NGIA Response to the Discussion Paper "A National Scheme for Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals December 2009"

A Submission by
Nursery & Garden Industry Australia
(NGIA)

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Industry Profile 2010

The Nursery & Garden Industry Australia (NGIA) is the national peak industry body representing producers, retailers and allied trades involved in the production of greenlife across Australia. The NGIA works in close association with the state and territory peak industry bodies providing a nationally united position on issues of commonality and importance.

The combined 'supply chain' of the Australian nursery industry has an annual value exceeding $5.5 billion, includes more than 20 000 small to medium sized businesses and employs approximately 45 000 FTE. The industry is located in every state and territory across Australia, and in most communities and environments, providing greenlife to a diverse customer range. The production sector is broad based producing in excess of 10 000 plant species with many and varying target markets that have an estimated annual value to the Australian economy exceeding $14 billion including:

National Value of Horticultural Sectors supplied by Production Nurseries

Production Nursery	Horticultural markets	Economic value
Container stock [1]	Ornamental/urban horticulture	$2 billion retail value
Foliage plants [1]	Interior-scapes	$87 million industry
Seedling stock [2]	Vegetable growers	$3.3 billion industry
Forestry stock [3]	Plantation timber	$1.7 billion industry
Fruit and nut tree stock [2]	Orchardists (citrus, mango, etc)	$5.2 billion industry
Landscape stock [1]	Domestic & commercial projects	$2 billion industry
Plug and tube stock [4]	Cut flower	$319 million industry
Revegetation stock [1]	Farmers, government, landcare	$109 million industry
Mine revegetation	Mine site rehabilitation	Value unknown
	Total Horticultural Market Value	$14.5 billion

[1] Data sourced from Market Monitor, [2] Data sourced from Horticultural Handbook 2004, [3] Data sourced from ABARE 2008
[4] Data sourced from industry

The Australian nursery industry is a small user (by volume) of pesticides however due to the more than **10 000** crop lines produced the industry requires a large range of products to combat the various pests, diseases and weeds that threaten the many different production systems in operation across the country. Due to the low volume of pesticides utilised throughout nursery production the pesticide manufacturers see the industry as a minor player within the market and as such tend to focus on the broader horticultural and agricultural markets to maximise the returns on their development and registration investment. This has resulted, over recent years, in a low number of new label registered pesticides being available to nursery production in most states and territories. As such, the industry is reliant on the Minor Use Permit (MUP) provisions provided for by the APVMA to gain access to modern pesticides to efficiently combat the various pests, diseases and weeds impacting on their businesses.

In providing comment to the Product Safety and Integrity Committee (PSIC) on the Primary Industries Ministerial Council (PIMC) proposal for a single, national framework to improve the

efficiency and effectiveness of the regulation of Agvet chemicals, NGIA is focused on access and costs relevant to current and new products at farm level.

NGIA supports the application of nationally standardised regulations relevant to pesticides with the proviso that these regulations are inclusive across Australia and have the ability to adapt to specific needs of industry as the situation may dictate (flexibility). These regulations must not overburden nor increase the costs that growers pay for the use of chemical products that are required to produce their crops and are essential in accessing relevant national and international markets. Furthermore industry must be consulted at every stage throughout the introduction of the national standardisation at both state and federal levels.

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This submission addresses the above Discussion Paper based on the Sections and Questions as outlined within the document on page 5 under **Section 2 Questions.** Furthermore the submission has focused on the questions from the Discussion Paper that NGIA feels it can meaningfully contribute too. The NGIA response is as follows:

Section 6 The National Registration Scheme

Q2. How effective are the current registration arrangements for facilitating adequate chemical access for minor use?

The NGIA considers the general principles behind the arrangements for access to chemicals under minor use as sound however it is in the application of the process that effectiveness is lost to some degree. The 'one size fits all' approach is limiting the delivery of Minor Use Permits (MUP) within appropriate time frames and there is a greater need for flexible, risk based assessment methodologies. That is NGIA believes that there is a strong argument that supports a less arduous regulatory process for "low" risk products such as biological products, insect traps and the like.

The NGIA would recommend that the APVMA have an internal monitoring and measurement program that assesses the performance of service delivery by the APVMA against agreed benchmarks. This will require documented service provisions for set activities e.g. issuing a MUP (crop specific), and a refund strategy if/when these service provisions are not met.

A particular arrangement that exists within the process of minor use approval is that of the state coordinator. This position exists within the relevant control of use agency in each state and territory providing feedback to the APVMA on MUP applications for each crop being considered. The state/territory coordinator has the power to veto the APVMA approved MUP based on very little information other than their say so.

The state/territory coordinator is not obligated to engage with the industry within that state and in fact if they (state coordinator) fail to respond to the APVMA request then it is deemed to be not approved (in that state) and the MUP will be issued without those state/territories listed for approved use. This default arrangement is not acceptable and should be reversed to an approval if a state/territory fails to respond thereby rewarding the industry or applicant for their input.

The above highlights the need for not only APVMA to act within defined parameters but the state/territories to be equally efficient and responsible. NGIA also considers current APVMA timeframes (often ignored) to be excessive and rigid which appears to allow applications to be shelved and provides no incentive to complete ahead of the regulated timeline.

Section 7 Issues for Consideration in Developing a National Framework

Q4. What do you take the precautionary principle to mean? What are the potential costs or benefits that could arise from adoption of a more precautionary approach in circumstances where lack of full scientific certainty exists in agvet chemical assessment, registration or control of use?

The NGIA understands the precautionary principle to mean in the absence of scientific proof to the contrary any activity suspected of having the potential of causing harm will be deemed to cause that harm therefore intervention is required. This allows for decision makers to err on the side of caution based on the unknown driven by assumptions as opposed to acting on the known facts at that time.

The precautionary principle can be applied at any level or point when assessing an activity and can be a platform for the ubiquitous, 'what if' question and also drive decision making to focus on the lowest common denominator. In the case of chemical registration a suspicion of harm could be applied to a product based on efficacy or human health/exposure or environment, etc which would place the onus onto the applicant to **prove** otherwise. Therefore without the 'science' to disprove the suspicion of potential harm the application of the precautionary principle applies deeming the activity to cause harm and steps required to mitigate the suspicion.

This is likely to drive the cost of registrations (label & minor use) higher and provide the regulator with a discretionary power that would be difficult to challenge. The opportunity to misuse the precautionary principle and query obscure processes or pathways as implements of harm will reduce registration efficiency and effectiveness and limit access to new chemistries.

The NGIA would argue that to some extent the precautionary principle is applied in current registration processes particularly in the setting of MRL's and is supportive of this merging with current product evaluation. The NGIA supports a risk assessment regulatory approach based on the sound principles of risk management and known science.

Section 8 Assessment Registration and Access to Chemicals

Q7. What would be the advantages/disadvantages of adopting an assessment process for new chemicals or products based on an agreed time for an agreed data set?

The APVMA is a service provider charging various fee's for its services and forcing its clients to invest large sums in research to address registration requirements. The APVMA operate under a monopoly and therefore clients are excluded from the usual free market choice of moving to a competitor due to poor service delivery.

It is only appropriate that defined service delivery parameters are set and that the clients of the APVMA have some degree of certainty. The notion of agreed timelines and data sets gives clarity to all parties involved and a high degree of certainty in the application process through the defined requirements and information sets.

The NGIA supports the adoption of an assessment process based on specified timelines and data sets with unambiguous guidelines established for both parties (regulator & applicant). The process must be accompanied by an equitable penalty framework, addressing both regulator and applicant, for failures to meet prescribed milestones. Currently there are no penalties for the failures of the regulator to meet acceptable timeframes in delivering their service.

Q8. What are the most important ways in which the efficiency of the APVMA's assessment process could be enhanced?

The NGIA considers that the efficiency of the APVMA can be enhanced through a number of instruments including:

- The provision of flexible operating guidelines that allows for and recognises the variation in its client base. This can be demonstrated by acknowledging the fundamental differences between food and non-food cropping, low toxicity vs. high toxicity and the associated risks.
- The APVMA having a greater understanding of how their clients operate and the similarities, or not, between Australian industries and their international peers. This could bring about a faster recognition of the relevance of internationally generated data in the assessment process.
- The APVMA having defined service provision guidelines and an appropriate and effective complaints process that enforces compliance and enacts penalties.
- Clear and unambiguous guidelines for applicants in the registration process.

Q9. How close is the alignment between chemical/product risk and effort in the assessment process and how best could it be enhanced?

This is an area that NGIA has limited experience with however based on the minor use process there appears to be a disconnect between the product, risk and the use pattern. It is important to consider not only the product and its known risks but how this is aligned to the use pattern being considered. As mentioned above, it appears that there is a process in place of 'one size fits all' and this is applied across all applicants irrespective of the toxicity and use pattern being sought.

Again NGIA draws attention to the current processes in place that fail to recognise the difference between food and non-food crops or the difference between high and low risk products. The NGIA believes that more flexible risk based assessment guidelines need to be in place to better reflect the overall risk of the product and the use pattern.

Q10. What is the benchmark against which the performance of the APVMA should be assessed?

The assessment of the performance of the APVMA could take two forms. The first is an assessment of its service provisions such as compliance with deliverables against agreed timelines, clarity of reporting and engagement with its client base and effectiveness of dispute resolution. The second form could be an international assessment against an equivalent agency benchmarking the above plus assessing the competence and technical efficiency of the APVMA as a whole.

Q11. What is the evidence that assessment would be more efficiently performed without the APVMA being required to carry out either efficacy or trade assessment? How would the risks that are currently managed through APVMA assessment of efficacy or trade risk be adequately managed in the absence of that responsibility?

The NGIA does not support the removal of efficacy and trade assessment from the APVMA product assessment process. The NGIA believes the APVMA can better utilise efficacy data generated internationally in its assessments and apply a more flexible approach to efficacy data generated in Australia. That is by acknowledging a product that has a demonstrated efficacy for a

specific pest in one crop will generally have equivalent efficacy in a different crop under similar use patterns.

Furthermore there needs to be greater recognition of the applicant's efficacy data in the registration process. This data is generally backed by Australian field trials and international registrations. The APVMA efficacy trials under these circumstances could be viewed as wasteful duplication and a cost burden to the applicant.

An issue of particular concern to NGIA, and it could be suggested unique, is the concern and focus applied to the product phytotoxicity when considering registration. Nursery production across Australia grows over 10 000 plant species and their cultivars and as such recognises that no manufacturer can test phytotoxicity over this crop. Removing the food based crops such as vegetable seedlings, herbs and fruit stock; there is still a very high number of non-food species grown in forestry, revegetation, and urban horticulture.

The NGIA believes that the APVMA needs to have the flexibility to address this, along with the manufacturer/applicant, to allow limited data to support the registration (non-food crops) and provide protection to the manufacturers and regulators against litigation arriving from adverse phytotoxic reactions.

Q15. What role, if any, could off label access to chemicals for minor use play in an integrated national system?

Off-label access and use of chemicals that have a registration within a cropping system can be a very useful instrument in relieving costs to both the regulator and industry alike. Having the ability to target a non-label pest and/or reduce the label rate and/or the number of applications is relevant and important in the use of chemicals in agriculture.

An example of reducing the frequency of use is in the application of an Integrated Pest Management (IPM) strategy that has the crop constantly monitored. Chemical use is only required as a spot spray within the crop to suppress pest populations generally managed by beneficial organisms within the crop. Further applications are not required and would be counterproductive to the concept of IPM. Label rate reductions can be useful in the combining of products that can have greater efficacy together than singularly.

A chemical that has registration against a particular pest in a specific crop and efficacy is demonstrated against a new pest at the same label rate should be an allowable off-label use. The NGIA would expect that for this use all label requirements apply such as rate, frequency of use and total applications.

Within nursery production there are many examples of pesticides registered for a single pest and known to have strong efficacy against non-registered pests. It can be clearly demonstrated with products registered for Silverleaf whitefly, yet not approved for Spiraling whitefly or Greenhouse whitefly, that either based on grower experience of efficacy or similar products registered in other crops (same active) the product cannot be legally used to manage other whiteflies in nursery stock.

The NGIA supports the position of a flexible instrument that allows responsible off-label use of pesticides within appropriate parameters based on a crop by crop assessment. The NGIA again raises the point that there are significant differences between crops and cropping systems, none

more evident than that between edible and non-edible crops. It is imperative for regulatory instruments to recognise these differences.

Q16. What are alternative systems for minor use and specialty crops/animals?

The NGIA considers the current system of minor use to be valid in that the principles of the program are appropriate however the process is confined by the inflexible instruments that surround the application of the said principles. The system needs to be overhauled to reflect the diversity of crops and the varied use patterns of products across agriculture. Areas that NGIA have suggested include:

- defined flexible service provision timeframes for the APVMA and penalty enforcement
- greater recognition of data generated for international registrations (similar use patterns)
- flexible instruments recognising crop differences (e.g. food vs. non-food)
- adequately addressing efficacy and phytotoxicity requirements
- expanded off-label use with appropriate parameters

Section 9 Control of Use

Q18. Is there a need for flexibility of control of use to respond to local or regional issues, and how could such flexible arrangements be delivered by a single national regulator, if at all?

Control of use needs to have the flexibility to respond to local and regional issues across Australia. The NGIA supports the model that proposes a national regulator that negotiates service agreements with each state/territory government for the provision of control of use. This support of the above model is based on the size of Australia and its varied climate, cropping systems, environmental values and the dispersed population. Furthermore industry engaging with a state based organisation is more likely to effect change at a regional level than trying to enter and convince a nationally based bureaucracy.

The NGIA believes that a state/territory agency is better placed to respond to control of use issues and is likely to be more accessible and respond to industry and community needs faster than a nationally based regulator. Furthermore this model is the least likely to be disruptive to the status quo and would be introduced with minimal cost to both the regulator and industry.

The NGIA believes that this service agreement must be consistent across Australia avoiding opportunities for state/territory governments to set varying standards, fees and charges for services, licensing, training, etc. Furthermore industry must be a participant in the development of the agreement framework and engaged and consulted at every level prior to implementation.

Q20. To what extent is there a need for a balance to be determined between government compliance action and industry mechanisms?

Agricultural industries across Australia have invested significant funds in developing and implementing on-farm best management practices (BMP) and grower training addressing the areas of transport, storage, application and use of agricultural chemicals. These on-farm programs and grower skills have achieved recognition within many of the commodity markets under titles such as Nursery Industry Accreditation Scheme Australia (NIASA), Freshcare and Cattlecare.

Presently there is limited regulatory recognition of the advances made across primary industries in the above areas and NGIA believes that there are grounds to support compliance balance through adoption of strategies that integrate with on-farm activities.

The Nursery Production Farm Management System that incorporates the best management practice program NIASA, the Environmental Management System (EcoHort) and on-farm biosecurity system (BioSecure *HACCP*) provides strategies for on-farm risk management. These programs address many of the issues around the sound and responsible use of chemicals including training, application equipment, pest resistance, IPM and environmental stewardship.

The NGIA believes that consideration should be given to recognising growers operating under on-farm programs that address the relevant elements as mentioned above to:

- responsible off-label use of chemicals
- rapid access to chemicals to address biosecurity emergencies
- access to registered high risk chemicals

Section 10 Competencies, training, accreditation and licensing

Q21. What evidence is there that training is effective in improving agvet chemical use?

Due to the limited specific data that would quantify the advantages of training NGIA is keen to propose that through the auditing process of the Nursery Production Farm Management System it can be demonstrated that training is effective in improving chemical use. A business operating under the Nursery Production Farm Management System, and particularly NIASA, is obligated to train (e.g. ChemCert) all persons handling agvet chemicals. The auditing process validates this and also assesses storage, Personal Protective Equipment (PPE), application equipment and records.

The NGIA suggests that based on the outcomes over many years of the program being audited and from grower feedback overall chemical use, by numbers of applications and volumes, has reduced due to correct chemical selection and effective application techniques. Furthermore with improved crop monitoring and pest identification growers are applying the chemicals in a more selective manner therefore significant reductions have occurred in broad based blanket spraying.

The NGIA is also confident in stating that business owners have recognised the benefits of training themselves and staff in chemical transport, storage, use and application. This is supported by the overall numbers of industry accessing chemical training across Australia irrespective of their engagement with audited on-farm programs. The NGIA attributes the above to grower training and appropriate technical support through the Nursery Production Farm Management System.

The Discussion Paper mentions current training is in place to meet grower/industry requirements and therefore would need to be adjusted to cover the needs of the regulator. NGIA would dispute this as any training that assists the grower transport, store and use a product will support the needs of the regulator. Any changes to the existing competencies would need to be undertaken with full industry consultation and current competencies assessed for content. (Note: Current ChemCert Competencies meet Queensland ACDC Licensing requirements).

Q22. Should there be a required level of training for access to agvet chemicals and, if so, what should be the basis for establishing that requirement (eg level of training and scope of operation, such as commercial operator or private landholder)?

The NGIA strongly supports the requirement for training to access and use agvet chemicals on all levels with the underlying principle of sound risk management. An important aspect of agvet chemical use is the very nature of new chemistries and their very selective nature. Gone, or going, are the broad spectrum pesticides and in their place are products that require a sound knowledge base to take advantage of their very selective mode of action. Furthermore application technology is advancing and it is becoming more important to understand this equipment to effectively maximise its utilisation.

The NGIA supports the requirement for training to access agvet chemicals due to:

- improved chemical efficacy on-farm
- chemical selection is knowledge based
- regulatory compliance due to correct label interpretation
- OH&S obligations are addressed through worker exposure considerations
- reduced overall chemical use on-farm integrated with IPM strategies
- guides environmental stewardship
- manufacturers registering products based on a lower risk of misuse

Currently training in chemical use is based on AQF Level 3 and NGIA supports this level as the base qualification to access and use agvet chemicals. Based on the evidence at hand AQF Level 3 is delivering the desired outcomes on-farm and in some states the relevant competencies meet the regulatory requirement to receive formal licensing (e.g. Queensland ACDC Licence).

Section 11 Possible Structures for a National Regulatory Scheme

Q23. Under what conditions could a single national regulator be expected to deliver assessment, authorisation and control of use services effectively and efficiently and, if so, would there be a need for flexibility at a regional level?

The NGIA supports a national assessment, authorisation and control of use model that provides for a single national regulator that outsources service delivery to state/territory governments and believes that this model would be the most effective and offers the opportunity to deliver the efficiencies required at a regional level. The harmonisation of subordinate law would be the least disruptive and is likely to be more practical to implement allowing the APVMA to fix its internal issues without facing significant operational changes.

The service agreement between the commonwealth and states/territories must be sound and equitable across all jurisdictions. The agreement must be enforceable preventing state agencies from reducing service deliverables due to undue internal budgetary restraints and/or interference from other state/territory priority setting.

Section 12 Funding Issues

Q26. What other key principles need to be considered in assessing the case for or against cost recovery?

Industry is concerned that developing cost recovery arrangements will be at the detriment to individual users, businesses, the Australian nursery industry as well as the wider Australian community.

A key overarching principle that should be considered when proposing a cost recovery model expands on the OECD Guidelines (1998) in relation to the disproportionate effect on small business with the potential for lost productivity. As the bulk of the Australian nursery industry are small businesses, significant changes to cost recovery will therefore impact significantly on these businesses and impede the sustainable growth of this important Australian horticultural sector.

Section 13 Is Cost Recovery of Control of Use Appropriate?

Q27 What other arguments are there in support of government funding of control of use regulation, particularly monitoring compliance, investigation and enforcement?

The discussion paper presents a compelling argument for government funding of control of use regulation. The NGIA firmly believes that the Australian Government has a duty of care to the boarder community to ensure that the regulation of chemicals is achieved with minimal risk to human health, the environment, target crops and trade. Monitoring compliance, investigation and enforcement are critical components of control of use regulatory activities and therefore should remain as core Government activities.

Q28 What is the view of stakeholders regarding the arguments made for cost recovery of monitoring compliance, investigation and enforcement, particularly:

- **cost recovery would not be inconsistent with the Government's policy objectives;**
- **the regulated industry is a beneficiary of the regulatory activities; and**
- **the users of agvet chemicals create the need for the regulatory activity?**

The NGIA is vehemently opposed to proposed cost recovery of monitoring compliance, investigation and enforcement. The discussion paper fails to articulate the increase in costs to individual users, businesses as well as the Australian nursery industry. Furthermore, this discussion paper fails to adequately detail the impact of cost recovery on the MUP program, which is a necessity for industry.

Owing to the small volume of pesticide applied, and a large number of different products required, by the Australian nursery industry, the MUP program is crucial for industry to gain access to modern pesticides. Any increase in costs will prohibit industry access to new chemistries and will encourage avoidance. This, in turn, would be in inconsistent with Government Policy and limit access to new, lower risk chemistries, hampering industry's commitment to environmentally sound on-farm practices.

The Australian nursery industry, as a non-edible industry, is not implicated in the argument put forward in the discussion paper in relation to minimisation of risks to overseas trade and market access. Should cost recovery eventuate, will the Australian nursery industry be lumbered with cross subsidising exporting industries of edible commodities due to their monitoring

requirements? This is inconsistent with the Productivity Commission's approach to increase efficiency by removing cross subsidies.

The paradigm that suggests inappropriate users should pay for regulation is not justified in relation to the nursery and garden industry. The NGIA has a long history of being an environmental steward and has always acted responsibly in handling pest management. Industry is vocal in promoting best practices for handling, storage and disposal of pesticides through programs such as IMP and accreditation programs for individuals (Certified Nursery Professional) and businesses (Nursery Production Farm Management System). There programs foster an attitude amongst growers of responsible utilisation of pesticides.

Q29 What is the potential impact of cost recovery of control of use regulation on:

- **manufacturers, if it results in higher regulatory fees; and**
- **the users of agvet chemicals, if it results in higher prices for agvet chemicals?**

It is inappropriate for NGIA to comment on the impact of cost recovery on manufacturers. However, as indicated above in our response to question 26 and 28, the NGIA considers cost recovery as a prohibitive barrier to improving sound pest management practices on-farm due to increased costs limiting grower access to safer, less toxic new and advanced chemistries through label registration and MUP. This will impact on the ability of businesses to seek safer options and threaten industries commitment to working in harmony with the environment for a sustainable future.

It should also be noted that industry is a price taker and moving towards cost recovery will place additional financial burden on growers who are facing various pressures such as the removal of the 40% fee rebate associated with the horticultural export program, dramatic increases in fertiliser prices, water restrictions and the possibility of an emissions trading scheme.

Q30 What are the potential risks that an increase in the cost of agvet chemicals will result in higher levels of improper usage?

Although it is possible that the increase in costs associated with pesticides may result in prohibited off label use, the NGIA is more concerned about providing access to new and advanced chemistry that may have greater efficacy against the target pest(s), a reduced environmental impact, are of lower toxicity to humans/animals and provide minimal off-target impacts without undue economic strain on growers.

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