

7<sup>th</sup> March 2014.

Department of Agriculture  
Agvet Chemicals Regulation Reform (M.6.137)  
GPO Box 858  
Canberra ACT 2601

[agvetreform@daff.gov.au](mailto:agvetreform@daff.gov.au)

Dear Sir/Madam

Re: Agricultural and Veterinary Chemicals Legislation Amendments –  
Chestnut/Hazelnut/Pistachio Industry Submission.

This submission is a joint response from the following Australian Horticultural Industry bodies.

- ✚ Chestnuts Australia Inc
- ✚ Hazelnut Growers of Australia Inc
- ✚ Pistachio Growers' Association Inc

The industry groups represent, in total, some 300 small and medium size growers and seek to represent the interests of these growers as chemical users nationally.

The following is a brief introduction to each of the industries:-

#### **Chestnuts Australia Inc**

- ✚ About 70-75% of the total national chestnut crop is produced in north-east Victoria. Chestnuts are also grown east of Melbourne, in central Victoria, around Orange, Southern Tablelands, Blue Mountains and Batlow in New South Wales, in the Adelaide Hills in South Australia, in Tasmania and in south-west Western Australia.
- ✚ Many chestnut orchards are small family owned orchards, but there are several large scale commercial plantings and the average size of new chestnut orchards is increasing.
- ✚ **Current production**
  - Area: about 1,000 ha.
  - Production: an estimated 1,200 tonnes a year of fresh chestnuts with the 2013 production valued at \$7.5 million
- ✚ **Industry potential**

Chestnut production is expected to increase to 2,000 tonnes by 2020 as young orchards come into production.

#### **Hazelnut Growers of Australia Inc**

- ✚ Hazelnut orchards are scattered throughout south-eastern Australia due the requirements of climate. The main production regions are the Central Tablelands of New South Wales near Orange, and north-east Victoria near Myrtleford. Hazelnuts are also grown in central and eastern Victoria and increasingly in Tasmania.

- ✚ Many hazelnut operations are small orchards of up to 6,000 trees. The average size of new hazelnut orchards is increasing and they are being planted to more productive varieties. Most are family operated enterprises.
- ✚ **Current production**
  - Area: approximately 130 ha, including young orchards yet to come into production.
  - Production: About 70 tonnes; expected to increase as new orchards come into bearing.
  - Value: Industry has a current value of approximately \$1 million.
- ✚ **Industry potential**

By 2015, the area under hazelnut production is expected to be approaching 200 ha.

#### **Pistachio Growers' Association Inc**

- ✚ The major production areas are along the Murray River Valley between Swan Hill in Victoria and Waikerie in South Australia. Further plantings are in central west Victoria and Pinaroo, South Australia. Small plantings exist in Western Australia.
- ✚ A central commercial processing facility is at Robinvale in Victoria.
- ✚ The pistachio industry includes a mix of medium-sized business ventures and smaller family-owned operations. The bulk of the crop is produced on medium-sized orchards.
- ✚ **Current production**
  - Area: 900 ha (2013 data).
  - Production: average of 1,200 tonnes in-shell per year (based on a two year average) (2013 data) with a two year average value of \$12 million.
- ✚ **Industry potential**

By 2016, the area under pistachio production is expected to increase to 1,200 ha. It is estimated that by 2020 pistachio production could average 3,000 tonnes/year (\$25 million).

The brief information above highlights that these three nut industries:-

- a) are relatively young industries but industries that are expanding and developing,
- b) have the ability to increase production and productivity over the coming decades,
- c) are relatively small industries in terms of value (between \$1 million and \$15 million) and current production.

The availability of funds for research and development including chemical registration are very limiting for all three industries.

Because of the small size of these industries chemical companies have very little interest in developing chemicals and/or seeking new label registration for any of the required chemicals. As a result the minor use permit is an essential 'tool' for these three industries. Any process that minimises the red tape relating to chemical registration will be extremely important to these small but emerging industries.

From the Chestnut/Hazelnut/Pistachio industry perspective we welcome the opportunity to provide a response to the Agricultural and Veterinary Chemicals Legislation Amendments.

Outlined below are specific responses to various questions passed in the consultation paper.

#### **(a) What are your views about these proposed changes to legislation?**

While recognizing it is essential for agvet chemicals to meet contemporary standards the industries were concerned that the approach towards chemical re-registration in the legislation signified a potential shift in regulatory approach away from risk-based assessment, given the

criteria to be utilised in triggering re-registration cycles. Consequently, the industries support the proposed amendments repealing re-registration requirements.

**(b) What are your views about requiring electronic lodgement of application information and fees?**

The Chestnut/Hazelnut/Pistachio industries favour the concept of electronic lodgement of application forms as operationally such an approach should provide efficiencies. However, a number of concerns have been raised over how such an approach will impact upon minor use and emergency use permit applicants.

Firstly, it is uncertain what information will need to accompany an application. Section 8B (1) of the Act indicates that “*the APVMA may, by legislative instrument, specify the information that must be contained in, or accompany, the application*”. As this is currently unknown, concerns exist that potential permit applicants will be unable to lodge their applications as they will not be able to comply with, or complete the requirements as stipulated on an electronic form. As a result the industries believe for Category 20, 21 and 22 applications there need to be a facility where permits applicants, unable to successfully lodge an application electronically, are directed towards an alternative lodgement pathway.

Secondly, the Act, in Section 110A (3) (c)<sup>1</sup>, requires that any defects in an application be rectified within 1 month. And that the APVMA must refuse the application if defects are not rectified within the month or if the “*APVMA is not satisfied that defects in the application can reasonably be rectified*”<sup>2</sup>. The difficulty from a minor use or emergency use perspective is that permit applicants can often have little data to provide in support of an application.

Unfortunately, as the Regulations<sup>3</sup> currently stand such minor use or emergency use permit applicants will have their applications refused if they are unable to provide certain information within the specified timeframe. Currently, many minor use permit applications are based on extrapolation and scientific argument. In such cases the APVMA may issue a permit with a requirement for future submission of confirmatory data. This allows access to the chemical while the required data is generated. Under the proposed framework this would not be possible and have the effect of delaying access.

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<sup>1</sup> Agricultural and Veterinary Chemicals Legislation Amendment Bill 2013

<sup>2</sup> Section 110A(4) (a) and (b)

<sup>3</sup> Agricultural and Veterinary Chemicals Legislation Amendment (2013 Measures No. 1) Regulation 2013 [Select Legislative Instrument No. 108, 2013]

Consequently, horticultural industries believe that for permits, applicants must be given the ability to negotiate directly with the APVMA before an application is refused. Such a move would improve the efficiency of the process as it would provide an opportunity for the applicant and the APVMA to agree on how identified data gaps could be addressed without incurring unnecessary application refusals and loss of fees.

To this end the industries propose that the Regulations be further amended as follows (proposed text for inclusion in red):

## **Agricultural and Veterinary Chemicals Legislation Amendment (2013 Measures No. 2) Regulation 2013**

### **8AP Matters for notice for technical assessment**

- (i) **For applications other than those made under s110**, that if the APVMA does not determine the application within the assessment period for the application and any extension to the assessment period, the applicant may notify the APVMA that it wishes to treat the application as having been refused, and may seek review of the refusal in accordance with subsection 165(3) of the Code;

**For applications made under s110**, if the APVMA does not determine the application within the assessment period for the application and any extension to the assessment period, the applicant may notify the APVMA that it wishes to treat the application as having been refused, and may seek review of the refusal in accordance with subsection 165(3) of the Code; **or the applicant may agree with the APVMA to a longer timeframe**

### **8AQ Matters for notice in relation to extension of permit**

- (i) **For applications other than those made under s110**, that if the APVMA does not determine the application within the assessment period for the application and any extension to the assessment period, the applicant may notify the APVMA that it wishes to treat the application as having been refused, and may seek review of the refusal in accordance with subsection 165(3) of the Code;

**For applications made under s110**, if the APVMA does not determine the application within the assessment period for the application and any extension to the assessment period, the applicant may notify the APVMA that it wishes to treat the application as

having been refused, and may seek review of the refusal in accordance with subsection 165(3) of the Code; **or the applicant may agree with the APVMA to a longer timeframe**

In sections 65A and 76A of the Regulation there is no text relating to minor use permits allowing an extension to the time periods to provide additional information or for the APVMA to assess that information. It is suggested that that the following text be inserted.

**65A        Period for giving additional information, report or sample**

**(6) For an application for a minor use permit, the maximum period is the period agreed to by the APVMA and the applicant.**

**76A        Extended assessment periods**

**(2)(a) The extended assessment period for an application for a minor use permit is the period agreed to by the APVMA and the applicant.**

**Permit Renewals**

Under Regulation 57B (h) it is indicated that “reasonable grounds” must be shown as to why an application to register has not been made during the life of the permit. The logic being applied appears to flow that given *section 27 Applications (2) (a) of the Act* now allows applicants, other than registrants, to apply to amend labels, a permit holder must provide “reasonable grounds” as to why they have not done so. As holders of many minor use permits the horticultural industries are concerned what will be considered ‘reasonable grounds’ and how this may affect future permit renewals. Could the application of a ‘reasonable grounds’ test result in applications for permit renewal being refused despite the original circumstances under which a permit was issued remaining, e.g., lack of approved options?

To seek an industry initiated label extension into a minor crop, the fee from July 1<sup>st</sup> will be \$7,775. For the Chestnut/Hazelnut/Pistachio industries, the cost of fees, and associated data generation, to progress permits to label extensions would be prohibitive. The industries therefore believe, to avoid any ambiguity that 57B (h) should also be repealed.

**57B Duration of permit—extension for further period**

~~(h) if an application has not been made by any person for variation of a relevant particular or condition of approval or registration for the active constituent or chemical product in respect to which the permit is issued—that there are reasonable grounds for the application not having been made.~~

The Chestnut/Hazelnut/Pistachio industries commends the above amendments to the Department as it is believed the efficiency and flexibility of the process of pursuing, assessing and managing minor use and emergency use permit applications will be significantly improved through their adoption.

Yours faithfully,

Trevor M Ranford B.Sc., Dip MP (AIMSA), Adv Dip Hosp (Wine Marketing), CPMgr

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