/Town & Country expressed concerns that, while there are a large number of premises which store significant quantities of agvet chemicals, because less than 30% (on average) are dangerous goods, they escape the Agsafe premises accreditation program. Consequently CRT/Town & Country supported a change to the current authorisation which would permit Agsafe to take action on all premises which store agvet chemicals which are defined as hazardous substances. They argued that the current threshold for premises accreditation based on Worksafe placarding level is becoming less applicable to the industry as less than 30% of agricultural and veterinary chemicals are now classified dangerous goods.

- 7.19 AFFA argued that changes to the accreditation threshold should reduce the potential anti-competitive elements of the scheme and help ensure that the risk management objectives of the scheme are better achieved.
- 7.20 AFFA noted the situation described in Agsafe's supporting submission where some premises manipulate their stock levels so as to fall below the current threshold for premises accreditation. AFFA contended that this indicated that the current premises threshold arrangements could be unintentionally producing an anti-competitive detriment to those premises meeting the obligation. AFFA argued that the proposed reduction of the threshold is justified on the grounds of improving competition and risk management. AFFA noted that the majority of industry participants surveyed favoured a lower threshold and AFFA supported this assessment.
- 7.21 AFFA considered that the proposed change is likely to result in a net public benefit because of the underlying need for all businesses to comply with government regulation. AFFA argued that the scheme may potentially assist some businesses to comply with hazardous substances legislation thereby providing a benefit to the premises affected and the public.
- 7.22 The NRA argued that the expansion of the accreditation program to capture smaller distributors is highly desirable. The NRA believed that the proposed changes have a large public benefit and are unlikely to have a significant financial impact on the agricultural sector.
- 7.23 Mabon's argued that while the Agsafe program has been successful some premises with high stock levels still submit inaccurate manifests to Agsafe to remain below the WorkSafe placarding levels and hence avoid the requirement for accreditation. Mabon's argued that reducing the threshold for premises accreditation would assist in ensuring everyone competes on a level playing field. Mabon's believed there is a public benefit in applying these standards to all stores regardless of size.
- 7.24 Virbac opposed the elimination of the storage levels and the Worksafe placarding formula to identify premises which should be included within Agsafe because;
- It is not confined to farm chemicals.
 - As defined, it could include every farm, veterinary practice, retailers who would be exempt in the past, every storage location which may have one drum of a hazardous substance and many others.
 - It will disadvantage small retailers.
 - It will be impossible to police every premises which stores hazardous substances.
 - It is a money generating exercise for Agsafe.

- The workplace placarding formula has provided adequate identity of the targeted Agsafe participants.

7.25 The VMDA strongly opposed any extension of the sanctionable powers of Agsafe. The VMDA argued that the granting of the original powers was designed to reinforce and complement regulations put in place, eg WorkSafe placarding limits, as those limits are deemed by the authorities to be the lowest actionable limits necessary. The VDMA contended that any extension of the premises accreditation below the placarding limits places in question the government based standard.

Additional burden on small business

7.26 The NFF expressed concerns about the impact on competition and availability of product in smaller (particularly isolated) rural centres under the new proposal should smaller retailers not become accredited and cease to trade. The NFF believed that smaller retailers should be responsible managers of chemical products. However, it expressed concerns that the additional costs of accreditation for businesses dealing in small amounts of chemicals may be such that they choose not to trade, thus restricting access to product for users.

7.27 The NFF expressed concerns about the proposed change to the premises accreditation threshold as, it argued, the proposed changes do not outline what requirements will be enforced on small businesses. The NFF noted that through the National Occupational Health and Safety Commission project "Simplifying the Safe Use of Farm Chemicals" the NFF, Avcare and others are in the process of clarifying the implementation of the Hazardous Substances Regulations with regard to registered agricultural chemicals. The NFF argued that it is unclear at this time how duties imposed on small businesses from these regulations will be enforced and how enforcement will be achieved. Therefore, it argued, it is not as yet possible to assess the regulatory burden that will be placed on small businesses or the benefits that will flow to the user industry. The NFF argued that the outcome of this project should be known before these regulations become entrenched into the Agsafe agreement.

7.28 The NFF further noted that the expansion of the Agsafe program from 1450 to 2000 premises represents a very significant increase. The NFF did not believe that the proposed changes have clearly outlined the extent of small businesses that will be caught by the expansion. The NFF questioned whether, for example, the expansion of the program will affect gardening sections in hardware stores and how it will affect premises that sell hazardous substances that are not registered agricultural chemicals such as fertilisers (for example it was the NFF's understanding that ammonium fertilisers are considered hazardous substances).

7.29 The HDWA argued that the requirement for accreditation of premises and personnel is a barrier to entry into the industry. Against this, it contended, there is no evidence which shows that these costs are outweighed by a public benefit. The HDWA contended that while it may be that there are additional benefits to

other government agencies associated with safe work practices, from a public health perspective the benefits to the public are limited.

- 7.30 AFFA noted that a lower threshold may result in a substantial imposition on very small businesses by requiring them to be accredited, thereby possibly placing such businesses at a competitive disadvantage.
- 7.31 AFFA noted that the majority of premises and personnel in the industry incur costs under the existing accreditation scheme arrangements. However AFFA noted that were these costs not being incurred other costs would need to be incurred in insuring compliance with government regulations. AFFA considered that in the absence of the Agsafe accreditation program such compliance costs to businesses would be higher.
- 7.32 AFFA did note that the lowering of the threshold for premises accreditation could impose significant costs on smaller businesses. AFFA therefore supported the Agsafe suggestion that a flexible fee structure be introduced, related to the cost to Agsafe, which in turn is determined by the potential risks to be managed.
- 7.33 Mabon's noted the possible costs of the arrangements to the agvet chemical industry especially to smaller stores which may be under cost pressures. However, it noted that Agsafe intends to ensure that there will be a sliding scale of fees to assist smaller stores requiring accreditation under the new threshold.
- 7.34 CRT/Town & Country contended that a large number of their members who stock dangerous goods below the threshold already have premises accreditation, and that the financial impact on its members of the premises fee (currently \$300) if the minimum threshold was lowered would not be considered unwarranted.
- 7.35 Mike Barrett & Associates argued that the new premises accreditation threshold is long overdue and will enable Agsafe to assist smaller premises to comply with legislative requirements. They argued that while the new threshold could result in a number of smaller businesses ceasing to market agricultural chemicals, given the widespread availability of these products, it is unlikely the public would suffer in price terms.

Staffing

- 7.36 AFFA argued that a reduced premises accreditation threshold may need to be matched by a corresponding increase in Agsafe's assessor staffing levels in order to maintain the ability to assess all premises within the required periods, which AFFA argued is necessary to avoid anti-competitive outcomes and maintain the credibility of the scheme. Therefore AFFA recommended that any renewal of authorisation should require Agsafe to demonstrate, on an ongoing basis, that it is meeting its assessment obligations to ensure compliance by all premises covered by its accreditation scheme.