



Submission to the Department of Agriculture

First Principles Review of Cost Recovery at the Australian Pesticides & Veterinary Medicines Authority, June 2014

24 October 2014

CropLife Australia Limited

ABN 29 008 579 048
Level 2 AMP Building
1 Hobart Place Canberra ACT 2600
Locked Bag 916 Canberra ACT 2601

Tel 02 6230 6399
Fax 02 6230 6355
www.croplifeaustralia.org.au
Twitter: @CropOLifeOz



Table of Contents

1	Executive Summary	1
2	Analysis of Proposed Cost Recovery Framework.....	3
	2.1 Upfront fees based on average costs.....	3
	2.2 Exemptions to upfront fees	4
	2.3 Annual levy	5
	2.4 Introduction of Government funding	6
	2.5 Maintenance of the APVMA's financial reserve.....	7
	2.6 Adjustment of fees.....	8
3	Analysis of Proposed Cost Recovery Framework.....	9
Appendix	Background.....	9

1 Executive Summary

The Department of Agriculture (the Department) has undertaken a review of first principles of the cost recovery arrangements for the Australian Pesticides and Veterinary Medicines Authority (APVMA). The resulting *First Principles Review of Cost Recovery at the Australian Pesticides & Veterinary Medicines Authority, June 2014* (the Report) was released on 1 September 2014 and called for submissions on the Report.

CropLife has welcomed the Report and provides this submission to the Department for their consideration.

CropLife Australia (CropLife) is the peak 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. CropLife Australia is a member of CropLife Asia and part of the CropLife International Federation of 91 national associations globally.

The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than \$17.6 billion each year to the Australian economy and directly employs thousands of people across the country.

CropLife and its members are committed to the stewardship of their products throughout their lifecycle and to ensuring that human health, environment and trade issues associated with agricultural chemical use in Australia are responsibly and sustainably managed. Our member companies contribute more than \$13 million a year on stewardship activities to ensure the safe and effective use of their products. CropLife ensures the responsible use of these products through its mandatory industry code of conduct and has set a benchmark for industry stewardship through programs such as **drumMUSTER**, ChemClear[®] and Agsafe Accreditation and Training. Our stewardship activities demonstrate our commitment to managing the impacts associated with container waste and unwanted chemicals.

Our members' crop protection products include herbicides, insecticides and fungicides that are critical to maintaining and improving Australia's agricultural productivity, as well as meeting global food security challenges in the coming decades. Each of these products is rigorously assessed by the APVMA to ensure they present no unacceptable risk to users, consumers or the environment. Without access to these tools, farmers could potentially lose as much as 50 per cent of their annual production to pests, weeds and diseases.

CropLife believes in a rigorous, robust and science-based regulatory system to protect users, consumers and the environment. The regulatory system must be effective, efficient and commensurate with risk. Regulation must be effective to ensure that product use in accordance with label instructions will not have unanticipated, adverse effects. Regulation must also be efficient to ensure it imposes the lowest possible cost to encourage investment and innovation by registrants to develop and register new products, uses and technologies for farmers. Inefficient regulation can prevent farmers from having timely access to the latest technology in new crops, new pesticides or new uses for existing pesticides.

The Australian agriculture sector has been identified by the current Government as a significant contributor to both the national economy and local communities. Integral to the success of Australia's agriculture sector is the access Australian farmers have to world's best agricultural chemical technology, including the latest developments of the most effective, safest and softest crop protection products. A properly constructed cost recovery framework should not impede this access to world's best products and should encourage and facilitate new technologies for use by Australian farmers.

CropLife is disappointed the Report has not included analysis of how the proposed framework may affect the agricultural chemical industry, particularly Australian farmers. The Report appears on the surface to propose an effective way to fund the operations of the regulator. However, the broader public policy must be considered. That is, the Department must ensure the operations of the APVMA and how it is funded enables the best possible outcome for the Australian agriculture sector.

CropLife does not believe the APVMA is currently operating in an efficient manner, which is inconsistent with the Australian Cost Recovery Guidelines, July 2014 (CRGs). Further, no driver of efficiency has been identified in the proposed cost recovery framework. We have identified areas of the proposed cost recovery framework that we feel are also inconsistent with the CRGs.

A cost recovery model, by its very nature, attempts to recover the full cost of an activity but under such a framework an inefficient process cannot be highlighted through financial analysis. Therefore, there is a need to conduct a Business Process Review within the APVMA to ensure processes that are subject to cost recovery can be made as efficient as possible.

It should be noted that CropLife confirms its support for the APVMA in becoming a best practice regulator of crop protection chemicals. CropLife recognises the Report has gone a long way to ensure the APVMA's cost recovery arrangements are transparent, equitable and consistent with government policy. CropLife does, however, remain of the opinion that a first principles review presents an opportunity for the Department to consider the impact the significant costs imposed by the APVMA has on the agricultural chemical industry and the Australian farming sector.

The Report proposes a recommended framework for cost recovery at the APVMA that is based on six elements. A summary of these elements is as follows:

- Upfront fees for activities where direct costs can be reasonably attributed to a specific user of the service.
- Some exceptions to the above where partial or full subsidisation of fees is necessary to prevent perverse outcomes.
- An annual tiered levy based on total sales for each activity where it is not practical to attribute individual costs.
- Introduction of government funding for the APVMA's activities in informing policy.
- Maintenance of the APVMA's financial reserve.
- Regular monitoring and adjustment of fees and charges in line with changes in expenditure, rather than automatic indexation.

CropLife provides detailed commentary to each of these elements in Section 2 of this submission.

2 Analysis of Proposed Cost Recovery Framework

2.1 Upfront fees based on average costs

In principle, CropLife supports the proposed cost recovery framework. That is, cost recovery primarily in the form of upfront fees, which are based on the average cost incurred by the APVMA in providing the services.

CropLife views upfront fees based on average costs as an equitable and transparent approach to cost recovery. An upfront fee based on average cost ensures all applicants are charged the same for similar services. It also ensures all users of APVMA services are aware of how much a specified activity costs and can make an informed decision as to whether or not they undertake a particular business opportunity.

Previously under the sales levy approach, manufacturers of products with larger sales volumes were charged more for product registration than manufacturers of low sales volume products, effectively subsidising the cost of a competitor's product registration. In addition, due to the lack of disaggregation of the levies collected, it is assumed that in some instances the sales levy from a crop protection product has been used to subsidise the cost of a veterinary medicine product's registration, and possibly vice versa. Upfront fees are in effect a measure to eliminate this unacceptable use of funds from participants of one sector for the benefit of participants of another sector of the agricultural and veterinary chemical industry.

Despite this in principle support, CropLife has concerns in relation to upfront fees and charges, particularly relating to the use of average cost as the sole driver of the fee calculation. While average cost may be an effective way to recover the costs incurred by the APVMA, there is no encouragement for efficiency. In fact, the opposite may be true. Undertaking of the work required to complete the registration process in an inefficient manner increases the overall cost to the APVMA and therefore increases the cost to applicants the next time the average cost is calculated and revised fees are set. Further, it may be seen as beneficial to APVMA employees to act without any urgency to create a "buffer" included in the subsequent average cost calculations. This would not only be detrimental to the reputation of the APVMA but would also severely impact the agriculture sector through a reduction of products being registered and an increase in the price being paid by end users to cover the increased registration costs.

The timeframes required to complete a registration approval is a major concern for the entire agriculture sector, especially farmers, and any measure that increases the chances of a delay should be avoided at all costs. A delay in the approval of a new product could see the release of a product delayed up to a point where it misses the growing season. This clearly puts farmers in an uncompetitive position in international markets where the product is available to growers from other countries. In some instances, the next opportunity to utilise the new technology is a full year later, leaving the farmer at a competitive disadvantage for a full year.

CropLife is also concerned that the assessment period the APVMA nominates as requiring to determine an application appears to be treated as an aspirational target, rather than an absolute timeframe. Under the customer and service provider agreement that an upfront application fee provides, it is important the APVMA delivers on the service they offer. Under a normal commercial arrangement between two parties, should the provider of services not meet the service standards that they offered, the buyer generally has the right to compensation. CropLife considers penalties for not meeting the agreed assessment period as a potential driver to ensure efficiency exists in the assessment process.

An inefficient process that is subject to cost recovery is inconsistent with the Australian Cost Recovery Guidelines, July 2014 (CRGs), which state:

Government entities should aim to minimise cost recovery charges through the efficient implementation of cost recovered activities, in the context of the specific policy outcomes and legislation.¹

CropLife therefore strongly recommends that a full and comprehensive Business Process Review is undertaken by an independent expert to identify areas where efficiencies can be obtained that will ensure the APVMA operates as efficiently as possible and does not inflict undue charges on the agricultural chemical industry.

It should also be noted that the Australian Public Service has in the past experienced wage increases above CPI, which would be included in the average cost calculations. CropLife considers it is not appropriate to seek additional revenues from industry to cover wage increases above CPI.

CropLife is also opposed to the introduction of payment plans, which it is considered will only delay the inevitable cost for applicants, potentially have an adverse impact on the APVMA's cash flow and expose the APVMA to unnecessary credit risk. CropLife is concerned that the APVMA may not be adequately resourced to assess the credit worthiness of applicants, increasing the risk of the APVMA making a decision to approve a payment plan that leads to the non-collection of fees despite undertaking the work, which may lead to the established companies within the industry left to bear the cost.

2.2 Exemptions to upfront fees

The proposed cost recovery framework recognises that full cost recovery from the applicant may not be appropriate as it is necessary to prevent perverse outcomes. This is particularly aimed at the fees charged for an application and/or pre-application advice sought for minor and emergency use permits.

It should be noted that manufacturers of agricultural chemicals rarely make applications for minor and emergency use. Applications are predominately made by farming sector groups or individual farmers seeking permission to use an existing crop protection product for an off-label use. There is, therefore, disconnect between the user and the payee (in the form of total sales levy) of these APVMA services. This represents inconsistency with the CRGs, which state:

The Australian Government's overarching cost recovery policy is that, where appropriate, non-government recipients of specific government activities should be charged some or all of the costs of those activities.²

If the APVMA is to be compliant with the CRGs, the cost of providing the minor use permits should be charged to the recipients of the benefit, the farmer representative groups or individual farmers that seek the permit. While it is arguable that these commercial operations should bear the cost of a minor use permit, we acknowledge that this cost may be too excessive for some to bear and therefore perverse outcomes such as the potentially unsafe practice of off-label use being undertaken. If the Government wants to increase the competitiveness of minor use crops and the safety of farmers in these industries, it should provide an appropriate level of funding. The current and proposed practice of charging the non-recipient of the service is not consistent with the CRGs and should cease.

¹ Paragraph 15

² Paragraph 10

The APVMA website makes the following statement in relation to emergency use:

Situations where the proposed use is generally unforeseen, such as the outbreak of an exotic pest or disease or where unusual weather patterns have caused higher or more frequent pest or disease incursions are considered to be an emergency. Any written submissions from relevant State Coordinator or government authority to the effect that there is a genuine emergency for which the use of a particular product or constituent is needed will be considered as strong evidence of that fact.³

This statement confirms that the requestor of an emergency use permit does not come from the agricultural chemical industry, but will come from a farmer, farmer group or environmental organisation with the endorsement of a State Coordinator or government authority. The current and proposed practice of charging the non-recipient of the service is not consistent with the CRGs and should cease.

The very existence of a minor use program is due to the uncommercial nature of certain products, as the relatively small potential revenue far outweighs the cost of registration for that purpose. The current Government has acknowledged the existence of this gap in available products and the need for public policy government intervention by committing Commonwealth funds towards the minor use program. CropLife believes this funding should be increased as Commonwealth Appropriation is the appropriate mechanism to fund the minor and emergency use programs, rather than a levy on manufacturers.

2.3 Annual levy

As further discussed in Section 2.4, CropLife believes it would be more appropriate to fund the majority of APVMA functions that the sales levy has been proposed to fund through government appropriation. However, if a tiered levy based on sales volume is selected as the appropriate cost recovery measure the proposed flat tiered levy is supported. The advantages of flat levies within each sales “tier” being:

- It’s a simple methodology, which may be beneficial to the APVMA and applicants, with potential efficiencies created when forecasting revenues and costs respectively. The simplified methodology may also increase the accuracy of these forecasts;
- The removal of the uncapped sales levy reduces the extent of cross-subsidisation when recovering the APVMA costs; and
- There will be a reduction in the variability of the levies paid across applicants for the same APVMA service.

Despite the flat tiered levy system leading to applicants within a tier of sales paying the same levy for similar services, inequity remains as differing levies are payable for customers receiving the same service. Additionally, functions identified to be funded by the sales levy are not sales volume driven. For example, general activities of the APVMA such as the website and corporate publications have no connection with the sales volume of registered products.

³ <http://apvma.gov.au/node/10926>

2.4 Introduction of Government funding

The Report correctly identifies the appropriateness of Commonwealth Appropriation for the APVMA to ensure the cost recovery arrangements of the APVMA are consistent with the CRGs. The Report has correctly identified activities such as informing policy and other activities requested by the Government should be at the cost of the Government, with Commonwealth Appropriation being the appropriate mechanism for funding these activities. CropLife strongly supports this recommendation but considers that there exists more APVMA activities than the proposed model suggests that under the CRGs should not be subject to cost recovery.

Paragraph 10 (emphasis added) is the key policy statement upon which the CRGs are built, which states:

The Australian Government's overarching cost recovery policy is that, where appropriate, non-government recipients of specific government activities should be charged some or all of the costs of those activities.

Further, Paragraph 13 states:

If the same cost recovered activity is provided to both government and non-government stakeholders, charges should be set on the same basis for all stakeholders.

Minor and Emergency Use

As detailed in Section 2.2, the non-government requester of the services is generally farmer representative groups and not the agricultural chemical manufacturer industry. CropLife acknowledges that compliance with the CRGs would see these user groups being subject to cost recovery from the APVMA, which may not lead to the desired outcome of the programs. A sales levy imposed on registrants is, however, inconsistent with the overarching cost recovery policy of the Australian Government.

Website, annual report and corporate publications

The stakeholders of the APVMA website, annual report and other corporate publications are government and non-government.

- The website is largely a platform for the communication of information to both industry and the general public.
- The annual report is not only an information tool for industry and the general public but it is also a key reporting tool of the APVMA back to government, which is required under legislation. The annual report is used by the Department of Agriculture and the Department of Finance in the preparation of consolidated reports.
- Other corporate publications are also used for a variety of purposes, with government and non-government stakeholders.

Therefore, under Paragraph 13 of the CRGs, as government stakeholders exist for these services, an appropriate share of the costs should be recovered from government.

Consultative committees, presentations and seminars

The agricultural and veterinary chemicals industry is not the only recipient of services relating to consultative committees, presentations and seminars provided by the APVMA. Each have an element of providing information to the public and/or other government sectors involved in Australian Government policy.

Similar to the website, annual report and corporate publications, under Paragraph 13 of the CRGs, as government stakeholders exist for these services, an appropriate share of the costs should be recovered from government.

Other

CropLife would like to take this opportunity to note that implementation of new legislation has highlighted a failure of the APVMA to maintain the currency and capability of Information and Communication Technology systems. Under current cost recovery arrangements, the funding for these systems and their maintenance has been provided by the agricultural and veterinary chemical industry. CropLife contends that it is inappropriate to ask the agricultural and veterinary chemical industry to fund any future capital improvements necessary to rectify this failure. The appropriate measure is for the Australian Government to fund these corrective measures.

2.5 Maintenance of the APVMA's financial reserve

CropLife members recognise the need for the APVMA to be financially stable, enabling it to be an adequately resourced effective regulator for the agricultural chemicals industry and their products. While the Report does not include a needs analysis or present any detail relating to the APVMA's financial reserve, it is seen as significant enough to warrant being included as one of the six elements upon which the proposed framework is built.

The CRGs state:

There must be alignment between the expenses of the activity (the costs involved in providing it) and the revenue (the income generated through charges for it).⁴

Ideally, the expenses and revenue should be aligned on a yearly basis. However, where justified, they can be aligned over a longer period (e.g. the business cycle of the activity). Government entities should develop mechanisms (e.g. internal control systems) to manage any under- or over-recovery.⁵

The maintenance of a financial reserve does not equate to financial sustainability and CropLife considers the emphasis of maintaining the financial reserve of the APVMA to be inconsistent with the CRGs. CropLife believes that a well-constructed cost recovery framework should accurately align the expense and the revenue, which is enough to ensure the financial sustainability of APVMA.

Further, the APVMA recorded cash holdings of over \$15.4 million at 30 June 2013. This significant cash reserve of the APVMA represents over-recovery from the agricultural and veterinary chemical industry in previous years. The size of the cash reserve also demonstrates that the focus on maintaining this reserve is not warranted in the short term.

⁴ Paragraph 36

⁵ Paragraph 37

CropLife considers analysis is warranted regarding the need for a financial reserve at the APVMA and if required, the appropriate level thereof. Measures should then be undertaken by the APVMA to adjust the financial reserve to the recommended level. The proposed cost recovery framework should refer to the accurate alignment of fees and charges with expenditure to ensure the financial sustainability of the APVMA, not the maintenance of the financial reserve.

2.6 Adjustment of fees

The proposed cost recovery framework does not include automatic indexation of the APVMA's fees and charges. CropLife supports this proposition on the following basis:

- As detailed in Section 2.5 of this submission, the CRGs state that any fees and charges should closely align with actual costs, rather than be based on automatic indexation.
- As the APVMA continues to mature as an organisation it should experience productivity gains. That is, the APVMA should become more efficient in its operations through past experience and lessons learned. These productivity gains may equal or even exceed any indexation. Automatic indexation would exclude these gains from the calculation of fees and charges and lead to over-recovery of costs by the APVMA.

3 Analysis of Proposed Cost Recovery Framework

Appendix Background

The *Agricultural and Veterinary Chemicals Code Act 1994* (the Agvet Code) is the primary Act regulating agricultural chemicals in Australia. It operates a pre-market regulatory intervention by requiring that any active constituent or product must first be approved or registered by the APVMA.

The regulatory framework for managing agricultural chemicals and veterinary medicines (agvet chemicals) in Australia is collectively referred to as the National Registration Scheme for Agricultural and Veterinary Chemicals (NRS). The APVMA administers the NRS in partnership with state and territory government agencies and in collaboration with other Commonwealth agencies.

In December 2002, the Australian Government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of its cost recovery arrangements and promote the efficient allocation of resources. The underlying principle of the policy is that entities should set charges to recover all costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives. Cost recovery policy is administered by the Department of Finance and outlined in the Australian Government Cost Recovery Guidelines.

The APVMA is one of a number of Australian Government regulators funded by fees and charges imposed on the industry it regulates. Under the agreement that established the NRS, the Australian Government and all state and territory governments determined that the APVMA should operate on a fully cost recovered basis, which it has done since 1996.

Costs are currently recovered from the agvet chemical industry through a complex system of application fees, annual fees and levies calculated on the value of sales. While some aspects of the cost recovery arrangements have been periodically examined – mainly as a result of amendments to the agvet chemical legislation and new regulatory activities – the structural robustness of the cost recovery framework as a whole has not been comprehensively reviewed since it was first initiated.