



April 2015

Via email: consultation@ipaaustralia.gov.au.

I am pleased to provide the following submission on behalf of the Australian Seed Federation which provides views on the reforms proposed in the paper to streamline IP processes and support small business.

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

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Chief Executive Officer
Australian Seed Federation



Australian Seed Federation
SOWING SEEDS

ABN 66 003 160 638

Australian Seed Federation Submission: Proposals to streamline IP processes and support small business.

April 2015



Introduction

The Australian Seed Federation (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, all of whom were consulted in the preparation of this submission.

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. The ASF has had representation on Plant Breeder's Rights Advisory Committee for a significant proportion of the time of its existence and as such is in a good position to make comments on possible alternative mechanisms to the Plant Breeder's Rights Advisory Committee to provide advice on plant breeder's rights.

1. Aligning and simplifying

A. *Renewal grace period*

The ASF supports option A2 as proposed as this would provide the most certainty and stability for stakeholders on the status of IP rights.

The introduction of a renewal grace period for PBR would mean that competitors would have to wait another six months after a renewal fee is due before they could be certain that they are free to use a plant variety. If adopted, the ASF would like clarity around the mechanism of informing stakeholders when a PBR remains 'live' and when it ceases.

Alternatively, The ASF can envisage a system of option A1 – no grace period if certainty around renewal notices as in 1c was introduced. For example, for PBR early invoicing combined with a renewal notice would remove the need for a grace period and provide more certainty relating to when PBR ceases

B. *Early payment of renewal fees*

Option B2 as proposed is the ASF's preferred option. There is unlikely to be any costs to PBR owners who pay renewal fees early.



C. Renewal notices

The ASF recommends Option C3 - introduce requirements to issue renewal notices for all IP rights. This is the current practice for all unrepresented owners of IP.

2. Re-examination / revocation

Option 4 is preferred by the ASF – formal re-examination process for all rights and improve patent processes. Refine the patents re-examination process and amend the trade marks, designs and PBR legislation to substantially align the review process with patents, while still accounting for important differences between the rights.

3. Extensions of time

The ASF supports a combination of options as outlined below with comments and questions noted in bold italics for some.

- A2 – Align PBR extensions with those for patents and for a wider range of actions. ***The ASF notes that in some circumstances PBR applicants seek extensions for no other reason than a pending PBR application provides a form of variety status not afforded to non PBR lines.***
- A4 – Specify the grounds for the ‘special circumstances’ extension in the trade marks legislation and align circumstances beyond control across the rights
- A5 - Allow extensions of time for renewal grace periods but not renewal dates, for all IP rights. ***This assumes a grace period exists for PBR as proposed for option A2 section A Renewal grace periods?***
- A6 - Make the ‘despite due care’ extension available for all IP rights and have no limit on the period of the extension
- B2 - For all rights, limit the ‘error or omission by applicant/owner’ extension to 12 months
- C2 – Streamlined process for short extensions of time
- C3 - Simplify and align fees
- C4 – Make all extensions of time non-discretionary.



4. Writing requirements

The ASF supports the option 2 - remove requirement to do things in writing.

5. Defining how documents are filed

The ASF supports option 3 – Amend IP legislation to replace the existing mechanisms with two new provisions for each right.

6. Official Journals and Registers

The ASF supports option 3 as proposed - remove legislative requirements to publish Journals and change time periods, and replace public notification with recording and publication requirements.

7. Self Service amendments

The ASF supports a combination of options 2, 4 and 5 as proposed. The ASF would like clarity around how amendments are determined to be substantive amendments in option 2.

8. Signatures

Option 2 is favoured by the ASF as proposed - Remove requirement for signatures for the actions listed above in the patents legislation

9. Certificates

The ASF generally supports option 3 as proposed - Amend IP legislation to remove requirements to issue certificates. The ASF notes that some of its members like the ability to display certificates for promotional purposes and would like the ability to gain access to such certificates for a small fee.

10. Address for correspondence

The ASF supports option 2 as proposed - align the address provisions and remove reference to an AFC. The ASF notes that there other legislative changes proposed for PBR that were an outcome from the PBR review and the ASF would like these changes to take precedence.

11 – 16.

The ASF has no comment to make on proposals 11 to 16 at this stage.



17. Unjustified threats of infringement

The ASF supports proposal of option 3 - align trade marks and PBR with patents and designs as well as allowing additional damages.

The ASF would like the following points noted relating to PBR and threats of infringement.

- i. Starting legal action against an alleged infringer including requesting a court order for collecting evidence of a possible infringement, should not be considered being an unjustified or groundless threat of infringement. Under the current PBR legislation obtaining evidence that an infringement has occurred is difficult. Recommendations from the 2010 PBR review, if legislated, could alleviate this to some extent.
- ii. The right holder is not forced to start an infringement case in court just to show that the threat of infringement is not unjustified.

18. Clarify ownership of Plant Breeders Rights

The ASF supports option 2 – allow more than two breeders to lodge a joint application.

19. Correcting an error in the name of an applicant

Option 3 is supported as recommended - Amend the PBR Act and Regulations to allow for corrections to the PBR Register

20. Trade marks and shelf companies

The ASF supports option 2 – amend section 27

21 and 22.

The ASF has no comment to make on proposals 21 and 22 at this stage.

Ends