



Representing *the best* of the plant science industry

CropLife Australia Limited
ABN 29 008 579 048

Level 1, Maddocks House
40 Macquarie Street Barton ACT 2600
Locked Bag 4396 Kingston ACT 2604

Tel +61 2 6273 2733
www.croplife.org.au
Twitter: @CropLifeOz

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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

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 CropLife Australia to make a submission to this Inquiry. CropLife is the national peak industry association representing the agricultural chemical and biotechnology (plant science) sector in Australia. In relation to this Bill, CropLife's comments are limited to the proposed amendments to the *Plant Breeder's Rights Act 1994* (Cth).

CropLife last provided comments to the Plant Breeder's Rights (PBR) Act reform consultation process in December 2017. CropLife's submission supported the steps in the proposed reform, but stated more work was needed to create viable and effective protection for plant breeders.

PBR IN ESSENTIALLY DERIVED VARIETIES

CropLife **supports** the amendment to allow non-PBR-protected varieties to be declared an essentially derived variety (EDV).

Allowing exclusive licensees to sue for infringement

CropLife **conditionally supports** the amendment to allow an exclusive licensee to bring infringement proceedings to enforce the PBR as this is consistent with the rights available to exclusive licensees in respect of other IP rights. CropLife would prefer that as opposed to the inclusion of an 'automatic' right, the right be made conditional upon prior written consent by the PBR owner. Such an approach facilitates the opportunity for both parties (the grantee and exclusive licensee) to negotiate on the right to sue infringers. Through a negotiation process, the PBR owner and the licensee can further refine the modalities of the right to sue and management of actual infringement cases in the license agreement. This will provide an appropriate balance between the rights of the PBR grantee and the licensee to sue infringers.

Unjustified threats of infringement

CropLife **supports** the amendments to introduce protection against unjustified threats of infringement proceedings in the PBR legislation and by introducing additional damages for unjustified threats of infringement proceedings in the Patents, Trade Marks, Designs and PBR legislation.

Further power to award damages

CropLife **supports** the amendments to the Plant Breeder's Rights Act to permit the Federal Court and the Federal Circuit Court to award additional damages under the Plant Breeder's Rights Act when a PBR in a plant variety is infringed.



OTHER MATTERS

Information Notice System

In its final report on the review of enforcement of Plant Breeder's Rights released in January 2010, the Advisory Council on Intellectual Property (ACIP) agreed that there were many barriers to the effective enforcement of 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.

CropLife is **disappointed** that a UK-style Information Notice System in Australia was not introduced as part of the current reforms.

Public Access to Plant Varieties

CropLife's December 2017 submission to the PBR reform consultation process raised our concerns regarding s19 of the PBR Act on 'Reasonable public access to plant varieties covered by PBR'. This article specifies that any party can request seeds of a protected variety, including of parent lines. This is exactly the reason why so very few applications for parent lines are filed in Australia.

Although section 19(11) specifies that "This section does not apply in relation to a plant variety in respect of which the Secretary certifies, in writing, at the time of the grant of PBR, that he or she is satisfied that plants of that variety have no direct use as a consumer product", IP Australia has historically been reluctant to provide a certificate as stated in section 19(11), and this has never been tested in court.

CropLife **recommends** that IP Australia starts working on a template for applicants to complete, invoking this exception. Once this procedure has been made easier, seed companies can feel more confident filing for parent lines in Australia.

This is very important for PBR on parental lines and it is easy to change in the current PBR Act reform process. Parental lines should simply not be available to subsequent users, certainly not during the PBR protection period.

Conclusion

Please do not hesitate to contact CropLife's Director of Crop Biotechnology Policy, Mr Osman Mewett [REDACTED] should you require any additional information on, or wish to discuss any aspect of this submission.

Yours sincerely,

[REDACTED]
Matthew Cossey
Chief Executive Officer