



**Australian  
Competition &  
Consumer  
Commission**

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Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
ph (02) 6243 1111  
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[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: A91027 & A91028  
Contact Officer: Danielle Staltari  
Contact Phone: 02 6243 362

5 January 2007

Mr Dennis Martin  
Partner  
Snedden Hall Gallop  
GPO Box 794  
Canberra ACT 2601

Dear Mr Martin

**Re: Agsafe – application for revocation and substitution A91027 & A91028  
– interested party consultation**

I refer to the above mentioned application for revocation and substitution lodged with the Australian Competition and Consumer Commission (the ACCC) on 18 December 2006.

Please find enclosed, for your information, copies of letters that the ACCC sent today to potentially interested parties as part of its public consultation process. A list of those contacted is also enclosed.

All publicly available submissions will be posted on the ACCC internet site at [www.accc.gov.au](http://www.accc.gov.au). The ACCC can also arrange for you to receive a copy of all publicly available submissions at the end of the consultation period.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Danielle Staltari on (02) 6243 1362.

Yours sincerely

Scott Gregson  
General Manager  
Adjudication Branch





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5 January 2007

Dear

**Re: Agsafe's application for revocation and substitution A91027 and A91028 –  
interested party consultation**

**Introduction**

The Australian Competition and Consumer Commission (ACCC) has received an application for revocation and substitution lodged by Agsafe Limited (Agsafe). Agsafe is seeking revocation of its existing authorisations A90680 and A90681 and substitution of new authorisations in respect of its Code of Conduct.

The purpose of this letter is to invite your comments in relation to Agsafe's application. In particular, the ACCC would appreciate information in relation to the relevant legislation or regulations that your agency may administer (see **Attachment A** to this letter).

**Agsafe's application**

Among other things, the Code of Conduct outlines the requirements for compliance with the industry accreditation program (known as the Guardian Program). The Code of Conduct provides for the imposition of trading sanctions on businesses that are not accredited under the Guardian Program. In essence this involves:

- chemical manufacturers agreeing not to supply agricultural and veterinary chemicals to distributors or retailers of chemicals who have not obtained accreditation through the Agsafe Guardian Program; and
- retailers and distributors of chemicals agreeing not to purchase agricultural and veterinary chemicals from manufacturers who have not obtained accreditation through the Agsafe Guardian Program.

Trading sanctions can be applied to both members and non-members of Agsafe and in instances where a business otherwise appears to comply with applicable legislation.



A copy of Agsafe's application for revocation and substitution and supporting submission is enclosed for your information. These documents and other attachments provided by Agsafe with its application will also be available on the ACCC's website: [www.accc.gov.au](http://www.accc.gov.au) (by following the Public Registers and Authorisations links).

### **Authorisation**

By way of background, the ACCC is the Australian Government agency responsible for administering the Trade Practices Act 1974 (the TPA). A key objective of the TPA is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The TPA, however, allows the ACCC to grant immunity from the TPA for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any detriment to the public including that constituted by any lessening of competition. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

### **Request for submissions**

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, arising from the Code of Conduct.

A key issue for the ACCC will be the ability for Agsafe and its members to boycott (through the imposition of trading sanctions) those businesses who have not obtained Agsafe accreditation under the Guardian Program. To assist the ACCC consider the public benefits and likely effect on competition arising from this conduct the ACCC would appreciate it if you could particularly address the questions which are outlined at **Attachment A**.

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information.

I would be grateful if you could please provide a response to the questions listed at **Attachment A** and any other comments you may wish to make on Agsafe's Code of Conduct by **8 February 2007**.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose. However, if you would like to discuss the questions listed at Attachment A, the ACCC would be happy to meet with representatives from your agency.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Danielle Staltari on 02 6243 1362.

Yours sincerely

Scott Gregson  
General Manager  
Adjudication Branch

**Agsafe's application for revocation and substitution A91027 and A91028 – Indicative Timetable**

<b>18 December 2006</b>	Lodgement of application and supporting submission.
<b>5 January 2007</b>	Public consultation process begins.
<b>8 February 2007</b>	Closing date for submissions from interested parties.
<b>February 2007</b>	Applicant responds to issues raised in the public consultation process.
<b>February / March 2007</b>	ACCC assessment.
<b>March / April 2007</b>	Draft determination.
<b>April / May 2007</b>	Public consultation on draft determination including any conference if called.
<b>May 2007</b>	Final determination.

## **Attachment A**

Could you please identify the relevant legislation and provisions that your agency may administer which regulate the storage handling, transport and sale of agricultural and veterinary chemicals? What type of businesses does this legislation apply to? For example, manufacturers, distributors, retailers or consumers of agricultural and veterinary chemicals.

2. How does the agency ensure that businesses comply with this legislation? For example, are there audits or inspections conducted by the agency?
3. Is there a requirement in the legislation, regulations or practice of the agency that businesses must obtain accreditation through the Agsafe Guardian Program as a means of demonstrating compliance with the legislation?
4. Does the legislation provide for sanctions to be imposed on businesses who fail to meet the legislative requirements? If yes, could you please explain what sanctions are available?
5. Does the agency issue compliance certificates, or any other mechanism, to certify that a business has complied with the relevant legislative requirements?
6. Does the agency receive complaints about businesses who may not be complying with the legislative requirements? If yes, what happens to these complaints and who lodges these complaints?
7. Does the agency receive complaints about Agsafe's Guardian Program? If yes, please outline the nature of the complaints.
8. Does the agency support the ability for Agsafe and its members to boycott (through the imposition of trading sanctions) any business involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals that has not been accredited under the Guardian Program? Please explain why or why not.
9. The accreditation scheme administered by Agsafe has been in operation for a number of years. What has been the agency's experience with the Agsafe accreditation scheme? Does the agency have any comments about the benefits of the Agsafe accreditation scheme?

## **List of interested parties**

National Transport Commission  
Department of Transport and Regional Services  
Department of Environment and Heritage  
AusIndustry  
Department of Education, Science and Training  
Department of Industry, Tourism and Resources  
ACT Emergency Services Agency  
VICSES  
State Emergency Service of South Australia  
National Drugs and Poisons Schedule Committee  
Office of the Australian Safety and Compensation Council, Department of  
Employment and Workplace Relations  
EPA VICTORIA  
NSW Department of Environment and Conservation  
WA Environmental Protection Authority  
Environmental Protection Agency-SA  
Qld Environmental Protection Agency  
Department of Primary Industries and Water Tasmania  
Department of Primary Industry Northern Territory  
Department of Primary Industries NSW  
Department of Primary Industries Victoria  
Queensland Health  
Environment ACT  
Department of Agriculture, Fisheries and Forestry  
Department of Health Western Australia  
Department of Industry and Resources  
Department of Emergency Services  
NT Worksafe  
ACT WorkCover  
QLD Department of Industrial Relations  
Victorian WorkCover Authority  
WA Department of Consumer and Employment Protection  
WorkCover NSW  
SafeWork SA  
NSW Department of Health  
Department of Employment, Education and Training Northern Territory  
Office of the Gene Technology Regulator  
Territory Health  
QLD Department of Primary Industries and Fisheries  
QLD Department of Local Government, Planning, Sport and Recreation  
Queensland Transport  
Food Standards Australia New Zealand  
Comcare  
Department of Mines and Energy  
Australian Pesticides & Veterinary Medicines Authority  
Therapeutic Goods Administration  
Australian Quarantine and Inspection Service  
National Health and Medical Research Council

Department of Health SA  
Department of Human Services Victoria  
ACT Health  
Department of Health and Ageing  
Department of Agriculture and Food WA  
Primary Industries and Resources SA  
Department of Health and Human Services Tasmania  
Department of Justice Tasmania, Workplace Standards Tasmania  
Workplace Health & Safety Queensland, Department of Employment and Industrial  
Relations  
Environment Protection Agency Board NT



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The purpose of this letter is to seek your comments in relation to the application as a potential interested party.

**Agsafe's application**

Among other things, the Code of Conduct outlines the requirements for compliance with the industry accreditation program (known as the Guardian Program). The Code of Conduct provides for the imposition of trading sanctions on businesses that are not accredited under the Guardian Program. In essence this involves:

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A key issue for the ACCC will be the ability for Agsafe and its members to boycott (through the imposition of trading sanctions) those businesses who have not obtained Agsafe accreditation under the Guardian Program. The ACCC is particularly interested in your comments on the ability of Agsafe and its members to impose trading sanctions on businesses who are not accredited under the Guardian Program.

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information.

If you intend to provide a submission in relation to the application, I would be grateful if you could do so by close of business **8 February 2007**.

## **General information**

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

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Yours sincerely

Scott Gregson  
General Manager  
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<b>March / April 2007</b>	Draft determination.
<b>April / May 2007</b>	Public consultation on draft determination including any conference if called.
<b>May 2007</b>	Final determination.

## **List of interested parties**

Australian Bureau of Agricultural and Resource Economics  
Australian Centre for International Agricultural Research  
Centre for Environment and Life Sciences  
Grains Research and Development Corporation  
Land and Water Australia  
Australian Health Ministers' Advisory Conference  
Biodiesel Association of Australia  
Biodynamic Agriculture Australia  
Central West Conservation Farming Association  
Croplife Australia  
Fertilizer Industry Federation of Australia  
Murrumbidgee Horticulture Council  
AusBiotech Ltd  
Agribusiness Employers' Federation  
Agforce Queensland  
Australian Chamber of Commerce and Industry  
Australian Consumers Association  
Australian Consumer Specialty Products Association  
Australian Retailers Association  
Small Business Association of Australia  
National Farmers Federation  
NSW Farmers Association  
SA Farmers Federation  
Victorian Farmers Federation  
Western Australian Farmers Federation  
Queensland Farmers Federation  
Tasmanian Farmers and Graziers Association  
VIRBAC Australia Pty Ltd  
Ruralco Holdings Limited  
Tylers Hardware & Rural Supplies  
P & H Rural Supplies P/L  
Wesfarmers Limited  
Mike Barrett and Associates  
Mabons Timber Protection (Australia) Pty Ltd  
WG Welch Consultants  
Australian Association of Agricultural Consultants  
Agricultural Chemicals Retailers Association  
Veterinary Manufacturers & Distributors Association  
Savage Baker & Backhouse Pty Ltd  
Southern Farm Supplies, Bega  
SAI Global Limited  
Guyra Rural Services  
Bowa Organics Pty Ltd  
The Aerial Agricultural Association of Australia  
Mr and Mrs Mathew and Liz Staples  
Elders  
Australian Council of Trades Unions  
Kerang Rural Supplies

Horsfield Trading Pty Ltd  
Bayer Australia Ltd  
Becker Underwood Pty Ltd  
Du Pont (Australia) Ltd  
Farnoz Pty Ltd  
Pfizer Animal Health  
Monsanto Australia Limited  
Sipcam Pacifica Australia Pty Ltd  
Summit Agro Australia Pty Ltd  
Sumitomo Chemical Australia Pty Ltd  
Agrisearch Services Pty Ltd  
Australian Cane Growers Council Ltd  
Cotton Australia  
Australian Dried Fruit Association Inc  
Australian Environmental Pest Managers Association Ltd  
NSW Fire Brigade Employees Union  
Medicines Australia  
David Gray & Co Pty Ltd  
AWU-FIME  
Pharmacy Guild of Australia  
Queensland Graingrowers Association  
Ricegrowers' Association of Australia  
Rural Marketing and Supply Association Inc  
Ancare Australia Pty Limited  
OzBioPharm Pty Ltd  
Australian Meat and Livestock Corporation  
CSL Limited  
Association of Australian Port & Marine Authorities Inc  
Boehringer Ingelheim Pty Limited  
Elanco Animal Health  
Intervet Australia Pty Limited  
Merial Australia Pty Ltd  
Novartis Animal Health Australasia Pty Ltd  
GlaxoSmithKline Australia  
Syngenta Crop Protection Pty Limited  
FMC Australasia Pty Ltd  
Chemtura Australia Pty Ltd  
Dow AgroSciences Australia Ltd  
Accensi Pty Ltd  
BASF Australia Ltd  
Nufarm Limited  
Greif Australia Pty Limited  
Grains Council of Australia  
NT Cattlemen's Association  
Growcom  
Grape & Wine Research & Development Corporation  
SA Chamber of Fruit & Vegetable Industries  
Vegetable Growers Association of Victoria  
Pastoralists & Graziers Association of WA  
WA Vegetable Growers Association

Landmark – An AWB Company  
CRT  
IHD Pty Ltd  
Department of the Prime Minister and Cabinet  
Fort Dodge Australia Limited  
Schering-Plough Pty Limited  
Landcare Australia  
Australian Veterinary Association  
FG Blockey & Associates  
Fertilizer Industry Federation of Australia  
Country Fire Authority of Victoria  
Animal Health Alliance