

6 September 2002

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

Dear Mr Roberts

Thank you for the opportunity to comment on the suggestion that the current exclusion from the innovation patent system of plant and animal subject matter should be removed.

The Grains Council of Australia (GCA) has examined this proposition carefully and, in conjunction with its members (who represent Australian growers of cereals, pulse and oilseeds), has come to the strong view that the current exclusion should be maintained. The reasons for this view are the potential conflicts with the operation of the Plant Breeders' Rights (PBR) legislation and the rights of growers to sow seed harvested from their own crops.

GCA believes the lowering of the innovative threshold to allow innovation patents to apply to plant material could allow breeders to bypass the provisions of the Plant Breeders' Rights Act. In particular, GCA believes it would tend to negate PBR objectives of, *inter alia*, allowing breeders to gain some recompense for their efforts but still have the new cultivars available for further research. Under the innovation patent system a variety could be effectively 'locked up' from further development or incremental improvement for eight years.

Similarly, if growers were able to access a variety covered by innovation patent rights, they would not have rights to use (sell) the resulting crop without agreement from the patent holder. This not only restricts a grower's freedom to act, but potentially could be used to constrain marketing rights, including statutory export powers. The PBR legislation does not restrict growers' rights to sell the crop resulting from use of the PBR variety.

Innovation patent rights could be used to prevent sowing of farmer-saved seed, whereas PBR allows the use of farmer-saved seed. The application of innovation patents to plant material could lead to confusion on the part of growers about the status of different varieties and possible legal action against growers using varieties covered by innovation patents.

I would be grateful if the Advisory Council on Intellectual Property could take these comments into account during its deliberations.

Yours sincerely

  
**JOCK KREITALS**  
Executive Director

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