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Mr Jeff Roberts
Secretary
Advisory Council on Intellectual Property
PO Box 200
WODEN ACT 2606

Dear Sir

Innovation patent – exclusion of plant and animal subject matter

Thank you for your letter of 2 July 2002 on the above topic.

Currently BSES protects all new varieties through the Plant Breeder's Rights Act (1994). Contrary to the section on PBR in the paper attached to your letter (see page 2, Plant Breeder's Rights, 3rd paragraph), the PBR Act does allow royalties to be paid on the crop produced where there is limited opportunity to obtain royalties from sale of seed. This is the case in sugarcane, a vegetatively propagated crop that is only replanted every four to five years.

However, we have been concerned that the current PBR legislation does not provide sufficient protection in the case of 'essentially derived' varieties. We believe that, with current technology in sugarcane, it is reasonably simple to insert one gene into an adapted variety that took 10-12 years to develop and test. The PBR Act allows protected varieties to be used for further research (eg transformed by second 'breeder') but the initial breeder has no rights unless the second breeder decides to negotiate. We have made a submission to the Registrar of the Plant Breeder's Rights Office on the 'Draft Report of the Expert Panel on Breeding', which deals with this issue. While our submission has resulted in a redrafting of this report, BSES has been examining plant patents as an alternative way to protect our varieties. The main reason for this is to obtain greater protection against other organisations using our varieties for transformation purposes without first negotiating with BSES.

For this reason, BSES would support the extension of the Innovation Patent to plants, as this would simplify patent applications for sugarcane varieties, should we decide to use this mechanism.

Yours sincerely



E S Wallis
Chief Executive Officer