

PLANT BREEDER'S RIGHTS

University of Queensland independent research reports

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Australian Seed Federation
SOWING SEEDS

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The goal of plant breeders has always been to create new variations of plant characteristics. This might be to provide solutions for diseases and pests, to increase tolerance to environmental stress, to improve quality and yields or to meet consumer expectations. Plant breeding depends upon genetic variability within and across related species as a basis for developing new plant varieties with improved traits.

Plant Breeder's Rights protects the commercial rights of new plant varieties. The Australian Seed Federation was a key player in the introduction of Plant Breeder's Rights legislation in 1987 and this remains a priority for the Australian Seed Federation and its members.

As innovative plant genetics and technologies are vital to the ongoing success of many aspects of Australian agriculture, an effective, efficient and equitable royalty revenue collection system is essential to support ongoing crop improvement and breeding innovation.

Rather than comment on each of the recommendations presented across the six independent reports from the University of Queensland, the Australian Seed Federation provides the following comments.

ESSENTIALLY DERIVED VARIETIES

The principle of essentially derived varieties (EDV) was a significant new element in the International Convention for Protection of New Varieties of Plants Act 1991 (UPOV 91). It was an important improvement to plant breeder's rights across UPOV member countries. The EDV related provisions of UPOV 91 serve to affirm and reinforce the strength and scope of PBR granted to a breeder who invests in the development of original varieties, as an incentive to continue a long-term effort towards germplasm development.

The breeder of a protected original variety is entitled to benefit when other variety developers 'predominantly' use that protected variety as an initial variety to derive new varieties. This is key to ensuring long term investment in breeding and innovative breeding achievements.

The Australian Seed Federation supports harmonisation with UPOV and their current definition of Essentially Derived. We are therefore not supportive of continuing the current Australian approach to assessing essential derivation, particularly through the retention of section 4(c), as this does not support the plant breeding sector who are the greatest users of Australia's PBR system.

Australia is considered an outlier in the global community with such a strict and explicitly narrow interpretation of EDV in its law. Most other countries either adopt the UPOV wording or the EU approach which provides a much broader EDV concept.

Australian Seed Federation members have reported it is a waste of time pursuing claims for EDV because the Australian interpretation is so narrow their claim would be unlikely to succeed. This is the main reason why IP Australia has not seen many, if any, EDV claims or challenges under the existing legislative framework.

DISTINCT, UNIFORM AND STABLE

According to UPOV, stability is assumed in hybrids. Stability is only tested when reasonable doubt is raised. In Australia, however, stability is often tested by seed lots from two different productions. This requirement can hinder or delay a PBR application as at that early stage, plant breeders very often have only one production underway.

Harmonisation of accepted DUS reports (from countries working within UPOV protocols) should be explored to ensure Australia is not left behind due to additional trial / testing requirements.

INFORMATION NOTICE SCHEME

The Australian Seed Federation supports the introduction of an Information Notice System, similar to that in practice in the UK. This was recommended by ACIP in its 2010 report and supported by the government response. However, this has not been implemented.

Barriers to effective enforcement of PBR discourage the development of new plant varieties. The current avenue for PBR owners to enforce a grower to meet their contractual obligation to complete a harvest declaration is via the courts. Undertaking legal proceedings is not something PBR owners enter into easily due to the time, cost and potential breakdown of important relationships.

An Information Notice System would enable PBR owners to obtain information from alleged infringers on the source of plant material within a set timeframe. If the information is not provided within that timeframe (without valid reason for a delay in supplying the information), then the PBR owner can proceed to a legal process presuming the other party is infringing PBR.

The introduction of a UK-style Information Notice System, developed through industry consultation, would compel non responders to complete their harvest declarations without going to the courts. This would be a useful tool for the PBR owner and a means of encouraging plant breeding.

EXHAUSTION

The Australian Seed Federation would support exploring a harmonisation of the understanding of exhaustion amongst UPOV members. This will be especially beneficially concerning import / export activities.

PURCHASE RIGHTS

The Australian Seed Federation supports further consultation regarding a right applying to the purchase of propagating material available to PBR owners, to enable the industry to collect royalties more efficiently.

This has been recommended since the 2010 “A review of enforcement of Plant Breeders Rights” by the Advisory Council on Intellectual Property. Many in the industry recognise that including a Purchase Right in

section 11 of the PBR Act should allow variety owners better engagement with domestic users of their varieties.

HARVESTED MATERIAL

The Australian Seed Federation supported that propagating material and harvested material should be treated the same to ensure breeders obtain an effective protection.

PLANT NAMES

The Australian Seed Federation supports further consultation/clarification regarding 'numeral/number only names' (non-Roman characters). In some sectors this is common practice for names of parental lines.