



Stock Feed Manufacturers' Council of Australia

8 August 2008

**Mr Sean Applegate
Secretariat
Advisory Council on Intellectual Property
47 Bowes Street
Woden ACT 2606**

Re: ACIP Review of PBR Enforcement

The Stock Feed Manufacturers' Council of Australia (SFMCA) makes this submission following the release of the Options Paper by ACIP looking at a Review of PBR Enforcement.

The SFMCA is the Federal Council body representing the State stock feed manufacturers' associations. Individual companies involved in stock feed manufacture belong to their relevant State association. SFMCA members manufacture in excess of 90% of commercial feeds sold within Australia.

SFMCA member companies manufacture over 4,900,000 tonnes (SFMCA 2007 members survey) of animal feeds annually across Australia in 113 milling sites. Stock feed manufacturers are a significant user of cereal grains within the Australian domestic market.

The SFMCA wishes to make the following comments in relation to the options paper.

The major cereal grains used in animal feeding are wheat, barley, sorghum, triticale and oats, with lesser volumes of lupins, peas, faba beans and chick peas. These grains are used by many feed mills as well as farmers that mix their own feed on site, including beef feedlots. It is of significance that these grains are typically purchased as "feed" grain, even though much of this grain is from "milling" varieties.

3.1. Exclusive rights granted

The SFMCA takes note of the following comments within section 3.1 *"those sectors in the value chain which are best placed to collect and report the information necessary to quantify the grower's royalty obligations to the PBR owner and possibly to collect the royalty on behalf of the PBR. This was particularly the case for grain varieties. The necessary information is the linking of a grower to the quantity of product produced from a particular protected variety"*. The SFMCA sees this is a very simplistic view and identifies a lack of understanding of the domestic feed grain industry. The feed grain market does not contract grain supply based upon variety, and as such collection of the royalty on behalf of the PBR is not as simple as linking the quantity of grain supplied by a grower from a particular protected variety.

Whilst it is clearly stated that an aim of Option 2 is to provide a more cost efficient collection process, this is being considered only from the perspective of the PBR owner. What needs to be included in the assessment of Option 2 is the significant added cost and administrative burden that would be placed upon feed grain end users in adoption of Option 2. Feed grain end users do not have systems in place to track and record grain receipt by variety. This includes financial systems not being set up to manage EPR's, thus there would need to be a time consuming manual process. EPR collection is further complicated through the application of different EPR amounts applied by each breeding company and for different grain species and varieties. The SFMCA would question that end users should not be considered as being "best placed to collect and report information" to PBR owners.

The introduction of Option 3, right over "purchase", would present significant challenges for the feed grains industry. The majority of wheat and barley varieties are bred as milling wheat and malting barley, with the growers' intent being to sell these grain varieties for these end uses. Option 3 could operate to require licenses for the purchase of these grains, with the grain accumulators, flour mills and malting companies holding licenses to purchase these milling grains. In this situation, these grain buyers are seeking to purchase specific varieties which they can define well ahead of the purchase demand. The number of different varieties any one flour mill or malting company purchases is limited to their specific milling requirements. The feed industry operates very differently and does not purchase grain based upon defined varieties. There is also a much wider number of grains in use, this being considerably more than that applying to flour mills or malting companies.

Due to unfavourable seasonal and crop production situations, these milling grains can often be downgraded and enter the feed supply chain. The feed industry provides an outlet for these downgraded milling grains and utilises material as it becomes available. In this situation the feed industry is not purchasing a specific milling variety and many sales of feed grain are completed on a prompt delivery basis. The SFMCA does not see the introduction of purchase licencing as being a practical option within the feed industry. This option is more likely to be seen as a barrier to trade between growers and end users, where growers with downgraded grain will have less options for prompt grain sales as feed buyers would not have the appropriate licences in place.

The SFMCA supports Option1, this being no change to the rights of PBR owners.

11. Education and awareness

The SFMCA agrees with the comments that "education programs should target specific stakeholders". Whilst feed grain end users are aware of PBR and EPR, there has been insufficient contact with end users to promote the importance of EPR collection in supporting plant breeding. It is our view that the majority of end users, including feed mills and farmers buying grain, have a limited understanding of the existing system of cereal grain breeding and role of EPR collection for its future success.

The Australian grains industry has undergone significant changes in cereal breeding, with a decline in public entities involvement and a transfer to private breeding company control. The significance of this change has not been communicated with many of the domestic feed grain end users. Cereal grain breeding companies need to be more proactive in promoting the importance of PBR and EPR collection for wider industry development.

13. End Point Royalties

Grain buyers such as feed mills or farmers mixing their own feed do not require a declaration or nomination of variety. Grain growers' supplying feed grain to end users do this without making any declaration of variety. Implementing Option 46 to make mendacious variety name declaration an infringement of PBR, would thus not change the situation with feed grains being sold by grain growers to end users. The SFMCA supports Option 45; no changes to infringements or penalties under the PBR Act.

The significant limitation for EPR collection by end users such as feed mills, feedlots and farmers buying grain directly from grain growers, is the feed grain is not purchased with reference to variety. Purchase contracts and purchasing specification make no reference to variety. When grain is received on site, no recognition is made of what variety of grain is delivered. This is distinctly different to the major bulk handlers that are purchasing milling wheat and malting barley based upon variety, and thus require staff and systems to handle this added requirement.

Implementation of EPR collection by feed grain end users requires significant changes to existing practices, control mechanisms and administration. To date the feed industry has not been convinced of the benefits to the industry, with the majority of grain varietal breeding being to the benefit of milling wheat and malting barley users rather than directed to feed grain production. Part of this problem is seen as a lack of communication and promotion of PBR and EPR's to the feed grain industry sector.

Companies operating in the feed grain sector do not employ staff with competency skills required to visually differentiate between varieties. These entities are also not equipped to utilise new technologies in defining varieties. The feed industry would be required to carry considerable additional costs to enforce EPR collection at receival sites.

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