

1 February 2019

The Secretary
Budget Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

By email: prebudgetsubs@treasury.gov.au

Dear Secretary

RE: Australian Seed Federation Pre-Budget Submission 2019-20

On behalf of the Australian Seed Federation (ASF), I provide the attached submission in response to the Assistant Minister for Treasury and Finance, Senator the Hon. Zed Seselja's call for submissions to the 2019-20 Budget.

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.

In Australia, the seed industry is crucial to the development of both broadacre and horticultural crops that are critical to the nation's agricultural productivity, sustainability and food security. The ASF is providing this submission in the interest of developing a nationally and internationally-consistent approach towards growth in productivity of Australian and international agriculture, through the delivery and supply of new and improved seed commodities and services to the market.

The seed industry has always responded to society's need for increased crop yields, better tasting varieties and pest and disease resistant crops. Ultimately, plant breeding fosters sustainable farming practices to meet the needs of a growing global population.

This submission identifies those areas where additional investment by government or policy decisions are required to ensure Australia's seed industry is resilient to change, can rapidly respond to emerging agricultural issues and facilitate the ability of Australian farmers to compete in global markets.

Please do not hesitate to contact me should you require clarification or elaboration in respect to any aspect of this submission.

Yours sincerely



Michael Leader
President

Introduction

This submission identifies areas where additional investment by government or policy decisions are required. This will drive seed industry innovation and ensure the industry can rapidly respond to emerging issues and allow Australian farmers to better compete in emerging markets.

The Australian Seed Federation submits the following recommendations to the 2019-20 Federal Budget:

- Improved enforcement of the Plant Breeders' Rights (PBR) regime and prosecution of current offenders, and introduction of an Information Notice System in the PBR Act.
- Improved border clearance times and cost recovery models for imported and exported seed.
- Globally harmonized phytosanitary testing protocols for imported seed.
- Support for raising grower/nursery awareness of the seed industry's Code of Practice and 'Know before you Sow' initiative.
- Implementation of the recommendations of the 2016 Productivity Commission Inquiry into the Regulation of Australian Agriculture.
- Implementation of the recommendations of the Third Review of the National Gene Technology Scheme and the Technical Review of the Gene Technology Regulations.

1. Improved enforcement of the Plant Breeders' Rights (PBR) regime and prosecution of current offenders, and introduction of an Information Notice System in the PBR Act

The ASF supported the recent proposed reforms to the PBR Act¹ as they clarified the law in relation to essentially derived varieties and strengthened 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, the Australian Centre for 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

¹ Intellectual Property Laws Amendment (Productivity Commission Response Part 1 And Other Measures) Bill 2018

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.

Recommendation One

The ASF **recommends** the Australian Government consider the provision of appropriation funding to IP Australia to prioritise the introduction of an Information Notice System.

2. Improved border clearance times and cost recovery models for imported and exported seed.

The ASF would like to collaborate with the Department of Agriculture and Water Resources Plant Biosecurity Division to formulate a strategy to provide the increased capacity and resources required to meet industry expectations of a maximum three day turnaround for clearing seed for sowing imports.

The seed industry is experiencing border clearance delays and inspection of seed imports which are unsustainable and is affecting the seed supply chain. We would like to look at a system where industry and government work together in maintaining appropriate timeframes for imported seed inspections and clearance times.

The Department of Agriculture plant biosecurity officers are not highly experienced in the seed field which is adding to the issue of seed import inspection delays being well over 7-days or more. The delays are causing major impacts throughout the seed supply chain including transportation and freight costs and sowing of the seed. Seed should be treated as a perishable commodity as delays can affect germination and seed quality.

In addition, red-tape costs for applying for Approved Officer or Approved Premises certification is hurting smaller seed businesses and we believe this impact was not fully considered in any regulatory impact analysis.

Recommendation Two

The ASF **recommends** the Australian Government consider the provision of appropriation funding to the Department of Agriculture in order so they can engage the appropriate industry expertise as necessary to train biosecurity officers in how to better and more efficiently inspect seed imports to help resolve the time delays currently being experienced. The funding would assist the Department of Agriculture and the Australian seed industry to develop strategies and increase capacity and resources together with creating a streamlined process whereby a maximum three day turnaround to clearing seed for sowing imports can be implemented. The funding could also be used by the Department to offset the cost of red-tape incurred by Australian small businesses involved in the import or export of seeds.

3. Globally harmonized phytosanitary testing protocols for imported seed

The Australian Department of Agriculture and Water Resources has recently introduced a number of mandatory destructive phytosanitary testing requirements for the import of seed that involve the use of protocols that are not used in any other country. The result of this is delays in seed arriving into the country and, at worse, the decision not to introduce particular high-potential germplasm for trialling and use in breeding in Australia. We believe this is severely hindering Australia's ability to compete with other countries as a key exporter of agricultural products.

Recommendation Three

The ASF **recommends** the Australian Government provide appropriation funding for the Department to undertake joint projects with key export National Plant Protection Organisation's (the government body responsible for plant quarantine under the International Plant Protection Convention) and industry with a view to reviewing and harmonising Australia's phytosanitary testing protocols.

4. Support for raising grower/nursery awareness of the seed industry's Code of Practice and 'Know before you Sow' initiative

Seed is the most important input into any crop or pasture. The quality of the seed must be assessed carefully to ensure that the buyer is getting value for money, and not introducing any weeds with the seed. To minimise the risk associated with buying seed, The ASF has invested in a Smart from the Start checklist that suggests some questions to ask your seed supplier.

Further education of farmers and retailers in the *Know Before You Sow* program will reduce the risk associated with buying seed to ensure the farmer is getting value for money and minimise 'over the fence' trading where the seed may contain pests and could introduce weeds to Australia. In educating consumers about the Know Before You Sow and ASF Code/s of Practice it will provide industry participants to make informed decisions in relation to the handling and marketing of seed by allowing them to have consistent and accurate information to enable them to make informed decisions about the suitability of seed for sowing.

The ASF Code/s of Practice acknowledges intellectual property rights and obliges ASF members to adhere to the provisions of the *Plant Breeders Right Act 1994(Cth)* and the *Patents Act 1990(Cth)* in respect to marketing of material covered by the legislation.

Recommendation Four

The ASF **recommends** the Australian Government consider the provision of appropriation funding to the Department of Agriculture to enable them to provide grant funding to assist in the promotion of the Know Before You Sow – Smart from the Start checklist to retailers and farmers around Australia.

5. Implementation of the recommendations of the 2016 Productivity Commission Inquiry into the Regulation of Australian Agriculture

Regulating genetically modified (GM) crops at a state level undermines the National Regulatory Scheme for Gene Technology. As recommended in the Final Report of the Productivity Commission's

Inquiry into the Regulation of Australian Agriculture, “the New South Wales, South Australian, Tasmanian and ACT Governments should remove their moratoria on GM crops. All states and territories should also repeal the legislation that imposes or gives them powers to impose moratoria on GMOs by 2018”.²

The circumvention of the national scheme is facilitated by section 21(1)(aa) of the Commonwealth *Gene Technology Act 2000*. Section 21(1)(aa) allowed the then Gene Technology Ministerial Council to introduce the Gene Technology (Recognition of Designated Areas) Principle 2003. In doing so, states and territories have the power to disallow the cultivation of GM crops for marketing purposes.

The principle was used by Western Australia, South Australia, Tasmania, Victoria, New South Wales and the ACT to legislate for moratoria on the commercial cultivation of GM crops, leading to what was identified in the March 2015 Harper *Competition Policy Review* as a significant example of a regulatory restriction on competition³.

Section 21(1)(aa) is a costly disincentive for private investment in Australian agriculture. It has been demonstrated to be unnecessary for preserving the identity of GM and non-GM crops and it removes farmer choice, with Australian farmers missing out on billions in additional farm income.

The commercial cultivation of GM crops is now permitted in Western Australia, New South Wales and Victoria. Both the South Australian and Tasmania governments have announced reviews into their moratoria. The ASF will be actively participating in these inquiries.

Recommendation Five

The ASF **recommends** the Australian Government provide appropriation funding to the Department of Health to enable the prioritization of the urgent repeal of s21(1)(aa) in the Commonwealth *Gene Technology Act 2000*.

6. The South Australian ban on transport of GM seed through the state

The South Australia *Genetically Modified Crops Management Act 2004* (the Act) was introduced to regulate and protect the cultivation and marketability of non-GMO crops in the State.

The current restrictions outlined in the Act on gene technology dealings in South Australia are imposing a logistical constraint on the operations of plant breeders who are involved in this market sector, including significant additional costs being imposed on members who are actively working to supply the legal seed for sowing market nationally.

The South Australian Government maintains a total ban on the transport of GM seed and grain through the State. This ban applies even to those products – including Roundup Ready canola – that have been approved for legitimate commercial release in Australia by the OGTR. We are not sure that this was the intention of the initial drafters of the moratorium legislation, but the result of subsequent amendments to Commonwealth legislation. This could be easily addressed.

² Productivity Commission 2016, Regulation of Australian Agriculture, Report no. 79, Canberra.

³ Harper I, Anderson P, McCluskey S and O’Byrne M 2015, The Australian Government Competition Policy Review, pp116.

This ban is affecting the industry's ability to source seed from production areas and to transport it within a timely and cost-effective manner to consumers around Australia. GM canola approved for planting in Australia cannot be transported directly by truck across the country with the SA transport ban in place. It must either be sent by road around to Western Australia via the Northern Territory, shipped via sea around South Australia, or air freighted. All of this adds time and increased costs which not only affects ASF members in WA and the Eastern areas but the entire seed supply chain particularly in South Australia, as it is likely the increased costs are being passed on to all Australian consumers and all Australian canola growers.

Quality testing of seed has also been affected, with seed companies now having to send GM seed to testing labs further afield for results. This is affecting ASF members' economic bottom line and puts us at a disadvantage trade-wise in reacting to market demand. All seed laboratories in South Australia should have the ability to test genetically modified seed for standard quality parameters.

We would also like to point out the transport ban imposed on South Australia is affecting free trade among States and would question whether it is consistent with Section 92 of the Australian Constitution which requires that the "trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free".⁴

Recommendation Six

The ASF **recommends** the Australian Government provides appropriation funding to the Department of Health to enable them to prioritise policy support to the South Australian government to facilitate the IMMEDIATE lifting of the South Australian GMO transport ban due to the significant negative implications to the seed and agriculture industry.

7. Implementation of the recommendations of the Third Review of the National Gene Technology Scheme and the Technical Review of the Gene Technology Regulations.

In October 2018 the Legislative and Governance Forum on Gene Technology (LGFGT) met to endorse the Third Review of the National Gene Technology Scheme and its 27 recommendations. Forum Ministers said these recommendations will enhance and strengthen the Scheme, crucial to ensuring it addresses future developments and challenges across health, medicine, agriculture, plants and animals. A Forum Action Plan has been produced to progress these recommendations.

The Forum Action Plan includes activities to be undertaken from 2018-2023. To be successfully implemented, adequate funding is required.

Recommendation Seven

The ASF **recommends** the Australian Government provide adequate funding to implement the agreed recommendations arising from the Third Review of the National Gene Technology Scheme.

⁴ Commonwealth of Australia Constitution Act (The Constitution). Act No. 84 of 1977. 'Section 92 Trade within the Commonwealth to be free'