



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

DETAILED RESPONSES ON THE QUESTIONS RAISED ON THE PLANT BREEDER'S RIGHT BILL AND THE PLANT IMPROVEMENT BILL

1. The Definition of a breeder in the presentation could be simplified by referring to natural or legal persons (slide 12 on Plant Breeder;s Rights presentation).

DAFF's response:

The presentation aimed to give examples of who may be considered a breeder as it is usually assumed that the breeding is limited to researchers in public or private research institutions.

Section 1 of the Plant Breeder's Rights defines a breeder sufficiently broad to include a person who bred, discovered and developed a variety, the employer of such persons and the successor in title of the two aforementioned categories of persons. Thus, the definition is sufficiently broad to cover natural and legal persons.

2. Is it possible to manipulate the period of validity of a right through operation of a will?

DAFF's response:

Section 8 of the Plant Breeder's Rights Bill provides for rights to be valid for periods of between 20 – 30 years depending on the particular kind of plant (detail to be covered in the regulations).

A plant breeder's right is considered an incorporeal thing (not physical) assigned to a specific breeder which can be transferred from one individual to another. If such a transfer happens through operation of a will, the validity period does not expire and replaced by a new period. The original period subsist from the starting period at which it was first assigned.

A plant breeder's right is granted in respect of the variety concerned as opposed to the owner of the variety. This means that the period of validity remains the same even if the variety were to be transferred to a new owner through a will. For example if the period of validity is 20 years and the right is transferred after 15 years. The period of validity will be the remaining 5 years for the new owner.

3. Given the economic importance of plant breeder's right, should the Advisory Committee not include someone with economic expertise?

DAFF's response:

DAFF accepts this as a valid proposal and will work with the State Law Advisors in considering this proposal.

4. Does the Act provide for the protection of indigenous biological resources which are often at risk of biopiracy?

DAFF's response:

The protection of indigenous biological resources falls outside the scope of the Plant Breeder's Rights Bill or Plant Improvement Bill. However, section 16(6) of the Plant Breeder's Rights Bill and section 28 (7) of the Plant Improvement Bill provides for compliance to any other relevant legislation. As an example, if a permit is required under the Biodiversity Act, 2004 for the accessing or commercializing an indigenous biological resources (e.g. the variety in question), proof of such authorizations should be provided before an application is considered under either Bills.

The PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS KNOWLEDGE SYSTEMS Bill, 2014 (Government Gazette Notice 243 of 2015 published by the Department of Science and Technology) aims among others: to provide for the protection, promotion, development and management of indigenous knowledge systems; to provide for the management of rights of indigenous knowledge holders; to provide for access and conditions of access to knowledge of indigenous communities; to