



ChemCert Training Group

ChemCert Training / Farmcare Training / GM Rural Training

10 September 2010

Mr. Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street,
Canberra ACT 2606

ATTN Jasmine Tan

Via email to Jasmine.Tan@accc.gov.au
Via fax to 02 6243 1199

Dear Richard,

RE: ACCC's Draft Determination on Authorisation A91234 A91242 – A91244 ref C2010/534

Thank you for the extension granted to ChemCert Training Group Pty Limited (CTG) by your office for our late submission to the Australian Competition and Consumer Commission's (ACCC) Draft Determination (Draft Determination) for Agsafe Limited's (Agsafe) Application for Revocation and Substitution of Authorisation A91234, A91242 – A91244 (Authorisation) to enforce the Agsafe Code of Conduct (Code).

ChemCert Training Group Pty Limited

CTG is a Registered Training Organisation (RTO) NTIS 90855, accredited under the NSW Vocational Educational Training and Accreditation Board to deliver Nationally Recognised Training under the Australian Qualifications Framework throughout Australia.

CTG's strength is in providing high quality, industry responsive chemical (pesticide) training courses to pesticide applicators and users.

CTG has a team of highly qualified trainers who have extensive experience and a diversity of skills that enables CTG to provide industry training and assessment (units of competency) of individuals to safely store, transport, handle and use chemicals.

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CTG works hard to continually improve our training courses and to deliver Industry specific, responsible and safe pesticide use training courses. CTG is very concerned about protecting human health and safety, agricultural food & fibre security and integrity and our environment.

CTG strives to deliver high quality courses and supports programmes that encourage people to manage (transport, store & handle) and use pesticides in a safe and environmentally responsible manner. CTG principally trains two AQFIII level units of competency:

RTC3705A - Transport, handle and store chemicals
RTC3704A - Prepare and apply chemicals

In its Draft Determination the ACCC correctly cites ChemCert Australia and Managing Farm Safety (FarmSafe) as leaders in farm safety training and risk management for users of Ag/Vet Chemicals (farmers and veterinarians) (Figure 1.1 page 4).

Consultation Process

The Draft Determination sanctions anti-competitive behaviour in the training market. We are very concerned that out of the 159 interested parties that the ACCC invited submissions from not one RTO appears to have been included.

CTG would have expected that any potential competing training providers (authorised by NARA or the relevant state or territory Vocational Education and Training (VET) Accreditation Boards eg VETAB) who provide an alternative to Agsafe training would have been notified and invited to make a submission. These RTOs would likely suffer the most detriment from the continued Authorisation.

Agsafe is a RTO (NTIS 188099) accredited by the National Audit and Registration Agency (NARA). To be fair the ACCC should take a whole of government, industry and VET sector approach when reviewing the Draft Determination and granting any exemption from the anti-competition provisions of the Trade Practices Act 1974. CTG is concerned that it appears that the ACCC did not invite submissions from or engage with NARA, who would have been able to advise which RTOs would be affected by the Draft Determination.

The Chemical (Pesticide) Training Market

The effect of the ACCC's previous authorisations has been to grant Agsafe the exclusive rights to undertake the training and accreditation of individuals and premises under the Agsafe Code of Conduct. Because of these exclusive rights Agsafe's RTO has market place protection which is not available to other RTOs in the chemical (pesticide) training market.

There appear to be no achievements or measureable outcomes, which have been reported in the Draft Determination as a result of the protective Authorisation which AgSafe has held in the training market since 1994, that would not be achieved or were unable to occur in an open and fair training market.



The Chemical (Pesticide) Training Market Con't

CTG is restricted to only focusing on the training of the end user in the safe handling, storage and use of chemicals, solely as a result of the Authorisation held by Agsafe.

By restricting the ability of CTG (and many other RTOs) from contributing our leading market knowledge to Agsafe's exclusive market sector, the Draft Determination will continue restricting the free flow of ideas, innovation and development.

Agsafe's protected position is contrary to the Australian Government's Vocational Educational and Training framework that encourages market competition between RTOs while ensuring standards are maintained through the AQTF and National Quality Council.

Protected industries lack the innovation, standards, cost minimisation and consequential industry efficiencies that are the hallmarks of an open, fair and transparent market.

In the past CTG has been effectively blocked by the ACCC determinations from providing training to individuals working in the wholesale and retail supply Ag/Vet sector.

The Draft Determination does not provide any assurance that cost minimisation and consequential efficiencies have occurred. There are no economic or qualitative comparisons of this protected training sector to the industry norm.

Whole of Industry / Community - Cost / Benefit

CTG agrees with the ACCC that "... State Governments have legislated that Ag/Vet chemicals must be stored, handled and transported in accordance with prescribed regulations (Draft Determination para1.9). The draft determination does not address the additional whole of industry costs that are imposed by duplicating the government regulatory framework within the Code.

The DECCW in their submission stated that potentially there will be an increased burden on regulators and manufacturers to manage compliance effectively, if the Code did not proceed. This is counter-intuitive because there is no calculation as to what this cost would be, or if the Code has resulted in the cost of compliance being shifted from the regulator or manufacturer to the wholesaler or retailer. The total cost of a single regulatory programme could well be less than the cost of two schemes running in parallel.

The Draft Determination (para. 1.12) states that CropLife member companies are responsible for 85% of crop protection products. However it is unclear whether that 85% refers to volume, market price or total number of units sold. If this industry sector requires protection for the greater public good, then such essential protection would only be able to be claimed or achieved if it covered 100% of the industry sector.

The wholesale and retail supply chains that provide the other 15% of crop protection products would clearly require some alternative legislative or regulatory standards and monitoring. There is no evidence that the duplication of any such monitoring or voluntary compliance program reduces the overall industry cost of compliance resulting in a greater public good being achieved.

Whole of Industry / Community - Cost / Benefit Con't

Our core concern is that Agsafe was established to create a national Code of Conduct and to facilitate Training and Assessment of personnel and premises at the wholesale and retail level.

We believe it was never the intent of the ACCC sanctions to provide exclusivity in Training and Assessment but rather the ability to impose sanctions to enforce the Code of Conduct.

CTG strongly supports Industry codes of practice and partnerships that improve standards for the safer use of chemicals. CTG does not believe that successful accreditation programs should hinge on protections of exclusivity in Training and Assessment under those programmes.

Australian Quality Framework (AQF) units of competency

The AQF units of competency that Agsafe trains are not so specific that they deserve exclusivity in the VET sector. CTG is also certified to assess the unit of competency RTC3705A: Transport Handle and Store Chemicals, which is one of the three units of competency within Agsafe's scope of registration.

The Code does not clearly articulate or provide for free and fair competition from other RTOs to deliver the same units of competency.

If the ACCC provides an authorisation to extend the Code for the next three years, we request that the Code stipulate which units of competency will satisfy the requirements of the Code for personnel accreditation and allow any approved RTO to train and assess these units.

Australian Quality Training Framework (AQTF) - Statements of Attainment

The ACCC states that "Personnel that are accredited gain a statement of attainment which is nationally recognised under the Australian Quality Training Framework (para 3.29).

Under the AQTF RTOs can only issue Statements of Attainment for qualifications within that RTO's scope of registration under the Australian Qualifications framework (AQF). Statements of Attainment must identify the units of competency that the participant has successfully completed.

While Agsafe states that a statement of attainment will be issued under the Personnel Accreditation programme, it does not mention which units of competency those statements of attainment will be issued for.

If the Code prescribed the specific units of competency, then any RTO which had these units within their scope, should be allowed to train and assess these units of competency under the Code.

AQTF - Nationally Recognised Training

The AQTF ensures that Nationally Recognised Training (NRT) can be undertaken by competing RTOs. All Statements of Attainment issued by RTOs for qualifications or units of competency must bear the NRT logo so that they are recognised by every other RTO.

Under AQTF Condition 7: Recognition of Qualifications: "The RTO must recognise qualifications and Statements issued by other RTOs."

At the moment both Agsafe and CTG, among other RTOs, have the scope to train along with other units of competency, the unit RTC3705A: Transport Handle and Store Chemicals. Agsafe determines not to recognise Statements of Attainment for RTC3705A issued by CTG or any other RTO. Agsafe has insisted that participants have to complete RTC3705A through the Agsafe course to be accredited under the Code.

If the Authorisation is continued then CTG seeks that the Code includes a provision that requires Agsafe to accept units of competencies (qualifications) issued by other RTOs as is required under the AQF.

Costs of Agsafe Accreditation (Units of Competencies)

The Draft Determination states that online basic training course costs \$520.00 per person for an individual to obtain Agsafe Accreditation (units of competencies) for three years and that face to face charges are negotiated with the contractor.

The AQTF requires RTOs to provide a clear fee structure for its clients and fee protection measures from its registering body. (Condition 5 of the AQTF, Financial Management). Therefore it is perplexing to find that the draft determination states the cost of face to face courses can be negotiated with the Contractor (para 1.25).

The Agsafe Accreditation – units of competencies comprise one at AQFIII, one at AQFII and one at AQFI.

A similar CTG course comprising two units of competencies at AQFIII, one at AQFII and one at AQFI for face to face training and assessment is \$350.00.

Without a breakdown of what percentage of participants are trained online versus face to face and the number of participants each year, it is not possible to undertake any factual cost benefit analysis.

Request for Conference with ACCC / Agsafe

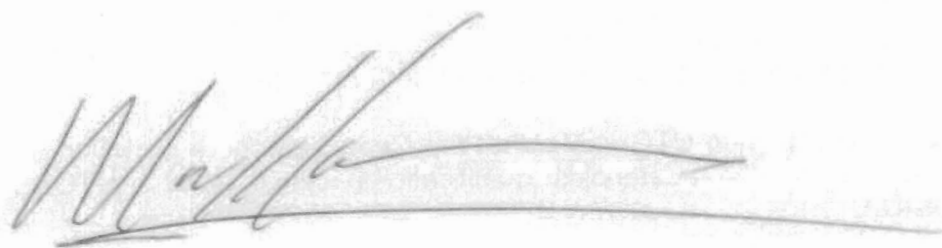
We request a conference with the ACCC and Agsafe and any others whom the ACCC believes should be invited to assist in producing an outcome that greatly reduces the anti-competitive impact of the draft determinations sanctioning the Agsafe code of conduct.

Request for Conference with ACCC / Agsafe Con't

We would like to work with the ACCC and Agsafe to improve and clarify the Code of Conduct, to enable the supply chain in the crop protection sector to establish a quality assurance programme for the whole of industry that improves the overall risk management and regulatory compliance, without unnecessary anti-competitive implications.

Thank you.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Kunnen', with a long horizontal flourish extending to the right.

Mark Kunnen
Chief Executive Officer
ChemCert Training Group Pty Limited

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