



Department of Natural Resources and Environment

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Dear Mr Malone

INTELLECTUAL PROPERTY (ACIP) - EXCLUSION OF PLANT AND ANIMAL SUBJECT MATTER

Thank you for your letter of 2 July 2002 seeking views on the exclusion of plant and animal subject matter from the recently introduced innovation patent.

The current intellectual property mechanisms applying to plant and animal subject matter include patents and Plant Breeders Rights. In addition, commercial contracts, particularly when used in combination with Plant Breeders Rights, offer a useful form of protection for the intellectual property of those responsible for innovations in plant and animal subject matter. These protections for intellectual property work well for those innovations involving plant and animal subject matter that do not meet the significant levels of innovation required to secure a full patent. In combination, this range of mechanisms would seem adequate to protect intellectual property and enable commercial return to those who have invested in minor innovations with plant and animal subject matter.

The inclusion of plant and animal subject matter in the list of items for which an Innovation Patent can be granted would mark a shift towards protecting something closer to discovery than invention. That is, there is a risk that intellectual property rights could be granted merely for the identification of a basic biological value rather than for innovation, particularly since an innovation patent is granted without full prior examination. This risk may be higher in the case of plant and animal matter because of the high level of uncertainty with definitions and boundaries in biological processes and organisms that does not exist with other areas subject to patenting.

It appears that there is little or no broader community benefit from including plant and animal subject matter in the list of items for which an Innovation patent may be granted. Consequently, it seems inappropriate to extend innovation patents to plant and animal subject matter.

Yours sincerely

Chloe Munro
Secretary

