

**Australian
Seed Federation**



**Public Consultation -
streamlining and
simplifying IP
regulation:
*Proposed Plant
Breeder's Rights
changes***

1 April 2026

IP Australia
PO Box 200
Woden ACT 2606, Australia



Sent via: Submission portal

Dear IP Australia

Re: Public Consultation – streamlining and simplifying IP regulation: proposed Plant Breeder’s Rights changes

The Australian Seed Federation (ASF) welcomes the opportunity to comment on IP Australia’s consultation on proposed reforms to streamline and simplify intellectual property regulation.

An effective PBR framework remains essential to encourage plant breeding investment, support equitable royalty collection, and ensure Australian growers have access to improved varieties that drive productivity, resilience and quality across the agricultural and horticultural sectors.

ASF supports practical reforms that reduce administrative burden, improve regulatory consistency and lower compliance costs.

However, administrative streamlining alone will not deliver the full productivity gains available through PBR reform. Unresolved structural issues continue to weaken confidence in protection, enforcement and value capture. Genuine productivity reform must also address these broader issues.

ASF continues to advocate for two key priorities that have been under active discussion with IP Australia for several years:

- First, Essentially Derived Varieties (EDVs) must be addressed as a matter of priority. Australia’s current approach remains out of step with UPOV and key international jurisdictions. This affects commercial decisions, including the withholding of varieties from the Australian market. Harmonisation with UPOV would improve confidence in the system and support access to new varieties.
- Second, an Information Notice Scheme (INS) remains a necessary missing element in the PBR enforcement framework. Many PBR holders with suspected infringements are effectively hamstrung by the absence of a practical step between suspicion and court proceedings. There is a need for better steps in the protection chain, and an INS would provide a proportionate pre-litigation mechanism to obtain key information and improve compliance.

ASF’s comments on the consultation proposals are set out below.

Yours sincerely

A handwritten signature in black ink, appearing to read "Katherine Delbridge", with a long, sweeping underline.

Katherine Delbridge
Chief Executive Officer



INTRODUCTION

The ASF is the peak national body representing the interests of Australia's sowing seed industry at the state, national and international levels. The ASF membership base comprises stakeholders from all sectors of the seed supply chain including plant breeders, seed growers, seed processors and seed marketers, all of whom were consulted in the preparation of this submission.

In Australia, the seed industry is a vital link in the development of crops that are critical to the country's agricultural and horticultural productivity, sustainability, and food security.

Proposal 9: expressly allowing virtual marking of products protected by patents, PBR and designs

ASF supports this proposal. Expressly allowing virtual marking for PBR would reduce compliance burden while maintaining clear notice of rights. It would allow rights holders to keep information current without the ongoing cost of changing physical labels or packaging each time the status of a right changes.

This reform would be particularly useful where products move through multiple production cycles, packaging formats or supply chain channels. It would also bring Australia into closer alignment with international practice.

ASF supports this reform on the basis that the virtual marking system should be simple, accessible and practical for rights holders of different sizes. The requirements should not become so prescriptive that they create a new layer of complexity, particularly for smaller businesses.

Proposal 10: introducing a grace period for PBR renewal fees

ASF supports this proposal. Introducing a six-month, non-extendable grace period for PBR renewal fees would improve consistency across IP rights and reduce the risk of inadvertent loss of valuable rights. Given the long-term investment required to develop new plant varieties, irreversible loss caused by an administrative oversight can have significant commercial consequences.

ASF supports alignment with the broader IP framework in this respect. A grace period is a practical and reasonable safeguard.

ASF also encourages IP Australia to ensure there are clear and reliable reminder processes during the grace period, so that the measure reduces unintended lapses rather than simply postponing them.

Proposal 11: removing herbarium deposit requirements for PBR

ASF is broadly supportive of this proposal. Where the current herbarium deposit requirement no longer delivers a clear practical benefit, repeal of the mandatory requirement would reduce cost and delay for applicants, particularly in relation to native species. This appears consistent with the broader objective of removing unnecessary procedural burden.



Any changes should not create unintended evidentiary or taxonomic problems in cases where specimen deposits may still be useful. If deposits become voluntary, the system should retain sufficient flexibility to allow deposits where they assist the integrity or identification of the variety.

Policy issue 5: clarifying exhaustion in the PBR Act

There remains uncertainty in the industry around how exhaustion operates in the PBR Act. This can increase compliance costs, complicate royalty collection, reduce confidence in enforcement, and create inconsistency in how parties understand their legal rights and obligations. These are not merely technical legal questions. They affect the day-to-day operation of the PBR system and the willingness of businesses to invest in breeding, licensing and commercialisation.

ASF supports legislative clarification of exhaustion in the PBR Act and supports exploring greater harmonisation in the understanding of exhaustion amongst UPOV members, particularly where this would improve certainty in relation to import and export activities.

Any clarification should preserve an effective and equitable framework for breeders to obtain returns on their investment and should not inadvertently weaken breeders' rights at the point of first sale.

Policy issue 6: clarifying how rights apply where harvested material is also propagating material

ASF supports legislative clarification in this area. Propagating material and harvested material should be treated in a way that ensures breeders obtain effective protection. In sectors where harvested material is inherently capable of being used again for propagation, the current ambiguity creates inefficiency and uncertainty.

This uncertainty has forced industry participants to rely on private contractual arrangements to manage issues that should be clearer in the legislation itself. ASF supports reform that reflects commercial reality and provides greater certainty on how the PBR Act applies where harvested material is also capable of propagation.

Essentially Derived Varieties (EDVs)

While EDVs are not specifically included in the present package, ASF considers this to be one of the most important outstanding issues in Australia's PBR framework.

The principle of EDVs was a major improvement under UPOV 1991. It is intended to ensure that breeders who invest in the development of original varieties can benefit where those varieties are predominantly used as the basis for further derivation. This is an important part of maintaining confidence in long-term breeding investment.

ASF remains concerned that Australia's current approach to EDVs is too narrow and is out of step with UPOV and with the approach taken in many comparable jurisdictions. In practice, this is not a theoretical issue. Companies withhold varieties from the Australian market, or reconsider release strategies, because Australia's current EDV settings do not provide sufficient confidence in protection.



This has direct implications for Australian productivity. Where breeders are reluctant to commercialise varieties in Australia because of weaknesses in the EDV framework, Australian growers are disadvantaged through reduced or delayed access to new genetics.

ASF therefore strongly urges IP Australia and the Australian Government to prioritise EDV reform. Harmonisation with UPOV is needed to ensure the Australian framework supports innovation, international confidence and access to improved varieties.

Amending Australia's EDV provisions to align more closely with UPOV would constitute genuine productivity reform. It would strengthen protection for original breeding investment, support innovation and help ensure Australian growers and breeders are not left behind.

Information Notice Scheme (INS)

ASF continues to support the introduction of an Information Notice Scheme similar to that operating in the United Kingdom.

This was recommended by the Advisory Council on Intellectual Property in its 2010 review and supported in the Government response, yet it has not been implemented. ASF considers that this remains a significant gap in the PBR enforcement framework.

At present, a PBR owner who suspects infringement often has very limited options. Without access to key information, the rights holder may be unable to assess the extent of the issue or determine whether court proceedings are warranted. The current system leaves parties caught between suspicion and litigation, with no effective intermediate step.

This is particularly problematic where a rights holder is seeking compliance information, including harvest declarations or the source of plant material, but is reluctant to commence legal proceedings immediately because of the time, cost and relationship impacts involved.

There need to be better steps in the protection chain. An INS would provide a structured and proportionate mechanism for a PBR owner to seek specified information from an alleged infringer within a set timeframe before commencing formal legal action.

A well-designed INS would:

- improve the practical enforceability of PBRs.
- encourage compliance without immediate resort to litigation.
- reduce enforcement cost and delay.
- help rights holders better assess suspected infringements.
- support confidence in plant breeding investment.

ASF recommends that IP Australia revisit this reform as a priority and consult with industry on the design of an Australian INS model suited to local conditions.

Conclusion

While ASF supports a number of practical reforms outlined in this consultation, it is important to be clear that the most critical productivity reforms for the PBR system are not being addressed.

It has been too long since meaningful reform has been delivered to the breeding and seed sectors. Administrative improvements alone will not resolve the underlying issues impacting confidence, investment and access to new varieties.



ASF continues to emphasise that priority must be given to:

- EDVs – urgent alignment with UPOV is required to ensure Australia is not seen as an outlier and to maintain breeder confidence and access to new varieties
- An Information Notice Scheme – to address the current gap between suspected infringement and litigation, enabling a more effective and practical protection framework for PBR holders

ASF supports practical reforms in this consultation that reduce unnecessary burden and improve consistency, including:

- allowing virtual marking for PBR
- introducing a grace period for renewal fees
- removing unnecessary herbarium deposit requirements, subject to maintaining system integrity

ASF also supports further reform to clarify the operation of exhaustion and the treatment of harvested material capable of propagation.

ASF would welcome continued engagement with IP Australia to progress these priority reforms.