



Tasmania

DEPARTMENT of
PRIMARY INDUSTRIES,
WATER and ENVIRONMENT

18 September 2002

Mr Jeff Roberts
The Secretary
Advisory Council on Intellectual Property
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Our ref
Your ref

Innovation patent – proposed inclusion of plant and animal subject matter

Dear Mr Roberts

I refer to a letter of 2 July 2002, from the Chairman of the Advisory Council on Intellectual Property, Mr Owen Malone, seeking input in relation to the above-mentioned issue.

The Department of Primary Industries, Water and Environment has prepared the attached response for your consideration.

I would also like to register my Department's interest to discuss this matter. Please advise Jeremy Aldred (contact details above) of the details of opportunities for such discussion.

Thank you for the opportunity to comment.

for Kim Evans
SECRETARY

Encl:

GENERAL ENQUIRIES (Statewide): Telephone: 1300 368 550

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Innovation patent – proposed inclusion of plant and animal subject matter

There are a number of issues the Department would like to raise in relation to this matter. They are:

- The Department recognises the current gap in patent law as it applies to innovation patents and their application to plant and animal subject matter.
- The Department notes that the extension of the innovation patent to cover plant and animal subject matter would not exclude the use of other avenues for the protection of intellectual property rights. For instance, the use of the *Plant Breeders Rights Act* (PBRA) would still be open for use in conjunction with the innovation patent.
- The Department acknowledges that there may be benefits arising from this proposal. Notably, the use of the *Patents Act* by plant breeders would afford them the higher levels of protection provided by that Act and the ability to utilise its sanctions to pursue breaches of intellectual property rights, for example the Franklin Barley case.
- However, the overall gain in relation to the use of the Patents Act needs to be balanced against the wider public interest of ensuring access to material by the wider community. The PBRA provides such accessibility for utilising plant propagating material for non-commercial or experimental purposes. Further, under the PBRA, PBRs are not infringed if propagating material is used as food or food ingredients.
- A concern, therefore, is what impact the extension of the innovation patent will have on the accessibility of material for further research, particularly that which may be undertaken by public institutions.
- There are also implications for farmers in accessing material for crop or animal production that is subject to patent given that patents provide the owner exclusive rights to commercially exploit the patented material over the life of the patent.
- A further issue that follows from the ownership of plant and animals is the question of patenting of genetic materials of plants and animals. It would appear that the innovation patents would lower the threshold test for patentability of genetic material, thus enabling that genetic material to be subject to the owner having exclusive rights over that genetic material. This may have implications for the availability of such material for further research and development.