



ABN 66 003 160 638

28 May 2018

Mr Mark Fitt  
Committee Secretary  
Senate Economics Legislation Committee  
Department of the Senate  
PO Box 6100  
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Via email [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au) , [seniorclerk.committees.sen@aph.gov.au](mailto:seniorclerk.committees.sen@aph.gov.au)

Dear Mr Fitt

**RE: INQUIRY INTO INTELLECTUAL PROPERTY LAWS AMENDMENT (PRODUCTIVITY COMMISSION RESPONSE PART 1 AND OTHER MEASURES) BILL 2018 [PROVISIONS]**

Thank you for your letter of 16 May 2018 inviting the Australian Seed Federation (ASF) to make a submission to this inquiry. The ASF is the peak national body representing the interests of Australia's sowing seed industry. The membership of ASF comprises stakeholders from all sectors of the seed supply chain including; plant breeders, seed growers, seed processors and seed marketers.

The ASF was a key player responsible for the introduction of Plant Breeders Rights legislation into Australia in 1987 and has since continued to represent the interests of plant breeders

In relation to this Bill, the ASF's comments are limited to the proposed amendments to the Plant Breeder's Rights Act 1994 (Cth). The ASF last provided comments to the Plant Breeder's Rights (PBR) Act reform consultation process in December 2017. The ASF's submission supported the steps in the proposed reform but stated they do not go far enough to create viable and effective protection for plant breeders. PBR in essentially derived varieties.

1. Essentially Derived Varieties

The ASF supports this proposal as it brings the Australian PBR law more in line with the UPOV 1991 convention. UPOV does not specify that the EDV needs to be protected or not. This proposal closes a loophole that exists where an EDV cannot be declared if no PBR application has been made for the later variety. It is likely that the EDV is very similar to the earlier variety and in most cases protection is not filed for.

2. Unjustified threats of infringement

The ASF in principle supports this proposal where a PBR owner threatens to sue an alleged infringer without justification, the court can award damages to the threatened party. However, the ASF is concerned about how a threat can be determined to be unjustified, bad or flagrant and what criteria are used to prove this.



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### 3. Further powers to award damages under the PBR Act

The ASF in principle supports this proposal. This proposal strengthens the position of the PBR owner and should deter potential infringers. However, as with determining what is an unjustified, bad or flagrant threat (2. above), there are concerns about what would constitute a blatant or flagrant infringement. The ASF assumes this has been established for patents, designs and trademarks.

### 4. Exclusive licensees in the PBR Act

The ASF supports the proposal to provide the exclusive licensee with the opportunity to sue infringers. However, the ASF believes this should not be a right but a negotiated opportunity developed by the PBR owner and the licensee in the license agreement. This has not been made clear in the draft Bill.

### 5. Other Measures

The ASF supports other measures to be changed in the bill; Ownership of PBR and entries in the Register, Secretary's role in the Plant Breeder's Rights Act, International Convention for the Protection of New Varieties of Plants.

### 6. Conclusion

The ASF supports the proposed reforms to the PBR Act as it clarifies EDV and strengthens the position of the PBR owner/exclusive licensee and should act as an increased deterrence of potential infringers.

However, the ASF does not believe this goes far enough. The ASF believes that the PBR Act has failed the small grain industry and farmers are breaching PBR. Thousands of farmers are knowingly growing and selling protected varieties with the knowledge that it is unlikely that they will be prosecuted. The consequence of this action is that very little breeding is taking place in major species of forage crops and feed grains such as Oats, Peas, Triticale and many other non-hybrid species.

In its final report released in January 2010, ACIP agreed that there were many barriers to the effective enforcement of plant breeder's rights (PBR) and that these discouraged the development of new plant varieties. ACIP recommended several legislative and procedural changes.

One of the most significant recommendations was the introduction of an Information Notice System that enables PBR owners to obtain information from alleged infringers on the source of plant material. The introduction of a UK-style Information Notice System would mean PBR owners may be able to require a notice from growers suspected of infringing PBR which states the source of specific plant material and products. A failure to comply within a set time could be counted against the grower in any subsequent court action.

In the Australian Government response to ACIP Final Report released in June 2010, it accepted this recommendation pending a feasibility study. Such an Information Notice System would address many of the key issues raised by the ASF in its submissions. The ASF requests IP Australia to prioritise its introduction.



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The Australian Seed Federation is also pleased to confirm that it is interested in receiving any updates about this consultation.

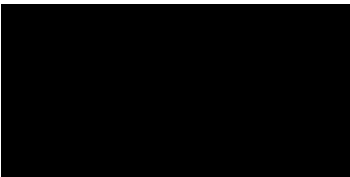
All correspondence regarding this submission and the consultation process can be addressed to:

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If you have any questions do not hesitate to contact me.

Yours sincerely



Bill Fuller  
Chief Executive Officer  
Australian Seed Federation

*Ends*