



Evidence must inform policy development – for the sake of human and environmental health

Submission by the Australian Council of Trade Unions to Issues paper – Review of the agvet chemicals regulatory system: Future reform opportunities, 2020

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and state and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

Unions represent those who work directly with or those workers who may be exposed to herbicides and pesticides during their work. These workers include local council workers involved in pest and weed control through to gardeners, plant nursery workers and importantly those who are involved in the growing or harvesting of plants and animals.

This submission uses the abbreviations:

- **IP** for the *Issues paper—review of the agvet chemicals regulatory system: Future reform opportunities*
- **agvet** for agricultural and veterinary.

The ACTU welcomes the opportunity to comment on the **Issues paper – review of the agvet chemicals regulatory system: Future reform opportunities** and is most appreciative that the deadline for submissions was extended.

Recommendations

1. The ACTU recommends that this Review of the regulation of agvet chemicals should focus on what changes are required to:

- A. Give effect to better communication and transfer of information and knowledge to users of agvet chemicals;
- B. Encourage users of agvet chemicals to reduce the use of hazardous chemicals to reduce the toxic load on humans and the environment;
- C. Create a regulatory system that encourages users of agvet chemicals to focus on the higher end of the hierarchy of risk control through elimination and substitution of chemicals that meet the following GHS classifications: carcinogenicity, target organ systemic toxicity, germ cell mutagenicity, and reproductive toxicity, with particular attention to highly hazardous pesticides, as per the WHO.^{1 2}

2. Our recommendations are founded on ACTU Policy which calls for the regulation of chemicals by:

¹ GHS Hazard classes eg https://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html

² WHO – Highly Hazardous Pesticides Call to Action - <https://apps.who.int/iris/bitstream/handle/10665/329501/WHO-CED-PHE-EPE-19.4.6-eng.pdf?ua=1>

a) adopting processes such that chemicals, both those currently in use and ‘new’ chemicals introduced into Australia, undergo rigorous and regular assessments;

b) ensuring the relevant chemical regulators (in particular the National Industrial Chemicals Notification and Assessment Scheme (NICNAS)³ and the Australian Pesticides and Veterinary Medicine Authority (APVMA)) are adequately resourced, remain independent, and have genuine consultative structures which guarantee union participation and involvement;

c) advocating for the adoption of a Toxic Use Reduction approach; and

d) the progressive phase out of International Agency for Research on Cancer (IARC) Group 1, followed by Group 2A carcinogens linked to occupational cancer.

3. The ACTU general chemical policy is consistent with the Global Outlook on Chemicals, 2019 Report, which calls for:

- the development and scaling-up of approaches that may help to reduce the use of highly hazardous pesticides, such as IPM and agroecological approaches, including development and use of non-chemical alternatives and other good agricultural practices, among others via awareness-raising and training of users
- Strengthened legislative frameworks and enforcement for the regulation of pesticides in general, and HHPs in particular, throughout the life cycle and improve capacity for enforcement.⁴

A. Hazard and Risk Communication

4. Currently the agvet registration and labelling systems do not provide the end user with clear, easily understandable information that communicates the potential health hazards associated with the chemical. Many labels are long winded with emphasis on how to use the product. Whilst this is important, a cursory look at, for instance, approved labels for the use of paraquat, fail to inform users of the potential for lung damage, liver and kidney damage and potential effects on the CNS.

5. Users of chemicals in, say, a manufacturing environment are provided with clear, concise, informative health and safety information. Similar rights to information must be afforded to those in the agricultural sector.

6. Many farm workers are from culturally and linguistically diverse backgrounds and must be afforded the same protection as workers in other sectors. Industrial chemical labels include GHS pictograms, which act as a warning to all users.

7. A further ‘complication’ is that many chemicals which are designated as ‘agvet’ are also used by workers in other sectors. In these situations, it is important that these workers receive the same level of health and safety information they receive for chemicals designated as ‘industrial’.

8. The review panel expresses concern that social media distorts the facts. Due to lack of scrutiny and studies in Australia, overseas sources of information such as the EU-OSHA are often relied upon as sources to obtain most up to date information. For example, the EU-OSHA stresses that

³ Note change of name since ACTU Policy adopted

⁴ Page 302, GCOII,

many workers are exposed to neurotoxic chemicals that can affect the central nervous system and these include pesticides.⁵

B. Reduction of toxic load on humans and the environment

9. In undertaking the review, the panel has been asked to:

- assess the appropriateness, effectiveness and efficiency of the regulatory framework underpinning the operations of the National Registration Scheme
- consider what the goals of Australian agvet chemicals regulation should be⁶

10. The Terms of Reference give scope for the review to consider what those goals should be and how protection of biological systems can be achieved. The Issues Paper (IP) proposes:

*“...a future regulatory system that is efficient, predictable, adaptive, nationally consistent, open and accountable, and places at its centre the protection of human, animal, plant and environmental health and safety”.*⁷(emphasis added)

11. As a general principle, the protection of human, animal and environmental health is achieved through the judicious use of a limited number of toxic substances to achieve the desired outcomes. There is growing scientific and community expectation that human activity causes as little harm to our environment as possible and which positively promotes sustainability of environmental systems.

12. The IP does not consider or discuss any of these issues. And in most sections consideration of health and safety is relegated to “an add on” in the narrative. Question 3 on page 13 broadly addresses these issues, but subsequent questions posed by the panel do not reference the broad objective of preserving and protecting health. In Chapter 2 “safety” is commonly referred to but reference to health appears to be missing.

C. Create a Regulatory System

13. The United Nations Environment Program (“UNEP”) in 2012 noted that:

*“reducing hazards and improving chemical management – at all stages of the supply chain - is an essential component of the transition to a low carbon, resource efficient and inclusive Green Economy”.*⁸

14. The information base about the effects of toxic chemicals on human health and the environment,⁹ international recommendations on strategic chemical management, and the increasingly important role of “green chemistry” in sustainable economic development are

⁵ Feng-Chiao Su et al Association of environmental toxins with Amyotrophic Lateral Sclerosis, JAMA Neurology, published online first, 9 May 2016.

⁶ Page 1, ibid

⁷ Foreword issues paper

⁸ UNEP Global Chemical Outlook: September 2012

⁹ “for many substances, particularly heavy metals, the halogens and the aromatic hydrocarbons, we have substantial scientific laboratory-based and the epidemiology study of their hazardous attributes” Geiser, 2011 page 334.

recognised internationally but are not discussed in the IP. In circumstances where climate change is one of our most important economic and environmental challenges, this is very regrettable.¹⁰

15. The authors of the UNEP GCO¹¹ report listed six key features of a comprehensive chemical management system including:

- *Comprehensive chemicals policies which prioritize chemicals into tiers. These tiers range from substances that are undesirable and should be avoided to those that are preferred;*
- *Comprehensive chemicals policies are hazard rather than exposure-based. Exposure considerations can be useful in screening chemicals or setting priorities, but the intrinsic hazards of a chemical, not the potential for exposure, is the primary consideration in determining the safety of a chemical;*
- *Comprehensive chemicals policies create and open access to information. These policies promote the generation and disclosure of critical information on chemicals ranging from production volumes and uses to human and environmental health effects;*
- *Comprehensive chemicals policies transition chemical use from higher hazard to lower-hazard substances. These policies drive and guide the phase-out of the most dangerous chemicals and the substitution of safer alternatives.*

16. In the ACTU's view, in undertaking the review, consideration must be given to the above, as the panel has been asked to:

- assess the appropriateness, effectiveness and efficiency of the regulatory framework underpinning the operations of the National Registration Scheme;
- consider what the goals of Australian agvet chemicals regulation should be.¹²

17. The review needs to recognise that business as usual is not appropriate in 2020. Of course, much of the mismanagement of agvet chemicals occurs in low and middle-income countries but Australia is not exempt, especially if our economy moves to more environmentally sustainable agricultural production.

18. The 2019 GCOII Report concludes:

*“Trends data suggest that the doubling of the global chemicals market between 2017 and 2030 will increase global chemical releases, exposures, concentrations and adverse health and environmental impacts unless the sound management of chemicals and waste is achieved worldwide. **Business as usual is therefore not an option.** Accelerating progress in order to achieve sound management, and the minimization of adverse impacts, within the context of the 2030 Agenda is, however, possible under a sustainability scenario.”¹³ (emphasis added)*

19. The above applies also to Australia. As the IP acknowledges, imported agvet chemicals will continue to increase as a proportion of chemicals used in Australia. We will therefore become more exposed to any deficiencies that may exist in any offshore evaluation of the health and safety of agvet chemicals.

¹⁰ e.g. The Economic Benefits of a Green Chemical Industry in the United States, Heintz and Pollin, PERI, University of Massachusetts, December 2011

¹¹ UNEP, *ibid*

¹² Page 1, *ibid*

¹³ Page 3 <https://papersmart.unon.org/resolution/uploads/k1900123.pdf#overlay-context=pre-session-unea-4>

General Comment

Lack of supporting evidence

20. The ACTU observes that the IP does not discuss, quantify, or reflect on how the current system is or is not achieving goals of protection of health. The IP contains many statements without supporting evidence.

21. Examples are given of where chemicals are used to improve the environment but there are no examples given of where use of agvet chemicals damages the natural environment. Given that there is no national system of either residue or monitoring of the environment and waterways there is likely to be insufficient data to provide examples of environmental damage. If there is no data this should be acknowledged, including why there is no data.

“the use of agvet chemicals is said to benefit the natural environment”.¹⁴

22. There are no statistics given to support the statement that *“the current system has successfully protected the health and safety of people, animals and the environment in Australia for the last 25 years”*.¹⁵

Given that there is no national or nationally applied system of residue monitoring or monitoring of the waterways or the environment (see page 55, IP) it is very hard to justify such a sweeping statement.

23. No examples are given to support the assertion that *“the system is not keeping pace with changes”*.¹⁶

24. Data has not been provided which could demonstrate the claim of a “first class regulator” and no detail is provided with regard to which stakeholders are the subject of the following statement:

“... stakeholders have made clear that the scientific rigour and technical proficiency of the APVMA, leading it to be a world class regulator, is a critically important strength of the current system”.¹⁷

25. No cost benefit breakdown is provided to explain the statement *“regulatory system dedicates a disproportionate share of resources to pre-market assessment”*.¹⁸

Neither is there information regarding what proportion of what resources are dedicated to this or other regulatory functions.

26. No fiscal analysis is provided to support the assertion there is *“significant cross-subsidisation”*.¹⁹

27. There is no evidence to support the view that public confidence is strong; in fact, the opposite could be asserted for various products.

¹⁴ Page 3, IP

¹⁵ Page viii, IP

¹⁶ ibid

¹⁷ Page ix

¹⁸ ibid

¹⁹ Page ix

*“...the panel recognises that, whatever changes are eventually made to the regulatory system, it is vital that the public's confidence in agvet chemicals regulation remains strong”.*²⁰

28. The statement below is not supported by any case studies or data; it is an assumption at best. For example, do multinational companies make changes to the product sold in Australia to ensure that degradation occurs at the same rate as in other agricultural settings?

Robust assurance systems are not always applied equitably and as Australia continues to import more chemicals our systems will be further reliant on the systems of entities outside of Australia.

*“ multinational innovator companies. As part of their product development process these companies have in place robust assurance systems ensuring the effectiveness of their products. These companies are unlikely to risk their reputation by introducing a new product without testing it thoroughly, including (where necessary) by generating data that is specific to Australian uses”.*²¹

Failure to expand on core concepts

The ACTU is equally concerned that the IP is relatively cursory when discussing some core concepts. Examples include:

29. Poorly designed regulation is said to *“damage productivity, deter investment and undermine jobs and growth”* (page 3). Whilst this may be an important by-product of a poorly designed system, the risks posed by a poorly designed system to the health of people, animals and the environment must be paramount.

30. It is unclear how the IP was able to form the opinion that:

*“The panel sees an opportunity, as is the case in other safety regimes, to take advantage of these higher standards and active interest in maintaining community confidence by formally assigning industry responsibility for managing safety”.*²²

This is not backed by any evidence. It must be remembered that industry regularly argue against the lowering of OELS in industrial settings. There is no evidence provided to indicate that industry would be better than the regulator at managing risks of pesticides.

31. There is no discussion regarding whether it would be easier or more efficient to prevent the use of a dangerous product under the pre-market or post-market approach.²³

32. The IP fails to discuss the full range of health and safety duties employers have to workers. Employers are obliged to do much more than provide access to the appropriate protective equipment to handle agvet chemicals.²⁴

33. Employers/PCBUs have obligations to reduce, so far as is practicable, workers exposures to hazardous chemicals utilising the full application of the hierarchy of control by elimination, substitution, isolation from and engineering controls to limit exposures.

²⁰ Page viii

²¹ Page 68

²² Section 2.4 p 29 “shared responsibilities”

²³ Section 2.5.1 p 36.

²⁴ Page 3

The provision of protective equipment is the lowest form of control in this hierarchy – only to be utilised if a risk remains after the higher order controls are implemented and in combination with the other risk control measures.

34. These duties are enshrined in regulations, but the experience of many workers is that these regulations are observed in the breach and employers assume their duties are as explained on page 3 of the IP. This is incorrect, however the recent experience of Health and Safety Representatives (worker representative under Work Health and Safety law) employed using insecticides in a hot house:

- The HSR affirmed that PPE (mask) is the main form of protection relied upon to reduce exposure but even that can be problematic. The HSR had to bring to the employer’s attention that the mask provided and required to be used had the wrong filters. Masks had been downgraded to save on cost – a clear breach of health and safety law.

35. As previously submitted to previous reviews²⁵ of the agvet system, the ACTU and affiliated unions have consistently opposed any reduction in so called “red tape”. The IP proposes that regulation should not be restrictive, but does not consider circumstances where regulation would have beneficial effects - e.g. banning the use of a pesticide toxic to the aquatic environment may be restrictive to trade but could considerably benefit environmental health.²⁶

36. The lack of discussion about the risks or benefits to health by a framework that allows “*greater regulatory flexibility and efficiency to facilitate improved chemical access as well as measures that enable innovation and increased speed to market*” is regrettable.²⁷

37. The IP does note that only safe and appropriate products are used (page 34). However, this is used as a justification for a reduction in “*pre-market assessment by the regulator in some circumstances, for example for the registration of many generics.... thereby decreasing the timeframe for a product to enter the market*”.

The objective must be to improve protection of health and if a benefit of that is improved profitability for manufacturers etc., that is an excellent and beneficial outcome. But speed to market and reduction in red tape, cannot be an objective of any chemical regulatory system.

Proposals contained in the Issues Paper

38. The ACTU supports the view that the purpose of the agvet chemicals regulatory system is to achieve two primary outcomes:

- to protect the health and safety of people, animals, plants and the environment; and
- to provide users with access to safe chemicals. ²⁸

²⁵ For example - Proposed Agricultural & Veterinary Chemicals Legislation; Removing approval & Re & Re & Re & Re registration) Bill 2013, ACTU D No 33/2014, page 8 – “*the ACTU has no objection to amendments which remove administrative complexity/burden only—however, these are only acceptable so long as there is no potential increase of risk to human health and safety and protection of the environment*”

²⁶ Page 3

²⁷ Page 7

²⁸ Page 11

39. The ACTU agrees that:

“these two outcomes for the system to be equally important and mutually supportive and should therefore be combined as the system's overarching primary purpose statement”.

40. Consistent with a toxic use reduction approach the ACTU supports consideration of mechanisms so that regions of significant environmental interest or value, such as those adjacent to the Great Barrier Reef, can be protected by the restrictions or banning the use of agvet chemicals uses.²⁹

41. Consistent with the requirements in general workplaces the ACTU supports mandating five yearly label reviews (by the holder) to align with the review of safety data sheet.³⁰

42. The ACTU supports the preparation of framework that stipulates that synergistic effects must be considered when the appropriate methodologies are available (the same approach as the EU). This would allow Australia to act on, and possibly work to support, the progress of other international regulators. The framework needs to be prepared now, not in the future.³¹

43. The ACTU strongly supports a system like that of the ECHA which has also developed tools, freely available, that enable third parties to manage their data on chemicals, giving them access to state-of-the-art risk assessment methodologies.

44. ECHA makes non-confidential information on substances accessible to the public through a dissemination portal. Information on 120,000 chemicals is publicly available, aggregated by chemical substance and summarised in info cards and brief profiles. The portal supports industry (e.g. for Safety Data Sheet preparation and research), NGOs and the public in getting a view on the chemicals they are exposed to in their daily lives.³² There are many benefits of the ECHA – for example the EU OSHA stresses that many workers are exposed to neurotoxic chemicals including pesticides.

45. The ACTU supports the application of consistent methodology across jurisdictions and monitoring of residues which must lead to or result in compliance and enforcement activity by the states.³³

46. The ACTU supports the development and application of monitoring in waterways and the environment in all jurisdictions.³⁴

47. The ACTU supports the publication of data on all monitoring on a regular basis to allow the community to scrutinise the system's regulatory effectiveness.³⁵

48. The ACTU supports the establishment of consultative forums.³⁶ These consultative forums must include consumers, environmental and human health expertise, representatives from unions and community groups. Dedicated forums, that do not include importers and manufacturers, are

²⁹ Page 48

³⁰ Page 48

³¹ Page 51

³² Page 54

³³ Page 55

³⁴ ibid

³⁵ Page 56

³⁶ Page 64

necessary to ensure oversight from those with perspectives associated with any potentially harmful effects of the use of agvet chemicals.

49. The ACTU does not support any reduction in premarket assessment or the removal of products from the agvet system to the ACCC. Unions have experienced significant difficulties in convincing the ACCC to take action when banned dangerous substances are contained in products e.g. asbestos containing materials in cars, railway locomotives etc. We see no evidence that the proposed transfer of responsibilities would improve health or environmental outcomes.

Summary

50. The ACTU considers a fundamental question for this review is “what systemic structures are required to protect human, animal and environmental health whilst using agricultural and veterinary chemicals?”

51. The ACTU is not convinced that the Issues Paper has provided a balanced, evidenced review of the effectiveness of the current system or proposed changes which would ensure such protection.

52. The ACTU recommends that this review needs significant revision to outline structures and mechanisms that:

- A. Give effect to better communication and transfer of information and knowledge to users of agvet chemicals;
- B. Encourage users of agvet chemicals to reduce the use of hazardous chemicals to reduce the toxic load on humans and the environment;
- C. Create a regulatory system that encourages users of agvet chemicals to focus on the higher end of the hierarchy of risk control through elimination and substitution of chemicals that meet the following GHS classifications: carcinogenicity, target organ systemic toxicity, germ cell mutagenicity, and reproductive toxicity, with particular attention to highly hazardous pesticides, as per the WHO.^{37 38}

53. The ACTU recommends the submissions of the Cancer Council of Australia and the Public Health Association of Australia, noting that both organisations possess significant expertise in the application of scientific evidence to public and environmental health matters.

³⁷ GHS Hazard classes eg https://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html

³⁸ WHO – Highly Hazardous Pesticides Call to Action - <https://apps.who.int/iris/bitstream/handle/10665/329501/WHO-CED-PHE-EPE-19.4.6-eng.pdf?ua=1>

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