

28 February 2012

Mr Tony de la Fosse
Program Manager
Corporate Services
Australian Pesticides and Veterinary Medicines Authority
PO Box 6182
KINGSTON ACT 2609

Dear Mr de la Fosse

On behalf of CropLife Australia I provide the attached submission in response to the *Cost Recovery Discussion Paper Covering the Period 1 July 2012 – 30 June 2015*.

CropLife is responding to the Discussion Paper, noting that its purpose is “to inform the development of interim cost recovery arrangements”. CropLife also notes that a formal Cost Recovery Impact Statement (CRIS) will be developed in March 2012 and that the CRIS will consider submissions that the APVMA receives on this Discussion Paper.

It is CropLife’s view that the development of a CRIS in this timeframe is counter-productive, which is elaborated on further in the submission.

Please do not hesitate to contact me or CropLife’s Deputy Chief Executive Officer, Mr Bernard Meadley, should you require clarification in respect to any aspect of this submission.

Yours sincerely,



Matthew Cossey
Chief Executive Officer

Attach:



SUBMISSION IN RESPONSE TO

COST RECOVERY DISCUSSION PAPER

COVERING THE PERIOD 1 JULY 2012 – 30 JUNE 2015

28 February 2012

Introduction

CropLife Australia

CropLife Australia (CropLife) is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers, formulators and registrants of crop protection and agricultural biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are essential to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than \$1.5 billion per year to the Australian economy and directly employs thousands of people across the country.

CropLife member companies spend more than \$13 million a year on stewardship activities to ensure the safe use of their products on the environment and human health. CropLife ensures the responsible use of these products through its industry code of conduct and has set a benchmark for industry stewardship through programs such as **drumMUSTER**, ChemClear® and Agsafe Accreditation and Training.

The products of the modern agricultural chemical industry are critical to maintaining and improving Australia's agricultural productivity to meet the food security challenges of the coming decades. The Agricultural and Veterinary Chemicals Code Act 1994 is the primary legislation regulating agricultural chemicals in Australia and accordingly determines how plant science and agricultural chemical companies bring crop protection products to the Australian market. Accordingly, CropLife and our members have a strong interest in any proposed changes to the fees and levies of the National Registration Scheme and continue to seek the most effective and efficient regulatory system governing this important industry and market. Each of our members' products is rigorously assessed by the Australian Pesticides and Veterinary Medicines Authority (APVMA) to ensure they present no unacceptable risk to users, consumers or the environment. This is after plant science companies themselves have spent up to ten years and US\$250 million researching and developing each new product. Without access to these important tools and products, farmers may potentially lose as much as 50% of their annual production to pests and weeds.

Issues Summary

Time Frame of Consultation Process

CropLife is responding to the APVMA's *Cost Recovery Discussion Paper Covering the Period 1 July 2012 – 30 June 2015*, noting that the purpose of the Discussion Paper is "to inform the development of interim cost recovery arrangements". CropLife also notes that a formal Cost Recovery Impact Statement (CRIS) will be developed in March 2012 and that the CRIS will consider submissions that the APVMA receives on this Discussion Paper.

It is CropLife's view that the development of a CRIS in this timeframe is counter-productive, which is elaborated on further in this submission.

Justification of the Cost Recovery System

Modern agricultural chemistry tools and products must be supported by a regulatory scheme that maximises the benefits associated with their effective and responsible use, while minimising the costs from excessive, unnecessary, inappropriate and/or ineffective regulation. The onus should be on Government to demonstrate that the cost recovery system imposed on any industry is justified, linked to services provided by the associated regulator, and does not result in undesirable or net negative outcomes. The APVMA's Cost Recovery Discussion Paper does not meet this benchmark.

Efficiency

The APVMA must efficiently conduct its regulatory activities to support applicants and registrants of agricultural chemical products. CropLife is concerned that the Cost Recovery Discussion Paper currently proposes a net recovery from applicants and registrants for APVMA functions that is greater than that under the current scheme.

CropLife remains concerned that over a number of years, there has only been limited improvement in the efficiency of the regulatory system for agricultural chemicals and little, if any improvement in APVMA productivity. CropLife's assessment of the Cost Recovery Discussion Paper indicates that there will be little improvement in efficiency or productivity, yet at a far greater cost to industry.

Compliance with Policy and Guidelines

CropLife members have always approached the funding of the National Registration Scheme with the highest level of good corporate citizenship and accordingly have been and remained prepared to pay fair and equitable fees for product registrations, applications and assessments. However, it is CropLife's position that other aspects of the APVMA's activities should be funded by Government appropriation. The APVMA cost recovery model does not comply with the Government's own policies or COAG's agreed principles on such matters. This is an issue that the Discussion Paper does not even seek to address or justify in any manner.

An industry based cost recovery fee and levy system should only be seeking to recover such monies as required to support the directly attributable activity of the APVMA in connection with the registration of products. CropLife has previously argued that compliance, adverse experience reporting and chemical review programs are designed to confirm the integrity of the regulatory system for the benefit of public health and safety, and the environment. As such, appropriation and a more equitable balance between cost recovery and Government funding may be appropriate and should be considered. Furthermore, the costs associated with the range of other activities undertaken by the APVMA, such as community communication and consultation, should be funded in line with other Government regulators and authorities and not provided totally by industry levy Levies should not be used as a balancing item in recovering the total annual budget requirement of the APVMA.

Shortcomings of the Policy Development Process

CropLife is also concerned that there are significant gaps and shortcomings in the policy development process to date that have undermined the integrity and efficacy of the fundamentals underpinning the Cost Recovery Discussion Paper proposals now being put forward by the APVMA. These shortcomings are evidenced in the Cost Recovery Discussion Paper not complying with Government guidelines for the development of Cost Recovery Impact Statements and the process concluding prior to a final new regulatory system legislative proposal being introduced into the Parliament, let alone passed. Furthermore, the entire lack of basic genuine economic modelling or analysis on the impacts of increased costs of the registration system on Australia's plants science industry, or on the Australian farming sector is deeply concerning and could result in dramatic unintended consequences for Australian agriculture.

This submission should be read in conjunction with CropLife's submission to the *Exposure Draft – Agricultural and Veterinary Chemicals Legislation Amendment Bill 2011*.

Summary of Recommendations

Recommendation 1: *CropLife strongly suggests that the introduction of temporary measures to adjust application and annual registration fees should not be introduced until the thorough review of cost recovery arrangements by the Department is completed, with provision of a comprehensive period of industry consultation so as to facilitate determination of the most efficient process. Until this is completed there should be no changes in fees and levies.*

Recommendation 2: *The APVMA should cooperate in making the SLAs and the ABC report available to stakeholders.*

Recommendation 3: *The APVMA should fully consider alternative procurement measures in order to increase efficiency.*

Recommendation 4: *Recovery mechanisms should be limited to directly identified activities and the use of levies as a balancing item must be avoided.*

Recommendation 5: *The APVMA must provide costing of each of its individual activities.*

Recommendation 6: *DAFF should seek appropriation funding for activities recommended under the AGCR Guidelines.*

Recommendation 7: *Cost Recovery should not exceed CPI without demonstrating benefit to industry, if at all.*

Recommendation 8: *The APVMA must follow ACGR Guidelines to ensure cost recovery is appropriate and that cost recovery is not being undertaken simply to earn revenue.*

Recommendation 9: *The APVMA must provide sufficient explanation of their financial position so as to allay industry's concerns.*

Recommendation 10: *The Government and the APVMA should consider whether the fees structure proposed will have a detrimental effect on innovation and productivity, and should bear in mind the purpose of the proposed National Food Plan when considering both the proposed review by the Department and any changes in fees at this time.*

Recommendation 11: *There must be a further review of the APVMA examining the appropriateness of uncapped levies.*

Recommendation 12: *The APVMA must reassess the fee and levy structure as forecast in order to determine a more accurate assessment of the proposed changes.*

Recommendation 13: *The APVMA must review the need for a financial reserve and CropLife suggests that it should seek to break even on average, or at the very least provide stakeholders with further justification for the level of reserves it proposes to hold.*

Recommendation 14: *The Government must conduct an independent Business Process Review of APVMA operations in the interests of transparency.*

Issues

Costs associated with the development and implementation of the *Better Regulation* reform package should not be recovered from registrants as these are Government policy initiatives that should be funded from general revenue.

In a joint media release from the Minister for Agriculture, Fisheries and Forestry, Senator the Hon Joe Ludwig and the then Minister Assisting Deregulation Senator the Hon Nick Sherry, dated 15 November 2011 both Ministers outlined the Government's intent for a comprehensive package of reforms, namely:

- "The package of reforms would cut red tape and increase the efficiency and effectiveness of agricultural and veterinary chemical regulation;
- "The reforms were aimed to encourage the development of modern and safe chemicals by removing barriers for companies to invest in cutting edge technologies and improve access to chemical products for users;
- "The measures would provide a great outcome all round; and
- "The changes would ensure the most efficient and effective regulatory system to ensure the protection for human health and the environment with a more straightforward assessment process, which is easier to understand and more cost effective to administer."

While CropLife is providing a separate response to the *Better Regulation* reforms, it is important to reassert our concern that the cost recovery arrangements proposed within the APVMA's Discussion Paper do not support any of the commitments originally made by the Honourable Ministers.

CropLife is concerned that in reality, the proposed system will be more expensive and cumbersome than the current regime, and will fail to deliver the innovation or efficiencies that the Government desires.

Whilst it may be tempting for the Government to dismiss the current and projected impost on the agricultural and veterinary chemical industry, there is a lack of empirical evidence to suggest that APVMA's activities, particularly the \$19.1 million per annum for the National Registration Scheme, have resulted in the desired or any added benefits/outcomes for human health, trade or the environment.

While other government regulators routinely conduct studies to confirm whether various medical, road safety or occupational health and safety regulations are proving effective (eg. in terms of lives saved, reduced injury or accidents prevented), CropLife is not aware of any studies of this nature conducted either by the APVMA or the respective policy agency, in this case the Department of Agriculture, Fisheries and Forestry.

CropLife would strongly suggest that empirical evidence of this nature would be a valuable addition to the development of the formal CRIS to ascertain whether the desired outcomes of the National Registration Scheme are being achieved (separate to the other processes and activities carried out by the APVMA) and would also assist in informing both the *Better Regulation* reform package discussions and the forthcoming review of the APVMA's cost recovery arrangements.

1. Measures proposed in the Discussion Paper should not be introduced in advance of the Government's review of cost recovery policy for the APVMA

CropLife notes that the Government has proposed a fundamental review of the APVMA's cost recovery arrangements, which will be undertaken in the period 2012-14 by the Department of Agriculture, Fisheries and Forestry (DAFF) in consultation with the APVMA and the Department of Finance and Deregulation.

CropLife also notes that the applicability of cost recovery may be impacted by economic analyses that will be undertaken as part of the current Council of Australian Governments (COAG) reform agenda. At present, industry has no indication of what impact the final reforms proposed through COAG will have on the industry. Further, CropLife notes that the review will include consideration as to whether to change the current policy to recover 60% of assessment costs via a levy on sales. Whilst this current policy framework that was determined by the signatories to the National Registration Scheme and endorsed by the Product Safety and Integrity Committee is, on the admission of the APVMA, not to be examined as part of the Discussion Paper, CropLife remains curious as to why the main tenet of that policy has been utilised in determining a 40% recovery of application costs as the baseline (Refer Page 3 of the Discussion Paper).

CropLife accepts that the APVMA is required under the Australian Government Cost Recovery Guidelines to produce a CRIS every five years. However, CropLife is at some loss as to the reasoning behind the decision to develop this exceedingly important proposal when a fundamental review is to be conducted by DAFF in 2012-2014. The timing of the Discussion Paper and its consideration by all stakeholders has been poorly thought through in that the proposal, along with its propositions to make fundamental changes, is being considered for implementation when there is a whole series of unknowns in terms of regulation and risk frameworks for assessment that are yet to be fully developed. It is CropLife's view that the rushing of this process may lead to perverse outcomes due to the degree of uncertainty, and without the necessary and practical consultation that will identify any systemic issues that may arise from its adoption.

Further, as consultation at this time is hampered by an incomplete suite of documents describing future APVMA functions and processes, issuing the Cost Recovery Discussion Paper for comment at this time is unsatisfactory.

- The Discussion Paper relates directly to the exposure draft of the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2011, the content of which has not been finalised, nor has it been debated by Parliament;
- Stakeholders do not have a complete picture of the regulations that would be enacted to underpin the proposed legislation;
- The Risk Framework and Compendium to accompany the APVMA's efficiency and compliance measures are incomplete;
- Other agencies involved in the assessment advice given to the APVMA in its deliberations on an application's merits have not provided input to the development of the Risk Framework and Compendium;
- There is a lack of transparency in the costings that the APVMA has provided for its activities, The Discussion Paper does not appear to adhere to the Australian Government Cost Recovery (AGCR) Guidelines;
- An increased cost burden on registrants hardly represents an efficiency measure under any business case. Ultimately, the burden of increased costs will be passed to end users and have an impact on trade and the Australian economy as a whole;
- The Discussion Paper fails to clearly demonstrate how the efficiency measures of simplified processes from the 2010 reforms have led to a measurable efficiency "dividend" for registrants or in improved performance, nor does it demonstrate any efficiency gains (and subsequent changes in fees) from joint global reviews and the acceptance of overseas data packages;

- Cross subsidisation will still remain using levies as a balancing item;
- The Discussion Paper fails in addressing industry's long held view that an activity based costing should not be based on how the APVMA *currently* operates and is resourced. There needs to be a fundamental review of how the APVMA conducts its business. CropLife believes that a large, process driven administrative structure supporting a small but dedicated team of assessors, evaluators and scientists who are tasked with managing a significant number of new product registrations and chemical reviews is not an appropriate use of APVMA resources for managing an effective, efficient registration scheme.
- The Discussion Paper fails to deliver any greater efficiency or reduced costs despite projected capital investment in IT and systems; and
- The Discussion Paper fails to deliver a fee structure that is and that will ensure innovative products are brought to market.

Recommendation 1: *CropLife strongly suggests that the introduction of temporary measures to adjust application and annual registration fees **should not be introduced** until the thorough review of cost recovery arrangements by the Department is completed, with provision of a comprehensive period of industry consultation so as to facilitate determination of the most efficient process. Until this is completed there should be no changes in fees and levies.*

2. Critical APVMA operational documents supporting the Cost Recovery Discussion Paper are not available

It is noted that the Discussion Paper references several documents that form the basis for both the revenue and expenditures proposed for the period through to 2015, namely:

- The August 2011 Activity Based Costing Report (ABC) by PricewaterhouseCoopers; and
- Service Level Agreements (SLAs) with other agencies, including the Department of Sustainability, Environment, Water, Population and Communities and the Department of Health and Ageing, which would also include the Office of Chemical Safety.

The ABC report, together with the SLAs, must be made available to stakeholders to enable a better understanding of the allocation of resources, the distribution of administrative costs and overheads internally within the APVMA, as well as the precise costs incurred in respect of each type of assessment undertaken by the Government agencies.

The AGCR Guidelines give direction on how to balance issues relating to the public release of documents such as the ABC report and the SLAs and commercial confidence. The AGCR Guidelines (Page 47) notes:

‘Commercial in confidence’ is not usually a sufficient reason for withholding information for most products. Only a small proportion of the products of these agencies are commercial in nature. Overall the benefits of transparency greatly outweigh any commercial considerations.’

CropLife is well aware that the APVMA directly sources health and environment assessments from other Government departments and agencies. CropLife also understands that these departments and agencies may, in some circumstances utilise contracted services to assist in these assessments from private technical service providers with particular expertise in the subject area(s). However, as the SLA documents are not publicly available, it is impossible to conclude whether the SLAs and associated contracted services represent good value for money expended by the APVMA.

Recommendation 2: *The APVMA should cooperate in making the SLAs and the ABC report available to stakeholders.*

3. Current arrangements for procuring risk assessment services may not represent value for money

While CropLife does not question the need for SLAs, it is CropLife's position that direct sourcing of services does not necessarily result in poor value for money. However, there are alternative procurement methods that tend to be more conducive to obtaining value for money from suppliers than those currently used by the APVMA.

Without knowing the details of the SLAs, CropLife is sceptical as to whether the current arrangements are of value and CropLife would wish to ensure that the other agency SLAs are not causing time delays in assessment resulting in inefficiency within the registration system and associated processes.

The AGCR Guidelines note that:

"Market testing or contracting out some aspects of an agency's activities are also a good way of gauging efficiency".

CropLife suggests that APVMA procedure for procurement of necessary assessment skills could include:

- Direct tendering for these services from multiple suppliers;
- Establishing a pre-qualified panel of suppliers that can provide these assessments based on a market rate applicable to the services. Whilst this may have been done by the APVMA, CropLife is unable to see clear evidence that this has occurred. CropLife believes this would provide a more efficient and expedited assessment process, and in the future would ensure the APVMA to access scientific services and assessment capabilities, which it may not be able to achieve internally through permanent staffing.

This is hardly a novel approach given that other regulators have adopted similar methods and practices. Such methods and practices have also been adopted by overseas regulators.

Recommendation 3: *The APVMA should fully consider alternative procurement measures in order to increase efficiency.*

4. Cost recovered levies should not be used as a 'balancing factor'

CropLife has examined the proposed operating budgets for the APVMA, together with previous years' financial statements and notes the mix between registration fees and levies, and here we provide comment specifically in respect of this issue.

CropLife notes that the APVMA recovers, or seeks to recover its entire operating budget from industry, with the exception of \$133,000 for minor use and \$650,000 from appropriation in respect of interest foregone. We are also cognisant of the allocations made by the Government for establishing various matters associated with the Government's reforms and note that of that amount, some \$4.5 million will be spent on IT upgrades, which will improve the APVMA's operational efficiency. We note also the proposition that industry will pay \$2 million of funds advanced back to the Federal Government.

In establishing the income requirements of the APVMA, the Authority has calculated the proposed fees structure and the levies it also proposes to implement. The levy rates envisaged capture any of the APVMA's costs not recouped through its other fees and charges.

The APVMA advises that "*the levy rate being set as the balancing factor (that is the difference between the APVMA's annual income from those sources, and its annual expenditure)*".

CropLife seeks clarification in respect of this issue as we believe this is a different approach from that recommended in the AGCR Guidelines, which state:

“Where possible, cost recovery should be undertaken on an activity (or activity group) basis rather than across the agency as a whole. Cost recovery targets on an agency wide basis are to be discontinued”.

Similarly the AGCR Guidelines state:

“Poorly designed levies can create the possibility of cross-subsidies between firms and/or industries. This possibility arises because a levy (whether a flat or proportional tax) applies to all members of a leviable group equally. If, within that group, some members utilise the resources of the regulator less than others, then they can end up subsidising those members that require more intensive regulation.”

Recommendation 4: Recovery mechanisms should be limited to directly identified activities and the use of levies as a balancing item must be avoided.

5. Cost recovery is inappropriately applied to several APVMA functions. This is inconsistent with AGCR Guidelines

CropLife considers that a major flaw in the Discussion Paper is the confusion caused by industry funding of some of the APVMA’s activities that are not strictly associated with an individual registration but which are activities that should be funded by Government appropriation.

The AGCR Guidelines provide examples of activities that **should be funded through appropriation**, a number of which are clearly outlined by the Discussion Paper as being industry funded. These include:

- Public goods, such as information activities, which include newsletters and websites that inform the communities;
- Explicit policy decisions to under recover in some areas, for example, to encourage innovation (Page 7 and Page 30) by not charging for some categories of applications; and
- Explicit policy decisions to not charge for Consents to Import (Page 21).

Where policy decisions have been made to provide free information to the public, to discount upfront costs or to not charge for some activities, these decisions by the APVMA have resulted in less than 100% cost recovery of those activities.

According to the AGCR Guidelines, these under recoveries should be funded through appropriations, rather than the current practice of over-recovering the cost of other activities through a levy or annual fee that is higher than it would otherwise be.

Further, the Discussion Paper (Page 24) states the following:

“The APVMA’s policy development and parliamentary servicing functions (such as Senate Estimates hearings, answers to Questions on Notice and Ministerial briefings) are integral to the effective management of the NRS and are therefore appropriate and efficient to include in cost recovery.”

This statement appears to arrive at the opposite conclusion to one of the key principles in the AGCR Guidelines (Page 2):

“Costs that are not directly related or integral to the provision of products or services (eg. some policy and parliamentary servicing functions) should not be recovered.”

Furthermore, the AGCR Guidelines (Page 23) specifically address the disincentive issue that has prompted the APVMA to not charge for Consents to Import:

“Charging can be inconsistent with policy goals if it significantly increases the cost of enforcement. For example, charging to list products on a register could create incentives for firms to avoid registration, thus increasing the costs of enforcement and reducing the usefulness of the register”.

The remedy for this conundrum, provided by the ACGR Guidelines, (Page 23) is to:

“Consider funding the regulatory activity from general tax revenue”.

The Discussion Paper proposes a different solution (Page 21) namely:

“It is appropriate therefore to recover these costs through the levy”.

CropLife asserts that the APVMA should indicate why the Discussion Paper and proposals do not closely adhere to the AGCR Guidelines. The APVMA should also indicate to stakeholders how each component of the cost recovery proposals aligns with the relevant part(s) of the AGCR Guidelines, or to provide stronger justifications where the APVMA is proposing cost recovery arrangements that appear to depart from the Guidelines.

We also note (as we have noted above) that the Discussion Paper does not clearly provide the cost of **each individual activity**. This is particularly evident in the grouping of Adverse Experience Reporting and Chemical Review that the APVMA groups as one activity. By demystifying each part of all activities stakeholders would gain better clarity and be able to comment constructively as to the methods used in the cost recovery model.

On the face value of the costing information that has been presented, CropLife believes that DAFF should seek appropriation funding for activities recommended under the AGCR Guidelines. Policy development and parliamentary servicing functions should not be recovered from industry. Together with public good and information services, these should be funded from appropriation. Costing these activities through appropriation would address many of industry’s concerns.

Recommendation 5: *The APVMA must provide costing of each of its individual activities.*

Recommendation 6: *DAFF should seek appropriation funding for activities recommended under the AGCR Guidelines.*

6. Cost increases exceed CPI without demonstrating any productivity improvements

The APVMA has, in CropLife’s view, failed to clearly demonstrate where it has returned any efficiency dividend to its stakeholders. Rather, it is clearly demonstrating a failure to reduce its costs, which is exemplified in the APVMA seeking additional funding from industry well over any benchmark that shows a net benefit.

This is demonstrated in that the APVMA seeks to increase revenues by more than the rate of inflation using the formula outlined on Page 27 of the Discussion Paper, which states:

“Indexation rates will be based on 75 per cent of the Wage Price Index (WPI) (annual change in WPI trend for the public sector) and 25 per cent of the Consumer Price Index (CPI) (annual change in all groups CPI, weighted average of eight capital cities), reported for the December quarter by the Australian Bureau of Statistics. The indexation rate is more heavily weighted to the WPI because the APVMA spends more on salaries than on supplies. The APVMA is subject to CPI increases and wage cost increases through service level agreements with other agencies, a mechanism is needed to ensure fees remain cost reflective over time”.

From advice received by CropLife and its members, this formula does not appear to take into account any productivity improvements that are achieved in return for above-inflation wage increases.

CropLife contends that typically, real wage increases (ie. wage increases over and above CPI) are paid in return for an increase in output per worker. Over time, as workers become better trained, more highly skilled and better equipped, they are able to produce more output per unit of time. In economic terminology, the APVMA's **real unit labour costs** should decline over time, as they do across the rest of the economy.

From the material presented in the Discussion Paper, it is unclear whether the APVMA is seeking to pay its staff and suppliers more for the same amount of output per unit of time, or whether there is any allowance for productivity improvements over time. In the absence of further evidence to the contrary, the default assumption in the APVMA costing model should be that every dollar of additional wages paid (over and above general CPI inflation) is exactly offset by an increase in the output per worker. This would allow the APVMA to gradually reduce its headcount over time as staff and suppliers become more productive in return for their higher wages. Mathematically, this would result in the overall revenue limited to the rate of CPI (or less), not at the 75/25 formula proposed in the Discussion Paper, all other things being equal.

Any growth in APVMA workload (eg. due to an increased number of applications for new chemicals) should be self-funding as the existing recovery formulas automatically compensate the APVMA for a higher volume of chemicals being approved and sold.

As a result, there does not appear to be sufficient justification, either from volume or price effects, for the APVMA to seek revenue increases that exceed general CPI inflation. CropLife suggests that in fact, the contrary may be true.

Due to the presence of some fixed costs in its operations, the APVMA should experience economies of scale (in addition to a decline in real unit labour costs, as noted above). That is, for each 1% increase in the volume of applications, the cost of processing those applications should rise by less than 1%. This would suggest that the overall revenue ask of the APVMA should increase in line with a CPI-X formulation, where X would be in the range of 2 to 3 percentage points per annum. That is, the APVMA's revenue ask should rise at a rate in the order of 2 to 3 percentage points slower than the rate of general CPI inflation. If the APVMA has entered SLAs with other agencies that grant payments to suppliers, which rise faster than the rate of CPI inflation without any productivity improvements or economies of scale in return (in effect, an agreement to pay more without receiving anything extra in return), then it is not appropriate to seek additional revenues from industry to cover those excessive increases in payments to suppliers.

CropLife also suggests that the major investment that is being made to the APVMA's IT infrastructure to allow greater efficiency in its total operations at the very least reduces the need for any changes in registration fees.

Recommendation 7: *Cost Recovery should not exceed CPI without demonstrating benefit to industry, if at all.*

7. Cost recovery being used inappropriately to ‘drought-proof’ the APVMA’s revenue stream

In the Discussion Paper, the APVMA has given some justification for increasing fees so that its revenues are less exposed to drought conditions. The APVMA advises (Page 10):

“Periods of lower than average rainfall or drought have resulted in lower agvet chemical use, and this directly causes lower levy revenue in the following year”.

At Page 11 the APVMA states:

“To the extent it is consistent with Australian Government Cost Recovery Guidelines, the APVMA believes it would be prudent to reduce the reliance on the levy and thus lower the potential impact of income fluctuations flowing from drought events”.

CropLife is not convinced that the evidence presented in the Discussion Paper is sufficiently robust to enable the APVMA to draw this conclusion.

Whilst there may be anecdotal evidence that APVMA revenue was lower at the same time as the drought in parts of Australia, there are other factors of which industry could inform the APVMA that have contributed to a significant shift in market conditions that are unrelated to drought.

The APVMA would, for instance, be aware of current investigations by the Australian Customs Service into the import of herbicides that may indicate other reasons for revenue shifts. Similarly, changes in exchange rates and terms of trade that will affect pricing of imported materials have affected industry.

We also suggest that the APVMA again consult the AGCR Guidelines, which state as follows:

“It is important for an agency to be aware of the agency objectives relevant to each activity or product to:

- understand the purpose of the activity and who benefits or creates the need for the activity;*
- assess whether adopting cost recovery would undermine the objectives of the activity;*
- if cost recovery is appropriate, choose an approach to charging that is consistent with the objectives of the activity; and ensure that **cost recovery is not undertaken simply to earn revenue**”.*

On its own admission, much of the Discussion Paper is focused on generating a reliable revenue stream. In the summary, the APVMA states that the Paper *“concentrates on ensuring appropriate and sustained revenue to enable efficient and effective administration of regulation”.*

CropLife therefore and reasonably surmises that the APVMA considers its cost recovery mechanism largely as a revenue exercise, rather than industry facing a cost structure that reflects the true cost of its activities.

It could be concluded from this that the activity of the APVMA will be driven purely on revenue receipts, rather than assessing applications when they are received, no matter what number of applications are received in a given period.

Recommendation 8: *The APVMA must follow ACGR Guidelines to ensure cost recovery is appropriate and that cost recovery is not being undertaken simply to earn revenue.*

8. Understanding the financial position is difficult without better disclosure

CropLife has also made an attempt to analyse the APVMA's finances and its financial position. We find, however, that we are unable to do any meaningful assessment of the reserves as disclosed in its latest Balance Sheet. Nor are we able to gain a clear understanding why an agency with revenue of some \$27 million would have such a large level of creditor accruals, which has the effect of reducing the Authority's net reserve position. The notes accompanying the financial statements do not offer any meaningful explanation or analysis in this regard. Whilst not wishing to have full disclosure of the makeup of the accruals, we would hope that the APVMA may be able to provide sufficient explanation to allay any concerns this raises.

Recommendation 9: *The APVMA must provide sufficient explanation of their financial position so as to allay industry's concerns.*

9. The policy outcomes sought remain unclear

The fee structure proposed is likely to stifle, rather than encourage innovation, resulting in fewer tools being available to assist farmers combat pests, weeds and diseases. This would have a downward effect on farm productivity at the same time that the Government is developing a National Food Plan through DAFF.

On its website, the Department states:

"The aim of the Plan is to foster a sustainable, globally competitive, resilient food supply that supports access to nutritious and affordable food. The government envisages that the national food plan will better integrate what it already does, and help identify if and where a better approach might be needed.

The green paper will outline how current policy addresses food issues, as well as discuss any potential changes the government might consider to policy, programs and governance arrangements as a means to contribute to the overall Food Plan objectives".

CropLife strongly suggests that the Government and the APVMA should bear this in mind when considering not only the proposed review by the Department, but any changes in fees at this time.

We have also expressed our concerns that it is hardly an interim arrangement for fees when it is proposed that the fees and charges will be those established for the next three years. Yearly automatic adjustments to fees will set in stone the current deficiencies within the system.

As stated in Recommendation 1, CropLife recommends that the APVMA should not introduce any material changes to overall revenue levels, composition or complexity until the review by the Department of Agriculture, Fisheries and Forestry is completed.

CropLife has over a number of years, raised the issue of uncapped levies. Whilst the levies in the proposal may be tiered and (on face value represent some concession to larger volume product registrants) they remain uncapped. As a result, some chemicals with high volume sales contribute disproportionately to the revenues collected by the APVMA.

The AGCR Guidelines make the following guidance notes in respect of levies:

"Usually, there will be a minimum threshold below which regulatory costs will not fall. At the other end of the spectrum, regulatory costs are unlikely to expand indefinitely. Thus, an agency should set minimum and maximum levies in some circumstances. However, the setting of thresholds and caps should reflect the cost of regulation so they do not create cross subsidies".

CropLife also notes that the Henry Tax Review (2009, Chapter E1) addressed the issue of industry levies. The fuel levy used to fund the Civil Aviation Safety Authority (CASA) has some similar characteristics to the APVMA levy, namely that it raises revenue in a way that is not closely aligned to risk.

“A large, complex charter operation is inspected more often than an aerial work operation with only an occasional charter. However, since half of CASA financing comes from taxing aviation fuel used in domestic flights, airlines pay for regulation according to how much fuel they use on domestic trips, no matter how risky their operations are. Reforming CASA fees to recover costs from those requiring tighter regulation (and therefore imposing the spillover costs) would improve the efficiency of the airline industry”.

CropLife fails to see any argument offered by the APVMA as to why fees should not be capped, rather it continues to adopt such a measure without any appropriate policy justification. The APVMA has never offered a reasoned rebuttal to industry’s call to cap the levy component on fees.

The Department has taken the position in other areas of its operations that it is far more important to focus Government resources on the areas of higher risk and to use cost recovery as more than a revenue raising tool. By using cost recovery to create price signals that encourage good behaviour and discourage high risk or illegal behaviour.

Some areas where the APVMA could make more use of cost recovery to drive efficiencies and reduce risk are mentioned in the Discussion Paper, including the offering of a rebate when the APVMA fails to finalise an application within the specified statutory timeframe.

When rebates are paid, this would presumably result in less than full cost recovery, leading to a revenue shortfall. It would not be appropriate to recoup those rebates elsewhere, by increasing other fees or the levy as a ‘balancing factor’ to offset rebates paid. Rather, the rebates would need to be funded through appropriations or by increasing operational efficiency.

CropLife recommends that there is a further review of the APVMA examining the appropriateness of uncapped levies. This should be undertaken in the DAFF review. The review should also examine the effects of the cross subsidies on all applicants and activities. In addition, it should review the number of categories of applications and modular fees for registrants to ensure that the number of categories/classes of applications remains relevant, or whether there is room to reduce the number of categories/classes of application fees and module fees.

Recommendation 10: *The Government and the APVMA should consider whether the fees structure proposed will have a detrimental effect on innovation and productivity, and should bear in mind the purpose of the proposed National Food Plan when considering both the proposed review by the Department and any changes in fees at this time.*

Recommendation 11: *There must be a further review of the APVMA examining the appropriateness of uncapped levies.*

10. Industry doubts that the fee and levy structure as forecast by the APVMA is an accurate assessment of the effect of the changes proposed

CropLife draws the attention of the APVMA to Appendix C of the Discussion Paper (Tables 43 to 45) which provides scenarios of the fees to be paid by different sized companies under the current and proposed charges.

The tables show that large and medium companies will pay lower fees, a small company will only pay a small increase in fees. These tables are difficult to reconcile with the fact that **in aggregate the APVMA** will be raising more revenue in total from the proposed new cost recovery arrangements. It is mathematically impossible given the composition of the industry, for all stakeholders to be better off (or only slightly worse off in the case of small companies) while the revenue being raised from industry as a whole has increased.

CropLife members have provided their own examples of the effects the fee increases will have on the cost of applications (based on historical patterns of application lodgement) and on the changes to the levy structure. No company has presented a case that would endorse or reflect the Tables at Appendix C.

In fact, a number of CropLife members have indicated that based on their business assessments and their intentions for new registration applications, the aggregate fees and levies paid will increase by more than 40% in the first year of such a change. In one instance, for a medium sized firm the increase is estimated to be over 400% for each year going forward to 2015. A number of members, (including the member mentioned previously) have indicated that the proposed fee increases will affect their business decisions as to whether to proceed with new applications for innovative product registrations in the Australian market. As previously stated in Point 9 above, there needs to be a new review to ensure that innovation is encouraged (and not stifled) so as to facilitate farmers' access to tools that will contribute to increase agricultural productivity.

CropLife also draws the APVMA's attention to Appendix C where both annual fees and continuation fees are included in the calculations. It is our understanding that the draft legislation provides that in that particular year when a continuation application is required, annual registration fees would not also be imposed.

Recommendation 12: *The APVMA must reassess the fee and levy structure as forecast in order to determine a more accurate assessment of the proposed changes.*

11. The requirement for a financial reserve at projected levels is excessive

CropLife notes that the APVMA has devoted part of the Discussion Paper to discuss the reasoning behind the maintenance of a healthy financial reserve. We note that the APVMA proposes to reduce the size of the reserve and provides its reasoning behind such a change in policy. CropLife suggests that as a cost recovery agency, the APVMA should break even on average, but due to the nature of the agricultural sector and we suggest, the agency's operating costs, there will always be fluctuations in revenues and costs from year to year.

In the Discussion Paper (Page 11) the APVMA notes:

"Without this 'buffer', the APVMA could lapse into negative equity, which would breach financial regulations".

However, it is not clear to CropLife where in the *Financial Management and Accountability Regulations 1997* (1 January 2012 compilation) there is a requirement for a reserve or a prohibition on negative equity.

To assist stakeholders in understanding the need for a reserve, it would be helpful for the APVMA to provide the citation or page reference to the relevant regulations. Whether a financial reserve is necessary for reasons other than FMA Regulations is another question. If the APVMA was only able to pay its staff from its own revenues, there could be a risk of a cash shortfall or the need for a temporary bank overdraft. However, unlike a small business that can only spend the money it has in its bank account or up to the limit of its overdraft, it is unclear whether this is the case for the APVMA. If it is the case that revenues paid to the APVMA, payments to suppliers and payments to staff are instead paid from a central consolidated revenue account, then there is no need for the APVMA to maintain a financial reserve. CropLife would argue that if the payment of wages to the staff of the APVMA is not, in fact, dependent on the receipt of revenues from industry, then the financial reserves of the size envisaged is not necessary.

While unclear from the material presented in the Discussion Paper, it may be the case that if the APVMA reserve became negative it would not actually result in the agency being unable to operate, and its bills would continue to be paid out of consolidated revenues.

CropLife would assert that if that is the case, it would be more sensible for the APVMA to pursue a financial strategy of breaking even on average, rather than maintaining a financial reserve that is always positive.

Recommendation 13: *The APVMA must review the need for a financial reserve and CropLife suggests that it should seek to break even on average, or at the very least provide stakeholders with further justification for the level of reserves it proposes to hold.*

12. The Government must conduct an independent Business Process Review of APVMA operations in the interests of transparency

CropLife notes that the APVMA has conducted Activity Based Costings (ABC) to determine the revenue sought and how the revenues will be utilised in cost allocation over the activities of the regulator. It is difficult for stakeholders to understand the intricacies of the ABC without fully studying how the ABC has been interpreted and the justifications associated with its adoption.

The ABC should be released for stakeholders to better comment on the full Discussion Paper.

The ABC is an important tool for allocating costs to various activities. However, on its own, it does not guarantee that the APVMA conducts its activities in the most efficient manner possible.

The activity based costing model includes all overheads, and seems to make no attempt to determine whether activities associated with overheads are integral to the service being provided, as the AGCR Guidelines require.

There has been no attempt at justifying whether the costs that are being recovered are efficient costs. For example, proposed fee increases are justified partly on expected increases in the wage bill. But are these cost increases efficient?

CropLife believes a Business Process Review needs to be conducted on the APVMA's operations. A Business Process Review goes beyond an ABC exercise to probe whether costs being incurred are appropriate and efficient, not just how those costs are allocated.

A Business Process Review of the APVMA could be valuable to examine whether there are better ways of performing its functions, whether the balance of administrative to technical staff is appropriate, whether some tasks can be outsourced, and whether the SLAs with the Department of Health and Ageing and Department of Sustainability, Environment, Water, Population and Communities are the most cost effective ways of procuring these services. If the APVMA has recently conducted such an exercise, it should be made available to stakeholders.

It is extremely important that this process be undertaken before any of the proposed changes are made as it will also give the APVMA an opportunity to re-evaluate its human resources requirements that are required to meet the changed regulatory environment. It would also give industry clarity on whether resources are efficiently being utilised to perform the core functions of the regulator.

CropLife notes in the Discussion Paper the proposed improvement in statutory timeframes proposed by the APVMA and the specific references to it being a matter that the APVMA openly wishes to address.

Table 21 in the Discussion Paper indicates that the APVMA completes many of the short timeframe applications (those in the “2 to 3 month” categories) in the statutory timeframe. However, for the categories of applications with longer timeframes (5 months or more) – generally those involving more complex or technical work – only around half are completed in the statutory timeframe.

In 2009-10 the performance was lower, with a majority in every category of complex applications taking longer than the statutory timeframe.

The APVMA has set performance targets (Table 23, Page 44) based on the percentage of all applications completed in the timeframe.

However, due to the large volume of applications in the “2 to 3 month” category (broadly speaking, the more administrative/non-technical applications), the performance in this category can mask the poor performance in some of the more complex/technical application categories.

Recommendation 14: *The Government must conduct an independent Business Process Review of APVMA operations in the interests of transparency.*

13. Recommended Policy Adjustments

CropLife suggests that improvement in processing applications can be achieved as outlined below.

A potential method for speeding up the process would be to allow industry to directly commission the required scientific assessments from independent, APVMA accredited, third party assessors, and submit these to the APVMA along with the other application documents. This could significantly reduce the technical workload and timeframe required by the APVMA once it receives the application. Whilst this may shift the burden of partly allowing external assessment, it would also change the fees the APVMA would charge for an application. Many registrants already use consultants to assist in the preparation of applications. Recognising that there are skilled persons who would meet the APVMA's required standard for assessment would be a step forward.

Rather than APVMA doing these assessments in-house (and through the Department of Health and Ageing and the Department of Sustainability, Environment, Water, Population and Communities), it may make sense for some outsourcing of this function. The use of accredited third party assessors (where the APVMA would be responsible for the accreditation of those assessors) would also give industry greater control over the assessment and approval timelines.

There are precedents for using government accredited third party assessors in other areas of government regulations, including hazardous machinery, construction, transport and many other areas where the government are able to regulate the activities of an industry (for the purpose of protecting health, safety and the environment), without the need for a government monopoly on conducting those inspections or assessments.

Whilst supporting the injection of a one-off \$8.75 million in reform payments, CropLife does not support the Government recouping \$2 million from industry through increased fees.

It is unclear from the material presented in the Discussion Paper whether the APVMA is also recouping further amounts of the one-off payment in the APVMA's costing model through depreciation and amortisation.

CropLife seeks further clarity on how the \$8.75 million is being utilised by the APVMA. We also request further clarity on the mechanism that the APVMA is utilising in recovering the \$2 million in 2012-13 and 2013-14. As a matter of good governance, once these funds were recouped there should be a resultant decrease in recoveries and fees for industry, which is not currently identified.

Table 11 in the Discussion Paper (Page 33) shows that \$19.1 million was spent on registrations and approvals in 2010-11.

CropLife has reviewed the number of applications finalised for pesticide registrations in the most recent three fiscal years where a full fiscal year of data is available. The data are from the APVMA website publications *Registration Statistics 2010-11, 2009-10, 2008-09*.

The data show that out of 4,471 applications finalised in the past three fiscal years, 1 was rejected (0.02%), 141 were withdrawn by the applicant (3%) and 4,329 (97%) were granted by the APVMA.

Putting to one side the applications withdrawn by the applicant, 99.98% of applications where a decision was required were granted. This appears to reflect a situation where companies will rarely submit an application for a product or active ingredient that they believe is unlikely to be granted by the APVMA.

The data would suggest that there are already sufficient incentives (such as reputational risk and public liability) for companies to only seek registration for products that are safe and effective, resulting in the APVMA granting applications in 99.98% of cases that proceed to a final decision.

A contributing factor to this high success rate is that in many cases, products may have been approved for use in other jurisdictions that prescribe to high standards of environment and human health protection.

Given the \$19.1 million of work undertaken by the APVMA to finalise applications, which rarely results in an outcome other than 'granted', it raises some questions:

1. Is the APVMA focusing its resources on the areas of greatest potential risk? Are there other higher risk areas – such as the AERP, Chemical Review, Quality Assurance, Compliance and Import programs – that may be more deserving of these resources (and as noted above, the AGCR Guidelines suggests those activities should be funded by appropriations)?
2. Is it necessary to spend this amount of resources regulating an activity that appears *prima facie* to have a near 100% rate of compliant conduct? CropLife would suggest that further efficiency could be gained by introducing a fast-track or self-assessment process for companies with a good track record of compliance.

Conclusion

CropLife cannot support the changed and increased fee and levy arrangements proposed by the APVMA given the fundamental, serious and significant issues with the entire cost recovery model proposed. These issues include the inconsistency with Government policy and the serious negative impacts on the provision of crop protection products to Australia's farming sector. These issues should be addressed and be subject to fresh consultation with stakeholders prior to any implementation.

CropLife is concerned that a number of principles that form the basis for cost recovery arrangements have not been adhered to by the APVMA. Similarly, CropLife continues to argue that activities carried out by the APVMA, excluding the National Registration Scheme, should be funded by Government appropriation.

CropLife is concerned that the measures and fees outlined by the APVMA will have the converse effect of limiting effective tools available to farmers to control pests, weeds and diseases, and will stifle innovation to the detriment of farmers, the community and the Australian economy.

It is important that stakeholders have all facts in front of them to make informed comment on any fees proposal, including the final legislation, the regulations, the Risk Framework and associated Compendiums.

The review to be conducted by the Department of Agriculture, Fisheries and Forestry into the APVMA's cost recovery arrangements should be carried out prior to any of the changes foreshadowed in the Discussion Paper to the fee structure. This review should be an open and transparent review that fully involves all industry stakeholders.