8 December 2017

IP Australia
consultation@ipaustralia.gov.au

Dear Secretariat

Re: Proposed changes to the Plant Breeders Rights Act

The National Farmers’ Federation (NFF) thanks IP Australia for the opportunity to provide comment on the draft legislation: Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Bill and Regulations 2017. We apologise for the delay in providing comment.

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia’s foremost and respected advocacy organisations.

Since its inception in 1979, the NFF has earned a reputation as a leader in the identification, development and achievement of policy outcomes - championing issues affecting farmers and dedicated to the advancement of agriculture.

The NFF is represented on IP Australia’s Plant Breeder’s Rights (PBR) Consultation Group. The NFF is supportive of the plant breeders’ rights on the basis that it maintains a balance between enabling private investment in plant breeding and the public good of competitive markets in plant breeding material. Commercial breeding of plant varieties is essential to the productivity of Australia’s plant-based agricultural industries.

Based on feedback from members, we are supportive of the proposed changes contained in the draft legislation for the following reasons:

- Allowing an essentially derived variety (EDV) to be declared for a non-PBR protected variety. This addresses a current loop hole in the current legislation and protects the intellectual contribution of the party that developed the original variety of plant. However, we support calls for appropriate transparency in this process that affords appropriate notice to the EDV breeder and requires sufficient information to be provided to establish that the second variety is an EDV.

- The NFF notes that the proposed protections against threats of infringement are intended to protect parties against unsubstantiated claims. This is important to encourage the development of new innovative varieties. However, we also support protections of those issuing threats when it is appropriate to do so in order to protect their intellectual property.
- We are supportive of further powers to award damages under the PBR Act, bringing the rights of breeders into line with measures in place for patents and trademarks.
- Similarly, we support measures for exclusive licensee to take legal action for infringements. This is equitable particularly in circumstances where an exclusive license was obtained through a commercial transaction. This affords the licensee holder with appropriate protections and aligns with measure in place for patents and trademarks.

For further information please contact Mr Mark Harvey-Sutton, Manager of Rural Affairs at the National Farmers Federation on 02 6269 5666 or at mharveysutton@nff.org.au.

Yours sincerely

TONY MAHAR
Chief Executive Officer