

Intellectual Property Arrangements Inquiry
Productivity Commission
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Via email intellectual.property@pc.gov.au

Re Issues paper on Intellectual Property

This response to the Productivity Commission Review into Intellectual Property is based on the specific area relating to Plant Breeder's Rights. (PBR)

Plant Breeder's Rights relate to the protection afforded individuals or companies that invest in the art/science of plant breeding and as a result have protection afforded to them via PBR to commercialise the development.

It is interesting to note that while the international process of Plant Breeder's Rights/Plant Variety Rights has been in existence since 1961, it is under review globally but clearly the benefits of having a system different from the patent system have been identified. *Ref UPOV report 2005*

There is a developing anomaly in that Governments wish to encourage innovation and investment in industry sectors to increase productivity and consumer benefits. A tool to do this is Protection of Intellectual Property, however the same Governments then look to forbid entrepreneurs from capitalising on this investment of resources and knowledge by banning collective bodies to market the product or introducing strict non-competition laws.

The area of Plant Breeders Rights is complex and in Australia was until recently a separate section within IP Australia. The processes of ensuring uniqueness and stability in a plant to meet the International Guidelines can be expensive and a level of protection is necessary to ensure development of unique plants that benefit Australia and breeders here. The Australian market is small for the non food sector but several companies have capitalised on the uniqueness and are marketing Australian product internationally.

In conversation with Mr Todd Layt of OzBreed he has declared that the Australian system of Plant Breeder's Rights is the envy of other countries. It is far superior to the USA Plant Patent system which has a weakness in that it can be surpassed by fraudulent claims. The Australian system has meant that OzBreed has been able to invest in breeding of specific grass types and a range of ornamental plants that are cultivated under licence in many countries. There are numerous other breeders in Australia who have been able to develop the export market via the protection offered by PBR. The Australian PBR system is endorsed by UPOV which Australia is a signatory to.

I have been involved with the working group within the Association of International Production Horticulture (AIPH) and discussions have been around ensuring that the Breeders rights are

protected. This is a global position as AIPH is a growers/breeders organisation with Members from all the major countries.

Plants are a “natural product” not manufactured to a specification and as such there is a requirement for a system that recognises these differences.

- Living Material – Breeders rights and NO patent
- Dead material – Patent and NO rights to the breeder.

The issue of Trade Marks has been considered by the International working group and experience shows that

- a patent or a breeders’ right protects the trade of a product
- trade names protect the entrepreneur / trader of products
- a patent or breeders’ right can only be given for one invention or one variety
- a trade name can be used for every product of a trader: in principal the trade name gives certainty of the origin of a product but nothing more.

N.B If you do not know what right traders claim this can be misleading!

The Plant Breeding Industry is critical to the improved production of food crops and plants that make our communities sustainable and livable. The current systems are constantly being refined and an area in Australia where improvements could be made is in the costs associated with protecting Plant Breeders Rights. There needs to be review of the processes and legal system supporting breeders.

There needs to be an understanding by the Commission that an efficient Intellectual Property protection system is important for Australia’s standing in the World markets and also for the breeders and growers of food, fibre and foliage.

Breeder’s Rights will survive because of the different characteristics between “dead industrial products” and the “living products” of nature.

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