

BLAKE DAWSON WALDRON

L A W Y E R S

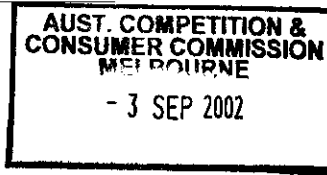
Level 39
101 Collins Street
Melbourne VIC 3000

legal.info@bdw.com.au

Telephone (03) 9679 3000
Int + 61 3 9679 3000
Fax (03) 9679 3111
DX 187 Melbourne

GPO Box 4958 WW
Melbourne VIC 3001
Australia

Partner
Ayman Guirguis
Telephone (03) 9679 3778



Mr Tim Grimwade
General Manager, Adjudications
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Our reference
AAG: 1315 4598

Your reference

3 September 2002

Dear Mr Grimwade

AWB Ltd trading as AWB Seeds ("AWB Seeds") – Notice under section 93 of the Trade Practices Act ("TPA")

We act for AWB Seeds.

On behalf of AWB Seeds, we lodge the attached Notice with the ACCC under section 93(1) of the TPA as well as an accompanying submission.

While the Notification process is a public one, we advise that the attachments to both the Notice and the submission, as well as a section of the submission (that is identified by brackets and headed CONFIDENTIAL), are "commercial in confidence".

Accordingly, we request that the ACCC maintain the confidentiality of the attachments to the Notice and submission and not place them on the public register. We also request that the ACCC excise the confidential section of the submission that will be placed on the ACCC's public register.

We look forward to your confirmation about our client's request for confidentiality.

We also note that for the purposes of privacy, we have excised from the lists that are attached to the notice, the names individuals (as opposed to corporations) that are Seednet distributors or that are retailers. The sections that are excised are apparent on the face of the documents. In the event that the ACCC requires the names of these persons, we would be grateful if you would make such a request in writing.

If you have any queries or would like to discuss our client's Notice further please contact me on (03) 9679 3778.

MELBOURNE
SYDNEY
BRISBANE
PERTH
CANBERRA
LONDON
PORT MORESBY
JAKARTA
SHANGHAI

Yours sincerely

Ayman Guirguis

141388996

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93 (1)

EXCLUSIVE DEALING:

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(Please read directions and notice on back of form)

1. (a) Name of person giving notice AWB Limited (ABN 99 081 890 459) trading as AWB Seeds ("AWB Seeds")
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person AWB Seeds aggregates, markets and supplies broad acre seeds for which it has registered plant breeder rights or for which it has been granted a licence by the registered owner of the plant breeder rights to commercialise the seed variety. The seed varieties include wheat and pulse seeds.
- (c) Address in Australia for service of documents on that person Mr Andrew McConville C/- AWB Seeds, GPO Box 4562, Melbourne, Victoria, 3000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates. The notice relates to agreements entered into by AWB Seeds with each of the Seednet distributors (allowing them to produce specified seed varieties of wheat and other seeds ("the Seed Varieties") and to sell the Seed Varieties to retailers and growers) and retailers and growers allowing the Seednet distributors and retailers to sell the Seed Varieties and growers to purchase and plant the Seed Varieties. The Seed Varieties that at present are the subject of this Notice are listed in Appendix A to this Notice.

(b) Description of the conduct or proposed conduct. AWB Seeds is proposing that:

(i) Seednet distributors will sell the Seed Varieties to retailers that have entered into a Marketing and Trade Agreement with AWB Seeds, and growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to provide AWB Seeds with an end point royalty; and

(ii) nominated retailers will sell the Seed Varieties to growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to provide AWB Seeds with an end point royalty (and other retailers that have entered into a Marketing and Trade Agreement with AWB Seeds).

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates

- AWB Seeds;
- Existing and prospective grain growers wishing to purchase the Seed Varieties;
- Existing and prospective Seednet distributors that enter into agreements with AWB Seeds from time to time; and
- Existing and prospective grain retailers that have entered into agreements with AWB Seeds from time to time.

The Seednet distributors and retailers that at present are proposed to participate are set out in Appendix B to this Notice.

(b) Number of those persons-

(i) At present time approximately 3000 persons seek to obtain these seeds both for the upcoming season and the following season

(ii) Estimated within the next year 3500.....

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses

.....
.....
.....
.....

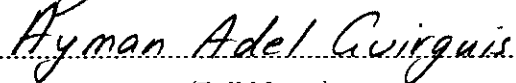
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice **Mr Ayman Guirguis, Blake Dawson Waldron, Level 39, 101 Collins Street, Melbourne, Victoria, 3000, Australia**

Dated 3 September 2002

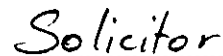
Signed by/on behalf of the person giving this notice



.....
(Signature)



.....
(Full Name)



.....
(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47 (2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3 (b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93 (7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93 (3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act, it comes into force when it is given.

APPENDIX A

Group A

Anlace Soft Wheat
Arrivato Durum Wheat
Bowerbird White Wheat
Chara White Wheat
Drysdale White Wheat
Goldmark™ White Wheat
Lang White Wheat
Lorikeet Specialty Wheat
Kukri White Wheat
Karlgarin White Wheat
Mira White Wheat
Petrie White Wheat
QT8750 (as yet unnamed) White Wheat
Silverstar™ White Wheat
Westonia White Wheat
Yitpi White Wheat

Group B

Moonah Narrow Leaf Lupins
Jindalee Narrow Leaf Lupins
Manafest Faba Beans
Kaspa Field Peas

Group C

Brennan Winter Wheat
Dennis Winter Wheat

Gordon Winter Wheat
Tennant Winter Wheat
Rudd Winter Wheat

Group D

Caliph Barrel Medic
Herald Strand Medic
Mogul Barrel Medic
Santiago Burr Medic
Essex™ Snail Medic
Silver™ Snail Medic
Cadiz Pink Serradella

**Confidentiality has been granted for APPENDIX B. Public
access is not permitted**

SUBMISSION TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION IN SUPPORT OF
NOTIFICATION UNDER SECTION 93(1) OF THE *TRADE PRACTICES ACT* 1974 (CTH)

1. INTRODUCTION

This submission is in support of a notice lodged under section 93(1) of the *Trade Practices Act* 1974 (Cth) in relation to conduct potentially falling within sections 47(6) or (7) of the *Trade Practices Act*. Accordingly, the relevant test to be applied by the Commission is set out in section 93(3A) of the *Trade Practices Act*, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

AWB Limited trading as AWB Seeds ("**AWB Seeds**") has been granted licences to the plant breeder's rights ("**PBR**") in the seed varieties listed in Annexure A to the Notice that accompanies this submission ("**the Seed Varieties**"). The majority of the licences granted to AWB Seeds have been secured via tender from a number of publicly owned plant breeding organisations.

AWB Seeds, pursuant to its interest in the Seed Varieties, requires that persons seeking to sell grain grown from the Seed Varieties agree to pay AWB Seeds an end point royalty calculated on the amount of grain that is sold, bartered, exchanged or consumed.

The Seed Varieties are grown and sold as follows:

- (a) in respect of some of the Seed Varieties, AWB Seeds outsources the growing of commercial quantities of such seeds to third party specialist seed growers. Once the commercial quantities of the Seed Varieties are grown, AWB Seeds sells the Seed Varieties to:
- retailers with whom AWB Seeds has entered into a Marketing and Trade Agreement, for resale by those retailers to growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to pay AWB Seeds an end point royalty (or in some circumstances, resale to other retailers who have entered into a Marketing and Trade Agreement with AWB Seeds); and
 - growers with whom AWB Seeds has entered into a Seed Sales Contract under which they agree to pay AWB Seeds an end point royalty; and
- (b) in respect of some of the Seed Varieties, AWB Seeds enters into a Seednet Seed Production, Processing and Distribution Agreement under which the Seednet distributors grow commercial quantities of the Seed Varieties and thereafter sells the Seed Varieties to:
- retailers with whom AWB Seeds has entered into a Marketing and Trade Agreement, for resale by those retailers to growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to pay AWB Seeds an end point royalty (or in some circumstances, resale to other retailers who have entered into a Marketing and Trade Agreement with AWB Seeds); and
 - growers with whom AWB Seeds has entered into a Seed Sales Contract under which they agree to pay AWB Seeds an end point royalty.

We attach a copy of :

- a Marketing & Trade Agreement that is entered into by AWB Seeds and retailers (attached as **Annexure 1** to this submission);
- a Seed Sales Contract (a licence) that is entered into by AWB Seeds and growers (attached as **Annexure 2** to this submission); and
- a Seednet Seed Production, Processing and Distribution Agreement that is entered into by AWB Seeds and the Seednet distributors (attached as **Annexure 3** to this submission).

**CONFIDENTIALITY
GRANTED**

The conduct that is the subject of the notice relates to:

- (a) the Seednet distributors supplying the Seed Varieties to retailers that have entered into a Marketing and Trade Agreement with AWB Seeds (in some circumstances retailers may also supply other retailers on the same basis); and
- (b) the Seednet distributors and/or retailers supplying growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to pay AWB Seeds an end point royalty, calculated on the amount of grain grown from the Seed Varieties that is sold, bartered, exchanged or consumed (collectively referred to as "**the Conduct**").

1.1 **The *Plant Breeder's Rights Act* 1994 (Cth) ("the PBR Act")**

The PBR Act was enacted in recognition of the Government's view that "continued innovation is needed to maintain Australia's competitiveness in agricultural and horticultural industries and that the stimulation of technology transfer is crucial to maintaining Australia's access to new plant varieties for all plant industries."¹ The PBR Act provides for the granting of proprietary rights to breeders of new varieties of plants. Upon application by the breeder or their assignee, the Plant Breeder's Rights Office may grant a Plant Breeder's Right ("PBR") in the variety. A PBR continues for 25 years from the date of granting in relation to trees or vines, and 20 years from granting in all other plant varieties. Section 11 of the PBR Act provides that the PBR in a plant variety is the exclusive right to do, or to licence another person to do, certain acts in relation to propagating material of the variety which include:

- (a) produce or reproduce the material;
- (b) condition the material for the purpose of propagation;
- (c) offer the material for sale; and

¹ Second Reading Speech 24 March 1994, delivered by Senator J P Faulkner.

- (d) sell the material.

In the case of the Seed Varieties, a grower who purchases the seed must not reproduce or sell seed without obtaining a licence from the PBR owner or licensee (agreeing to pay a royalty to the PBR owner or licensee).

1.2 Seed Varieties grown in Australia

The Seed Varieties are grown throughout Australia. Last year, over 12.5 million hectares of wheat was grown in Australia. There are over 100 wheat seed varieties currently available to and used by growers in Australia (approximately 25 of these varieties (for which plant breeder's rights are registered) attract end point royalties). These wheat varieties are supplied by the following seed manufacturers/distributors and retailers:

- Planttech Pty Ltd (jointly owned by Elders Limited and Grainco Australia Limited)
- Sunprime Seeds Pty Ltd (joint venture of The University of Sydney, Grains Research and Development Corporation and GrainCorp Operations Limited)
- GrainCorp Operations Limited
- The University of Sydney
- Wesfarmers Limited
- Elders Limited
- Rural Co
- Other ancillary independent retailers

Wheat breeders include:

- Public Breeding Programs
- Agriculture Victoria
- NSW Agriculture
- Queensland Department of Primary Industries
- University of Sydney
- CSIRO
- Western Australian Department of Agriculture
- Luminus (University of Adelaide)
- South Australian Research and Development Institute.

Private Breeding Programs include:

- Grain Biotech Australia Pty Ltd
- Heritage Seeds Pty Ltd
- Crop&Food Research
- AWB Seeds
- Longreach Plant Breeders Management Pty Ltd.

The Conduct will affect only 5% of the available wheat seeds sown in Australia in any year.

The Seed Varieties include the following varieties which have been developed to offer advantages over other wheat varieties:

- Yitpi - a variety bred for the 'mallee' type soils of Victoria, South Australia and Western Australia. This variety has improved yield, a higher grain classification and improved boron tolerance in comparison to other wheat varieties such as the "Frame" variety which is commonly used by growers in these regions.
- Chara – this wheat variety boasts an improved grain classification, yield and disease resistance in comparison to other wheat varieties used in Southern NSW such as the "Janz" variety.
- Lang – the advantages of this variety is improved resistance to crown rot, septoria and black point in comparison to a number of other varieties commonly used in southern Queensland and northern NSW.
- Kukri – as with the Lang wheat variety, this variety has shown improved disease resistance over other varieties, short season maturity which provides flexibility to growers as well as unique and improved end user characteristics.

2. THE ROYALTY SYSTEMS

2.1 Seed Based Royalty Collection

Plant breeders sometimes collect royalties on their PBRs via the levying of a royalty on seed at the time of purchase of the seeds by growers (Seed Based Royalty Collection or "SBR"). Consequently some seed varieties which are subject to PBRs are being sold with an added premium in consideration for the PBR.

Under the SBR System, AWB Seeds, as owner or licensee of the PBRs in particular seed varieties, either licences or sub-licences the PBRs through retailers or AWB Seeds sells the seed directly to growers. Where AWB Seeds sells to retailers, a licence agreement between AWB Seeds and the retailer allows the retailer to sell seed to the grower without the grower being required to enter into any licence agreement in respect of the PBR in that seed variety. AWB Seeds obtains royalties on these varieties by the grower paying royalties as part of the purchase price of the seed (either directly or through the retailer).

2.2 Shortcomings of the SBR System

Under the PBR Act, growers are permitted to "reuse" seed. This means that growers can legally retain grain from their crops (grown from varieties protected by the PBR Act) and reuse this grain as seed in future years (known as "grower saved seed").² However, the PBR owner retains the exclusive right to sell the seed, and any grain subsequently grown from it, unless the grower obtains a licence to do so. PBR owners of more mainstream wheat varieties (subject to a SBR system) are generally not able to recoup the costs of breeding their varieties as well as those who can levy royalties under an EPR system.

Under the SBR system, growers do not obtain a licence from the PBR owner, or its assignee or licensee. As a result, the PBR owner does not have effective control of the propagation of seed once it is sold to the grower. For example, the seed may be on-sold, or used to produce more seed for sale to other growers. Such acts would be in contravention of the PBR owner's rights in the seed. However, the fact that there is no direct contractual relationship between AWB Seeds and the grower means that AWB Seeds is unable to exercise monitoring or auditing rights, resulting in any contravention being very difficult to prevent or detect. Therefore, although PBR owners have statutory rights, they are difficult to enforce and much grain is produced and sold using grower saved seed, thereby avoiding payment of royalties to the PBR owners.

If no other effective means of levying royalties on these wheat varieties is allowed that enables plant breeders to receive an adequate return on their investment in breeding such varieties, a number of breeding programs may close. This would, in turn, have a negative effect on growers (in the varieties available to them and the prices at which they can sell their produce) and ultimately reduce the competitive advance of Australian wheat internationally (in particular, in the international climate where the grain market is heavily subsidised).

2.3 End Point Royalty Collection

The end point royalty system of collecting royalties ("EPR") involves a royalty scheme which aligns royalty collection with the purpose of the PBR Act which was introduced to:

[provide] for increased scope and effectiveness of the breeder's right on protected varieties and [further, it was envisaged that], in the *national interest*, all sectors of the agriculture and horticulture industries, including public and private plant breeders, will jointly use the business assets that PBR provides to develop marketing and *breeder royalty systems* appropriate to their industry sectors.³

An EPR is a royalty paid on every tonne of grain produced by growers. The EPR is only paid by the grower when grain is sold, bartered, exchanged or consumed but does not apply to grain retained by growers for use as seed in future years. EPR collection has already been implemented in several crop species in Australia (such as canola, faba beans, lentils, lupins and barley).

² A distinction is made in the industry between *seed* (which is planted) and *grain* (which is the harvested material).

³ Second Reading Speech 24 March 1994, delivered by Senator JP Faulkner, emphasis added.

The EPR system for the Seed Varieties proposed by AWB Seeds involves:

- (a) the grower, as part of the purchase of the Seed Varieties, entering into a Seed Sales Contract with AWB Seeds under which it agrees to pay EPRs to AWB Seeds on produce derived from the Seed Varieties if sold or used (a licence between AWB Seeds and the grower); and
- (b) the retailer that purchases the Seed Varieties from a Seednet distributor, another retailer or AWB Seeds entering into a Marketing and Trade Agreement with AWB Seeds in order to ensure that at the time that the retailer sells the Seed Varieties to a grower, the grower agrees to the payment of EPRs to AWB Seeds as referred to in (a) above.

The notice therefore relates both to the Seednet distributors and retailers selling seeds to other retailers that have entered into Marketing and Trade Agreement with AWB Seeds and to Seednet distributors and retailers requiring growers to enter into a Seed Sales Contract with AWB Seeds under which they agree to pay an EPR to AWB Seeds. Both elements of the Conduct are ultimately aimed at ensuring that AWB Seeds is paid the EPR to which it is entitled upon the sale, barter, exchange or consumption of the Seed Varieties by growers.

In relation to the EPR system, the Seed Sales Contract:

- results in a reduction in the initial purchase price of the Seed Varieties;
- provides that the EPR must be paid by the grower on all produce sold or used which is derived from the Seed Varieties;
- suggests methods for the grower to pay EPRs;
- allows the grower to save seed (which may be derived from produce) for use in future crops; and
- provides the protection of the PBR owner's intellectual property.

Under the EPR system, the EPR paid will be calculated according to the amount of harvested wheat sold or used (but not as grower saved seed) by the grower, as opposed to the SBR system where the royalty is paid "up front", based on the amount of seed purchased, and irrespective of the variety's performance.

3. PUBLIC BENEFIT

The main benefits of the proposed conduct are:

- (a) **Reduction in up-front costs to growers.** Under the EPR system, growers wishing to grow the Seed Varieties stand to benefit in that they pay less when purchasing seed in comparison to if the Seed Varieties were being sold via an SBR system. The EPR system will allow growers more flexibility in allocating their finances in that they do not need to pay royalties until they sell or use the produce derived from the Seed Varieties.
- (b) **Re-allocation of risk from individual grower, to PBR owner.** As the EPR is only calculated in respect of grain sold or used (but not as grower saved seed), in the event that a crop is ruined or performs badly, an EPR will not be payable, or significantly reduced (depending on yield) under the EPR system. Compared to

the current structure, this change represents a reduction in the risk borne by the grower. These risks will, under the proposed structure, be borne by the PBR owner.

- (c) **Encouragement of innovation.** The PBR Act creates intellectual property in plant varieties with a view to providing a stimulus to innovation by encouraging increased investment in plant breeding and technology transfer.⁴ This has been identified as an important element in maintaining trading competitiveness.⁵ As discussed above, it is difficult to monitor compliance with PBRs. The EPR system, in helping to ensure compliance with the PBR owner's rights under the PBR Act, will assist in giving effect to the objectives of the PBR Act.

The importance of encouraging continued innovation has also been recognised by various government bodies, grower representative bodies and grain industry research bodies who give their support to the introduction of EPR systems, including the Victorian Farmer's Federation, the Standing Committee on Agriculture and Resource Management's Plant Industries Committee and the Grain Research and Development Corporation, as set out in the following paragraphs.

- (d) **To develop a more efficient and prosperous seed industry in Australia.** There are various studies, reports and research undertaken by organisations involved in or related to the seed industry which suggest that an SBR system of collecting royalties will not sustain private plant breeding and further innovation in Australia.⁶ In particular, the following extracts are illustrations of the recent approach taken by the seed industry to EPR system of levying royalties on seed varieties:

- (i) Background paper to the Victorian Farmers Federation's 2002 Grains Conference lists the following benefits of EPRs:
- "Unlike up front fees (SBR), EPRs reward in paddock performance. If the characteristic advertised in the new variety for example: higher yield or protein [is present, and (sic)] the grower benefits from the higher return at point of delivery, the company (breeder of variety) is rewarded";
 - "EPRs reduce the initial seed costs to growers adopting a new variety, therefore encouraging wider grower uptake of a new variety";

⁴ Second Reading Speech 24 March 1994, delivered by Senator JP Faulkner.

⁵ Second Reading Speech 24 March 1994, delivered by Senator JP Faulkner.

⁶ Notes prepared for Grain Research and Development Corporation's ("GRDC") Value Chain & Post Farm-Gate Program by Mike Taverner, GRDC Program Consultant, "Supporting a more internationally competitive seed industry in Australia", November 2001. See also Watson, A. GRDC, "The Impact of Plant Breeder's Rights and Royalties on Investment in Public and Private Breeding and Commercialisation of Grain Cultivars".

- “If a grower invests in new seed (through high up-front seed costs) they carry the risk if that variety does not perform. If an EPR applies the company (breeder of the variety) carries some of the risk as well”; and
 - “EPRs can in effect provide a system of tracking whether that variety remains popular over an extended period of time.”
- (ii) Victorian Farmers Federation’s 2002 Grains Conference passed the following resolution supporting the collection of EPRs:
- “That the Grains Group recognises the need for the collection of end point royalties as an effective method of cost recovery and commercial return for investors in plant breeding and commercial partners.”
- (iii) The Plant Industries Committee of the Standing Committee on Agriculture and Resource Management (“SCARM”) (a division of the Agriculture and Resource Management Council of Australia and New Zealand) endorsed the use of EPRs in commercial contracts as a means of promoting private sector investment in plant breeding in its March 2000 report.

4. NO PUBLIC DETRIMENT

The proposed conduct will not result in a public detriment as it does not restrict:

- retailers or growers from being able to purchase (and plant) the Seed Varieties because there are no restrictions on the number of Marketing and Trade Agreements or Seed Sales Contracts to be entered into by AWB Seeds. In fact AWB Seeds is seeking the widest possible levels of sales to retailers and growers;
- the retailers' ability to choose whether to purchase the Seed Varieties from AWB Seeds or Seednet distributors;
- the growers' ability to choose the retailer of their choice;
- the growers ability to purchase from multiple retailers, provided that the grower enters into a Seed Sales Contract before purchasing any of the Seed Varieties; or
- the growers ability to sell grain to any grain marketer.

Both presently and in the future, the ability of AWB Seeds to charge royalties in respect of the Seed Varieties technology is and will be constrained by natural competitive forces such as:

- the very ready availability of other wheat seed varieties (including other varieties subject to other EPR Systems);
- the global nature of the wheat market;
- growers refusing to pay a premium for varieties attracting PBRs unless the advantages, for example by way of improved yield or increased disease resistance, make the particular variety superior to the other varieties available; and

- retailers refusing to purchase seeds at all or certainly pay a premium for varieties attracting PBRs unless growers are prepared to purchase the seed.

The above competitive dynamics will continue to operate in the future (and, indeed, may be enhanced by the EPR system), and accordingly, the conduct is unlikely to have a detrimental effect on price or price competition, including EPR rates, in relation to the supply of Seed Varieties.

**Confidentiality has been granted for ANNEXURE 1. Public
access is not permitted**



ANNEXURE 2

Seed Sales Contract

Date _____

Contract No. _____

THIS CONTRACT is made between AWB Limited ABN 99 081 890 459, trading as AWB Seeds ("AWB Seeds") and the Grower named in Clause 1.

PURPOSE This contract sets out the terms and conditions under which the Grower obtains from AWB Seeds, or its duly authorised agent ("Seller"), seed of the variety specified in clause 1 ("Seed"), for use in crop production ("Commodity").

1. Grower (Trading Name) _____ Contact Name _____
Address _____ Post Code _____
Phone No _____ Fax No _____ Mobile No _____
AWB Registration No. (s) _____ Share Farm Registration No. _____
Seed Variety Supplied _____ Packaging Supplied 40kg | 50kg | Bulka Bags | Bulk (circle one)
Seed Line No. (s) _____ Quantity Supplied (mt) _____
Quantity Supplied (mt) _____ Total Quantity Supplied (mt) _____
Quantity Supplied (mt) _____

2. Seed Supply

- (a) AWB Seeds agrees to supply Seed to the Grower from an approved Seller.
(b) The Grower acknowledges receipt and acceptance of varietal purity in the form of a Seed crop and/or Seed analysis report from Agrifood Technology Pty Ltd (ABN 52 085 032 104) or a third party inspection agency ("advice").
(c) AWB Seeds does not guarantee that the Seed supplied is free from disease or other defect.
(d) The Grower acknowledges that the Grower or the Grower's servants or agents are not in unauthorised possession of the Seed or Commodity...

3. Commodity Delivery and Royalty Payment

- (a) The Grower agrees that the Seed is subject to a breeder royalty. If the royalty is not applied to the Variety stated in Clause 1 at the time of Seed purchase then the Grower agrees to pay a royalty on all Commodity produced.
(b) The Grower agrees that it is a fundamental term of this contract to pay the EPL if applicable to the Variety stated in Clause 1.
(c) AWB Seeds will deduct the EPL from deliveries made to AWB Limited or it's Related Bodies Corporate.
(d) AWB Seeds may, on notification to the grower, appoint a third party, such as a private grain buyer, to collect an EPL on deliveries made to that agent on behalf of AWB Seeds.
(e) Commodity production from the original Seed may be retained as Seed for subsequent planting by the Grower named in Clause 1 only.
(f) AWB Seeds may encumber any of the Grower's other payments from AWB Limited or its Related Bodies Corporate to recover any monies due to AWB Seeds under this contract.

Important Note: The Grower acknowledges to have read, understood and accepted the terms of this contract upon signing. In particular the Grower acknowledges that AWB Seeds is either: - (a) A Licensee of the Seed variety stated in clause 1 and that all dealings relating to the cultivar are subject to the terms of the License and this contract; or (b) A Licensee or Sublicensee under PBR of the variety of Seed stated in clause 1 and all dealings relating to the variety are subject to PBR and the terms of the License or Sublicense; meaning that any unauthorised commercial propagation or any sale, conditioning, export, import or stocking of the Seed or Commodity is an infringement of the rights of the Licence or Sublicense and an infringement under the Plant Breeders Rights Act 1994.

Grower _____ AWB Limited or its duly authorised agent ("Seller") _____
Date _____ Seller Name _____
Date _____

Appendix A - Breakdown of End Point Levy

Variety	Total End Point Levy (EPL) Payable \$ per mt including GST	GST Payable	Breeder Royalty \$ per mt	Commercial Fee \$ per mt
Aniace Wheat	\$1.10	\$0.10	\$0.50	\$0.50
Arrivato Wheat	\$3.30	\$0.30		
Bowerbird Wheat	\$1.10	\$0.10	\$0.70	\$0.30
Brennan Wheat	\$1.10	\$0.10		
Chara Wheat	\$1.10	\$0.10	\$0.55	\$0.45
Dennis Wheat	\$1.10	\$0.10		
Goldmark Wheat	\$1.10	\$0.10		
Gordon Wheat	\$1.10	\$0.10		
Jindalee Narrow Leaf Lupin	\$1.38	\$0.125	\$0.95	\$0.30
Karigarin Wheat	\$1.60	\$0.145	\$1.00	\$0.45
Kaspa Field pea	\$2.20	\$0.20	\$1.70	\$0.30
Kukri Wheat	\$1.10	\$0.10	\$0.65	\$0.35
Lang Wheat	\$1.10	\$0.10	\$0.55	\$0.45
Lorikeet Wheat	\$1.10	\$0.10	\$0.65	\$0.35
Manafest Faba Beans	\$3.30	\$0.30	\$1.75	\$1.25
Mira Wheat	\$1.10	\$0.10	\$0.50	\$0.50
Petrie Wheat	\$1.10	\$0.10	\$0.55	\$0.45
QT8750 (as yet unnamed)	\$1.10	\$0.10	\$0.70	\$0.30
Rudd Wheat	\$1.10	\$0.10		
Silverstar Wheat	\$1.10	\$0.10		
Tennant Wheat	\$1.10	\$0.10		
Yitpi Wheat	\$1.10	\$0.10	\$0.55	\$0.45

GST - AWB Seeds may, on the issue of a valid tax invoice, recover from the Grower any goods and services tax ("GST") paid or payable by AWB Seeds with respect to any taxable supply of goods and services by AWB Seeds to the Grower. Any Levies or Royalties charged are taxable supplies and AWB Seeds may recover from the Grower an additional amount as GST.

Grazing or Hay - A Grower who has purchased an AWB Seeds variety listed in Appendix A has a contractual obligation to remit an EPL payment to AWB Seeds, even if the crop production is subsequently cut for hay or grazed, since this removes the opportunity to collect the EPL from Commodity production. A payment of \$55.00 per **tonne of seed sown** (GST inclusive) is due and payable within 30 days from when the crop has been fully grazed or cut for hay.

Appendix B - Grower Paid End Point Levy

The introduction of the Plant Breeders Rights Act 1994 in Australia was intended to enable breeding programs to generate financial returns from new varieties and to encourage the flow of international genetic material into Australia. AWB supports this concept and has established an End Point Levy ("EPL") structure as the most appropriate mechanism to contain seed prices and generate financial returns to breeders and their commercialising partners from new varieties.

A Grower who purchases a Variety with an EPL has a contractual obligation to redeliver all Commodity, except Commodity which is retained by the Grower for the purpose of replanting as Seed ("**Grower saved seed**"), as follows:

- i) Deliver directly to AWB Limited or it's Related Bodies Corporate. (For example Pool, cash, forward contract etc.)
- ii) Open marketing, subject to payment of the EPL to AWB Seeds.

Under option i) the EPL will be deducted by AWB Limited, under option ii) the Grower must make the EPL payment directly to AWB Seeds. Any EPL payment made by cheque to AWB Seeds, should be accompanied by the name and address of the grower, the weight of the crop in tonnes and the amount of seed retained by the grower.

Details - Grower Paid EPL:

- The Grower is free to sell grain production ("**Commodity**") to any third party, provided the tonnage is covered by an appropriate EPL. If the grain is sold to a party other than AWB Limited or it's Related Bodies Corporate, then the EPL must be forwarded to AWB Seeds (Grower Paid Levy).
- The contractual redelivery obligation is enduring. The same conditions apply in subsequent years to Commodity produced from Grower saved seed.
- Commodity which is sold to third parties cannot be used for seed purposes under the PBR Act, even if the redelivery obligation has been discharged by an EPL. The Grower (seller) will be in breach if the Commodity is used for Seed.
- No EPL is payable on Commodity retained for use as Seed by the Grower
- Payments of the EPL should be made to "AWB Limited" and sent to AWB Seeds at the address shown below.

AWB Seeds
 Grower Paid Royalty
 GPO Box 4562
 Melbourne Vic. 3001

Confidentiality has been granted for ANNEXURE 3. Public access is not permitted.