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# 20 years of PBR

## *Why, What and Where to....*

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 on a label denotes PBR protection



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# Why plant varieties? Government's aim

## ■ Intention

- Competitiveness of agricultural industries
  - New varieties are key building blocks but development is often slow and risky
  - Mechanisms to increase investment
    - Reduce up-front costs
      - Direct investment; Tax breaks
      - Initiatives to stimulate innovation
      - Statutory research levies (dollar for dollar)



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# Why protect varieties? Government's aim

## ■ Intention

- Competitiveness of agricultural industries

	<b>1980</b> (Green 1980)	<b>1886</b> (Lazenby,1986)	<b>1990</b> (Downes 1990)	<b>1992</b> (Clements et al 1992)
Public	130	120	69	58
Private	18	15	15	14
Total	148	135	84	72

- Other mechanisms to increase investment
  - Increase potential commercial return

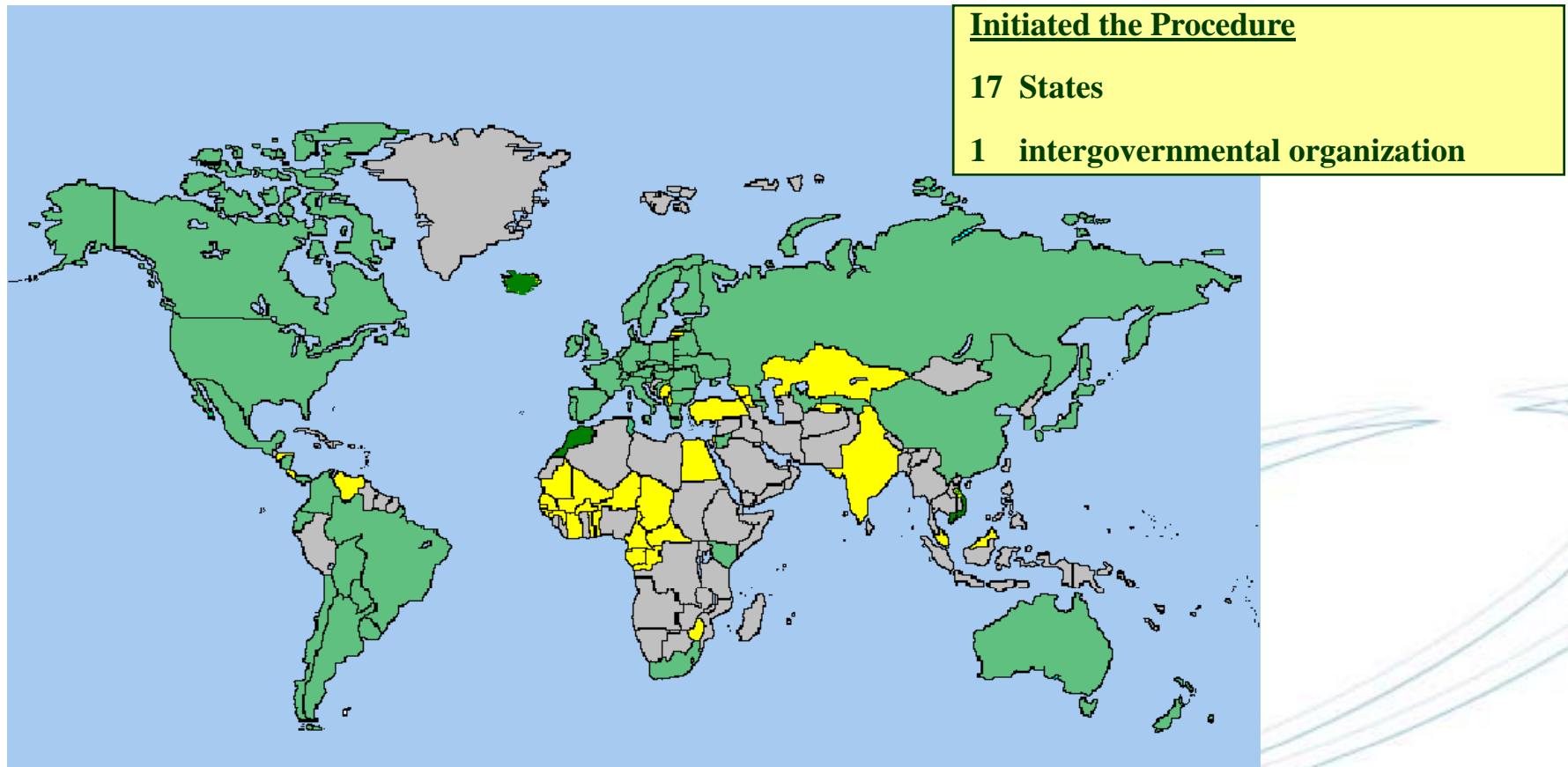


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# Why protect varieties? Government's aim

- Intention
  - Competitiveness of agricultural industries
- Policy outcomes for PBR
  - Increase investment in plant breeding by
    - ☒ providing opportunity for financial return
  - Increase access to best varieties/breeding lines
    - ☒ often from overseas
  - Speed technology transfer
- Adoption of the specialised UPOV system

\* UPOV = *Union internationale pour la protection des obtentions végétales* (n=63)





# What - is PBR ? (Scope)

- PBR is a separate form of patent
  - Gives the right to exclude others from a limited range of commercial activities
    - ☐ protection from unauthorised multiplication, sale, import, export, stock, conditioning
  - Specific ‘rights’ also given to researchers, public & producers etc by way of exclusions
  - Very prescriptive primary legislation



# What – subject matter

- Sometimes compared with Copyright
  - books                      words                      letters
  - varieties                      germplasm                      genes
  - sequential 3 tier protection
    - ☐ focus on propagative material
    - ☐ then harvested material
    - ☐ then product of harvested material
  - progression relies on ..unauthorised propagation  
AND no reasonable opportunity to exercise rights..
  - some protection against plagiarism (EDV)



# What's not protected?

- Non commercial acts
  - home use
  - experimentation
  - breeding other varieties
- Use authorised by other laws
  - provided equitable remuneration is paid
- Farm Saved Seed
  - significant disincentive to investment
  - **Potential solutions: stay tuned to Dr Matt Rimmer at 2.40 today.**



# PBR fictions

- Grantees will receive royalties
  - Fact: It is for the grantee to establish appropriate commercial arrangements
    - ☐ can control part or all of the marketing chain
- Government will police my rights
  - Fact: PBR provides a background of protection by specifying circumstances under which rights are infringed
  - Grantee decides how to exercise the right
    - ☐ **Grantee is responsible for enforcement**



# How PBR works in Australia

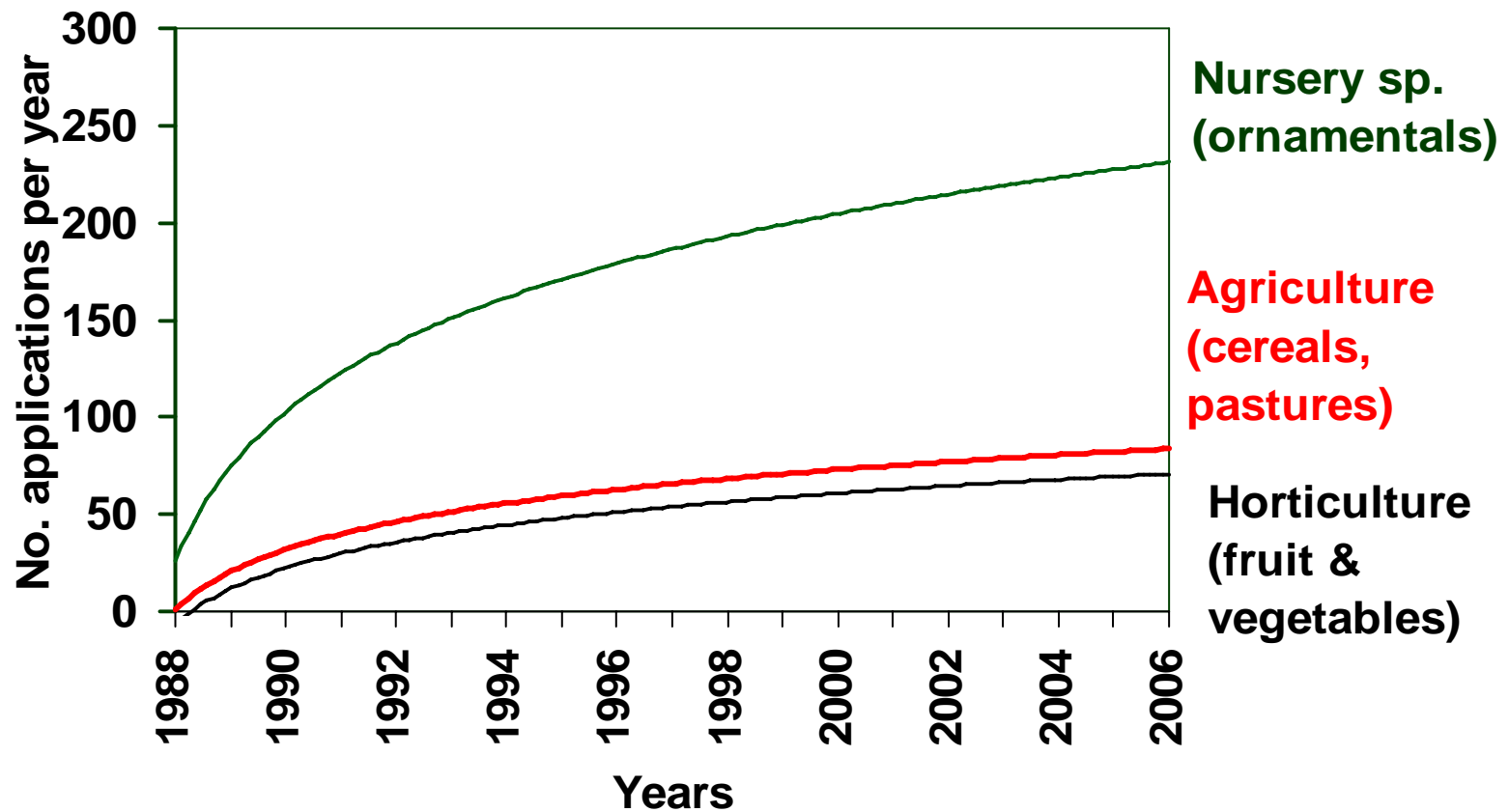
- Application (with claims) made by applicant
- Claims tested (so called 'breeder testing')
  - onus of proof is on applicant
  - applicant may seek technical help from QP
  - provides a published description
- Verification
  - independent assessment by PBR examiner
  - publication of description inviting comments etc

**Evidentiary threshold = Balance of Probabilities**

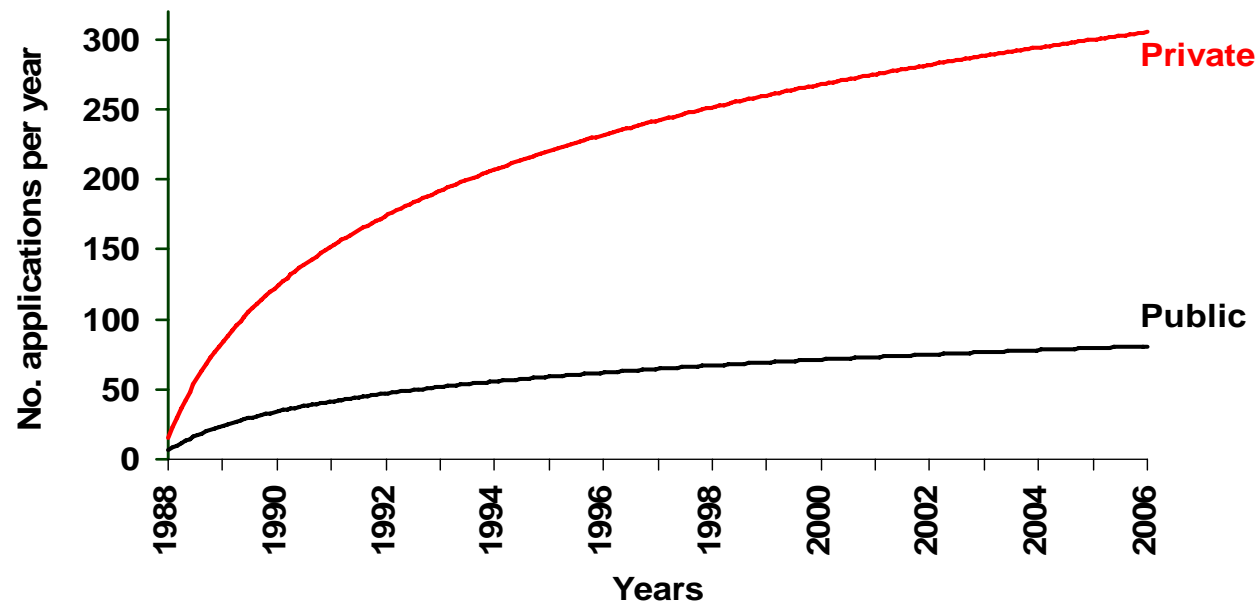
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## PBR applications in Aust. 1988-2006

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# PBR filings - by investment sector 1988-2006

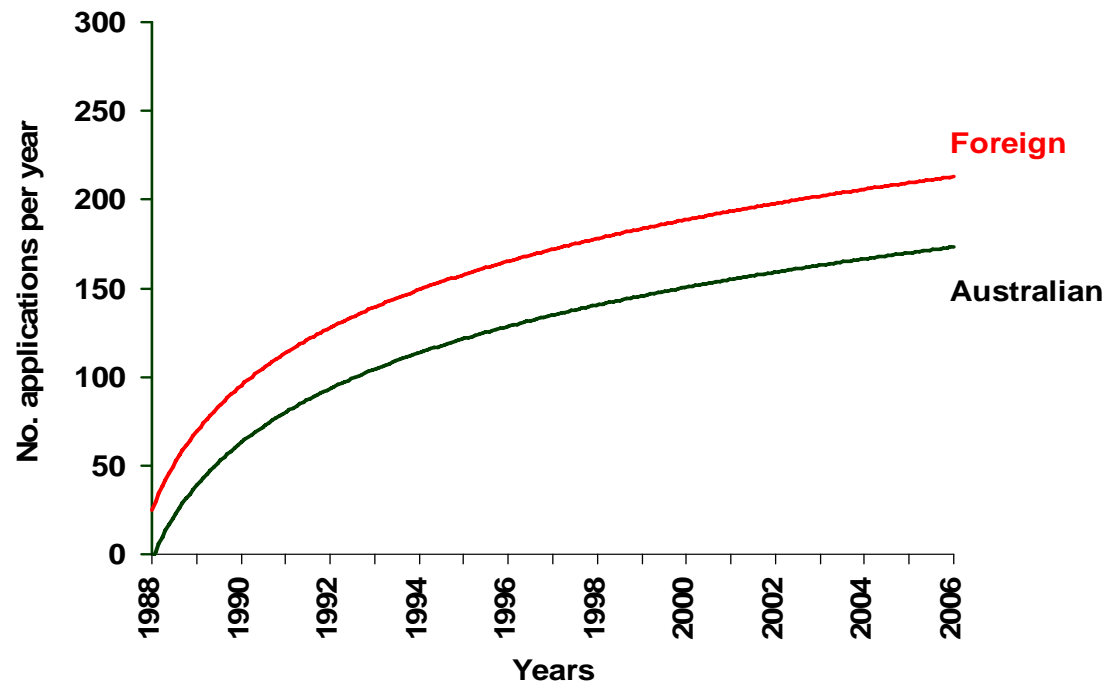


**About 100 new breeders enter PBR each year**

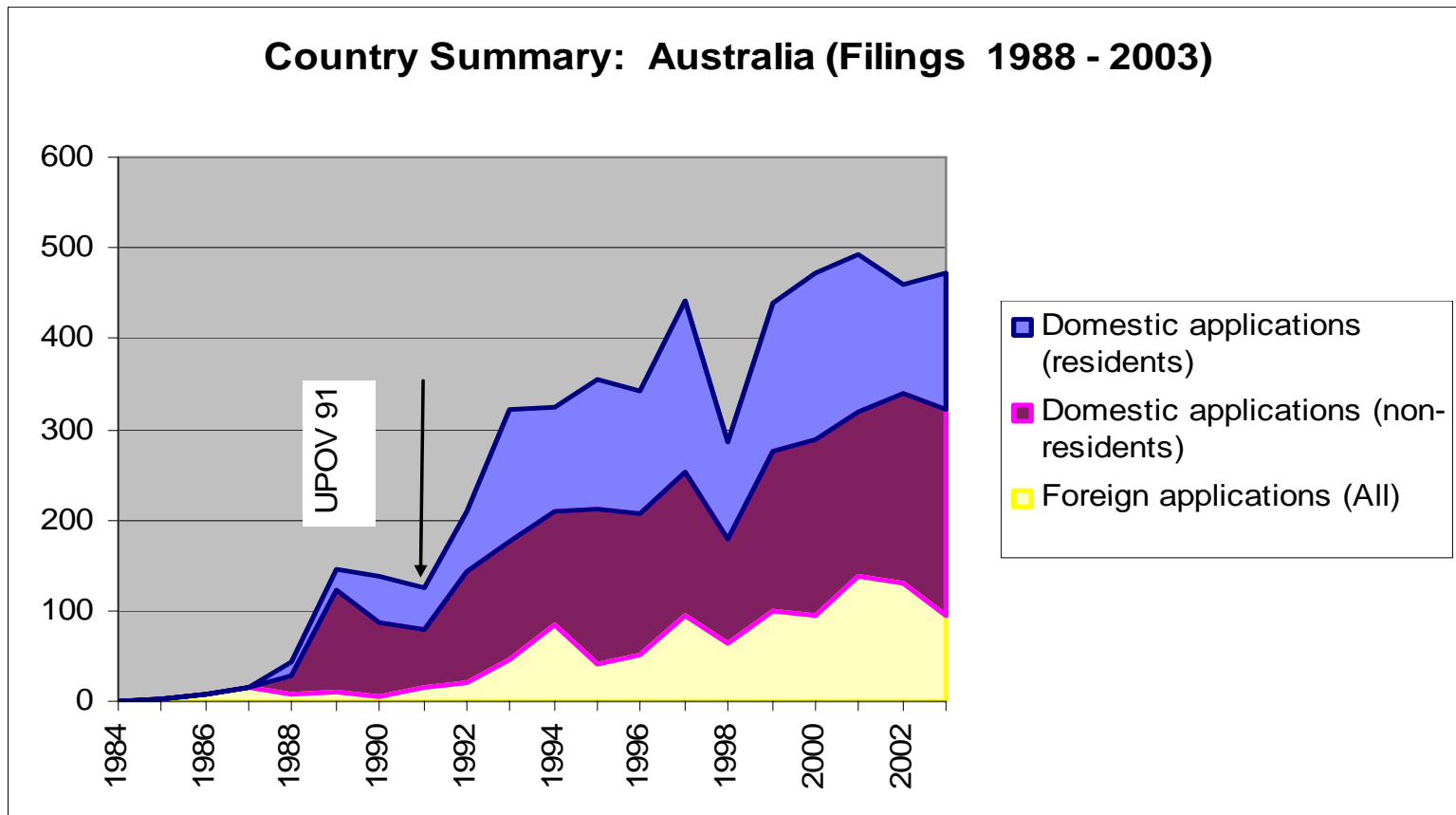


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# PBR filings by origin 1988-2006



# AU filings in other UPOV countries



# PBR applicant profile

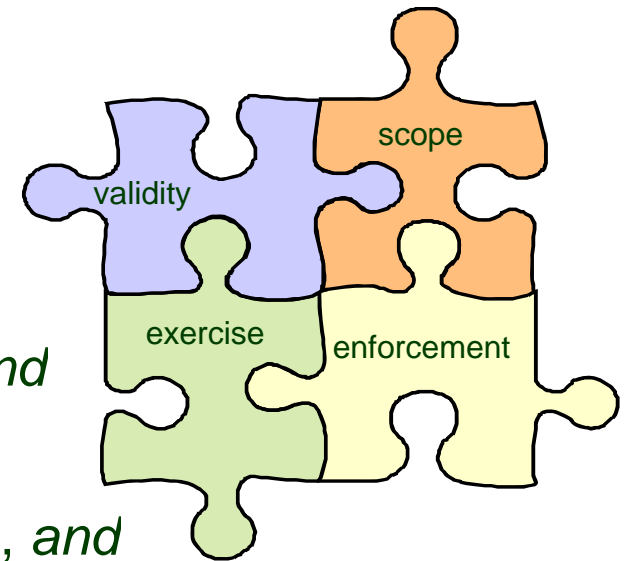
- Predominantly participants are:
  - small, self-filers who have bred the variety - most are ornamentals
  - 30% first time self-filers each year
  - 60% filings are foreign
  - Domestic filers seldom use patent attorneys or agents
    - ☐ rely on “in-house”/consultant QP
  - Foreign filers (esp. institutional breeders) may use patent attorneys but do use agents – where attorneys are used:
    - ☐ all normal Aust. attorney firms are involved

# Where to .. topical aspects of PBR

- Harmonised with International Conventions & other IPRs (UPOV, TRIPs, ITPGRFA, TM)
- Special 'allowance' under TPA (under review)
- PBR may not meet all expectations
  - Eligibility of some 'breeding' methods
  - DNA, Duration
  - Real/perceived lack of enforceability
  - Farm Saved Seed - exclusion to broad?
  - Not all derived varieties are protected by EDV

# Effective PBR arises from a combination of:

- the granting of legally sustainable, rights (**validity**), *and*
- the **scope** of the rights, *and*
- the opportunity to **exercise** those rights commercially, *and*
- the ability to **enforce** if the exercise of rights 'goes wrong' or free riders infringe, *and*
- interactions: other laws; incl. different IPR covering the same subject matter



Increasing number of plant varieties will have simultaneous coverage from multiple IPRs (PBR, Patent, TM etc)

'IPR Onion'

