

RESPONSE TO ISSUES PAPER ON:
A REVIEW OF ENFORCEMENT OF PLANT BREEDER'S RIGHT

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4.1.1: This is so, particularly in relation to species (e.g. forage cereals that we breed) that can only capture a seed-based royalty. In the third season of one of our new varieties, our licensee estimated that they lost sales through farmer-to-farmer and other illegal trading of \$800,000, which resulted in a loss to us of \$40,000 in royalties. Often seed is advertised as e.g. feed oats, grown from variety 'x'. Each time we release a new variety, the same cycle repeats itself.

So in answer to the questions:

1. Yes, as above
2. Yes, I believe so
3. Yes, particularly through the GCA, but to date they have been reluctant to assist as their members see it as helping breeders and seed companies.
4. ...

4.2.1: Questions:

5. Yes. Breeders have no confidence to proceed and there is no evidence that the Act will support them.
6. Yes
7. None of which I am aware

4.2.2: Questions:

8. Yes. All the dot points preceding the questions are exactly the problem. Reversing the onus of proof is very important
9. A formal checklist as to the steps and the order of those steps required would be a good start. The PBRO has been reluctant to provide anything useful to date.

4.2.3: Questions:

10. Yes. The system works in favour of the defendant
11. The issues in 4.2.2 cover some of them. Need some legal advice for others. Your explanation P57 is appropriate.

4.2.4: Question:

12. Yes. Much of the Act is seen as 'grey' by any legal advisor we consult.

4.2.5: Question:

13. Yes. Provides a deterrent and would do more to cover the loss of intellectual as well as physical capital.

4.2.6: Question:

14. Criminal sanctions would provide a greater deterrent but if the Act was capable of supporting civil action and people knew this, then perhaps criminal sanctions may not be required
- 15...

4.2.8: Question:

16. Yes, we have had cases where a variety of field pea, protected in NZ, was exported to Australia, machine dressed as stock feed and then redressed here and sold as seed. On one occasion, we were evaluating the lines here, but had not sought PBR at the time. The market was lost to our licensee as the seller sold the seed widely. The seed market for those cultivars was approximately 10,000 tonnes.
17. Harmonise the laws between countries.

4.2.9: Questions:

18. Yes. Misdeclaration is common. We have not done estimates but it can be substantial in terms of lost EPR. On one variety of durum wheat in 2006, we lost \$15,000 in royalties alone, that we know of!
19. Rapid DNA diagnostics at silos and points of delivery in the stock feed market. If it doesn't match then it should be downgraded to feed in milling deliveries. This may deter misdeclaration.
20. Not yet market-ready.

4.2.10: Question:

21. Yes, for all the dot points listed in this section. Also overcomes the social issues listed in 4.2.11
22. ...

4.2.11: Questions

23. Independent investigation
24. A specialist body would be more appropriate

4.2.12: Questions:

25. Yes, in grain and pasture seed sectors in particular
26. This should be covered through their peak body e.g. ASF, as is already the case, as long as ASF can access such procedural information to pass on.
27. Closed loops and common law contracts are currently the only means of protecting the investment

PSN

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