

## **Plant Breeders Rights**

### **What are the facts about PBR?**

The introduction of the Plant Breeder's Rights (PBR) Act 1994 in Australia was designed to enable breeding programs to generate financial returns from new varieties and to encourage the flow of international genetic material into Australia by providing for exclusive commercial rights to a registered variety.

PBR encourages private investment in plant breeding by ensuring that a proprietary return can be earned on investment in breeding new genetic material and seed varieties. It provides the right of commercialisation of 'new' varieties and through grower contracts, provides for the collection of royalties at one point during the production cycle. Usually these royalties are collected on the production of a tonne of grain and as such, are known as End Point Royalties (EPR).

PBR are a form of intellectual property, like patents and copyright and are administered under the *Plant Breeder's Rights Act 1994* (the Act). PBR provides for rights to:

- 1) Produce or reproduce the material;
- 2) Condition the material for the purpose of propagation (conditioning includes cleaning, coating, sorting, packaging and grading);
- 3) Offer the material for sale;
- 4) Sell the material;
- 5) Import the material;
- 6) Export the material; and
- 7) Stock the material for any of the purposes described in (1) to (6).

Exceptions to the breeder's right are the use of the variety privately and for non-commercial purposes, for experimental purposes, and for breeding other plant varieties. A variety can be used for these purposes irrespective of the existence of Plant Breeder's Rights.

Farm saved seed is permitted, unless the crop is declared by regulation to be one to which farm saved seed does not apply. Currently no crops have been declared in this way.

### **How does PBR affect farmers?**

Seed varieties protected under PBR place certain restrictions on farmers as well as imposing certain obligations. Most simply, a PBR protected variety cannot be sold as seed for sowing which includes trade between farmers (over the fence trading). However, seed may be held on farm for own use or in a bona fide share cropping arrangement.

Put another way, PBR varieties cannot be sold as a source of seed for future sowing.

### **What is an End Point Royalty (EPR)?**

An EPR is a royalty paid on every tonne of grain produced by growers, regardless of the quality of the grain produced or whether it is sold or not. It is a collection method used by Breeders under the PBR Act to fund ongoing research and importantly, in the investment required to breed new varieties.

An EPR is simply a return on investment that is facilitated by PBR. By earning EPRs, breeding companies have an incentive to invest in research and to develop new varieties. In this way it is the same as paying for intellectual property rights or earning rent on an investment property.

An EPR will be payable for life of the variety in the market place (up to maximum of 20 years) while ownership of a variety is protected under the Plant Breeders Rights Act (1994).

### **Where can I get more information?**

The advice provided here is of a general nature and should not be relied upon.

You should seek specific legal advice in relation to your own situation should you wish to make decisions in relation to PBR.

Further information can also be obtained from the Federal Government's IP Australia Office: [www.ipaustralia.gov.au/pbr](http://www.ipaustralia.gov.au/pbr)