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A National Scheme for Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals

Submission to the
Consultation Regulation Impact Statement

April 2011

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Overview

The National Toxics Network (NTN) made a previous submission to the Minister for Agriculture, Fisheries and Forests Policy Discussion Paper *Better Regulation of Agricultural and Veterinary Chemicals.*

While we understand the overlap, it's confusing to have these complementary reforms included in the RIS. We will not be repeating our position on those reforms in this submission and will instead confine our comments to the points as they are presented in Table 1 of the RIS.

The level of response being sought in response to the RIS, we believe, is not appropriate at this point in the consultation process. Each section requires a multi-stakeholder consultation workshop in itself to discuss the complex Options presented. Some options are provided here without adequate detail or assessment of the benefits and costs.

The RIS proposes options for a single national framework consistent with the policy principles that COAG approved in 2010. The NTN however, seeks a national framework that is *also* consistent with the internationally recognised four pillars of chemical reform, which we detailed in our previous submission to the Discussion Paper.

NTN will assess the options presented within the RIS within the framework of the four pillars of chemical reform: *the precautionary principle; the right to know; no data no market and the substitution principle.*

The outcomes we are seeking from the proposed reforms are:

- An overarching policy directive for the sustainable use of pesticides which recognises the impacts of climate change and the need to reduce use and reliance on synthetic pesticides while supporting a transition towards adaptive integrated systems of pest management;
- The responsibility for pesticide information and safety sits at the top of the supply chain;
- All stakeholders are able to access information on pesticides, including toxicological information on chemicals used in the formulation of products, up-to-date labels, and pesticide use database by region;
- High risk pesticides are swiftly removed from the market;
- Incentives are put in place to stimulate the registration of low-risk products; and,
- The rules governing the control of use are strengthened and harmonized, especially in relation to training, record keeping and notification.

Governance

Comment is sought on which combination of the governance options outlined above (or any not mentioned above), and in the case of Option 2, which mode of service delivery: regional branches; outsourcing to state and territory governments, or open tender, would be:

- *most likely to deliver the timely and best quality decisions;*
- *most effective in ensuring that knowledge is applied to provide guidance for industry and the broader community;*
- *most likely to enhance compliance, either by making it easier for those regulated to comply by removing barriers to compliance or by deterring non-compliance through more effective enforcement and sanctions; and*
- *most likely to assist regulators and industry in making better risk management decisions.*

In the case of Option 1 (harmonised state and territory law) comment is also sought on how best to avoid diversion of regulatory arrangements between jurisdictions.

NTN believes it's highly unlikely the states and territories would give up their powers to form a new national agency to regulate the control of use of pesticides as proposed in Option 2. This process is likely to get bogged down in politics and may never happen. While this option is enticing because it could elevate the status of pesticide regulation and provide opportunities for influencing national policy, it also comes with challenges such as budgetary implications, reduced grassroots political influence and another layer of distance from the actual usage of pesticides to. A change of government may also see a downgrading of the importance of any new agency or a change to the delivery of control of use from state and territory governments to open tender, which would be a disaster.

Options 3 and 4 are too much like what we already have and can't be supported because they would not bring about the changes needed.

NTN therefore supports the intention of Option 1 with provisos. We agree that assessment and registration and regulation of control of use must be kept separate. If the APVMA is to maintain its assessment and registration role however it's critical that the early harvest reforms are implemented to radically improve its operations, most importantly in the area of chemical reviews and the introduction of an EU-style re-registration system.

It's also essential that the APVMA governance structure is such that it enables the states and territories to be partners overseeing the APVMA's policy and operational direction. We need the advisory board to retain its two-way advisory functions and to broaden its representation with other stakeholders such as the environment and independent scientists.

Training, licensing and accreditation could be managed through a *separate* national agency, which is governed in partnership with state and territory governments as local agents. NTN would also include maintaining a national pesticide use database from mandatory records as part of the functions of this national agency.

Harmonised regulations would then be appropriate for the regulation of other aspects of control of use. There would need to be some agreement with the states and territories about the level of funding required for harmonized regulations to be equally enforced in each state and territory. The potential diversion from mirror legislation should be considered in the drafting phase of the regulations.

NTN supports Option 1 with provisos

Assessment and use information

What are the costs of redesigning a label?

What would be the likely cost to registrants of complying with Option 2 (all labels placed on a single website)?

The costs of not redesigning labels must also be considered in terms of ongoing misuse and misapplication of products as a result of overly complicated instructions and limited health and safety warnings. The issue of ensuring we have effective user-friendly labels has gone on for decades. Government funded studies and surveys have already revealed the problems with labels.

As a basic right to know and risk management tool, it's essential that all labels and permits are accessible to the public on a single reliable, up-to-date website. Whatever the costs (which wouldn't be that significant) it must be done.

Facilitation of registration of low risk products

What timing and fee concession incentives would be needed to interest applicants in the lower risk substitution program?

What are likely products or product groupings for the second element of the program (expedited reviews and use of overseas regulatory findings)?

The facilitation of low risk products onto the market is an essential aspect of *the substitution principle*, which is a core reform according to the four pillars of chemical reform.

NTN can't comment on the timing or concessions that might apply with the level of detail provided in the RIS, and because of the uncertainties about other aspects of the regulatory system such as re-registration.

We propose a dedicated multi-stakeholder workshop is required which would look specifically at the options for the best way to achieve the outcome required for fast tracking low-risk products.

In addition to the Health Canada criteria for determining low risk products we would also include:

- the pesticide and its breakdown products do not bio-accumulate in animals or the environment
- the pesticide and its breakdown products do not cause secondary movement of pesticide or breakdown products into the broader environment through for example spray or vapor drift
- the active pesticide and its breakdown products are not an endocrine disruptor

Access to high-risk chemicals

Estimates of costs of specialist training courses, or alternative ways of establishing competency for current RCPs, such as pre-emergence termiticides and vertebrate poisons.

What are the costs of record keeping?

Ideally high-risk chemicals should not be available at all and a high-risk chemical should not be available if there is a lower risk chemical available for the same purpose. Any high-risk chemicals must be managed nationally and the same rules apply in each state and territory.

Many products that end up as 'restricted chemical products' should not be available at all because their risks can't be managed in any practical way. For example, the RCPs - acrolein, endosulfan (a persistent organic pollutant which is now banned), mevinphos, chlorpyrifos and fenthion.

In the case of vertebrate poisons wider considerations must also be taken into account for their ongoing registration such as animal welfare requirements and integration with overall management plans for 'pests'. Access to these chemicals must require specialist training. Access to termiticides and fumigants must also require specialist training courses.

Option 1 is preferred.

Improving legal interaction with the APVMA

Feedback on a practical solution to the appeal process for APVMA recall and enforcement actions that would:

- *be effective in protecting human life and the environment;*
- *balance safety and environmental standards with procedural fairness; and*
- *provide for an agile and responsive regulator.*

NTN does not have the legal expertise to comment on this however we believe the regulator must be given all the necessary tools and power to carry out its job with the protection of health and the environment uppermost.

General access categories and permits

Feedback on:

- *aspects of minor use permits most in need of improvement;*
- *the most effective ways to enhance the timeliness and efficiency of the minor use permit system.*

Minor use permits are a massive problem because they are a costly and time-consuming program that essentially perpetuates farmer's reliance on pesticides and existing chemistries. It currently provides no incentives to move to low-risk products and legitimizes untested uses of chemicals, which undermines the intention of the regulatory system, and potentially increases resistance to chemicals and creates unknown risks to human health and the environment.

According to an analysis carried out of APVMA minor use permit submissions several trends have been identified[1]:

- Approx. 40% seek renewal of existing applications;
- A large number of fragmented stakeholders exists despite some good representation from peak industry bodies and government agencies;
- A significant proportion of applications seek older chemistry, including those subject to current chemical reviews;
- Horticultural crops are the most prominent sector (52%) followed by broad acre crops (12%) and forestry (5%);

[1] Outcomes of Analysis of Existing Minor Use Applications and International Approaches, Product Safety and Integrity Committee Stakeholder Workshop Papers Attachment A, May 2005.

- Applications to control environmental, noxious and/or declared weeds are common;
- 87% of applications seek approval in new crops/situations;
- 83% of applications are submitted as either no product is currently approved for that purpose (52%) or limited effective options exists (31%);
- Approx. 50% of new applications require a residue assessment;

NTN believes minor use permits should not exist to perpetuate the use of older chemistries that are under review, especially as it is likely that are to be used on a new crop according to the figures above.

There must be a different emphasis for permits which steers users towards low-risk products and other adaptive, integrated methods of pest management to help farmers get off the chemical treadmill.

However any list of chemicals developed that are 'generally regarded as safe' as proposed in Option 1, should surely be a list of low-risk chemicals and the same criteria would have to apply in establishing such a list as would be required to qualify as a low-risk product. As all pesticides are designed to kill we do not support ever referring to them as 'safe' in any context.

Accepting lower rates and frequencies is problematic unless they are supported by data because it could significantly increase the risks of resistance to useful low-risk chemicals, unless their mode of action precludes the capacity for resistance.

In addition, lower rates and frequencies should only be acceptable within the context of a *real* integrated pest management program. By this we mean, an IPM program that is integrating different methods of control such as mechanical, physical, cultural and biological controls and not just relying on switching between different pesticide, which should a last resort.

We can't support Option 1 in its current format and Option 3 is not acceptable because it doesn't address the problem. Option 2 is also limited because it doesn't drive users towards low-risk products and options and really just perpetuates what currently happens but more 'efficiently'.

Permissible uses for crops

Feedback is specifically sought on practical, cost and benefit aspects of Options 1-4, particularly:

- *in regard to adoption of a more restrictive approach than currently applies in some states and territories, as outlined in Option 1, the extent of potential:*
  - *user productivity, or opportunity, costs;*
  - *decrease in risk;*
  - *any likely impact on incentives to register more uses on label;*
- *with regard to the adoption of a less restrictive approach, such as Option 2 or 3;*
  - *any practical issues in establishing an appropriate list (Option 2) or appropriate bounds (Option 3);*
  - *potential user productivity benefits;*
  - *potential increase in risk;*
  - *any likely impact on incentives to register more uses on label;*
  - *the level of interest from agronomists in such a scheme such as that outlined in Option 4.*

NTN cannot comment further on minor use permits and permissible uses for crops because we fundamentally believe these uses need to be tied to low-risk products wherever possible. This issue is too complex and requires a multi-stakeholder workshop to work through the various options.

Management of the chemical portfolio

Comment is sought on:

- *the likely costs of data provision and other associated costs related to the review process;*
- *the level of review costs that would discourage registrants from persisting with registration of different categories of products;*
- *the opportunities for use of overseas data, assessments and reviews, and*

any of the issues outlined as 'key areas for further design' under Option 1.

NTN has provided comment on this proposal covered in the early harvest reforms. Designing a re-registration system requires a dedicated multi-stakeholder workshop to debate the various options.

A national system of use controls – regulatory powers

Feedback on desirable inclusions or limits to regulatory powers.

Comment on the opportunities/limits and benefits/costs to industry participants of co-regulatory arrangements and the likely costs of MRL breach reporting responsibilities.

Clearly maintaining the status quo is not an Option because it doesn't address the problems regarding the different levels of monitoring and surveillance and the holes in the system. And as stated, it would not satisfy the requirement of the COAG direction.

Consumer expectations around monitoring and surveillance of the food supply to ensure its safety are increasing. The community has a right to know about residues in their food supply. With increasing volumes of food being imported and changing requirements in exporting countries, it's critical that a nation-wide, independent and consistent surveillance program is implemented.

Option 1 is preferred.

A national system of use controls – record keeping

Comments are sought from businesses that would be affected by an additional record keeping requirement and the cost of keeping records.

Inconsistent record keeping costs regulators and the community when investigations are carried out into adverse incidents or breaches and records are not available. Record keeping is an essential part of any risk management system. Records that are required under QA or other programs that meet new regulatory requirements and are available to be independently audited may not need to be duplicated.

NTN supports a national database of pesticide use as part of the community's right to know about pesticide use in Australia.

Option 1 is preferred.

Training and licensing – fee-for-reward users

Estimates of the numbers of contractors likely to be affected by extending licensing requirements to all fee-for-reward applicators in all states and territories.

What are the current competency standards and numbers of workers in amenity horticulture?

An independent national training and licensing scheme is essential for *all* fee-for-reward users. Untrained or poorly trained users of pesticides can have significant impacts on the environment and community health through misuse and misapplication of pesticides. It is reasonable to approach it in terms of competency criteria for each occupational category as long as the bar is never set too low.

Option 1 is preferred.

Training and licensing – farmers and other occupational users

Comments are sought on the:

- *appropriateness of setting a base level of competency;*
- *most appropriate base level of competency;*
- *likely costs of additional training, including costs of time and travel*
- *appropriateness and likely impact on businesses of adoption of a licensing requirement as suggested under Option 2.*

The APVMA's assumption '*that in registering products and approving label directions they assume that users have the skill to follow label instructions'* is fundamentally flawed and a major factor behind why pesticides are misused.

There are real and significant challenges with literacy and numeracy in the community. This became very apparent when the NSW government introduced mandatory training requirements and many commercial users of pesticides were unable to complete the basic competency requirements – AQF3.

However, it is entirely appropriate to set an adequate base level of competency for any commercial users of pesticides at AQF 3. You cannot put dangerous products into the hands of people who can't read, comprehend and follow the instructions on its safe use.

The fact that commercial users of pesticides can access and use products capable of causing widespread harm and damage, without any training whatsoever, is totally unacceptable.

No case has made that the majority of use is currently compliant with labels or all health and environmental standards, so any costs requiring all users to meet basic competency standards needs to be balanced against the risks of putting dangerous products into untrained hands.

In practice it is difficult to enforce levels of competency to level of risk of chemicals in an agricultural context. While sales restrictions on high-risk pesticides can be enforced, how is it then policed on farm?

Options 1& 2 are preferred

Training and licensing – sales personnel and advisors

Comment is sought from:

- *users about the extent of reliance on advice, and quality of that advice: and*

- *sellers and advisors on the likely costs of training.*

Reliance on advice for off-label use by sales personnel or advisors undermines the entire regulatory system and it is a liability and legal grey area. NTN does not support anyone giving off-label use advice to users of pesticides. We support a base level of competency for all sales personnel and advisors which is separate from all industry schemes.

Options 1 is preferred