

Submission Rijk Zwaan

We appreciate the opportunity to file a submission regarding the Intellectual property Laws Amendment Bill 2018.

Once again, we would like to make some observations, in relation to Plant Breeder's rights:

Paragraph 41A(4)(a)(ii):

In case a person applies for a declaration that another variety (the second variety) is essentially derived, the applicant should in the case of a non-PBR-protected second variety supply information that the second variety is a registrable plant variety as described in section 43. As indicated in our previous submission we do not consider it appropriate for the second variety to meet all the ordinary criteria for registration of subsection 43(1) including the criterion that the variety has not been exploited or has been only recently exploited. According to UPOV, the second variety only needs to qualify as a variety. To qualify as a variety, it is not relevant whether a plant grouping has already been exploited or not. Further, we consider it impossible to determine when a third party has exploited another variety for the first time.

Paragraph 41E(8):

We are of the opinion that the applicant for the declaration should only pay the cost of the test growing in case the second variety is assessed not to be an essentially derived variety (EDV). In case the second variety is assessed to be an EDV, the breeder of the second variety should bear the cost. It is important to note that the breeder of the second variety not only has been infringing a PBR by selling the EDV without permission, but could have avoided the cost by asking permission from the applicant to commercialize the second variety as soon as he intended to sell the EDV.

Paragraph 41E(3)(b):

It speaks for itself that the breeder of the initial variety will supply material of his PBR protected variety. However, the breeder of the second variety could easily supply different material from the material of the second variety. Any professional company would not do so but to avoid fraud we suggest that an independent expert will be appointed by the Registrar who collects material of the second variety. (The same applies to paragraph 40(2)(b) of the current Act). In any case, also the breeder of the initial variety should be allowed to provide material of the second variety to be included in the test growing. In case the material supplied by the breeder of the second variety appears to be different from the material of the second variety supplied by the breeder of the initial variety, further investigation is necessary.

For the other amendments at stake, we would like to refer to the submission of the Australian Seed Federation of 28 May 2018.