

# Key International Treaties for Plant Genetic Resources

This Fact Sheet provides an overview of the key international treaties that are relevant for the governance of plant genetic resources in Australia.

## The Convention of the International Union for the Protection of New Varieties of Plants (UPOV)

UPOV is a binding international agreement that was first adopted in 1961 by a group of European nations. The Convention came into force in 1968 establishing international rules to protect the rights of the developers of new plant varieties. The original UPOV Convention has been modified a number of times and its most recent revision in 1991 requires member countries to provide an intellectual property right specifically for plant varieties. This form of intellectual property protection is often referred to as plant breeder's rights.

The main objectives of UPOV are:

1. to encourage plant breeding and innovation through the grant of a limited commercial monopoly to breeders of new varieties; and
2. to give legal protection to breeders, without which anyone could commercialise their new varieties without payment.

While farmers' rights are not specifically recognised by UPOV, the Convention recognises 'farmers' privilege'. This allows member countries of UPOV to decide whether farmers can save and re-use farm saved seeds and propagating material while still safeguarding the legitimate interest of the breeders of new plant varieties.

To be eligible for protection under UPOV, plant varieties need to be: new, distinct from existing, commonly-known varieties, sufficiently uniform, and stable. Under the UPOV Convention, the plant breeder's rights are granted for a limited period of time – 20 years from application date (25 years for trees and vines) – and then the variety passes into the public domain.

Australia became a member of UPOV on 1 March 1989 and introduced a *Plant Breeder's Rights Act* in 1994 to comply with UPOV.

## The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO)

TRIPS came into force on 1 January 1995 to set out the minimum standards of intellectual property protection that WTO member countries are required to provide. The TRIPS Agreement requires WTO member countries to protect plant varieties by patents, an 'effective *sui generis* system' (of its own kind), or combination of both. A *sui generis* system enables WTO member countries to design their own system of protection for plant varieties if they have elected not to use their patent system for plant protection.

In Australia, plants can be protected by patents provided that they meet the necessary requirements that exist for patentability.

## The Convention on Biological Diversity (CBD)

The CBD entered into force in December 1993 to establish a framework for the governance of genetic resources from plants, animals, or microorganisms. It provides that 'States have the sovereign right to exploit their own resources pursuant to their own environment policies', and that 'the authority to determine access to genetic resources rests with the national governments and is subject to national legislation'.

The key goals of the CBD are:

1. the conservation of biological diversity;
2. the sustainable use of the components of biological diversity; and

3. the fair and equitable sharing of the benefits from the use of genetic resources.

The CBD recognises that access to and use of valuable genetic resources should be based on mutually agreed terms and the prior informed consent of the resource-providing parties. The protection of traditional knowledge of Indigenous and local communities is a key concept of the CBD. The Convention requires States to encourage the equitable sharing of the benefits accrued from the use of traditional knowledge, innovations, and practices.

Australia was one of the first countries to accept the Convention (1992). In response to the CBD, Australia has adopted the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Some States and Territories of Australia also have adopted CBD-compatible laws. These include Queensland and the Northern Territory.

### **Nagoya Protocol on Access to Genetic Resources and Benefit Sharing (the Nagoya Protocol)**

The Nagoya Protocol is an international agreement establishing binding legal obligations relating to the access and use of genetic resources. The Protocol is supplementary to the CBD and only applies to those States that have ratified it. The Protocol, which has been ratified by 120 countries, came into force on 12 October 2014. Contracting Parties to the CBD that have not ratified the Protocol are still bound by obligations on access and benefit sharing set out in the CBD.

The Nagoya Protocol is designed to implement the third objective of the CBD: ‘the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, considering all rights over those resources and to technologies, and by appropriate funding’.

Australia signed the Nagoya Protocol in January 2012 and is now consulting with national stakeholders to implement and ratify it.

### **International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty)**

The Plant Treaty, which came into effect on 29 June 2004, aims to promote:

1. the conservation and sustainable use of plant genetic resources for food and agriculture; and
2. the fair and equitable sharing of benefits derived from their use.

The Plant Treaty encourages the use of plant genetic resources through the sharing of national and international collections of plant materials that are important for research, breeding, and training for food and agriculture.

A key feature of the Plant Treaty is its ‘Multilateral System’, a global mechanism to ensure access to plant materials and benefit sharing. The Multilateral System covers plant materials of 64 food and forage crop species that have been identified in *Annex 1* of the Plant Treaty. These include plant materials that are under the management and control of the government and in the public domain, that are held by CGIAR and other gene banks as *ex situ* collections, and that individuals and institutions include as contributions to the Multilateral System. The Plant Treaty also recognises farmers’ rights to plant genetic resources and traditional knowledge, including the right to save, use, exchange, and sell seeds. The Treaty encourages States to protect these rights under their national laws.

Australia signed the Treaty on 10 June 2002 and ratified it on 12 December 2005.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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