

30 May 2011

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

**RE: INQUIRY INTO THE PATENT AMENDMENT (HUMAN GENES AND BIOLOGICAL MATERIALS)
BILL 2010**

Attached duly marked-up on behalf of CropLife Australia (Mr Matthew Cossey and Mr Daniel Quinn) is the Proof Committee Hansard of evidence given to the Committee at the Public Hearing in Canberra on Friday 29 April 2011.

Separately, we would like to clarify Mr Quinn's response on behalf of CropLife in relation to the following question from Senator Xenophon at Page 8 of the Proof Committee Hansard:

“Senator XENOPHON: I will go to a US decision. Judge Dyk, in his decision in *Intervet v Merial* in August 2010, said that serious questions were raised as to whether isolated nucleic acid claims represented a patentable subject matter under the US Code. He said that it must be qualitatively different from the product occurring in nature, with 'markedly different characteristics from any found in nature' and that 'it is far from clear that an isolated DNA sequence is qualitatively different from the product occurring in nature'. Does that not indicate a judicial trend towards essentially what this bill is trying to achieve?”

Having incorrectly heard this question, Mr Quinn responded addressing the *Myriad Genetics* case, as opposed to the *Intervet v Merial* case. While Mr Quinn's response was completely accurate in respect to the *Myriad Genetics* case, I provide the following information in respect to the *Merial* case to ensure the Committee has a full and correct answer.

The *Intervet v Merial* case was a decision by the Federal Circuit of the US Court of Appeals that was about the degree of similarity that needs to exist between different patented DNA before a patent infringement is recognised. This decision implicitly recognised the patentability of DNA. One member of the Court, Judge Dyk, simply provided a non-binding, dissenting opinion to the majority decision, which does not represent an international or a national trend, or even a formal decision by the Court not to recognise biological patents.

Please do not hesitate to contact me or CropLife's Policy Manager for Biotechnology and Minor (Mr Quinn) should you require clarification in respect to any aspect of this matter.

Yours sincerely

Matthew Cossey
Chief Executive Officer

Attach: