

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and
Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

25th February 2011

Dear Ms Dennett

We wish to provide this submission to the Senate Standing Committee on Legal and Constitutional Affairs (Committee) in its inquiry on the Bill.

We ask the Committee to consider our submission in the context of the effects that the Bill (if passed in its current form) would have on our company's business, and on the Australian biotechnology and pharmaceutical industries more generally.

The Bill proposes to exclude the patenting of the following under Australian law: 'biological materials including their components and derivatives, whether isolated or purified or not and however made, which are identical or substantially identical to, such materials as they exist in nature.'

In our view, the effects of this ban on the patenting of biological materials would be extremely broad, and may have some serious consequences for our company's continued research and development and other operations in , as outlined in more detail below.

Hexima Limited – background and technology

Hexima Limited is an agribusiness company developing innovative gene technologies to help farmers enhance the productivity of arable land by improving yields and reducing the use of chemicals. Hexima's core technologies aim to strengthen commercial crops by enhancing their resistance to insect pests and fungal disease. Hexima partners with multinational seed companies to establish commercial markets for its technologies. These partnerships are based specifically on Hexima's existing patent portfolio and its ability to generate new patents.

Hexima was spun out of The University of Melbourne in order to progress the commercial development of the patent portfolio. Hexima was funded for approximately 6 years by a small group of professional investors before listing on ASX in 2007 and raising \$40million. Without patents this could not have happened.

Hexima Limited's current patent position

Our company currently has at least 7 granted Australian patents and at least 3 Australian patent applications which contain claims which could potentially fall within the broad wording of the proposed ban on patentability outlined in the Bill. Hexima also has at least 30 granted international patents and at least 42 international patent applications.

Specifically, our company's patents and patent applications include claims in relation to genetically modified agricultural crops.

Potential effect of Bill on Hexima Limited

If passed in its current form, the Bill may have serious consequences for the operation of Hexima's business.

Patents are key assets for Hexima. If Hexima is not able to seek and obtain protection for its research by way of a patent, this could potentially have the following consequences: Hexima will not apply its technology to Australian agricultural crops; inability to attract and retain investors; inability to attract state and federal Government Grants which require patents as evidence of research and commercial potential (e.g. Climate Ready and Commercial Ready); loss of future revenue from licensing of patented technology; More generally, we believe Australian farmers would not receive the benefit of technologies invented overseas, impacting the competitiveness of Australian farmers operating in global markets.

Submission

For the reasons outlined above, we strongly urge the Committee to reject the proposed amendment to the Patents Act 1990.

As an alternative, we urge the Committee to review and consider the recommendations of the Australian Law Reform Commission's report on gene patenting and human health from 2004.