

10 June 2016

Mr Jonathan Coppel
Commissioner
Intellectual Property Arrangements
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Coppel

RE: DRAFT REPORT – PRODUCTIVITY COMMISSION INQUIRY INTO INTELLECTUAL PROPERTY ARRANGEMENTS

CropLife Australia (CropLife) is the national peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of crop protection and agricultural biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security.

Meeting the challenges presented by sustainably increasing food production to meet growing global demand will require science-based innovative production systems grounded in a strong, robust and workable intellectual property (IP) framework. In particular, innovative crop protection and crop biotechnology solutions can assist farmers in producing high yields with fewer natural resources by reducing water consumption, increasing a crop's nutrient uptake and significantly reducing the need for other inputs.

CropLife's initial submission to this Inquiry highlighted the role that IP plays in modern agriculture and the effect any reduction or removal of existing IP protections for crop protection or crop biotechnology products would have on the availability of agricultural innovations, including genetically modified (GM) crops or agricultural chemicals in Australia.

CropLife welcomes the opportunity to provide these additional comments to specific requests for information and on Draft Recommendations made in the Commission's Draft Report.

Draft Recommendation 6.1

Amend ss7(2) and 7(3) of the *Patents Act 1990 (Cth)* to raise the overall threshold for inventive step

Any amendments to the overall threshold for inventive step should not come at a cost for Australian inventors and users. Patents will generally be filed in a variety of countries and the threshold in Australia should not be higher than that in other countries. This will prevent new technologies from coming onto the Australian market and will also place Australian inventors at a disadvantage.

Draft Recommendation 12.1

Amend the *Plant Breeder's Rights Act 1994 (Cth)* to enable essentially derived variety declarations to be made in respect of any variety

Extending essentially derived variety (EDV) declarations would enhance the efficiency of the plant breeder's rights system and therefore CropLife supports this draft Recommendation. This will provide better protection, and importantly certainty, to companies to pursue agricultural innovations.



Draft Recommendation 14.1

Repeal s51(3) of the *Competition and Consumer Act 2010* (Cth)

Section 51(3) should not be repealed as it will create uncertainty in how patent licences can be managed and lead to reduced incentive to invent. This is especially so in the agricultural sector, where breakthrough inventions can have rapid uptake and critical innovation is urgently required.

CropLife does, however, note the positions of the Productivity Commission and of the Australia Competition and Consumer Commission (ACCC) in relation to this section. Given the importance of a position of certainty about the environment in Australia for owners of IP, should this section be repealed there will be a critical and essential need for:

- the ACCC to undertake significant consultation with stakeholders about any proposed guidelines; and
- any proposed amendments to the *Competition and Consumer Act 2010* (Cth) (CCA) relating to block exemptions powers under the CCA be similarly subject to an "Exposure Draft" and extensive stakeholder consultation.

Information Request 12.1

Would extending the Essentially Derived Variety coverage to all plants reduce the potential for patent sniping of varieties protected by PBR.

A patent on a plant variety only covers a single plant variety or genome and that protection offered is therefore quite limited. Such a patent does not protect the plant's phenotypic characteristics, mutations of the patented variety nor technologies for its cultivation. As such, care needs to be taken when looking to address issues such as 'patent sniping' in this area.

Indeed, in the case of *Grain Pool v Australia* of 2000, the Australian High Court held that there is no intrinsic legal impediment to the patenting of plant varieties. The Australian Patent Office *Manual of Patent Practice and Procedure* also confirms that with respect to eligibility, a plant variety should be treated as an article of manufacture if it satisfies the requirements set forth in the case *National Research Development Corporation* (i.e. if it is not naturally occurring, if its development involves the technical intervention of *man* and the variety has economic utility). The threshold for obtaining a patent on a plant variety is quite high and is the same as for any other patentable invention.

In order to ensure the ongoing agricultural innovation required to meet a growing population's needs, it is of key importance to provide plant variety innovators with tools adequate enough to protect their innovations, including plant breeder's rights and patents on plant varieties. The combination of these different, but complementary intellectual property protections for plant varieties, is required to provide the incentive needed for the continued development of new plant varieties and thus to ensure the availability of these new plant varieties for the Australian farmers.

CropLife would therefore, as stated previously, welcome extending EDV coverage, as it would enhance the efficiency of the plant breeders' rights system. This should not, however, come at the detriment to, or undermining of the effective scope of protection under the plant variety patent system.

Please do not hesitate to contact either myself or CropLife's Crop Biotechnology Policy Manager, Mr Osman Mewett, should you have any questions or require further information in respect of any aspect of this submission.

Yours sincerely

Matthew Gossey
Chief Executive Officer