



Australian Government

IP Australia

Discussion paper

Essentially Derived Varieties



Acknowledgement of Country

IP Australia acknowledges the rich contributions to innovation that Aboriginal and Torres Strait Islander peoples have made through 60,000 plus years of continuing lore and history. We pay our respects to the Traditional Custodians of the lands on which our agency is located and where we conduct our business.

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Introduction

Since the *Plant Breeder's Rights Act 1994* (PBR Act) commenced, several reviews and reports have noted stakeholder concerns about Australia's approach to essentially derived varieties (EDVs).¹

In 2021, IP Australia consulted publicly on potential changes to the International Union for the Protection of New Varieties of Plants (UPOV) explanatory notes on EDVs² and commissioned the University of Queensland (UQ) to consider whether Australia should adopt the approach in the then-draft explanatory notes.³ Following consultation, IP Australia agreed to review the EDV provisions to assess whether they remain clear, fit for purpose and appropriately balance incentives for initial breeders and follow-on innovation, particularly considering advances in breeding technologies.

IP Australia seeks evidence and practical examples on whether Australia's EDV provisions operate effectively and as intended. This paper explains the development of the EDV concept, Australia's current framework and then examines three main areas for discussion:

- whether the EDV provisions are sufficiently clear;
- whether the threshold for establishing essential derivation is appropriate; and
- the EDV determination process.

This paper presents issues for discussion but does not propose a preferred model for reform.

The consultation questions throughout this paper seek evidence, practical examples and views on the benefits, risks and likely effects of changes to the law. You may request confidential treatment for your submission or describe your examples in general terms.

A [consolidated list](#) of questions is available at the end of the document. You may answer some or all the questions. You can also raise any relevant EDV issues that are not covered in this paper.

If you would like to meet with us to discuss the issues raised in this paper, please email consultation@ipaaustralia.gov.au.

Making a Submission

Written submissions can be uploaded to IP Australia's Consultation Hub: <https://consultation.ipaustralia.gov.au/>

For accessibility reasons, please submit responses by email in Word, RTF, or PDF format.

The contact officer is Isabel Ward, who may be contacted on (02) 6283 2720 or via email at consultation@ipaaustralia.gov.au.

Submissions should be received no later than Friday, 30 October 2026.

¹ Reviews and consultations include the 1999 Standing Committee on Agriculture and Resource Management Review, the 2002 [Expert Panel on Breeding](#), the 2010 [ACIP Review of PBR Enforcement](#), and the 2016 [Productivity Commission Inquiry into Australia's IP arrangements](#).

² IP Australia Consultation Hub, 'Proposed changes to UPOV Explanatory Notes on Essentially Derived Varieties',

³ Hamish MacDonald and Brad Sherman, *Essentially Derived Varieties and the Plant Breeder's Rights Act 1994 (Cth)* (University of Queensland, 2022), available at: [University of Queensland PBR policy research](#)

Background

The UPOV System and EDVs

The UPOV Convention⁴ is the framework for domestic plant variety legislation in member countries. Australia is a member of UPOV and party to the 1991 Act of the UPOV Convention (UPOV91). The UPOV Convention includes the ‘breeder’s exemption’ which allows plant breeders to use protected varieties to develop new varieties without authorisation by the rights holder. This exemption reflects the cumulative and iterative nature of plant breeding, where breeders rely on existing varieties to introduce genetic variation.

Historically, the time-intensive and iterative nature of plant breeding generally gave the initial breeder time to realise a return on their investment before improved varieties entered the market.⁵ However, in the lead up to the agreement of UPOV91, stakeholders raised concerns about the impact of genetic engineering and molecular techniques. They expected that more precise trait selection would reduce the time needed to develop new varieties and could limit the initial breeder’s ability to realise a return on investment. They also raised concerns that these techniques could enable breeders to create genetically similar varieties with minor or trivial changes, thereby undermining the value and originality of high-investment breeding programs.⁶

To address these concerns, UPOV91 introduced the concept of “essential derivation”. Article 14(5)(b) of UPOV91 defines an EDV as follows:

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is clearly distinguishable from the initial variety, and
- (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Article 14 extends the breeder’s rights to the initial variety to any varieties derived from it. This means third parties must obtain authorisation from both the breeder of the EDV and the rights holder for the initial variety before commercialising an EDV. The rights holder for the initial variety retains rights over the EDV until the PBR for the initial variety expires.

EDVs in Australian legislation

In Australia, PBRs are granted under the PBR Act which is aligned with UPOV91. Section 4 of the PBR Act provides that a plant variety is an essentially derived variety of another plant variety if:

- a) it is predominantly derived from that other plant variety; and
- b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and
- c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

⁴ The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organisation established in 1961 through the UPOV Convention. The Convention was revised in 1972, 1978 and 1991.

⁵ Jay Sanderson, *Plants, People and Practices. The Nature and History of the UPOV Convention*, Cambridge University Press, 2017, 210.

⁶ Jay Sanderson, *Plants, People and Practices. The Nature and History of the UPOV Convention*, Cambridge University Press, 2017, p209-211

The PBR Act defines "essential characteristics" as heritable traits that result from the expression of one or more genes, or other heritable determinants, that contribute to the principal features, performance or value of the variety.

Section 12 of the PBR Act provides that, if the Registrar declares a variety to be essentially derived from a protected initial variety, the rights granted to the initial variety extend to the EDV from the date of the declaration.

While Australia adopted the EDV concept, the PBR Act expands on the UPOV91 definition in three ways:

- it defines "essential characteristics".
- it specifies circumstances in which a variety will not be considered an EDV, clarifying where the chain of essential derivation ends.
- it gives the PBR Registrar responsibility for administering and determining EDV matters.

These additions aimed to provide greater certainty and establish a clearer threshold for determining essential derivation. UPOV membership obliges Australia to meet minimum requirements but does not set upper limits, provided Australia remains consistent with the minimum requirements.

Since the introduction of the EDV provisions in 1994, IP Australia has received three applications for essential derivation, all of which were unsuccessful.⁷

Issues for discussion

Stakeholders have long raised concerns that aspects of the Australian definition of EDVs are unclear and that the current threshold for establishing essential derivation may be too high. This paper considers these issues under three themes:

- clarity of the EDV provisions;
- the appropriate threshold for establishing essential derivation; and
- potential improvements to the administration and determination of EDV matters.

These issues are connected, but this paper considers them separately to support discussion. The following sections ask stakeholders to provide evidence, examples and views on whether reform is needed and, if so, what changes IP Australia should consider.

Concerns that the EDV provisions are unclear

Meaning of "important (as distinct from cosmetic) features"

Stakeholders have raised concerns about the requirement in section 4(c) of the PBR Act that an EDV must not exhibit "any important (as distinct from cosmetic) features" that differentiate it from the initial variety. The term "important features" is not defined in the PBR Act and is unique to Australia.

Consultation questions

1. *Do you agree that the term "important features" causes confusion? If so, why?*
2. *How would you define features that are important to a variety? Please provide practical examples.*

⁷ Details of these cases are available in Doug Waterhouse, 'Experience on Essentially Derived Varieties in Australia', [Seminar on Essentially Derived Varieties](#), International Union for the Protection of New Varieties of Plants (UPOV), Geneva, 22 October 2013.

Definition of “essential characteristics”

The PBR Act defines essential characteristics as:

“heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal features, performance or value of the variety.”

The UPOV Convention does not define essential characteristics, and many UPOV members do not define the term in domestic legislation. International case law provides limited guidance on what constitutes an essential characteristic.⁸

The UPOV Explanatory Notes on EDVs provide guidance developed and agreed by UPOV members on how the Convention should be understood and applied. The Notes describe essential characteristics as follows:

“Essential characteristics are characteristics that result from the expression of the genotype or combination of genotypes of the initial variety and include, but are not limited to, morphological, physiological, agronomic, industrial (e.g. oil characteristics) and/or biochemical characteristics.

“Essential characteristics” are characteristics that are fundamental for a variety as a whole. They should contribute to the principal features, performance or value for use of a variety and be relevant for one of the following: the producer, seller, supplier, buyer, recipient, user of the propagating material and/or of the harvested material and/or of the directly obtained products and/or the value chain.

Essential characteristics may or may not be characteristics used for the examination of distinctness, uniformity or stability (DUS) and/or used for the examination of value for cultivation and use (VCU).

Essential characteristics may evolve over time.”

Consultation questions

3. *Should IP Australia clarify the current definition of essential characteristics in the PBR Act? If so, should IP Australia retain, amend or supplement it with guidance, and why?*
4. *Should IP Australia incorporate the description of essential characteristics in the UPOV Explanatory Notes into the PBR Act or explanatory material to the Act? If you favour this approach, should IP Australia incorporate the description in full or only in part? Please explain why.*

Relationship between “important features” and “essential characteristics”

IP Australia has heard that stakeholders are uncertain whether “important features” in section 4(c) of the PBR Act are equivalent to “essential characteristics” in section 4(b), or whether each concept performs a distinct function. Stakeholders have also questioned whether an ‘important feature’ would always be an ‘essential characteristic’, given the definition of the latter. Previous reviews recommended replacing “important features” with “essential characteristics”.⁹

Consultation questions

5. *Do you think the reference to ‘important features’:*

⁸ The [University of Queensland Research Report on EDVs](#) considered international case law on EDVs (pages 7-9). The question of essential characteristics was considered in the 2015 Italian case *Almo s.p.a. v Sardo Piemontese Sementi Soc. Coop. Società Agricola*. This case is the only case which attempted to comprehensively enumerate the essential characteristics to be compared.

⁹ Recommendation 9 of the 2010 [ACIP Review of PBR Enforcement](#).

(a) imposes additional requirements beyond the ‘essential characteristic’ requirement,

(b) imposes no additional requirements, or

(c) is unclear whether it imposes additional requirements?

Where possible, please provide practical examples to support your views.

Meaning of “cosmetic”

Stakeholders have also questioned the phrase “as distinct from cosmetic” in section 4(c). The phrase creates difficulty because a feature may be aesthetic in nature but still commercially or technically important. This issue is particularly relevant to ornamental varieties, where flower shape or colour may determine market value, and to fruit varieties, where colour may materially influence consumer preference and marketability. The same type of trait may also carry different significance across crops: a colour change may have little commercial significance in some wheat varieties but substantial significance in an ornamental such as a Calla Lily.

Consultation questions

6. *Does the phrase “as distinct from cosmetic” create uncertainty where an aesthetic feature is commercially or technically important?*
7. *Can you provide examples of derived varieties where an EDV was not sought because the relevant feature was cosmetic?*

Concerns that the EDV threshold is too high

The EDV system aims to balance access to protected varieties for further breeding with fair protection and remuneration for initial breeders when new varieties are predominantly derived from their varieties.

As new technologies enable competitors to develop and commercialise new varieties more quickly, initial breeders may have less time to recoup their investment. Stakeholders have raised concerns that Australia’s threshold for essential derivation is too high, and advances such as gene editing, targeted mutagenesis and other precision breeding methods have heightened those concerns.

The current EDV threshold

The requirement that an EDV not exhibit “any important (as distinct from cosmetic) features” that differentiate it from the initial variety is unique to Australia. Stakeholders have raised concerns that this requirement means that Australia defines EDVs too narrowly. The Productivity Commission noted that the requirement means that “in some cases, the balance of rights is tipped in favour of follow-on breeders over initial breeders, particularly in an era where new technology can be used to rapidly introduce traits of interest into existing varieties.”¹⁰ Stakeholders have echoed this view in recent years.¹¹ Conversely, the Productivity Commission and the former Advisory Council on Intellectual Property (ACIP) noted that a threshold set too low could create an ‘endless cascade of PBR over all derived varieties’.

Some stakeholders believe that the small number of EDV applications in Australia suggests the threshold is too high. However, relatively few EDV disputes have been identified internationally.¹² IP Australia seeks evidence and practical examples to better understand the extent of any problem and whether legislative reform is warranted.

¹⁰ Productivity Commission 2016, Intellectual property arrangements, Inquiry Report No. 78, p. 419

¹¹ IP Australia 2021 Consultation, [Proposed changes to UPOV Explanatory Notes on Essentially Derived Varieties](#)

¹² The University of Queensland’s review of international case law identified only eight essential derivation decisions.

Consultation questions

8. *Have concerns about follow-on breeding prevented anyone from releasing varieties in Australia? Can you provide an example?*
9. *Have new breeding technologies, including gene editing, enabled breeders to develop varieties that you believe should have been treated as EDVs but do not meet the definition in Australian law? Please provide details where possible.*
10. *What other evidence should IP Australia consider when assessing whether to change Australia's EDV threshold?*
11. *Are you aware of PBR owners not applying for an EDV declaration because they expected the application to fail? Please provide details.*

Stakeholders hold different views on the appropriate EDV threshold. To support discussion, this paper compares the current PBR Act approach with two alternative threshold approaches below suggested by stakeholders.

Alternative approaches to the EDV threshold

Possible approach 1: Consider varieties with added essential characteristics as EDVs

While UPOV members take different approaches to EDV provisions, most agree that a variety qualifies as an EDV if it:

- is predominantly derived from the initial variety;
- retains all essential characteristics of the initial variety; and
- introduces **additional essential characteristics** unique to the derived variety.

If "important features" are interpreted as being equivalent to "essential characteristics", a variety with additional essential characteristics would not be considered an EDV under current Australian law.

Example

A breeder develops Variety B, a new sunflower variety, from Variety A by induced mutation. Variety B derives solely from Variety A and retains all its essential characteristics, but adds herbicide tolerance, an additional essential characteristic that Variety A does not have.

Under Australia's definition of EDVs, Variety B would not be considered an EDV, as it has an important feature that differentiates it from Variety A, whereas most UPOV members assessed that Variety B would be an EDV.

Possible approach 2: Treat a variety as an EDV where differences in essential characteristics result from the act of derivation.

Some stakeholders favoured another approach during IP Australia's 2021 consultation on EDVs, that would allow an EDV to differ from the initial variety in its essential characteristics, provided the act of derivation caused those differences. Under this interpretation, predominant derivation would be a key factor in determining EDV status. For mono-parental varieties (i.e. varieties derived from a single parent), a variety would be an EDV regardless of the number of resulting changes, as any change must be a result of the act of derivation.

This approach could result in varieties being treated as EDVs even where important or innovative characteristics have been added or modified, for example to improve disease resistance or adaptation to different growing conditions. Such a variety would not be considered an EDV under the current PBR Act, despite being predominantly derived from the initial variety's genome. In response to the 2021 consultation stakeholders that

did not favour this approach were concerned that this could disincentivise innovation of new breeding technologies and the use of new breeding techniques to develop new varieties.

Example

Variety A is a Delphinium with pink flower colour. Variety B, which has light pink flowers, is a mutation of Variety A produced by ion beam irradiation.

Under an approach where mono-parental varieties are considered essentially derived this would be an EDV. In an approach where the essential characteristics of the variety need to be retained this would not be considered an EDV.

IP Australia has reservations about this approach. The IP system aims to balance incentives for innovation with the broader interests of the community. While breeders should have adequate incentives to develop new varieties, a predominantly derived variety may incorporate a significant new trait, such as disease resistance, that reflects substantial investment and innovation. Treating all mono-parental varieties as EDVs could reduce incentives to develop and commercialise those varieties.

Consultation questions

12. *Considering the current approach in the PBR Act and the examples provided above, what threshold should IP Australia apply to EDVs? Why?*
13. *Should IP Australia consider other approaches to the EDV threshold? If so, please provide examples to support your views.*

Other stakeholder views on EDV thresholds

Definition of EDV incorporating a genetic component/genetic similarity threshold

Some stakeholders have suggested adding a genetic component to the EDV definition, such as a minimum level of genetic similarity between varieties. Stakeholders who support a genetic threshold argue that it may provide greater certainty and objectivity than assessments based solely on varietal characteristics and derivation.

UPOV considered this issue when discussing the revised Explanatory Notes on EDVs. However, neither the UPOV Convention nor the revised Explanatory Notes adopted a fixed genetic similarity threshold. Practical difficulties include the lack of universal genetic similarity thresholds, the likely need for crop-specific thresholds, and the absence of international consensus on appropriate genetic testing methodologies or thresholds for most plant groupings.

Although the UPOV Convention and the PBR Act do not include a genetic similarity threshold in the EDV definition, genetic evidence may still assist EDV assessments, particularly for predominant derivation. Australian EDV matters have considered evidence such as DNA profiling. Until broader international consensus emerges on testing methods and crop-specific thresholds, IP Australia does not propose to include a genetic similarity threshold in the EDV definition.

Consultation questions

14. *How would changes to the EDV threshold affect incentives for initial breeders and follow-on breeders in your sector?*
15. *What evidence shows that IP Australia needs to change the EDV threshold to maintain incentives for investment in plant breeding and the development of new varieties in Australia?*

Improving the EDV process

The PBR Act sets out the process for applications and determinations of essential derivation for protected varieties (sections 40 – 41) and non-protected varieties (sections 41A – 41F). IP Australia seeks views on possible improvements to the EDV process.

The University of Queensland noted in its independent research report on EDVs that stakeholders lack awareness and understanding of the PBR Act generally and EDVs specifically. Stakeholders have also raised concerns about limited guidance and information on how the EDV framework operates in practice. IP Australia welcomes views on whether additional guidance, greater transparency or changes to current processes would help users navigate the system and improve confidence in EDV outcomes.

Consultation questions

- 16. What information should IP Australia make available about the EDV process and EDV decisions? For example, would more detailed guidelines help?*
- 17. Would more information about concepts such as ‘predominant derivation’, ‘essential characteristics’ or ‘important features’ reduce uncertainty about terminology?*

Publishing EDV decisions

The PBR Registrar does not currently publish EDV assessments, and there is limited public guidance on how the Registrar applies the EDV test in practice. This may make it difficult for breeders and rights holders to understand how previous matters have interpreted key concepts such as “predominantly derived”, “essential characteristics” and “important features”.

Publishing EDV decisions, or summaries of decisions, could improve transparency and provide practical guidance on the types of evidence the Registrar considers relevant to EDV applications. It may also help stakeholders assess whether to seek an EDV declaration and support greater consistency in future decision-making. However, EDV matters may involve commercially sensitive technical, genetic or market information. IP Australia would therefore need to consider whether to publish decisions in full, in redacted form, or as de-identified summaries.

IP Australia seeks stakeholder views on whether publishing EDV decisions would improve certainty and confidence in the EDV system, and what information would be most useful to make publicly available.

Consultation questions

- 18. Would publishing EDV decisions be useful?*
- 19. If IP Australia published EDV decisions, what level of detail should it make publicly available? For example, should IP Australia publish decisions in full, in redacted form, as de-identified summaries, or through another approach? Please explain your reasons.*

The decision maker

Australia is the only UPOV member where the PBR Registrar has a role in determining whether a variety is essentially derived. In other jurisdictions, courts generally determine EDV status in disputes between the relevant rights holders, if the parties cannot resolve the matter through private negotiations.

When assessing whether a variety meets the DUS requirements for registration, the Registrar assesses whether it is distinct, uniform and stable. That assessment identifies differences between varieties but does not ordinarily require the Registrar to determine the performance, value or merit of those differences. By contrast, an EDV determination requires the decision maker to consider whether a characteristic contributes to the principal

features, performance or value of a variety. This raises the question of whether courts, which routinely determine contested questions of fact and law on expert evidence, may be better placed to decide EDV disputes.

Court determination of EDV status may reduce the layers of appeal proceedings. Under the current process, parties may seek merits review of the Registrar's decision by the Administrative Review Tribunal and then appeal to a court. Moving EDV determinations to the courts would also reduce legislative and procedural complexity in the PBR Act, including the detailed administrative framework for EDV applications. Courts already have established procedures for dealing with contested expert evidence, cross-examination and commercially sensitive information. The cost and seriousness of court proceedings may also encourage parties to assess the strength and value of their position before bringing or defending a claim, which could discourage weak or speculative matters.

However, court proceedings would cost more and take longer than an administrative application to the Registrar. Those costs may make enforcement less accessible, particularly for smaller breeders. Court determination may not necessarily provide greater clarity in practice. Given the small number of EDV disputes and PBR court cases, courts may take considerable time to develop a substantial body of case law interpreting terms such as "essential characteristics" and "important features", and stakeholders may continue to seek greater specificity in legislation or additional guidance. Any move to court determination would therefore need to consider whether measures are required to preserve accessibility and provide sufficient certainty for users of the PBR system.

The appropriate decision maker may also depend on what, if any, changes IP Australia makes to the EDV provisions. For example, if IP Australia changed the EDV threshold, it may need to reconsider whether the Registrar should continue to determine EDV status administratively or whether a court should determine disputes between the affected parties. IP Australia welcomes feedback on potential improvements to the EDV determination process.

Consultation questions

- 20. Should the PBR Registrar continue to make EDV determinations, or should EDV disputes be determined by a court? Please explain your reasons.*
- 21. Would your answer to the previous question differ if IP Australia lowered the threshold for establishing essential derivation? Please explain.*
- 22. What costs, benefits and accessibility impacts would moving EDV determinations to the courts have, including for smaller breeders?*
- 23. What other changes to the EDV process should IP Australia consider?*
- 24. Do you have any other comments or concerns about Australia's approach to EDVs that are not addressed in this paper?*

Consolidated consultation questions

Note: You may answer some or all the questions. You can also raise any relevant EDV issues that are not covered in this paper.

Clarity of the EDV provisions

Important features

1. *Do you agree that the term "important features" causes confusion? If so, why?*
2. *How would you define features that are important to a variety? Please provide practical examples.*

Essential characteristics

3. *Should IP Australia clarify the current definition of essential characteristics in the PBR Act? If so, should IP Australia retain, amend or supplement it with guidance, and why?*
4. *Should IP Australia incorporate the description of essential characteristics in the UPOV Explanatory Notes into the PBR Act or explanatory material to the Act? If you favour this approach, should IP Australia incorporate the description in full or only in part? Please explain why.*

Relationship between important features and essential characteristics

5. *Do you think the reference to 'important features':*
 - (a) imposes additional requirements beyond the 'essential characteristic' requirement,*
 - (b) imposes no additional requirements, or*
 - (c) is unclear whether it imposes additional requirements?**Where possible, please provide practical examples to support your views.*

Cosmetic features

6. *Does the phrase "as distinct from cosmetic" create uncertainty where an aesthetic feature is commercially or technically important?*
7. *Can you provide examples of derived varieties where an EDV was not sought because the relevant feature was cosmetic?*

The EDV threshold

Evidence of a problem with the current threshold

8. *Have concerns about follow-on breeding prevented anyone from releasing varieties in Australia? Can you provide an example?*
9. *Have new breeding technologies, including gene editing, enabled breeders to develop varieties that you believe should have been treated as EDVs but do not meet the definition in Australian law? Please provide details where possible.*
10. *What other evidence should IP Australia consider when assessing whether to change Australia's EDV threshold?*
11. *Are you aware of PBR owners not applying for an EDV declaration because they expected the application to fail? Please provide details.*

Alternative threshold approaches

12. *Considering the current approach in the PBR Act and the examples provided above, what threshold should IP Australia apply to EDVs? Why?*
13. *Should IP Australia consider other approaches to the EDV threshold? If so, please provide examples to support your views.*

General EDV threshold views

14. *How would changes to the EDV threshold affect incentives for initial breeders and follow-on breeders in your sector?*
15. *What evidence shows that IP Australia needs to change the EDV threshold to maintain incentives for investment in plant breeding and the development of new varieties in Australia?*

Improving the EDV process

Guidance and transparency

16. *What information should IP Australia make available about the EDV process and EDV decisions? For example, would more detailed guidelines help?*
17. *Would more information about concepts such as ‘predominant derivation’, ‘essential characteristics’ or ‘important features’ reduce uncertainty about terminology?*

Publishing EDV decisions

18. *Would publishing EDV decisions be useful?*
19. *If IP Australia published EDV decisions, what level of detail should it make publicly available? For example, should IP Australia publish decisions in full, in redacted form, as de-identified summaries, or through another approach? Please explain your reasons.*

The decision-maker for EDV matters

20. *Should the PBR Registrar continue to make EDV determinations, or should unresolved EDV disputes be determined by a court? Please explain your reasons.*
21. *Would your answer to the previous question differ if IP Australia lowered the threshold for establishing essential derivation? Please explain.*
22. *What costs, benefits and accessibility impacts would moving EDV determinations to the courts have, including for smaller breeders?*
23. *What other changes to the EDV process should IP Australia consider?*

Other matters

24. *Do you have any other comments or concerns about Australia’s approach to EDVs that are not addressed in this paper?*