

Australian Plant Intellectual Property Law in Context¹

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Introduction

The term "Plant Intellectual Property" ('PIP' hereafter) refers to property rights either in commercial plant types or in types of commercially useful processes and techniques involving plant materials. The property rights in question are commodity rights—they provide control over market goods, things that can be bought and sold. As such, plant intellectual property rights are relatively recent phenomena, dating from no earlier than the early Twentieth Century, and in Australia only since the 1980s.²

This paper is largely descriptive in nature. It aims to help the reader understand the regulatory framework of PIP, and the context within which that framework has arisen and operates. It is, however, informed by a normative interest. Any new form of property requires justification, since it involves restricting access to a class of goods that was previously freely available. PIP is further contentious in that it allows for the commercialisation of genetically modified plants. So it is hoped that this paper at least helps uncover some of the issues that are relevant to consideration of the justification and desirability of PIP.

The Preconditions for PIP

Property rights in plants could in fact have only arisen recently. To see why this is true we need to have both a grasp of the nature of intellectual

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