



Our ref: PRJ1003050
Contact officer: Paula Pearsall
Contact phone: 02 6243 1254

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111
www.accc.gov.au

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Regulation of Agricultural and Veterinary Chemicals
Agvet Chemicals Branch
Department of Agriculture and Water Resources
GPO Box 858
CANBERRA ACT 2601

Sent by email: agvetreform@agriculture.gov.au

Dear Ms Gaglia

Public consultation: *Proposed changes to timeshift applications and other measures, and to support operational efficiency*

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the proposals contained in the Exposure Draft of the *Agricultural and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2018* (the Regulations) and the consultation paper on *Proposed changes to timeshift applications and other measures, and to support operational efficiency* (the consultation paper).

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 chemicals that have household applications must also comply with the requirements of the Australian Consumer Law (ACL) where they fall within the definition of a 'consumer good'.

The ACCC would like to comment on Proposal 3 of the consultation paper and Part 3 of the proposed Regulations. The ACCC has concerns regarding the proposed removal of certain products from regulation under the *Agricultural and Veterinary Chemicals Code Act 1994* (the Agvet Code) and the APVMA's jurisdiction, on the grounds that deregulating these products may create a regulatory gap and reduce the regulatory oversight of these products.

Role of the ACCC and the ACL

The ACCC is a whole of economy regulator that promotes competition and fair trading in markets to benefit consumers, businesses and the Australian community. One of the ACCC's key roles is to seek to ensure that consumers can confidently participate in markets. Through the administration of the ACL, the ACCC aims to prevent misleading behaviour and unconscionable conduct, and to minimise the risk posed by unsafe consumer goods.

Our product safety responsibilities involve identifying, prioritising and addressing risks arising from unsafe consumer goods. We do this by administering the consumer product safety provisions of the ACL, which include powers to issue compulsory recalls, product bans and safety warning notices.

Potential action by the ACCC is assessed and undertaken according to a risk-based and principles-based approach set out in our Compliance and Enforcement Policy. The ACCC allocates resources to the issues that pose the greatest risk to consumers and prioritises issues according to a published list of Product Safety Priorities. We are selective in the matters we investigate, including the product safety matters we address. We cannot pursue all matters that come to our attention.

Role of the ACCC and ACL in relation to agricultural and veterinary chemicals

Agvet chemicals that have household applications have to comply with the requirements of the ACL if they are considered to be a consumer good. Consumer goods are defined as goods that are intended for personal, domestic or household use.¹ Where an agvet chemical is considered to be a consumer good, the ACCC will accept notifications of a voluntary recall on behalf of the Commonwealth Minister.

However, in recognition of the specialist mandate of the APVMA, the ACCC does not generally take action in relation to agvet chemicals. Consistent with the Government's Statement of Expectations, the ACCC seeks to avoid duplication of the supervisory activities of other regulators, and considers whether outcomes could be achieved by using existing regulations administered by another regulator. The ACCC also does not accept Mandatory Injury Reports concerning agvet chemicals, as these are subject to an exemption in the ACL² and are made directly to the APVMA.

Proposed deregulation of 'low risk' agricultural and veterinary chemicals

Part 3 of the Exposure Draft proposes to declare that certain substances are not an agricultural or veterinary chemical and are therefore not subject to regulation by the APVMA. These substances are:

- carbon dioxide or nitrogen used as a fumigant
- citronella oil used for a purpose other than as an insect repellent for use on human beings, and
- sheep branding substances.

Although the consultation paper notes that the risks with these substances can be sufficiently addressed under other laws, such as consumer protection laws,³ the ACCC would like to note that removing these products from the scope of the Agvet Code may lead to a regulatory gap and reduce the regulatory oversight of these products. The ACCC would caution against any expectation that the ACL would provide the same or a similar level of regulation.

Regulatory gap between consumer and non-consumer goods

As previously mentioned, a consumer good is one that is intended for personal, domestic or household use. Citronella oil, when used as or in a consumer good (such as in a candle), would likely fall within the scope of the ACL. However it appears unlikely that sheep branding

¹ Section 2 of the ACL.

² Section 131(2)(c) of the ACL and Regulation 92 *Competition and Consumer Regulations 2010*.

³ Department of Agriculture and Water Resources, *Proposed changes to timeshift applications and other measures, and to support operational efficiency*, page 15.

substances, or carbon dioxide or nitrogen fumigants would be considered consumer goods as these substances are generally used for an agricultural or commercial purpose. As a result, it is unlikely that these products will fall within the scope of the ACL and the ACCC's regulatory functions if they are removed from the remit of the APVMA.

The proposed deregulation may therefore create a regulatory gap where some products would not fall within the regulatory scope of either the ACCC or the APVMA. This means that in the event of an unsafe incident, neither the ACCC nor the APVMA will:

- receive mandatory injury reports regarding these products
- receive voluntary recall notifications regarding these products, or
- be able to introduce a compulsory recall for these products.

The ACCC is of the view that removing the above products from the Agvet Code will reduce the regulatory oversight given to these products, and potentially lead to a regulatory gap that the ACCC will not be able to fill.

ACCC role in regulating agricultural and veterinary chemicals

In the case where a deregulated product is also a consumer good, the ACCC is not able to provide the same level of oversight for the deregulated product as the APVMA. Parliament has identified an enhanced public risk associated with agvet chemicals and established the APVMA as the specialist regulator of these products.

As a generalist regulator, the ACCC is unable to increase activity in areas vacated (in whole or in part) by other regulators. The ACCC cannot replicate the focus and expertise that a specialist regulator like the APVMA delivers. It is not sustainable to reduce or remove this specialist regime and expect the same level of attention and expertise from the ACCC.

Furthermore, the ACL does not provide the same pre-market controls that are currently mandated by the Agvet Code, such as registration and accreditation of products prior to sale. The ACL is heavily weighted towards reactive, post-market controls, such as banning or recalling products following an injury, illness or death. These post-market controls are not a substitute for the pre-market controls that are currently applied to these products under the Agvet Code.

If a product safety issue involving citronella, or other deregulated consumer goods, were to arise under the proposed deregulated framework, the ACCC would assess these issues along with all economy-wide product safety issues that come to the ACCC's attention.

As the identified products are considered to be low risk under the APVMA's regulatory framework, the ACCC will take the specialist advice of the APVMA and is unlikely to prioritise taking regulatory action in relation to citronella and any deregulated consumer goods that are considered to be low risk.

Next Steps

The ACCC supports measures to improve the efficiency of product safety regimes in Australia. However, we ask that you consider the implications of deregulating agvet chemicals, including those considered to be low risk, from the Agvet Code. In particular, we suggest that you consider potential regulatory gaps and any reduction in oversight that may occur if these chemicals are no longer subject to regulation by the APVMA and the Agvet Code.

If you would like to discuss any aspect of the ACCC's submission, we would be happy to arrange a meeting. Please contact Neville Matthew, General Manager, Consumer Product Safety Branch on 02 6243 1066 or at neville.matthew@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Delia Rickard', with a decorative flourish at the end.

Delia Rickard
Deputy Chair