

Seedwise response to issues that were raised in three submissions received to Seedwise's ACCC application for authorisation.

- i. The Australian Oilseeds Federation and Soy Australia submit that a flexible collection fee, determined independently by each grain buyer, would be a more effective and efficient approach to EPR collection fees than a uniform collection fee.

Seedwise application for authorization relates to Royalty Managers being able to discuss the collection fee payable to individual grain buyers. By being able to openly discuss and potentially alter the collection fee arrangements the Royalty Managers are hopeful of being able attract other grain buyers to the support the automatic deduction of EPR's. It is not the intent that all grain buyers should be paid the same rate for the royalty deduction service they provide. It is intended that the system be flexible so as to attract the smaller grain buyers to collect royalties. It is acknowledged that they may need to be paid more per tonne due to their relative scale inefficiency.

The intent is that any given grain buyer would receive the same payment (per tonne rate) from each of the Royalty Managers as contracted through Seedwise. In this way the individual grain buyer only needs to have one rate within their system. It is possible that the smaller grain buyers who do not have economy of scale may not be able to offer the royalty deduction service at the same rate than the larger grain buyers. The Royalty managers are aware that the smaller grain buyers do need incentive to enter this scheme. The royalty managers have in the past paid for the upgrade of software packages used by the smaller grain buyers (Grainsmart) to encourage their participation and ensure that they are not at an economic disadvantage.

- ii. The WA Farmers Federation's submits that:
 - a five year authorisation period would be more suitable initially

The current EPR Agent and EPR Collection Agreements with each grain buyer are based on 3 year terms and expire on the 31st of August 2016. The current Seedwise (EPR Agent) EPR Collection structure has been operating for 5 years (harvests) and expires on the 31st of August 2016. Seedwise and the Royalty Managers believe that given the costs and time involved in completing an ACCC application for authorization the 10 year period is more appropriate.

- the collective conduct should incorporate greater transparency as to how the collection fee is set, including justification for increases and full disclosure of relevant information to growers and buyers to ensure anti-competitive conduction is not occurring

While the Royalty Managers understand the WA Farmers Federations desire to have complete transparency through the publishing of the per tonne collection fees paid to each individual grain buyer such an act would place the Royalty Managers in a position where they would not have any negotiation strength. In essence the strength in any negotiation would be handed to the grain buyers allowing them to act in an uncompetitive manner. Publication of the rates would allow the larger grain buyers who have economy of scale to see whether smaller less efficient grain buyers are being paid a higher rate and potentially demand the same fee.

An increase in the collection fee does NOT lead to an increase in the total end point royalty rate paid by the grower. When a grower commences to grow a new variety they enter into the industry standard Variety License which states the end point royalty rate for the variety in question.

The table below indicates the three different methods that an EPR is collected.

<i>Variety SS1 (EPR rate of \$3/t)</i>	<i>Collection fee</i>	<i>Royalty Manager/Breeder share</i>	<i>Grower pays</i>
<i>Auto deduct Trader 1</i>	<i>\$0.12/t</i>	<i>\$2.88/t</i>	<i>\$3/t</i>
<i>Trader provides</i>	<i>Collection fee</i>	<i>\$3/t</i>	<i>\$3/t</i>

<i>data only provider</i>	<i>role and costs undertaken by Breeder</i>		
<i>Grower declaration via annual report (service provided by NGR)</i>	<i>Collection fee role and costs undertaken by Breeder</i>	<i>\$3/t</i>	<i>\$3/t</i>

The purpose of this application is to provide the Royalty Managers/Breeders the option to collectively negotiate with individual grain traders an auto deduct rate. The current the rate paid to the grain buyers, by the Royalty Managers, of \$0.12/t was not set by the Royalty Managers, rather it is a historical artefact set by circumstances in 1998. The Royalty Managers currently have no way of discussing possible changes to this default rate of \$0.12/t as we do not have the mechanism to discuss fees. Therefore the price has remained set at \$0.12/t since 1998 when it was first established.

If the ACCC provides authorization to our application, then it is envisaged that this would lead to the different collection fees being offered to different grain buyers on a negotiated basis. An example of these potential differences is shown in the table below. In each instance the total royalty the grower pays does not change. Any increase in the fee paid to the grain buyer is borne by the Royalty Manager.

<i>Variety SS1 (EPR rate of \$3/t)</i>	<i>Collection fee</i>	<i>Royalty Manager/Breeder share</i>	<i>Grower pays</i>
<i>Auto deduct Trader 1</i>	<i>\$0.12/t</i>	<i>\$2.88/t</i>	<i>\$3/t</i>
<i>Auto deduct Trader 2</i>	<i>\$0.13/t</i>	<i>\$2.87/t</i>	<i>\$3/t</i>
<i>Auto deduct Trader 3</i>	<i>\$0.15/t</i>	<i>\$2.85/t</i>	<i>\$3/t</i>
<i>Trader provides data only provider</i>	<i>Collection fee role and costs undertaken by Breeder</i>	<i>\$3/t</i>	<i>\$3/t</i>

<i>Grower declaration via annual report (service provided by NGR)</i>	<i>Collection fee role and costs undertaken by Breeder</i>	<i>\$3/t</i>	<i>\$3/t</i>
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- full disclosure of the fee that grain buyers will receive should be required so that growers can ensure that collection fees are not unfairly being charged to growers

As explained and shown in the table above, the collection fee is not charged to the grower and in fact comes out of the end point royalty the Royalty Manager is entitled to receive for that variety.

Using the variety Mace as an example, this is evidenced by the fact that if a grower currently sells to an end point royalty deducting grain buyer the end point royalty of \$3.00 per tonne is deducted from the growers payment. The grain buyer deducts from the \$3.00 EPR a fee of \$0.12 and remits \$2.88 per tonne to the variety owner. If that same grain grower sold the variety Mace to a non EPR collecting grain buyer then the variety owner would invoice the grain grower direct for the \$3.00 per tonne EPR. The grain grower has been charged no more for the automatic deduction by the grain buyer. This system holds true for all of the grain varieties subject to the automatic EPR deduction systems.

The grower builds that EPR rate into their gross margins in the same way they do with other input costs. If the EPR rate is set too high and therefore the grower cannot make an acceptable profit the grower will not grow that variety. This does not affect the grower as they have freedom to choose a variety. Rather it will affect the potential income of the variety owners as the overall adoption rate of the variety will be lower leading to reduced royalty income.

- iii. CBH submits that the EPR system imposes significant costs and risk on grain buyers and that any arrangements aimed at increasing the take-up of EPR collection by grain buyers

should not impose further costs or risk on grain buyers.

Seedvise and the Royalty Managers contend that there is no risk or significant additional cost to the Grain Buyers. The basis of the grain buyers EPR Collection Agreement is that the grain buyer will do their 'best endeavours' to collect applicable EPR's from growers grain payments (EPR Collection Agreement Clause 7.1). If the Grain Buyer fails to make a deduction the Royalty managers have no legal or financial recourse upon the Grain Buyer. The large majority of grain buyers supporting EPR Collection arrangements are using grain management software products that once set up efficiently and effectively collect EPR's from grower's payments. The Grain Buyers already have their systems established to deduct other fees from the growers grain payments. These fees include federal government research levies and state based levies. It should be noted that the grain buyers do not receive any form of remuneration from either State or Federal government sources for collecting these levies. One of the main reasons the EPR Agent was appointed was to minimize the grain buyer's administrative cost of managing and negotiating the EPR collection system with eleven individual Royalty Managers. This in itself is a significant saving in negotiation and legal expenses. Seedvise, on behalf of the Royalty Managers, is very conscious not to impose further costs or risk on grain buyers as this may result in the grain buyers deciding to opt out of the EPR Collection system.

ACCC request for further information

To assist the ACCC in its assessment of the application, it would be helpful if Seedvise could provide additional information regarding the following topics:

1. Seedvise Pty Ltd:
 - a. History of Seedvise, purpose, membership, etc

In May 2008 representatives from the Grains Research Development Corporation (GRDC), Australian Grain Technologies (AGT) and Intergrain approached Denis McGrath to complete a project (AV10001) relating to EPR Collection. Under this project Denis McGrath, when

employed by Agvise Pty Ltd, investigated the impediments of grain buyers establishing an EPR collection service. The GRDC and participating Royalty Managers approached Denis McGrath to be their EPR Agent mid 2009. Seedvise Pty Ltd was established in October 2009 following the partners of Agvise Pty Ltd decision to dissolve their partnership. Seedvise Pty Ltd became the EPR Agent for the 2010/11 harvest.

The EPR Agent is primarily responsible for contracting grain buyers to collect and remit EPR's, on behalf of participating Royalty Managers, and to coordinate the alternative data provision EPR collection system. The EPR Agent is also required to engage other grain supply chain participants involved in EPR collection (e.g., grain software companies), promote and educate the grain industry participants about the merits and need of the EPR system and manage the industry website www.varietycentral.com.au.

There is no "membership" Seedvise as it is an independent consulting company owned by Denis McGrath. The Royalty Managers are not obliged to use Seedvise as their agent. The EPR Agent (Seedvise) is remunerated for services provided based on an agreed annual fee. This fee is divided by the total number of varieties entered for collection each harvest and charged proportionally to the Royalty Managers based on the number of varieties they have individually submitted. The EPR remuneration is not related in any way to the EPR rate set for each variety or the EPR collection fee.

- b. How many royalty managers are part of the group?

There are currently 11 Royalty Managers that contract Seedvise to be their EPR Agent. Participating in the collective industry EPR collection system (EPR Agent system) is voluntary and Royalty Managers can opt out or in at any time.

- c. What percentage of royalty earning crops would be represented under the authorisation?

All species of grain crops that apply an EPR to the varieties grown are represented under the authorisation – wheat, barley, canola, oats, triticale, field peas, lupins, chickpeas, lentils, faba beans and soybeans. EPR Collection compliance varies between seasons and crop types -

current estimates for wheat are that 75-80% of EPRs are collected, for barley 70-75% are collected, and for chickpeas the collection rates may be as low as 55-60%.

Wheat is by far the largest of these crops with some 22 million tonnes grown in Australia annually. Of this 22 million tonnes approximately 80% are subject to an EPR (the remaining % being varieties greater than 10 years old). At present approximately 87% of the EPR varieties are collected by the automatic deducting grain buyers.

2. The collection fee:
 - a. How will the new fee be set? What are the criteria and processes Seedwise intends to implement in setting a new fee?
 - i. How did AWB set the collection fee?

The Royalty Manager representatives are very conscious of their responsibilities under the Competition and Consumer Act of 2010. Royalty Managers have therefore not yet discussed in anyway how or if a new fee would be set as they have not yet gained the required authority from the ACCC. It is however envisaged that EPR Agent will provide feedback to the Royalty Managers on current and potential EPR collection agents (grain buyers) thoughts on the EPR collection fee. The Royalty Managers would then discuss potential changes to the EPR collection fee. It is also likely that the EPR Agent and representatives of the Royalty Managers may need to meet one on one with specific grain buyers to negotiate an agreed position

The AWB collection fee was established in 1998 following negotiations between representatives of the Department of Agriculture and Fisheries Western Australia (DAFWA), the owner of a number of EPR varieties at this time, and the AWB Ltd.

- b. As with other industries, the wheat industry has been progressively deregulated in recent decades on the basis that competitive forces would lead to a more effective and efficient wheat supply chain. What are the characteristics of the EPR collection fee that make collective conduct

necessary?

- i. Why haven't royalty owners/managers changed collection fees for their crops independently?

Simplification of the capture and dissemination of information relating to EPR collection is the main characteristic that makes collective conduct necessary.

The Royalty Managers have in the past individually negotiated and contracted direct with individual grain buyers. It was, in fact, the grain buyers who informed the Royalty Managers that this was a significant impediment on their time and efficiency. It was for that reason the Royalty Managers appointed Seedvise as an agent to represent and contract on their behalf. This allowed for one contracts between all Royalty Managers and given individual grain buyer.

As mentioned in a previous answer eleven Royalty Managers currently contract the EPR Agent to represent them to engage grain buyers to collect EPR's on currently 204 EPR varieties (13/14 harvest period). Each individual variety is assigned a different variety code from the major grain receiving / bulk handler companies. These various variety codes are critical in the grain buyer identifying the variety of grain sold by the grower and determining the appropriate EPR rate to be deducted from the growers grain payment. In addition the company status /details and EPR variety ownership needs to updated and communicated on a regular basis. The establishment of the EPR collection group and the appointment of the EPR Agent has simplified the management of this information and alleviated the need and expense to grain buyers to engage, negotiate and manage individual contracts for the eleven Royalty Managers.

As recommended by Grain Trade Australia (GTA) the centralization of the capture and dissemination of all the Royalty Managers company details and variety information with the EPR Agent has been a key factor in gaining the agreement of a large number of the current grain buyers supporting EPR collection. This action has significantly reduced the potential transaction costs for the grain buyers allowing them a single interface rather than negotiating with 11 separate Royalty Managers

Royalty Managers are able to cease contracting the EPR Agent at any time and commence negotiating one on one with individual grain buyers. The EPR Agent approach to EPR collection, however, has significantly improved the EPR returns of all Royalty Managers and subsequently they have not seen the need to independently offer their own collection fee..

- c. A higher collection fee represents an increase in revenue for grain buyers, but an increase in cost for royalty managers. Do royalty managers intend to absorb this cost themselves, or would the cost be shared across royalty managers/owners, grain buyers, and grain growers?

Royalty Managers intend to absorb any potential collection fees. Any increases in the EPR collection fee would be expected to improve the effectiveness or efficiency – i.e., improve EPR collection compliance or reduce the overall cost of EPR collection.

- d. The ACCC understands that the feedgrain industry often buys lower quality crop varieties or leftover/downgraded crops, and that determining to origin of these varieties is generally more difficult. Because of this, the feedgrain industry may be less willing to participate in the EPR system. How does Seedwise envisage the collective conduct having an effect on the participation of feedgrain buyers?

The EPR Agent and individual Royalty Managers have been engaging the feed grain industry for a number of years to improve EPR collection in this market segment. This market segment is increasingly more discerning about the quality of grain it buys. Due to smaller size and increase in number of business associated with buying feed grain the collective conduct (EPR Agent) approach is extremely important to simplify the processes required for them to support EPR collection systems. The EPR Agent has been directly meeting with a number of feed grain buyers about establishing methods to capture variety

information at the point of sale and to support EPR collection.

3. Potential for collusion beyond EPR collection fee:
 - a. As with any collective bargaining arrangements, when a group of competitors get together to collectively negotiate in relation to a particularly issue this increases the potential that they may collectively agree on issues outside the scope of the authorised conduct. What processes or counterbalances does Seedvise have planned to mitigate this potential?

The EPR group meetings have been focused on educating grain growers, grain buyers and other grain supply chain participants on the importance of EPR collection to the prosperity of the Australian grain industry. The EPR group has actively tried to simplify and improve the consistency of documents and communication of EPR related information. Examples of this work include the establishment of the industry website www.varietycentral.com.au, the creation and adoption of an industry standard Variety License and the Grower Harvest Declaration Form.

As mentioned in an earlier answer the EPR group has not at any stage discussed the collection fee price. Royalty Managers take their legal obligations very seriously with a number of them having sought their own legal advice and have been counseled about what topics they can and cannot discuss when attending the EPR group meetings. Seedvise believes to ensure the ongoing success of the EPR collection system it will be paramount the current excellent governance practices be maintained.

4. Any comments Seedvise wishes to make in relation to the issues raised in the attached submissions as summarised above and/or in relation to any other submission received.

The main driver for the Royalty Manager's seeking the authorisation to

discuss the collection fee paid to the grain buyers is to enable us to:

- a) Develop strategies (financial or other) to engage with the remaining smaller grain traders who currently feel that they are not of an economic size to participate in the royalty collection system.***
- b) To open discussions with existing EPR collecting grain buyers to ensure both grain buyers and royalty managers are aware of each others drivers, costs and efficiencies they might bring to the system***
- c) To meet the needs of the Australian grain growers by ensuring the automatic collection of royalties occurs at the broadest possible level thereby eliminating the need for direct invoicing of individual growers by each royalty manager***

By engaging with these traders and having them come on board as an end point royalty deductor would, in fact, ensure a more even playing field and fairer system for all grain traders. That is no grain trader could be seen to be at a disadvantage based on the fact that they are deducting the EPR.