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Streamlining Regulation of Agricultural and Veterinary Chemicals
Agvet Chemicals Branch
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Sent by email: agvetreform@agriculture.gov.au

To Agvet Reform

Public consultation: *Streamlining Regulation of Agricultural and Veterinary Chemicals*

Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the proposals contained in the consultation paper on *Streamlining Regulation of Agricultural and Veterinary Chemicals* (the consultation paper) and the Exposure Draft of the *Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018* (the Bill).

The ACCC understands that the Australian Pesticides and Veterinary Medicines Authority (APVMA) administers a series of laws that regulate agricultural and veterinary (agvet) chemicals, which may have commercial or household applications. Agvet products that have household applications may also have to comply with the requirements of the Australian Consumer Law if they are classed as a consumer good.

The purpose of the Bill is to streamline regulations for agvet products, with the consultation paper seeking submissions on the proposed draft Bill. Part 7 of the Bill relates specifically to improving the transparency of voluntary recalls of agvet products. Given the potential for some agvet products to meet the definition of a consumer good, the ACCC would like to provide comment on Proposal 7 of the consultation paper and Part 7 of the Bill. These comments relate to the ACCC's role in receiving and publishing voluntary recalls, and the ACCC's role in receiving mandatory injury reports.

The Role of the ACCC

The ACCC promotes competition and fair trading in markets to benefit consumers, businesses and the Australian community. Our primary responsibility is to ensure that individuals and businesses comply with the *Competition and Consumer Act 2010* (the CCA) which includes the Australian Consumer Law (the ACL).

In relation to consumer protection, the ACCC's role is twofold – we seek to ensure that consumers can confidently participate in markets and that consumer goods are safe. Of

relevance to this submission, the consumer product safety laws in the ACL also provide for a number of specific protections to consumers. These protections include:

- notification requirements for a voluntary recall of a consumer good (section 128);
- the ability for a responsible Minister to issue a compulsory recall (section 122); and
- the ability for a responsible Minister to issue a safety warning notice for a consumer good (section 129).

More broadly, under the ACL consumers are guaranteed the right to acceptable quality, of which the safety of a consumer good is a relevant consideration (section 54).

Proposals for recalls

The ACCC's role

Under section 128 of the ACL, if a person voluntarily takes action to recall a consumer good, they must, within two days after taking action, notify the Commonwealth Minister. The ACCC currently accepts notifications for most consumer goods on behalf of the Commonwealth Minister. The ACCC may also publish the voluntary recall notices it receives on its Product Safety Website. The requirements of section 128 apply to 'consumer goods', which are defined by the ACL in section 2(1) as those goods that are intended to be used, or are of a kind likely to be used, for 'personal, domestic or household use'.

As mentioned previously, there may be some agvet products that also meet the definition of a consumer good, if they are designed for personal, domestic or household use, such as household insecticides and pesticides. The ACCC would currently receive voluntary recall notifications for such products.

Proposal 7

As we understand this proposal, a person intending to recall an agvet product will need to give a notice to the APVMA before taking any recall action, as per the proposed section 106A of the Bill. This section also makes non-compliance with this provision an offence, with a maximum penalty of 60 penalty units.

The ACCC notes the following on page 30 of the consultation paper:

"Based on the proposed measure, a voluntary recall process would generally involve a recaller:

- conducting the recall of the chemical product, including contacting customers and any necessary notifications, including advertisements and any notifications to the ACCC."

Duplication in notification requirements

For the agvet products that also meet the definition of a consumer good, when conducting a voluntary recall, a supplier will need to meet the requirements of both the draft Bill and section 128 of the ACL. This is confirmed by section 106 of the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*, which states that section 128 of the ACL imposes obligations on certain persons who voluntarily recall chemical products.

In the event that a recaller must comply with both the requirements of section 106A of the Bill and section 128 of the ACL, the recaller would have to notify the APVMA before taking action, and the ACCC within two days of taking action.

While the ACCC notes the importance of a product regulator being informed of proposed recalls, the different notification timeframes under the Bill and the ACL will create inconsistencies and confusion for industry. Furthermore, the requirement to duplicate recall notices will increase the administrative burden on suppliers.

The ACCC requests that the Department of Agriculture and Water Resources consider aligning reporting timeframes to the requirements of section 128 of the ACL by amending the Draft Bill to require suppliers to notify the APVMA within two days of voluntarily taking action to recall.

Mandatory reporting

The ACCC's role

Under section 131 of the ACL, there is an obligation on suppliers to inform the Commonwealth Minister, through the ACCC, of any death, serious injury or illness associated with a consumer good within two days of becoming aware of the incident.

However, under section 131(2)(c) of the ACL and Regulation 92 of the *Competition and Consumer Regulations 2010*, a registrant of an agvet product is required to report to the APVMA, and is therefore exempted from mandatory reporting to the ACCC.

The APVMA's role

The ACCC notes that under section 161 of the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*, there is a legislative requirement for a registrant of an agvet product to inform the APVMA of any new information, including information that shows that the product may not meet safety criteria. Failure to notify this to the APVMA or the provision of false information can lead to sanctions including fines, suspension and/or cancellation of regulatory approvals.

Proposal 7

The ACCC understands that the Bill does not intend to change the current mandatory injury reporting obligations for agvet products, but would like to draw your attention to the following text on page 30 of the consultation paper, that states:

“Based on the proposed measure, a voluntary recall process would generally involve a recaller:

- providing any mandatory reports – for example, if a death or serious injury or illness has been associated with a product, a mandatory report would need to be lodged with the ACCC.”

As noted, registrants of agvet products are not required to provide mandatory injury reports to the ACCC in the event of a death, serious injury or illness that has been associated with the product. In the event that the ACCC receives any mandatory injury reports associated with agvet products, the ACCC will refer these to the APVMA.

The ACCC would like to reaffirm our view that the APVMA is best placed to receive and assess mandatory injury reports relating to agvet products. This will allow the APVMA to use this type of information to inform regulatory decisions about the appropriateness of agvet goods to remain in the market.

Next steps

If you would like to discuss any aspect of the ACCC's submission, we would be happy to arrange a meeting. Please contact Heidi Snell, Acting General Manager, Consumer Product Safety Branch on (03) 9290 1854, or by email at heidi.snell@acc.gov.au.

Yours sincerely



Delia Rickard
Deputy Chair