



**SUBMISSION IN RESPONSE TO**

**PRODUCT STEWARDSHIP BILL 2011**

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## INTRODUCTION

CropLife Australia 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 agro-biotechnology products. 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 \$1.5 billion a 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.

CropLife is keen to ensure that these programs maintain their success and remain viable mechanisms to manage agricultural chemical product disposal.

Our comments with respect to the *Product Stewardship Bill 2011* are designed to ensure that the benefits sought by the proposed stewardship framework do not unintentionally diminish the success, effectiveness and efficiency of the existing programs.

CropLife, along with other agricultural and veterinary chemical manufacturers, as well as other affected stakeholders have established AgStewardship Australia to manage the strategic direction of our stewardship programs. As a result, CropLife agrees with, and supports, the issues raised by AgStewardship Australia. This submission should be read in conjunction with that provided by AgStewardship Australia.

## ISSUES

CropLife has identified a series of issues that must be resolved to ensure that unanticipated and undesirable consequences from implementation of the Bill are avoided. CropLife believes that the general approach to product stewardship is appropriate, with measures for voluntary, co-regulatory and mandatory schemes each being appropriate in different circumstances. To be truly voluntary, those existing product stewardship schemes that choose not to volunteer to be regulated under this Bill should not be penalised for that choice.

Instead, existing product stewardship schemes should be *encouraged* to participate in any voluntary regulation. If the benefits of participation can outweigh the costs, product stewardship schemes will naturally volunteer to participate in the framework. Changes to the *Product Stewardship Bill 2011* should be pursued to ensure that the costs can be minimised, while the benefits from participation can be maximised.

Costs could be minimised by:

- **Facilitating innovative compliance, reporting and auditing**

*drumMUSTER* and ChemClear® are already regularly and publicly reporting their performance. This provides all stakeholders with assurance that the schemes are achieving their stated objectives with respect to the end-of-life management of agricultural chemical products. If these schemes were regulated by the *Product Stewardship Bill 2011*, additional, regular reporting to government will merely serve to increase costs through increased administration. In the case of *drumMUSTER* and ChemClear®, this would offer no benefit.

Rather than requiring reports to be provided to the regulator in accordance with the regulations, public reporting guidelines could be developed that give product stewardship schemes the option of reporting publically. This would maintain transparency and decrease the regulatory compliance burden on participating schemes.

- **Minimising the amount of overlap with other regulatory approaches**

*drumMUSTER* and ChemClear® are funded by an industry levy. Imposition of this levy is authorised by the Australian Competition and Consumer Commission (ACCC), which ensures that there is a net benefit to the community from imposition of the levy. This authorisation is regularly reviewed to ensure that the benefits of these schemes remain and that the projected anti-competitive impact remains acceptable. In contrast, accreditation of product stewardship arrangements in accordance with the provisions of the *Product Stewardship Bill* is likely to significantly duplicate the regulatory scrutiny of the ACCC.

CropLife suggests that where a product stewardship scheme has been reviewed and authorised by the ACCC, no further scrutiny by the Department of Sustainability, Environment, Water, Population and Communities is justified.

- **Conducting compliance audits on a risk basis**

For co-regulatory and mandatory product stewardship schemes, employing risk in compliance audits can ensure that scarce resources are directed to those areas most in need. Rather than adopting an expensive and ill targeted approach to compliance, regulators should ensure that they efficiently target those product stewardship schemes that are likely to result in the greatest policy outcome for government. It will also preclude regulators from focussing on bureaucratic and inconsequential cases of non-compliance.

- **Maintaining flexibility in the legislation to recognise the variety of product stewardship approaches**

Flexibility allows the regulator to recognise that there is no one 'correct' approach to stewardship. Ultimately, a range of valid approaches are likely to occur that take into account the specific circumstances of the product. For example, performance measures that set a target number for recycling do not work for agricultural chemical products. For these products, it is important that containers be collected from remote rural locations, and a focus on achieving a target number would result in collections occurring in near urban areas to the detriment of remote rural areas where containers and unwanted chemicals could accumulate. For CropLife's participants in **drumMUSTER** and ChemClear<sup>®</sup>, this outcome is unacceptable.

Increasing the costs of regulatory compliance for product stewardship schemes will have one of two consequences. As resources are directed to complying with rigid, bureaucratic monitoring and reporting provisions, resources that can be deployed to collecting, recycling and disposing of empty containers and unwanted chemicals will be reduced. If excessive, the ultimate sustainability of the program may be threatened. Alternatively, should existing levies be increased to reflect the increased regulatory compliance costs, the relative benefits to the community may be outweighed by the anti-competitive cost, requiring the ACCC to withdraw its authorisation of the program.

Neither of these outcomes is acceptable to CropLife.

CropLife considers that the potential benefits of the *Product Stewardship Bill 2011* are:

- **Addressing free-riders**

Providing a competitive marketplace for agricultural chemical products will prevent current product registrants from gaining an advantage over those registrants that take responsibility for their products throughout the product life cycle.

- **Demonstrating commitment to sustainable use of chemical products**

Being able to demonstrate a registrant's commitment to managing industry wastes may provide some additional benefits, however, as the **drumMUSTER** and ChemClear<sup>®</sup> programs are well recognised and understood by users of these chemicals, there are limited opportunities for additional benefits to accrue.

To address free riders, schemes need to at least adopt a co-regulatory approach that further increases the potential costs associated with government regulation.

## CONCLUSIONS

CropLife recognises that the *Product Stewardship Bill 2011* seeks to take a voluntary approach that does allow schemes like **drumMUSTER** and ChemClear<sup>®</sup> to 'opt out' and avoid regulation. For the voluntary approach outlined in Part 2 of the *Bill*, it is very likely that any benefits will be exceeded by the costs of participation. This is a significant barrier that will limit the number of schemes that self select to be voluntarily accredited.

The key benefit for agricultural chemical registrants would occur through being able to deal with free riders by requiring them to either participate in an existing scheme, or establish a similar scheme to manage agricultural chemical wastes. However, this benefit only accrues where a scheme seeks to be co-regulated in partnership with government. The costs of a co-regulatory approach are likely to result in excessive costs, diminish outcomes and detrimentally affect the sustainability and viability of product stewardship schemes like **drumMUSTER** and ChemClear<sup>®</sup>.

If addressed, CropLife's recommendations may mitigate these problems. As it is currently constructed, the *Product Stewardship Bill 2011* is not likely to provide any benefit to those industries that have developed schemes to address waste products.