

2024-25 PRE-BUDGET SUBMISSION

The Treasury

January 2024



Recommendations

The Australian Seed Federation submits the following recommendations to the 2024-25 Federal Budget:

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.
2. Improved border clearance times and training of biosecurity officers for imported and exported seed.
3. Globally harmonised phytosanitary testing protocols, including a Systems Approach for imported seed.
4. Support for raising grower/nursery awareness of the seed industry's Code of Practice and 'Know Before You Sow' initiative.
5. Implementation of the recommendations of the Third Review of the National Gene Technology Scheme and the Technical Review of the Gene Technology Regulations and the FSANZ Review of Food Derived from New Breeding Techniques.
6. Support for attracting and retaining employees in the seed industry in both rural, regional and remote, and metropolitan locations.
7. Support to run carbon sequestration trials for the turf grass sector.

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.

There are ongoing and growing issues within the grains sector relating to the security of Plant Breeder's Rights and the field crop breeding industry's ability to secure their income through End Point Royalties (EPR) payments.

Declines in compliance with EPR payments, due to uncertainties related to PBR enforcement, is leading to reduced income to the field crop breeding sector and is having impacts on plant breeding businesses and their viability. Reduced investment in the plant breeding industry will have consequences for the future productivity of the Australian grains industry.

We are calling for the current review of Plant Breeder's Rights that is currently being undertaken by IP Australia to be funded appropriately so as to be expedited. The current lack of progress and clear timeframes around this review has raised concerns amongst members of Australia's broadacre crop breeding industry, as well as the broader grains industry.

The Australian agricultural sector is striving to reach \$100 billion farmgate value by 2030, up from the forecast value of \$73 billion for 2021-22, with the broader agribusiness supply chain working to reach \$300 billion. The Australian grains sector is the largest agricultural industry with over 22,000 farm businesses growing on average 47 million tonnes of grains, oilseeds and pulses each year for domestic and global customers. This creates \$28.6 billion in farm gate value and \$29.9 billion in annual exports (based on 5-year average to 2022-23).

Australia's wheat breeding programs have evolved from public programs that were privatised in the early 2000s. Since that time the rate of genetic gain in wheat, as measured by yield, has risen from 0.11% per annum to 0.82% per annum. This has led to an estimated \$3 billion of additional income (farm gate value) for Australian wheat growers over the last 20 years. These improvements

demonstrate both the value derived from plant breeding, but also the significant contribution that plant breeding makes to productivity gains in Australian agriculture.

The Australian grains industry is reliant on Australian plant breeders developing varieties that are suited to our environmental conditions and meet the needs and wants of growers as well as the specifications of our markets. The EPR system has allowed the Australian plant breeding sector to remain strong at a time when competing countries have seen a decline in plant breeding efforts. A survey of 278 public sector plant breeding programs in the U.S.A. found that many were short on funding, losing staff due to retirement and lacked succession plans.

The collection of EPR is facilitated through Plant Breeder's Rights. EPRs are, in effect, an annual licence fee paid by the growers of field crop varieties to the owner of the specific variety. The EPR is a rate charged on a per tonne basis when the grower sells their grain, typically \$3.00 to \$4.00 per tonne. The EPRs collected by plant breeding companies provide these companies with income that is reinvested by their businesses into research and development to underpin their plant breeding efforts as well as maintain their business operations. Breeding for wheat, barley, lupin and oats are now all undertaken by private breeding companies and are 100% reliant upon the collection of EPRs for their financial success and ongoing investment into breeding and receive no ongoing government support.

Breeding companies are faced with declining compliance relating to correct variety declarations and the payment of EPRs. In some regions compliance rates have fallen to as low as 46%. The estimated financial loss to the breeding sector in 2021-22, for wheat and barley is \$15.8 million and \$11.9 million respectively. Plant breeding companies have been working together, with the approval of the ACCC, on a comprehensive range of measures to address the compliance issues, but ultimately rates of compliance continue to decline. Examples of the measures implemented include:

- Marketing and education to inform grain growers of their rights and obligations.
- Developing and improving a common simplified process for declaring varieties at harvest.
- Contracting (willing) grain buyers to collect and remit EPRs on behalf of grain growers.
- Incentivising traders to participate through the provision of a fee.
- Appointment of an agent to act as a single point of contact for the traders.
- Funding software upgrades for traders to enable them to collect the EPR.

In the absence of a clearer legal basis for plant breeding companies to underpin compliance, companies will need to make the commercial decision to reduce their investment in breeding activities in regions of low compliance and redirect resources to states and regions where they are more assured of a financial return. This will reduce the productivity of the grains industry, at a time when productivity in the industry is coming under increasing pressures from biosecurity pressures as well as the impacts of climate change on seasonal productivity.

With the current review of the Plant Breeder Rights (PBR) Act being undertaken through IP Australia there is an opportunity to address this issue. There are three key areas within the Plant Breeder Rights Act that require clarification and or amendment to address issues related to intellectual property ownership. These include:

1. Clarify the definition of Propagating material to include Harvested Material from field crops

The definition of Propagating Material, within the Act, needs to be clarified to ensure that all seed (grain) harvested from field crops is clearly defined and considered to be Propagating Material and therefore a new "embodiment" of the variety owner's intellectual property. As a new "embodiment" of the variety, the variety owners will be able to claim that any grain buyers that offer for sale, sell or

export a variety would need a licence from the variety owner to do so. With that amendment it is clear that the grain buyer would be undertaking the activities c), d), f) & g) from section 11 of the PBR Act as listed below:

- a. produce or reproduce the material;
- b. condition the material for the purpose of propagation;
- c. offer the material for sale;
- d. sell the material;
- e. import the material;
- f. export the material;
- g. stock the material for the purposes described in paragraph (a), (b), (c), (d), (e) or (f).

2. Include a Purchase right to section 11 of the Act

A “Purchase Right” should be added to Section 11 of the PBR Act. This recommendation was made in 2010 and supported in the Advisory Council on Intellectual Property entitled “A review of enforcement of Plant Breeder’s Rights”, however it was not supported at that time by IP Australia.

While a clarified definition of Propagating Material would assist where a grain buyer is purchasing grain for the purpose of subsequent sale, it does not assist where the grain buyer is purchasing the variety for their own internal business or domestic use (for example as feed for stock or to use in milling). In that instance they are not undertaking any of the activities currently listed in section 11 of the PBR Act that require authorisation of the variety owner.

It is only with the inclusion of a Purchase Right to section 11 of the PBR Act that the variety owners would be able to ensure engagement with domestic users of their varieties. At present there are significant losses of EPR income when a variety grower does not declare their production and that production is sold to a domestic user who is also unwilling to assist in the EPR collection process. In some regions, the lack compliance is greater than 50%.

3. Introduce a Notice system to support compliance.

The addition of a Notice System to the PBR Act is essential to ensure variety owners have a mechanism by which they can gather information relating to their variety.

The accurate gathering of data relating to a grain growers harvest and therefore the EPRs that are payable is an ongoing issue for variety owners. While the vast majority of grain growers comply with their contractual obligation to complete an annual Harvest Declaration there are still a significant number who do not do so.

At present the variety owner has only one mechanism to enforce a grain grower to meet their contractual obligation to complete a Harvest Declaration. That is to commence legal proceedings in the courts. This is an approach that variety owners have not been willing to undertake due to the cost of such legal action, the number of actions that would need to be undertaken and the potential breakdown in valuable relationships between variety owners and growers.

The introduction of a Notice System that could be used to compel non responders to complete their harvest declarations would be a useful tool for the variety owner and improve the overall integrity of the system.

The introduction of such a system would need to be coupled with legislated penalties for failure to comply and/or the provision of false and misleading information. Likewise, penalties should apply for variety owners that misuse the Notice System to “harass” growers.

Recommendation one

The ASF **recommends** the Australian Government:

- Fund IP Australia to expedite the current review of Plant Breeder’s Rights
- Fund IP Australia to prioritise the introduction of an Information Notice System

2. Improved border clearance times and training of biosecurity officers for imported and exported seed.

Clearance times of seed imports have fluctuated over the past five years. After an improvement in 2019, COVID caused significant delays. Resulting recruitment issues due to a widely acknowledged workforce shortage has been one reason timeframe trends have not returned to an upward trajectory.

While we understand that biosecurity officers have had priorities of Varroa mite and foot-and-mouth disease prevention to contend with, the continued border clearance delays the seed industry continues to encounter are unsustainable.

Border clearance or seed import inspection delays impact the entire seed supply chain, including leading to increased transportation and freight costs. These cost and time impacts flow on to growers who work under strict seeding timeframes. Seed should be treated as a perishable commodity as delays can affect germination and seed quality.

The seed industry is at a disadvantage due to a lack of biosecurity officers trained in seed assessments. There are reports of there being as few as one or two biosecurity officers working to assess seed imports in Brisbane. This lack of resourcing can result in weeks-long delays.

Seed inspection is a specialised skill, and the seed industry is brimming with expertise and willingness to be an active partner in seed education to assist the department to train up more biosecurity officers for seed inspections.

The Australian Seed Federation has recently begun a project with teams within the Department of Agriculture, Fisheries and Forestry to address a disadvantage that the seed industry faces due to a lack of biosecurity officers trained in seed assessments. This is a very welcome development and members of the Australian Seed Federation have willingly engaged in the project to date, sharing their expertise, facilities and products for training purposes.

With further funding, this program could be expanded.

It is worth noting too that whilst it’s critical to have more biosecurity officers trained in seed inspections, the charge rate should be commensurate with expertise, given that those with less experience take longer to complete an inspection. Companies used to have the option to book inspections at a day rate which was both more efficient for the department and more cost effective for companies. This is no longer available.

Members of the Australian Seed Federation have repeatedly expressed their frustrations at the portal system which rather than improve timeliness of biosecurity inspections, has led to further delays,

frustrations, and inefficiencies. There are reports of biosecurity officers waiting in cars for hours for the portal to clear them to do a job which could have been completed in 15 minutes.

Inefficiencies are also seen regarding Approved Premises approvals. A small business and member of the Australian Seed Federation has an Approved Premises used almost exclusively to test ISTA proficiency samples. To achieve that Approved Premises status requires the submission of a range of documents. The process can take up to 120 days. This small business has been regularly audited and has been without issue.

They are now undertaking a building fit-out. Their existing approval room will be moved from the lower floor to the upper floor. The move does not require any transfer of biosecurity material outside of the confines of the building. The transfer could happen entirely under the supervision of a Biosecurity Officer.

All of the required documentation to move the already Approved Premises room has been submitted and they've been told the department still require the 120-day process period.

This means there is a purpose made room that cannot be used and the existing room which will be repurposed to a pathology laboratory cannot happen either.

Process for process-sake has huge consequences for businesses. Delays of this magnitude are completely unreasonable, especially when there is an easy solution proposed. Industry pays for these departmental inefficiencies.

It is important to note that the introduction of a primary production levy is not the solution to these biosecurity concerns. It is simply another levy imposed on an industry already significantly contributing to the scheme.

Recommendation two

The ASF **recommends** the Australian Government:

- Fund the Department of Agriculture, Fisheries and Forestry 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.
- Fund the Department of Agriculture, Fisheries and Forestry to engage in projects and processes that allows for co-design within Australia's biosecurity system to allow for a more connected, efficient and science-based system.

3. Globally harmonised phytosanitary testing protocols, including a Systems Approach for imported seed.

The Department of Agriculture, Fisheries and Forestry 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. This is also inefficient for Departmental staff.

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.

The seed business is global, and import/export of seed is essential for global food production, as well as to facilitate breeding of new plant varieties and the production of seed. As processing and seed testing is frequently centralised and seed lots are supplied to many different countries over a period of many years, re-export of seed is commonplace.

The current consignment-by-consignment phytosanitary certification for seed movement is more and more challenging because of an increase of very specific import requirements which makes re-export very difficult. Therefore, the Australian Seed Federation supports the development of an alternative option, a Systems Approach for seed, in which import and export of seed is possible in a certified supply chain, based on current industry pest management practices.

Initial discussions with staff at the Department of Agriculture, Fisheries and Forestry regarding a Systems Approach have been very positive.

The Australian Seed Federation encourages the Australian Government to actively participate in the International Plant Protection Convention (IPPC) efforts to develop a Systems Approach Annex to ISPM 38 on the International Movement of Seeds and financially support these efforts.

Recommendation three

The ASF **recommends** the Australian Government:

- Provide appropriation funding for the Department of Agriculture, Fisheries and Forestry 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; and
- Actively participate in the IPPC efforts to develop a Systems Approach Annex to ISPM 38.

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. The Australian Seed Federation has invested in a Smart from the Start checklist to minimise the risk associated with buying seed by suggesting some questions a seed buyer should ask the 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 the Australian Seed Federation's Code/s of Practice, which all members adhere to and are audited against, 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 make informed decisions about the suitability of seed for sowing.

Recommendation four

The ASF **recommends** the Australian Government consider the provision of appropriation funding to the Department of Agriculture, Fisheries and Forestry and RDCs such as AgriFutures and the Grains Research and Development Corporation 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 Third Review of the National Gene Technology Scheme and the Technical Review of the Gene Technology Regulations and the FSANZ Review of Food Derived from New Breeding Techniques.

In October 2018 the Gene Technology Ministers' Meeting 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.

In late 2020, the Department of Health issued a Consultation Regulation Impact Statement (CRIS) with options for proposed regulatory frameworks to support implementation of the Third Review of the Scheme.

In April 2023 the Gene Technology Ministers' Meeting met. They again committed to implementing Recommendations of the Third Review, including those requiring legislative amendment – almost five years after they first endorsed this. The GTMM agreed to a revised timeline in which the new legislation is expected to be introduced into the Commonwealth Parliament in 2024 after a period of extensive jurisdictional, targeted and public consultation.

This is now grossly overdue, and the Australian Government must fund the Department of Health to prioritise this implementation for the good of Australian biotechnology sector – both agricultural and medical, before the next review begins the following year.

To minimise regulatory asynchronism, 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 potential for 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. In late-2020, FSANZ advised of a further 6-month delay to release of its proposal to amend the Food Standards Code to address food derived from New Breeding Techniques. These indeterminable delays are not acceptable to industry and progress is imperative.

Recommendation five

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; and also allow FSANZ to progress with consultation on its proposal to amend the Food Standards Code to address regulatory matters for food derived from New Breeding Techniques.

6. Support for attracting and retaining employees in the seed industry in both rural, regional and remote, and metropolitan 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 metropolitan 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, feedstock and textile fibre industries.

To secure our industry's future knowledge and expertise the Australian Seed Federation has invested in a Seed Industry Professional Program to provide training and education programs for those currently in the industry and new entrants. Training and education is important for securing the future of the seed industry and may lead to innovative ways to further the development of our sector.

The seed industry, like so many agricultural industries is suffering from a diminished workforce and inability to attract and retain new staff.

The results from the The tripartite Agricultural Workforce Working Group, convened by the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Murray Watt, for the purpose of tripartite engagement on workforce issues have been pleasing. So too is the resulting Agricultural Workforce Forum which will continue the work in finding solutions that address workforce issues in the agriculture and processing sectors.

This forum will be crucial going forward and must be funded to ensure a future agricultural workforce that is robust.

Recommendation six

The ASF **recommends** the Australian Government provide adequate funding to the Agricultural Workforce Forum to see 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.

7. Support to run carbon sequestration trials for the turf grass sector.

Turf has been found to be an extremely positive carbon sequester. Given the sheer volume of land under turf cultivation, turf could be one of the biggest crops when it comes to sequestering carbon.

The turf seed members of the Australian Seed Federation are seeking investment to run field trials to consider the true value of carbon sequestration with turf grasses suitable for the Australian environment. The trials would consider and evaluate the trade-offs between maintenance intensity of turf, soil carbon storage and the overall turf aesthetics. When you consider the number of golf

courses, playing fields, public parks, schools and home gardens across Australia, all covered in turf, utilising this resource as a carbon sequester would be invaluable.

The Australian National Turfgrass Evaluation Program (ANTEP) was formed in 1997 by the turf seed members of the Australian Seed Federation due to there being insufficient independent varietal testing of turf material in Australia. This left turf managers having to evaluate their seed selection primarily off USA data.

In its more than 25 years of operation, ANTEP has successfully run trials of perennial ryegrass, tall fescue and Bermuda couch. For the next trials, ANTEP wants to consider more than colour, density, seasonal growth, wear tolerance and spring transition of turf grass and truly understand the potential turfgrass has as an environmental tool.

A modest financial investment to support an ANTEP trial covering carbon sequestration would bring about considerable rewards considering studies have shown turf sequestrates approximately 80-90% of the carbon in a home environment. The results of such a trial would allow turf managers a great return on investment, both financially and environmentally, from their choice of turf grass.

Recommendation seven

The ASF **recommends** the Australian Government provide funding to run a carbon sequestration trial for turf grasses suitable to the Australian environment.