

(116289)



## NSW Agriculture

5 SEP 2002

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

Dear Mr Roberts

I refer to your letter of 2 July 2002 in which the Advisory Council was seeking a view from NSW Agriculture on the exclusion of plant and animal subject matter from protection under the innovation patent system.

The Department agrees that there is a gap in the current system offering protection for plant and animal subject matter. While the Plant Breeders Rights (PBR) Act 1994 provides adequate protection for most plant applications, there are specific aspects of plant breeding which the PBR Act fails to protect. For instance, the insertion of specific genes into a new commercial plant variety could create a distinct variety which could render the original variety obsolete. The exploitation of new varieties in this way capitalises on the genetic value in the original variety without any consideration to the original breeder.

It is the Department's view that most breeding establishments would consider a standard patent to be costly and inappropriate to protect most plant types. There are exceptions especially where the potential commercial life of a variety is long and/or it is a very high value crop.

Access to the innovation patent system for short term protection with reduced application and maintenance costs would be attractive for plant breeding. The same could be said for specific animal subject matter where currently there is no alternative system for protection other than the standard patent process.

The Department believes the innovation patent system should be consistent with the standard patent in so far as the range of subject matter is concerned.

The Department believes there would be no disadvantages to industry by removing the exemption on plant and animal subject matter. Non Intellectual Property (IP) holders can obtain access to patented subject matter through negotiation with the IP owners. This approach could assist development of IP where access to breeding material rather than commercial varieties would provide a more efficient development process.

The Department's contact for any further discussions on this matter is Mr John Ryan, Manager (Technology Transfer). Mr Ryan can be contacted on 02 6391 3540.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R F Sheldrake', written in a cursive style.

**R F SHELDRAKE**  
**DIRECTOR-GENERAL**