



PBR and the grains industry: how to get practical outcomes using the legal framework



Outline

- Increasing role of End Point Royalties (EPRs)
- What does and does not work now
- Industry enforcement of rights
- Changes to PBR Act

End Point Royalties

- Seed royalties not enough for breeders
- EPRs increasingly important
- Rely on contract (and PBR Act)
- May allow grower-to-grower trading
- A range of different systems and contracts

What works, what doesn't

- PBR Act gives appropriate balance of protection for breeders and growers
 - May become an issue for GMOs – interaction with patents
- But enforcement has problems
 - “reasonable opportunity” for s14(1)(b) and 15(b) and farm-saved seed
 - Difficult to gather evidence
 - Damages / account of profits not much disincentive
 - Cost of enforcement high for marginally profitable industry
 - Criminal prosecutions difficult

Industry self-help

- PBR is fundamentally a private right
- Adopt common approaches to simplify systems. Options canvassed include:
 - Standard contracts
 - Centralised PBR & EPR information and/or collection
 - Greater breeder & seed industry co-operation
- Fight test cases
- More education

Improvements to PBR Act

- Clarify “reasonable opportunity” requirement
 - Delete s14(1)(b) and s15(b); or
 - Reverse the s14 and s15 onus of proof; or
 - Add clarification of “reasonable opportunity”
 - Treat harvested grain as “propagating material”
 - Add “use” to s11 bundle of rights
- Add exemplary damages
- Some want farm-saved seed exception removed

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