

AUSTRALIA

Clarification of Plant Breeding Issues under the Plant Breeder's Rights Act 1994 December 2002

Full information: www.anbg.gov.au/breeders/index.html

EXECUTIVE SUMMARY

This report focuses on clarifying issues relating to 'breeding' and 'essential derivation' [2] in the *Plant Breeder's Rights Act 1994* (PBRA), as proposed by the Standing Committee on Agriculture and Resource Management (SCARM).

The catalyst for the report was a perception that (i) applicants and objectors generally had a poor understanding of the threshold of eligible breeding required by the PBRA and (ii) the balance between first and subsequent breeder rights in relation to 'essentially derived varieties' (EDV) should be reviewed. The report is set against the requirements of the PBRA and Australia's commitments under the Convention of the *International Union for the Protection of New Varieties of Plants 1991* (UPOV).

The Panel believes that, generally, breeders will welcome the report because it provides guidance, albeit at a general level, on how to satisfy the criteria for breeding required by the PBRA. The report concentrates on those situations where the eligibility of the breeding methodologies is most often questioned (for example bulk/pedigree selection within an existing population or the discovery of a natural variation/mutation).

The report provides guidance and clarification on 'breeding' by defining 'discovery', 'selective propagation', and 'eligible breeding' methodologies, as well as questions and answer resolutions to common 'difficult' situations.

The Panel confirms that all varieties must meet the same minimum criteria regardless of the method of their origination. The Panel also notes that there are a number of misconceptions about what may automatically qualify or disqualify a variety from PBR registration.

The Panel acknowledges that in some exceptional cases the clarifications proposed might prove disadvantageous to the eligibility for protection of some varieties (for example, those varieties without information on their parents/origin).

The Panel confirms that Australia's current interpretation of breeding is consistent with international best practice and that no new, higher, or lower requirements for breeding are imposed.

EDV refers to the situation where the breeder of one variety (the 'first variety') claims that another breeder has developed another variety (the 'second variety') that is directly related to, and essentially the same as, the first variety.

The Panel agrees that breeding is an incremental process and the intent of the PBRA is to encourage the introduction of new varieties based on research and development.

The PBRA is not intended to facilitate or encourage 'copies'. In Australia, the second breeder's major defence against vexatious claims of EDV is to demonstrate *'important' difference* otherwise the challenger's case will succeed, all else being equal. This is consistent with the intent of the PBRA, which is to produce new varieties and not copies. Therefore, in the opinion of the Panel, the current legislation encourages innovation, while providing protection for all breeders against plagiarism and vexatious challenge.

On a separate issue, occasionally seen as related, some see the development of new plant varieties through gene insertion as a 'quick and easy' process. The Panel believes that successful gene insertion is generally *not* quick and easy [3]. Moreover, recognition is growing that 'traditional' and 'biotech' breeders share a mutual interest in working together. The Panel encourages the development of such mutually advantageous relationships.