

Plant Breeder's Rights and End Point Royalties

Steve Jefferies (Chairman)
on behalf of
EPR Steering Committee

Plant Breeders Rights

- Plant Variety Rights Act enacted in Australia in 1987 to;
 - Increase private sector investment in plant breeding
 - Improve Australia's access to germplasm and genetic tools through ability to protect others IP
- Initially had little impact in Australia due to farmer saved seed provision
- 1991 UPOV convention extended IP protection to **harvested material and products**
- Plant Breeders Rights Act enacted in Australia in 1994

Plant Breeders Rights Act, 1994

PBR Act provides the **owner** of a variety with an **exclusive** right to do, or licence someone else to do, the following (subject to some conditions) in relation to 'propagating material'*;

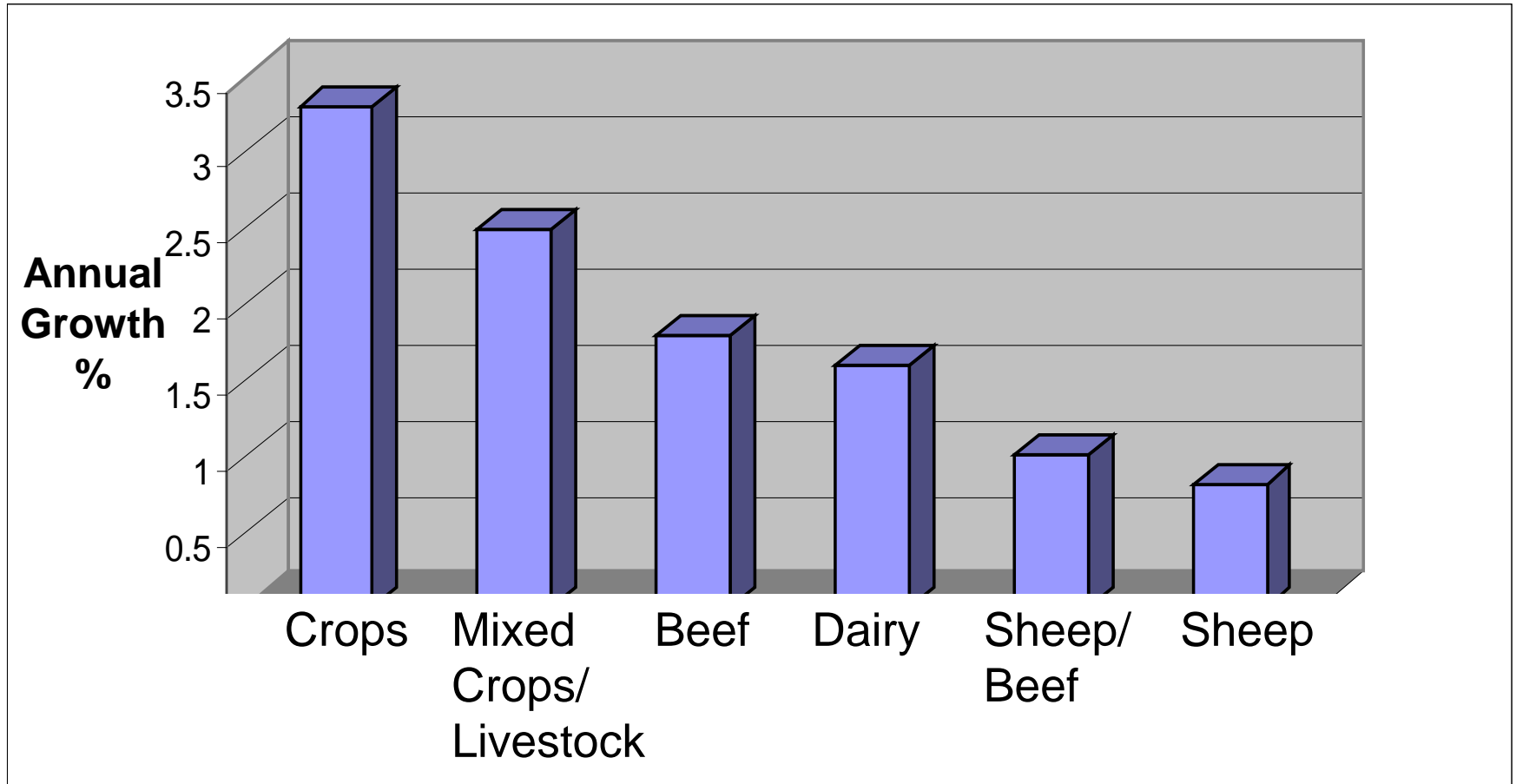
- **produce** or **reproduce** the material;
- **condition** the material for the purpose of propagation;
- **sell, import, export** the material;
- **stock** the material for all above.

** For grain products, the term 'propagating material' refers to both grain and seed.*

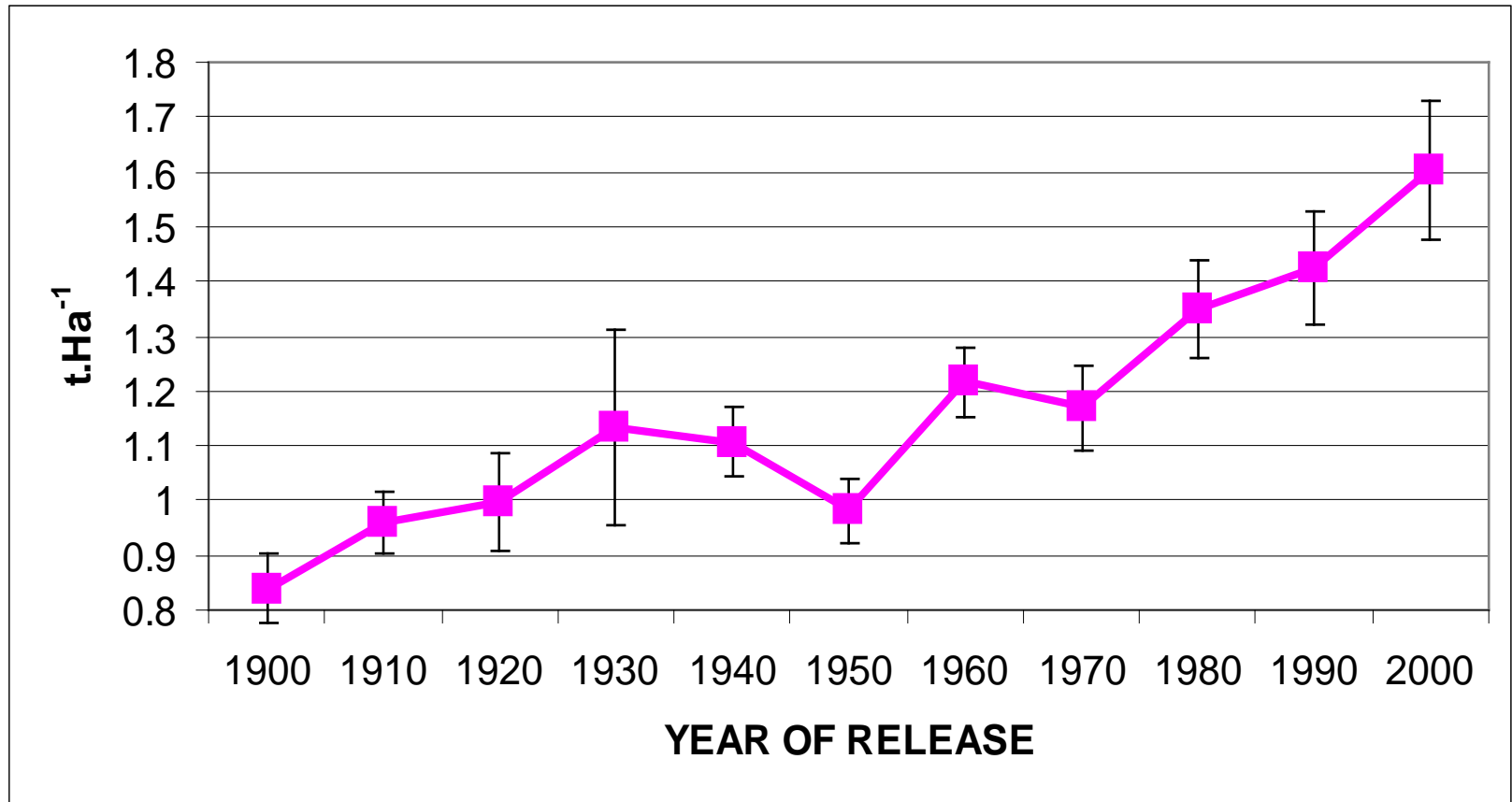
PBR and End Point Royalties

- End Point Royalties were accepted by major grower groups as an equitable and economically viable PBR value capture mechanism in late 1990s
 - Grower groups preferred this alternative to seed royalties
 - Seed royalties could not capture sufficient resources to adequately sustain breeding
- It is the PBR legislation (PBR Act, 1994) that provides the legal basis that make End Point Royalties (EPR) possible
- Growers pay the EPRs not traders
- Australian breeding programs, particularly wheat, are now reliant entirely on EPR income for survival

Broadacre Productivity Growth by Industry

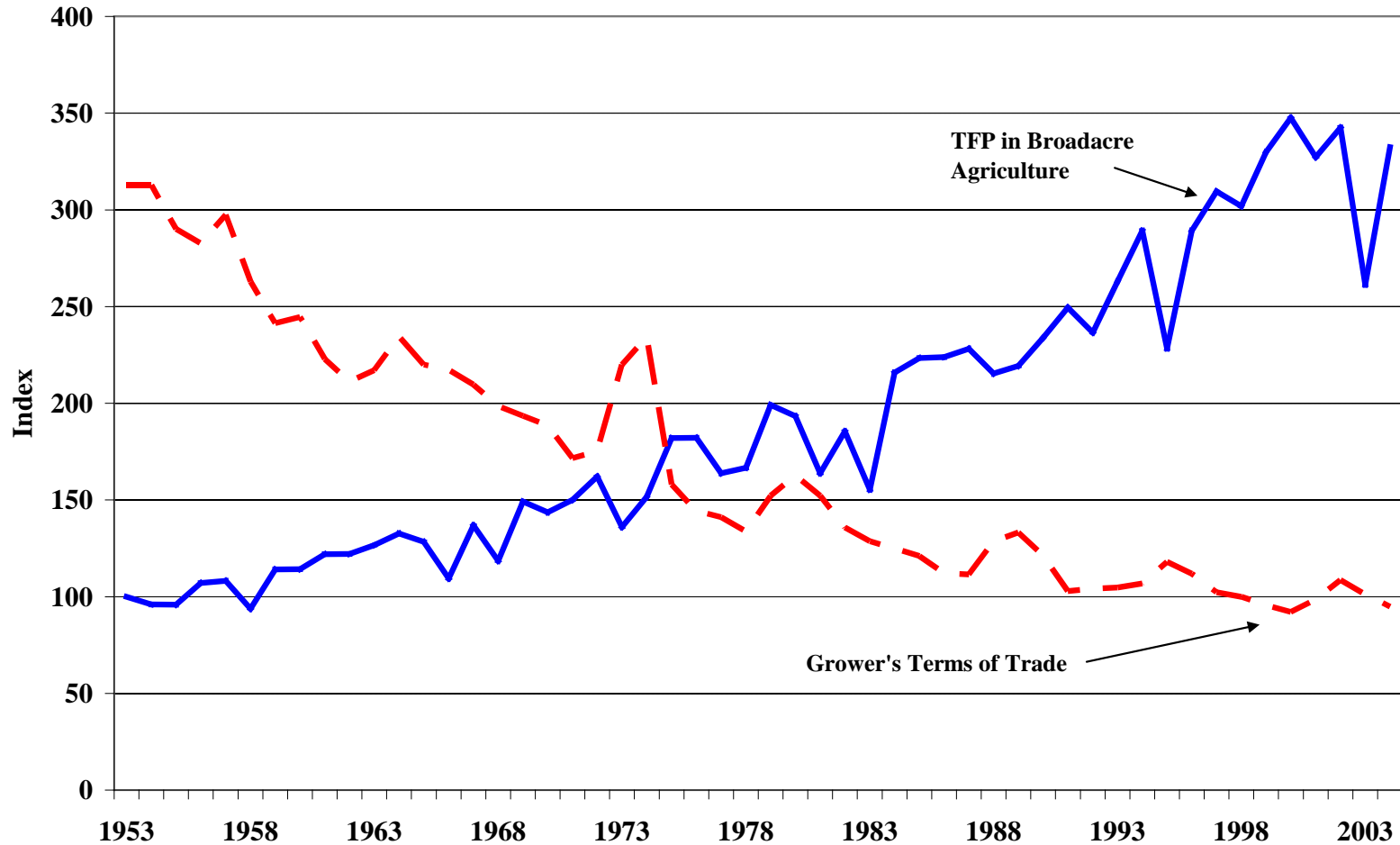


Mean yield (t/ha) of wheat varieties against release date assessed at 6 sites in SA in 2003



Wheat breeding, as an example, is delivering 1.2% annual gains in productivity

Total Factor Productivity 1953-2003



Source: Mullen, JD & Crean, J 2007, *Productivity Growth in Australian Agriculture: Trends, Sources and Performance*. Research Report, Australian Institute, Surry Hills, Australia.

“An efficient and effective EPR system is essential to the survival of Australian plant breeding and the ongoing delivery of gains in productivity and quality critical to the future of the Australian grains industry”

Rights of PBR owners

- PBR owners have the legal right to control their varieties
- These rights enable PBR owners or their agents to attach an EPR to their variety, and use that right (or common law) to ensure it is collected
- These rights recognised in various areas eg WEA export licenses
- Grain traders need certainty that the grain they are intending to sell is not encumbered by unpaid royalties
- Can be achieved through an EPR Collection Agreement between trader and variety (PBR) owner

EPR Steering Committee

- Industry stakeholders have come together with the aim of improving the efficiency and effectiveness of EPR collection
- Representatives from wheat breeding companies, Barley Breeding Australia, Pulse Breeding Australia, Oilseeds industry, Australian Seed Federation, NACMA, and GRDC
- Achievements
 - Developed industry standard grower licence
 - Developed a industry standard commodity trader agreement for EPR collection
 - Assisted with grain trading software upgrades
 - Progressing concept of central point of contact for grain traders and stop EPR clearing house/administrative process

Wheat Export Australia

- WEA - “Exporter Accreditation Application Form” to be completed by a company or cooperative making an application to be accredited under the *Wheat Export Accreditation Scheme 2008* (the Bulk Scheme).
- Section 4.4 of this form relates to End Point Royalties. It states that “under Section 5 (1)(c)(xvii) of the *Bulk Scheme* an applicant is not eligible for accreditation unless WEA is satisfied that the applicant is a ‘fit and proper’ company, having regard to such other matters as WEA considers relevant”.
- WEA considers that payment of End Point Royalties under the *Plant Breeders Rights Act 1994* is a relevant matter under Section 5 (1)(c)(xvii) of the Bulk Scheme.”

WEA Accreditation – meeting EPR obligations

Option A

- Enter into EPR Collection Agreement
(Industry standard or individual agreement)

Option B

- Identify the varieties to be exported and have a documented arrangement with the variety owner/s that ensures EPR obligations have been met

Industry Standard EPR Collection Agreement

- Developed & tested by a number of the major grain traders in 2007 revised draft agreement now available
- Basic requirements of EPR collection agreement:
 - Upon receipt/purchase a Grain Trader records variety name and the tonnages purchased of each variety from each grower
 - Grain Trader deducts EPR from each grower payment and remits to owner or agent or;
 - Interim option where capability to process as above is unavailable: Grain Trader provides the grain purchase details (as above) to enable variety managers/owners to directly invoice growers
 - Grain Traders will become free from PBR encumbrances
 - Grain Traders compensated by variety owners for cost of transaction

Summary of Key Messages

- PBR gives variety owners certain legal rights in the commercialisation, production and trade in grain of protected varieties
- End Point Royalties (EPRs) are a PBR value capture mechanism
- An efficient and effective EPR system is essential to the survival of Australian plant breeding and the ongoing delivery of gains in productivity and quality critical to the future of the Australian grains industry
- >50% of broad acre grain production is now from varieties with EPRs increasing at approx 10%/year
- NACMA, variety owners and other grain value chain stakeholders are working together to ensure a functional and equitable system is developed to best serve the needs of the whole industry

More Information

- Communication and enquiry contact for grain traders

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- Phone: (03) 52651039 0408688478
- Email: denis@agviservices.com
- In Person: GRDC stand, Aust. Grains Industry Conference, Tuesday & Wednesday

- Draft agreements, list of varieties with an EPR;
www.grdc.com.au/director/events/grdcpublications/pbr_epr