End point royalties – simplifying the system

EPRs are an essential income source for Australia’s cereal, pulse and oilseed breeding programs. The collection of these royalties is evolving and now there are two main systems.

These two main collection systems are:

■ Automatic deduction of EPRs by grain traders buying from a grower; or
■ Royalty managers directly invoicing growers for EPRs.

The Plant Breeder’s Rights Act gives the variety owner the exclusive right to sell the variety, which includes the right to collect royalties for commercial use. Plant breeders rights (PBR) is a type of intellectual property right/set of rights. It is a protection of a variety that allows the breeder/owner of the variety to place restrictions on what the grower and others can do with it.

EPR is a fee charged for the use of a PBR variety. Royalties are collected at the first point of sale or commercial use.

The first EPR variety was released in 1996. Grain produced from approximately 180 EPR varieties now makes up the major proportion of Australia’s winter crop.

The possibility of charging EPRs provides a direct commercial incentive to encourage breeding companies to continue breeding new varieties that meet the needs of growers.

KEY POINTS

■ The majority of grain varieties grown in Australia now have an EPR.
■ The process for Australian EPR collection continues to evolve to become simpler for all areas of industry.
■ A new website will provide updated information on EPRs and their collection.
■ There are two main systems for EPR collection.
■ A common Grower Harvest Declaration Form has been agreed upon by the major seed companies to simplify the declaration process for growers.
■ Across-industry cooperation to ensure EPRs are collected is vital to ongoing resourcing and success of plant breeding activities.
There are two collection methods used by the companies responsible for EPR collection (royalty managers) at present.

1. **Automatic deduction of EPRs by the grain traders purchasing the grain directly from a grower.**

   Most grain traders have agreed to support automatic deduction of EPR collection in Australia.

   Collection of the EPR is dependent on the EPR variety being declared at the point of delivery. Grain traders can only deduct EPRs when a variety is correctly identified on grain receival documents.

   When a grower delivers to a bulk handler for sale to a grain trader, the trader relies on the bulk handler’s variety declaration system and the grain trader will deduct the EPR automatically according to variety.

   In all cases, the EPR collection agent remits any accrued EPR payments to individual royalty managers with a comprehensive report, which identifies the grower, varieties and quantities of grain purchased. This grain purchase information is then used by individual royalty managers to help reconcile individual grower EPR payments.

2. **Royalty managers directly invoicing growers for EPR payments.**

   This system applies to growers who either decide to use their grain on their own farm or sell it to businesses not automatically deducting EPRs from their grain payments.

   Royalty managers will invoice growers for outstanding EPRs. Outstanding EPRs to be invoiced to growers are identified by royalty managers via grain purchase data supplied, under agreement, from various grain traders and from the information provided by growers returning their annual EPR Harvest Declaration Form.

   Already, many grain traders who do not automatically deduct EPR have agreed to support EPR collection by supplying grain purchase data to royalty managers.

   Major royalty managers have agreed to use a common Grower EPR Harvest Declaration Form, to be distributed by the National Grower Registry (NGR), from the 2010/11 harvest. This will make completing the form and compliance much easier for growers. Royalty managers require growers to declare the following information for each EPR variety they have grown:

   - quantity of seed sown;
   - quantity of harvest grain sold;
   - quantity of harvest grain used on farm;
   - quantity of harvest grain warehoused at end of April each year;
   - quantity of harvest grain retained for planting; and
   - quantity and name of the entity where the harvest grain was sold.

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**The PBR system’s overarching objective is to enable ongoing investment in plant breeding. RD&E levies now focus predominantly on agronomy and crop management practices, pre-breeding research and on the breeding of minor crops, where full funding through EPRs is not feasible.**

The possibility of charging EPRs provides a direct commercial incentive to encourage breeding companies to continue breeding new varieties that meet the needs of growers. If a variety does not meet the promised value, then it will not be adopted and a strong financial message will be sent back to the breeding company.

Under an EPR system breeders and growers share the production risk – but also share in the rewards. Growers have access to superior varieties faster through streamlined research. The breeding programs need to be market-driven and meet end-user requirements to recoup their investment.

When making decisions on new varieties, growers are encouraged not just to consider the level of EPR they are likely to pay but the performance of the variety after consulting the National Variety Trials (NVT) website, local trials, agronomic advice and marketing opportunities.

The EPR will be payable for the life of the variety in the market place. The ownership of the variety is protected under the PBR Act (1994) for a maximum of 20 years.

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**FIGURE 1 END POINT ROYALTY (EPR) AUTO DEDUCT COLLECTION SYSTEM**

Growers – produce EPR variety grains

Grower sells grain* to a grain buyer* who will automatically deduct EPR from grower payment, if the variety is identified in grain delivery documents

Grain buyer

Grain buyer* remits EPR $s and data relating to the individual grower to royalty manager

Royalty managers

Variety owners / plant breeders

* First point of sale of grain; * Grain Buyer EPR Collection Agreement

**FIGURE 2 END POINT ROYALTY (EPR) DATA PROVISION AND COLLECTION SYSTEM**

Growers – produce EPR variety grains

Grain buyer directly provides data on grower purchases* or grower provides data via EPR Harvest Declaration Form

Royalty manager invoices for outstanding EPRs.

Variety owners / plant breeders

On-farm use

Grain buyer

Royalty managers
Licensing agreements

The seed licence is a legally binding contract between the grower and the PBR owner of the EPR variety, or between the licensed commercialisation party and the grower. This licence contains the terms and conditions that a grower needs to abide by when using a new variety. A number of commercialisation parties have adopted an industry standard PBR seed licence agreement. The industry seed licence consists of a seed agreement as the body of the licence plus schedules. All seed terms and agreements are detailed in the body of the licence. Terms and conditions that vary between varieties and/or between the various PBR owners are confined to schedules.

All information in one central location

Australia’s grain industry can now use a new central point to find information relating to EPRs. The website varietycentral.com.au includes information on EPR rates for different varieties as well as the companies that own the PBR and the royalty manager for each variety. Variety Central is an information source for Australian grain growers and industry, encompassing plant breeding, seed commercialisation, varieties, royalties and other relevant information. It is a joint initiative developed by the EPR steering committee and sponsored by the following companies:

- AGT (www.ausgraintech.com);
- Grainsearch (www.grainsearch.com.au);
- Intergrain (www.intergrain.com);
- Monsanto (www.monsanto.com.au);
- Nuseed (www.nuseed.com.au);
- Seedmark (www.seedmark.com.au);
- Seednet (www.seednet.com.au); and

Seed licences and related grower forms needed for EPR collection are also available for downloading from this website. News and fact sheets on EPR will be updated regularly.

Central lists of EPR rates for all EPR varieties can be found on the website. Rates can vary from more than $13/tonne on some canola varieties down to $1/tonne on some cereal varieties. Growers wishing to examine the different rates when selecting varieties are encouraged to use this resource.
Frequently asked questions

What is the difference between plant breeders rights (PBR) and EPR?
The PBR is a legislated act that provides the rights for the owner of the variety to commercialise the variety and the EPR is the royalty charged as a result. The EPR will be payable for the life of the variety in the market place, while the ownership of the variety is protected under the PBR Act (1994) for a maximum of 20 years.

Why should growers pay a levy to the GRDC and an EPR?
Breeding programs for the major broadacre crops have gradually moved from being publicly funded to self-funded. EPR provides an income to these breeding programs to enable improved variety development.

GRDC levies are used for a number of important services including R&D capacity building, pre-breeding research, developing new farm practices, breeding activities where there is still market failure, and other activities such as the NVT system.

How is the EPR calculated?
EPR rates are set by the variety owner. EPR rates are normally determined by research and development costs, market forces and the value of the variety to Australian cropping.

Can the EPR on a specific variety change from year to year?
Setting EPR rates is at the discretion of the owner of each variety. Growers will normally be informed well in advance of sowing of any changes to specific varieties’ EPR rates.

Why do I have to pay the EPR on a variety that has not performed for me?
Because the grower has a contracted obligation to the variety owner or its commercial agent.

Can I use PBR varieties in a share cropping situation?
Seed of PBR-protected varieties may be sown under a genuine share cropping arrangement.

My neighbour tells the bulk handlers the grain they deliver is an old non-EPR variety to avoid paying. Is this illegal?
This mis-declaration of a variety is a breach of the PBR Act and may result in fines of up to $55,000 for an individual and $275,000 for a company. It may also breach any seed licence that is in place.

Correct variety declaration is a vital component in maintaining Australia’s premium quality grades. Growers deliberately mis-declaring varieties are potentially diminishing the viability of the plant breeding companies to deliver improved varieties and the ability of Australia’s grain trade to deliver grain quality to the marketplace. New improved varieties and premium grain markets are vital ingredients in the success of every grower’s grain business and Australia’s grains industry.

Where do I source a common Grower Harvest Declaration Form?
The form is available at varietycentral.com.au or from www.grdc.com.au or from a royalty manager or the National Grower Register (NGR).

What if I choose not to comply?
Variety owners and royalty managers use a number of different sources to monitor EPR compliance. While it is ultimately up to the grower to ensure compliance, Harvest Declaration forms, bulk handler reports and grain trader reports can all help measure compliance and, when required, direct invoicing of growers will take place. Compliance with EPR systems is vital to ensure the future of Australian breeding programs.

Can I sell the seed of a PBR-protected variety with the sale of the farm?
For most varieties, other than those where the breeder/owner has clearly indicated that the grower is permitted to sell as seed, the seed remains the property of the breeder/owner and application to transfer the seed to the new farm owner would need to be made. If the transfer is approved, then the vendor has no further claim on the seed.

For the latest information relating to the seed distribution arrangements for individual varieties please refer to ‘seed distribution’ at varietycentral.com.au.

Do I have to pay EPR on harvested grain I have kept for sowing next year?
Some breeders/owners may insist growers pay a royalty on farmer saved seed, while others do not. Seed suppliers should be able to indicate the situation for varieties they sell.

Do I still have to pay the EPR if I feed my harvested grain to my own livestock?
Yes – the royalty is payable on total tonnes harvested, not only tonnes delivered to a warehouse or buyer.

Useful resources

- Variety Central
- PBR fact sheet
- GRDC
- Plant Breeder’s Rights Office
- National Variety Trials
- Australian Centre for Intellectual Property in Agriculture
- Australian Seeds Federation

Information on PBR is available on the websites of most state departments of agriculture and plant breeding and seed companies.

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