



Representing the Plant Science Industry

CropLife Australia Limited
ABN 29 008 579 048

Level 2 AMP Building
1 Hobart Place, Canberra ACT 2600
Locked Bag 916, Canberra ACT 2601

Tel: 02 6230 6399
Fax: 02 6230 6355
www.croplifeaustralia.org.au



Animal Health Alliance (Australia) Ltd
ABN: 76 116 948 344

Address: Level 2 AMP Building
1 Hobart Place
Canberra ACT 2601
Locked Bag 916

Phone: 02 6257 9022
Fax: 02 6257 9055
www.animalhealthalliance.org.au

**SUBMISSION ON
AGSAFE'S APPLICATION FOR REVOCATION AND SUBSTITUTION
A91027 – A91030
DRAFT DETERMINATION**

23 April 2007

1. INTRODUCTION

CropLife Australia and Animal Health Alliance (Australia) are the peak industry associations representing the manufacturers and registrants of agricultural and veterinary chemical products respectively in Australia. Our member companies' annual product sales combined represent over 90% of the market by dollar value.

A key goal of for both entities is to raise awareness of the contribution that our industries make to sustainable agriculture and to the ongoing competitiveness of Australian agricultural exports.

CropLife, Animal Health Alliance (Australia) and our member companies are committed to safety, stewardship and quality and we lead industry efforts to demonstrate this commitment.

2. THIS SUBMISSION

CropLife Australia and the Animal Health Alliance (Australia) welcome the opportunity to respond to the draft determination of the Australian Competition and Consumer Commission (ACCC) concerning authorisation for Agsafe to impose trade sanctions as part of its Code of Conduct.

CropLife is the sole shareholder of Agsafe. Its member companies are members of Agsafe along with the member companies of Animal Health Alliance (Australia) and those entities that qualify for Agsafe membership under the Guardian Program.

CropLife and Animal Health Alliance members are required to participate in all Agsafe programs (Guardian, **drumMUSTER** and ChemClear[®]) as a condition of membership. These programs provide fundamental mechanisms by which our member companies take full-lifecycle stewardship responsibility for their products. Guardian accreditation of premises and training of personnel is the most effective means possible for CropLife and Animal Health Alliance members to ensure that their products are handled and stored appropriately and used responsibly.

As a consequence, CropLife, Animal Health Alliance and their members are seriously concerned by the ACCC's flagged intention to withdraw the authorisation for Agsafe to use the potential for trade sanctions to motivate compliance. The trade sanction is the lynchpin in a credible and effective co-regulatory approach focussed on achieving the safe and responsible management and use of agvet chemicals.

Agsafe delivers industry stewardship

CropLife and Animal Health Alliance members take a "beyond regulatory compliance" responsibility for their products, from manufacture through to post-consumer waste management. Not only do they ensure that they meet their own regulatory requirements, but have initiatives (either on an individual company basis, or collectively through Agsafe, CropLife and Animal Health Alliance) to help other players along the supply chain do the same.

While the Agsafe program was initiated in 1987 to help manufacturers and distributors train their staff to maintain safety standards in the production, transport and retailing of industry products, it now fulfils a broader function with a greater public benefit component.

Guardian now provides a "one stop shop" approach to understanding and monitoring compliance with the multiplicity of regulatory requirements that apply across Australia's states for the storage, transport, handling and use of agvet chemicals. It is a convenient and cost effective way to check compliance. However, Guardian's value beyond that is to provide personnel training and accreditation to ensure that products are sold with appropriate advice to foster safe and responsible use.

The regulatory environment

It is an unfortunate result of Australia's Federation that responsibility for the regulation and safe use of agvet chemicals is spread across jurisdictional boundaries and across several pieces of legislation. The Australian Pesticides and Veterinary Medicines Authority (APVMA) is responsible for regulating agvet chemicals up to and including point of retail sale. Each of the states and territories regulate the manner in which agvet chemicals are used by the end user.

These regulations are numerous, inconsistent and sometimes contradictory. Despite recognition by Banks and COAG that this regulatory environment is creating unnecessary red tape along the supply chain, including for farmers, there is only limited political appetite for reform let alone harmonisation.

In addition, the states and territories argue that they have limited resources to monitor and enforce their control of use regulations. They often argue that there is a role for industry to play a self-regulatory role by monitoring and reporting infringements of control of use regulations.

Guardian has monitored and checked 99% of eligible premises over the past five year period – a level of compliance activity that state governments claim is beyond their financial capabilities. While the rate of initial non-compliance was high (73%), this is consistently reduced to negligible levels by the combination of counselling/advice (carrot) and threat of trade sanction (stick). Proof of this fact is that only one trade sanction has actually been applied in the past five years.

It could actually be argued that, by providing a national approach to checking and promoting compliance that also is individually tailored to the legislative requirements of each state and territory, Guardian is providing a public service at no cost to governments and at minimal cost to the participants.

There is additional benefit to CropLife and Animal Health Alliance members, who know well that the misuse of their products can result in a regulator withdrawing those products from market. It is in their commercial interest, as well as in their interest as industry stewards, to make efforts to ensure that their products are being stored, transported, and handled appropriately and that the products are sold along with the appropriate advice on responsible use. These outcomes benefit manufacturers, distributors, farmers and the community more broadly.

Public benefits versus detriments

It is instructive to revisit the ACCC's Determination of May 2002¹ in which it last granted authorisation of the trade sanction for Agsafe. The most pressing question arising from a comparison of that determination and the Commission's current draft determination is "what has changed since then?"

The public benefits are compelling².

Benefits to Distributors

- A convenient, credible and cost effective mechanism to check compliance with regulatory requirements across Australian jurisdictions
- A recognised, credible and nationally consistent signifier of that compliance
- Effectively identifies, simplifies and communicates regulatory information to industry
- More adaptable and productive mechanism to encourage compliance than litigation
- Improved regulatory compliance and reduced costs of incidents and litigation

¹ ACCC Determination, 22 May 2002

² Drawing and building upon information provided in Section 6 the ACCC's May 2002 Determination

Benefits to Customers/Farmers/Users

- A recognised, credible and nationally consistent signifier that premises has properly stored and handled the products and that advice can be sought on appropriate use

Benefits to Manufacturers

- A recognised, credible and nationally consistent signifier that premises has properly stored and handled the products and that advice can be sought on appropriate use (ie. that stewardship is being delivered)

Benefits to the Community

- Monitoring and fostering of regulatory compliance leading to:
 - Safety of premises, personnel and neighbouring communities
 - Protection of human health
 - Protection of the environment
 - Protection of export markets

Benefits to the Economy

- Minimises red tape (cost of compliance monitoring/verification)
- Protects export markets (through residue minimisation/management)
- Increases agricultural productivity (through ongoing training of sales personnel)

Benefits to Governments/Regulators

- Protects integrity of regulatory system thereby maintaining community confidence
- Mechanism to communicate/promote compliance programs
- Enhanced compliance with no additional cost to governments
- More effective driver of compliance than litigation – reduced risk of litigation leading to reduced costs to government
- Reduced business frustration with differences across jurisdictions

Public Detriments

It is indisputable that the imposition of the trade sanction could result in a lessening of competition.

However, it is the threat of the sanction, rather than the sanction itself, that is the cornerstone of ensuring compliance with accreditation standards. Without the authority to apply a sanction in the face of determined non-compliance (with mandatory regulatory requirements), and the limited capacity of state/territory governments to monitor/enforce compliance, Agsafe and its members will be significantly debilitated in their ability to deliver stewardship of agvet chemicals and associated public benefits.

The role of the sanction is not to limit competition, as has been suggested by the Commission in its current draft Determination. Its role is borne out in its application to date – the sanction has been applied sparingly since the ACCC first granted authorisation in 1993. Since then sanctions have been applied to 57 firms and currently apply to only 3 of the 1664 firms covered by the accreditation program.

The ACCC noted in its May 2002 Determination that the sanctions process, involving a three stage warning process, allows premises the opportunity to demonstrate a commitment to rectify non-compliance and that the small number of actual sanctions ultimately applied shows that “the possibility of sanctions being ultimately applied [is] essential to this success.”³

³ Clause 9.13

The Commission also made the point in May 2002 that the anti-competitive detriments of the obligation to meet premises and personnel accreditation requirements are “limited by the structure of the industry, which is characterised by a large number of agvet chemical retailers the vast majority of which are unlikely to be detrimentally affected by these obligations, particularly as the obligations of Agsafe accreditation mirror various regulatory safety requirements. To the extent that these obligations may force some premises to cease stocking agvet chemicals the Commission does not consider that, given the number and scope of retailers stocking these products, end users will be detrimentally affected, either in terms of price or availability of supply.”⁴

In conclusion, the ACCC considered that while Guardian may result in some lessening of competition, “the anti-competitive detriments as a result of the proposed scheme [are] limited.”⁵

The Commission also concluded that “subject to certain conditions, the public benefits likely to result from the arrangements will outweigh any anti-competitive detriment.”⁶

It is our understanding that all conditions identified by the ACCC in its previous determinations by Agsafe have been met.

CropLife and Animal Health Alliance therefore argue that there is little evidence to suggest that the market or the balance of public benefit versus detriment has substantially changed since the May 2002 Determination. We request that the Commission reconsider its evaluation of public benefit and detriment, with a view to continuing authorisation of the trade sanction for another five years.

Yours sincerely



Paula Matthewson
Chief Executive Officer
CropLife Australia Limited



Dr Peter Holdsworth
Chief Executive Officer
Animal Health Alliance (Australia) Ltd

⁴ Clause 9.46

⁵ Clause 9.48

⁶ Clause 9.165