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Dear Sir

Re: Plant Breeders Rights Enforcement Issues Paper

We are agricultural consultants in SW NSW, consulting to broadacre dryland farmers in this region. As a result we deal with users of PBR protected varieties on a regular basis, and have contact with the breeders. We also have clients who are contracted growers for the PBR rights holders. As such we have an understanding of the workability of the PBR Act at the farm level – and it is in need of reform, not just restricted to enforcement as the issues paper is limited. Our concerns will be evident through answers to your questions below:

Question 1

Farmer saved seed is a fundamental exemption within PBR. If you try to get rid of this you will have widespread dissatisfaction amongst broadacre farmers. Instead of discontinuing the farmer saved seed, you should be expanding its use by making licensing available for farmer to farmer transfers. If this happens now and the farmer is not caught the companies get nothing – licence it and you will have some control of the quality, and will collect more income than at present. Farmers will be more willing to comply if they believe the system is fairer.

Question 2

No answer

Question 3

There is need for education to all sectors of the industry. The seed companies have an unrealistic collection mechanism. There is a perception by farmers that the seed companies are triple dipping (funding from grower levies, seed purchase price and royalties). Growers need to be made aware of the issues the seed growers face to take a variety to market. Seed breeders need to be more critical in their analysis of seed varieties

prior to release. There have been a great many “dud” varieties released since PBR began, which would not have been released under the old system.

#### Question 4

Breeding new varieties requires the use of other varieties to provide suitable genetic material. As such a new variety is always going to have a heritage from other varieties. The EDV issue appears to be a problem with definition.

#### Question 5

The threat of legal redress is a big issue for farmers. For this reason most are compliant, but anecdotally some farmers are involved in farmer to farmer trade. The current PBR legislation is actually operating to the detriment of farm production. For example, there have been major disease issues in wheat in recent years, with many popular varieties becoming susceptible. New varieties have been released and growers have adopted these, but due to the drought and high costs structures the initial level of adoption was low. If farmer to farmer licensing was introduced then there would be a much faster take up of the newer varieties, the underlying level of disease would decline across the region, wheat yields would be improved, regional communities would generate more economic activity and the seed company would be generating licence fees as well as more royalties.

#### Question 6

No answer

#### Question 7

No answer

#### Question 8

The collection process is laboured disjointed and resented by farmers. There is often confusion as to which variety is being delivered at district silos, such that the variety delivered may be inaccurate. Reversing the onus of proof would be strenuously opposed by growers and lead to further resentment.

#### Question 9

Surely the issue is not about securing as many prosecutions as possible but for renewing the system to make it is fairer and easier, so that there is greater compliance. Undertake a licensing programme, provide better collection services.

#### Question 10

See Q 9

#### Question 11

No answer

#### Question 12

Making things easier to understand should always be the aim

Question 13

See Q9

Question 14

No answer

Question 15

Mediation would always be preferable to legal proceedings.

Question 16

No answer

Question 17

No answer

Question 18

Varietal identification is a problem on farm as well. Farmers occasionally get farmer retained seed mixed up and sow variety X believing it is variety Y. You have identified the problem with collection at the district silos, whereby identity is mistaken.

Much of the harvested grain is now carried by contractors who make the declaration at the silo and have little interest in varietal accuracy.

Introduction of more testing (ultimately at the growers cost) would no doubt lead to greater prosecution of farmers, and with it increased resentment. You are better to develop a system that works with growers to achieve a mutually beneficial result.

Growers are also disinclined to pay royalties on grain that is fed off to livestock on farm.

Question 19

There are too many new varieties released. These compound the complexity of testing. By limiting the new releases to those that are worthwhile, would at least cut down the number of varieties that need to be tested. There are also many old varieties grown years ago that are still available and they would clutter the system as well.

Question 20

These technologies would be likely to be extremely expensive, and this cost will ultimately end up in the producer's pocket. A collaborative mechanism is required.

Question 21

A central collection body would be much better than the fragmented system at present.

This should be

- an independent not for profit body
- have an educational role for the new system
- mandatory membership for breeders
- conduct all operations including royalty collection, variety ID and

mediation/prosecution

Question 22

See Q21

Question 23

Get the independent body to do the work

Question 24

The body should have a co-operative outlook to include all parts of the industry. Prosecutions should be avoided to keep this approach such that they should only occur for blatant and flagrant breaches of the act, and not minor indiscretions or mistakes. You need to build goodwill amongst the farming community. They have seen the introduction of the new PBR scheme where they are paying more for varieties at purchase as well as the ongoing Royalties – but the perception is that the pace of varietal improvement is no faster than it was in the past, and a lot more confusing with the release of many varieties that have no particular place in the industry.

Question 25

Education will always be of benefit, but you need to fix the system first. It is unworkable at present and the problems the Breeders are facing are due to the problems in the system. The new independent body should provide the education to growers.

Question 26

No answer

Question 27

No answer

This review is too small in scope – it is a band aid review seeking ways to implement more prosecutions and not focusing how to make the act better so that there is little need for prosecution. The system is broken and needs to be fixed. Increasing penalties will not satisfy any of the participants in the industry.

Yours sincerely

A.L. Biddulph