

Plant Breeder's Rights

Protection

Protection of a new plant variety can be obtained under the Patents Act and/or the Plant Breeder's Rights (PBR) Act.

Patents

A new plant variety is patentable only if it can be reproduced by the breeding method described in the patent specification. It must also satisfy the requirements of novelty and inventive step.

Plant Breeder's Rights

New varieties developed by traditional breeding methods are usually best protected by PBR. They protect both plants and their propagating material, and are available in respect of all genera or plant species.

To be registrable, a variety must be:

- distinct, i.e. clearly distinguishable from any other variety whose existence is a matter of common knowledge;
- uniform in its relevant characteristics on propagation; and
- stable, i.e. its relevant characteristics are unchanged after repeated propagation.

Applying for PBR

Breeders of a new plant variety can apply for PBR in Australia at any time up to one year after the variety's first sale in Australia. Where a breeder is a national of a member country of the UPOV (International Union for Protection of New Plant Varieties), they may apply for plant variety rights in Australia within 4 years of the first sale in that country (6 years for trees or vines). Priority may be claimed for an application lodged within 12 months of the first filing of a corresponding application in another member state.

Rights Conferred by PBR Registration

PBR registration gives you the sole right to:

- produce or reproduce propagating material of the registered variety;
- sell, offer for sale, import or export propagating material;
- condition propagating material for propagation; or
- stock propagating material for any of these purposes.

Examination

Once you have lodged an application and been issued with an application number, the application is examined for formalities and for novelty and the prima facie distinctness of the variety. If satisfied, the Examiner will accept the application.



You must lodge a detailed description of the variety within 12 months of acceptance (extendable). The description must set out the characteristics that distinguish the new variety from previous varieties, and detail any test growings carried out to demonstrate distinctness, uniformity and stability.

You must also provide a certificate of verification by an approved qualified person in Australia. Once an examination fee has been paid, the description of the variety is published in the *Plant Varieties Journal*.

Examination includes:

- Assessment of the written information provided, including data from comparative growing trials. The Examiner may require further test growings to be performed.
- Field examination of the trials by a PBR Examiner - to check the methodology used and to ensure that the data provided is reliable.
- Publication of the results of the trials and a full description of the variety in the *Plant Varieties Journal*, after which opponents have 6 months in which to raise objections to the granting of rights. Any objections must be based on concrete evidence demonstrating why the variety is not eligible.
- Other enquiries made by the PBR Office to establish the eligibility of the variety.

The results of test growings carried out in other countries will not necessarily be accepted by the Australian Examiner. We recommend that you seek our advice on a case-by-case basis.

If PBR registration is granted, the fact is published in the *Plant Varieties Journal*. Where registration is refused, the applicant is advised of the fact and grounds for refusal. The applicant is also given the opportunity to make written submissions in relation to the application.

Term of PBR

PBR registration lasts for 20 years from the date of filing the application in Australia (25 years for trees and vines). Annual renewal fees are payable to the PBR Office following grant.

**For more information please visit our website
www.griffithhack.com.au**

