

13 January 2020

The Hon Michael Sukkar MP
Assistant Treasurer
Department of the Treasury
Langton Crescent
PARKES ACT 2600

By email: prebudgetsubs@treasury.gov.au

Dear Assistant Treasurer

RE: Australian Seed Federation Pre-Budget Submission 2020-21

On behalf of the Australian Seed Federation (ASF), I provide the attached submission in response to your call for priorities for the 2020-21 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 with 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 (ASF) submits the following recommendations to the 2020-21 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 harmonised 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.
- Support for training and education programs to further the skills and expertise in the seed and agriculture industry including attracting younger entrants and retaining employees in rural, regional, remote and CBD locations.

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 recently 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.

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

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 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.

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.

The ASF also strongly encourages the Australian Government to support a revision of the UPOV/EXN/EDV/2, Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention adopted on April 6, 2017.

The adoption of the Explanatory Notes on Essentially Derived Varieties (EXN EDV) in 2017, particularly part b) “Defining an essentially derived variety” (points 4 to 19) has raised deep concerns among plant breeders. The current text of the EXN EDV suggests a very narrow scope of the EDV concept, inter alia by indicating that one modification of an essential characteristic might lead to the new variety being out of the scope of the EDV concept. This narrow interpretation greatly endangers the breeding incentive and could possibly lead to a diminution of biodiversity, breeding effort, and eventually resulting in fewer choices available for the users of varieties and threatening the whole UPOV system.

Recommendation One

The ASF **recommends** the Australian Government:

- a) Provides appropriation funding to IP Australia to prioritise the introduction of an Information Notice System; and
- b) Supports a revision of the Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention

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

Although clearance times of seed imports improved in 2019, the seed industry continues to experience border clearance delays and inspection of seed imports which are unsustainable and are 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 led to the issue of seed import inspection delays being well over 7-days or more. Though improving, such 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 the Cost

Recovery Implementation Statement the Department consulted on in late-2019. The costs of export documentation processing (i.e. phytosanitary certificates) are also significant and require revision.

Recommendation Two

The ASF **recommends** the Australian Government consider the provision of appropriation funding to the Department of Agriculture to enable them to train biosecurity officers to more efficiently and effectively inspect seed imports to resolve the time delays currently being experienced. The funding could assist risk management and increase capacity and resources by 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 regulatory costs incurred by Australian small businesses involved in the import or export of seeds.

3. Globally harmonised phytosanitary testing protocols for imported seed

The Australian Department of Agriculture has introduced several 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.

Additional appropriation funding is also required to enable the completion of Pest Risk Analyses that have been ongoing for several years. Proper industry consultation is required to ensure these analyses provide certainty for seed importers.

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 the 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. The South Australian government has been proactive in exploring options to lift its GM moratorium on the mainland; whereas Tasmania announced a 10-year extension to their moratorium in mid-2019.

Recommendation Five

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.

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. Implementation of the recommendations of the Third Review of the National Gene Technology Scheme and the FSANZ Review of Food Derived from New Breeding Techniques

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.

In late 2019, the Department of Health issued a Discussion Paper on *Implementing Recommendations of the Third Review of the National Gene Technology Scheme*. In its submission, the ASF expressed its frustration at the excessive and seemingly endless rounds of consultation to deliver much-needed reform to the means by which gene technology is regulated in Australia. All agricultural peak industry bodies have expressed consistent views to the multiple consultation rounds regarding the need to update definitions, develop risk-proportionate regulation and streamline regulatory requirements. It not immediately clear why this substantial body of information was not considered sufficient to develop and consult on options for implementing the recommendations of the review.

To minimize regulatory asynchronicity, it is also important that FSANZ implement the outcomes of its Review of Food Derived from New Breeding Techniques in a timely manner. Currently, there is the risk a product developed using certain gene-editing techniques would be regulated as a GM food, but not as a GMO: this is far from ideal.

Recommendation Six

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.

7. Support for training and education programs to further the skills and expertise in the seed and agriculture industry including attracting younger entrants and retaining employees in rural, regional, remote and CBD locations.

The seed industry is very broad and diverse in ranging from family-owned businesses through to multinational corporations, located in rural, regional, remote and CBD locations around Australia. Collectively, the seed industry value chain in Australia is worth over \$1 billion dollars. It is one of the most important industries in Australia and provides essential inputs for Australia's food, feed and fibre industries. To secure our industry's future knowledge and expertise the ASF is investigating and investing in ways to provide training and education programs. Education and Training courses specifically designed and tailored to the seed industry need to be accessed in all areas and across several different mediums being online and in-person (practical and online assessment). Training and

Education are important for securing the future of the seed industry and may lead to innovative ways to further the development of our sector.

The ASF has already developed a Seed Industry Training Day which covers the main components of the seed industry value chain with a focus on understanding technical aspects for the commercial application in the seed business. This training day is mainly targeted at new entrants in the seed industry and providing them with an understanding of the full seed supply chain. Building on this introductory training program may require government support to develop a more comprehensive training and education module that could link into an industry-recognised qualification. Enhancing the seed industry's education and training programs will attract new and young entrants into the industry as well as retain and further develop and support those who currently work within the sector.

Recommendation Seven

The ASF **recommends** the Australian Government provide adequate funding to develop seed industry training modules and courses that can be delivered to new entrants into the sector and those who work within the industry in further developing their skill expertise and securing our industry for the future.