



Australian Government

IP Australia



Plant Breeder's Rights (PBR) Examination Timeframes Workshop Outcomes

November 2023



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BACKGROUND

IP Australia's Plant Breeder's Rights (PBR) Reform Program was set up to research and review the PBR system to ensure it is fit for purpose, supporting innovation in plant breeding, and linked to the Australian Government's priorities relating to agriculture and growth.

IP Australia is undertaking an ambitious agenda of PBR reform initiatives, including modernising IT systems, and considering changes to policies, processes, and legislation.

During our research, we heard a lot from stakeholders about the timeframes involved with breeding and growing new varieties of plants and how they work, or do not work, with the current PBR legislation and examination processes. For example, situations where the deadlines in the PBR legislation were not realistic, or where applications have been delayed in the system and not making progress for a long time.

In all intellectual property (IP) systems, ensuring that applications are progressing towards grant is necessary for public certainty and confidence. PBR is no exception, but plant breeding has unique

challenges and a need for flexibility for the practical realities of breeding, growing, and importing plants. This includes environmental and biosecurity factors out of anyone's control.

In August 2023 we held four virtual workshops with over fifty stakeholders across different industries to explore these PBR examination timeframe issues more deeply and collect and test ideas for reform, where applicable.

Each workshop focused on eight previously identified PBR examination timeframe issues arising in both domestic and international contexts. These were woven into four hypothetical, evidence-based scenarios. These four scenarios and eight issues (labelled A-H) were sent to participants as [pre-reading for the workshops](#).

Across the workshops we captured qualitative and quantitative data through online polls and questions, and extensive discussions with participants.

THIS REPORT AND COMMITMENT TO PRIVACY

We want to be transparent about the information we collect and what we do with it.

The information in this report, and what we share publicly, is and will remain de-identified. Our aim was to create a safe environment for those attending the workshops to share feedback. This is also why we are not sharing recordings of the workshops and are instead sharing this report.

This report provides an overview of discussions that took place during the workshops and the issues and ideas raised by participants who attended. Readers are encouraged to reflect on these and are welcome to provide any feedback in response.

The report does not represent IP Australia's views or conclusions, or a commitment to progress ideas raised in the workshops.

We will continue to keep PBR stakeholders updated as next steps progress, along with ongoing opportunities to be involved in future consultations.

Information about the topics discussed in the workshops can be found in the slide deck accompanying this report.



EXECUTIVE SUMMARY

How we ran the workshops and collected data

Over 50 people, including PBR applicants, growers, agents, Qualified Persons (QPs), and other interested stakeholders from Australian horticultural and agricultural industries participated in this series of virtual workshops.

We asked participants to consider four different scenarios from application to grant and answer questions about the delays and pain points those scenarios demonstrated. Multiple issues were woven into each scenario, focusing on issues affecting domestic and overseas applicants separately.

Participants across all workshops answered the same questions and polls on an online Sli.do platform anonymously, which provided a mix of quantitative and qualitative data. This included ratings on a scale of zero to five of how much each issue impacts them or their clients, and polls testing different solution ideas. We also collected written responses during brainstorming sessions on how we might address each of the issues through the Sli.do platform.

We encouraged open discussion and questions throughout the workshops, and for participants to raise any issues, pain points and general experiences as we progressed through the scenarios, as well as ideas for potential solutions for the group to discuss. Qualitative data was captured from these discussions.

What the data shows us about the issues

Findings were consistent across both the qualitative and quantitative data, with four issues standing out as priorities for the workshop participants:

- Timeframes for submitting a detailed description for a new variety.
- The lack of general extension of time provisions in the *Plant Breeder's Rights Act 1994* (PBR Act).
- The lack of a grace period for renewing a PBR once it is registered, and the processes for PBR renewal deadlines operating differently to other IP rights.
- Timeframes and logistical challenges waiting for the availability of overseas trial data (so that the data can be used instead of conducting a growing trial in Australia).

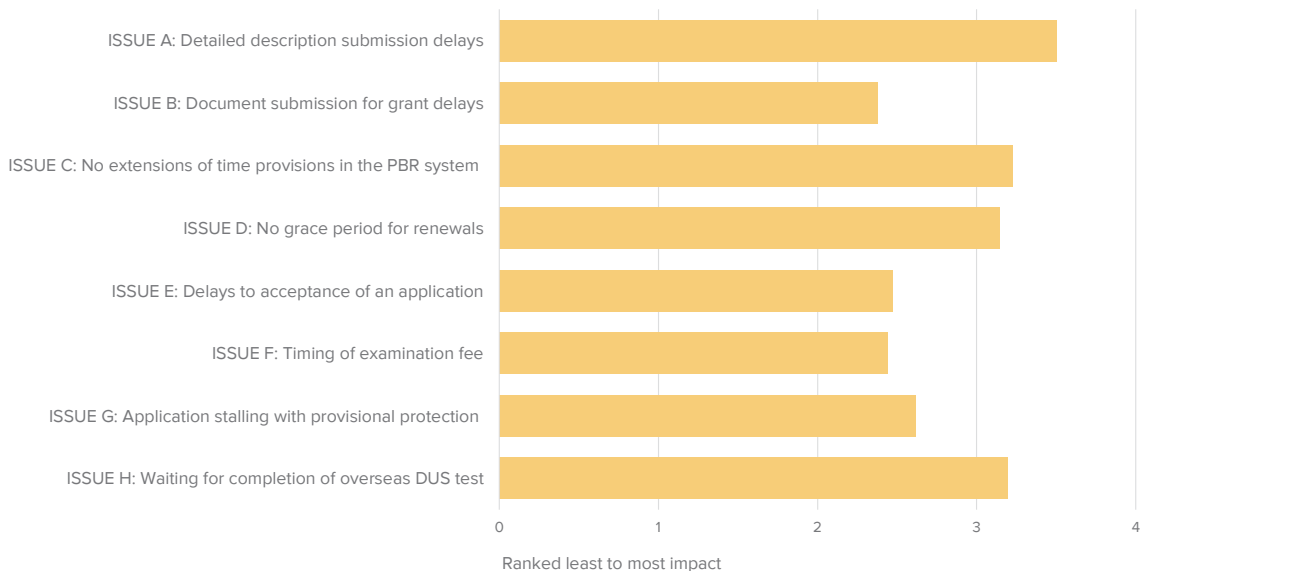
The other issues were ranked lower, with participants telling us they generally impacted them less than the four above, but the issues still generated significant discussion throughout the workshops.

Participants also raised additional issues around challenges submitting the documents required for Part 2 of the application process to secure the grant of a PBR after the growing trial is complete (especially interacting with the IT systems involved), and challenges they experience paying to renew PBRs (including the reminder notices and systems to pay).

Figure 1 below shows the overall ranking of the issues we discussed in the workshops.

Figure 1

PRIORITISATION OF EXAMINATION TIMEFRAME ISSUES BY WORKSHOP PARTICIPANTS



What the data shows us about potential solutions

Overall, the responses from the workshops show an appetite from PBR stakeholders for change, and for IP Australia to continue exploring different reforms across the PBR system to address issues and challenges they are facing.

Some of these solutions would involve exploring changes to the PBR legislation. For example:

- 95% said they would support changing the timeframes to submit a detailed description (with some participants suggesting making it a longer timeframe for everyone, and others suggesting varying the timeframe by plant type).
- 92% said they would support general extension of time provisions being introduced into the PBR Act.
- 90% said they supported introducing a grace period for PBR renewals to align with the other IP rights.

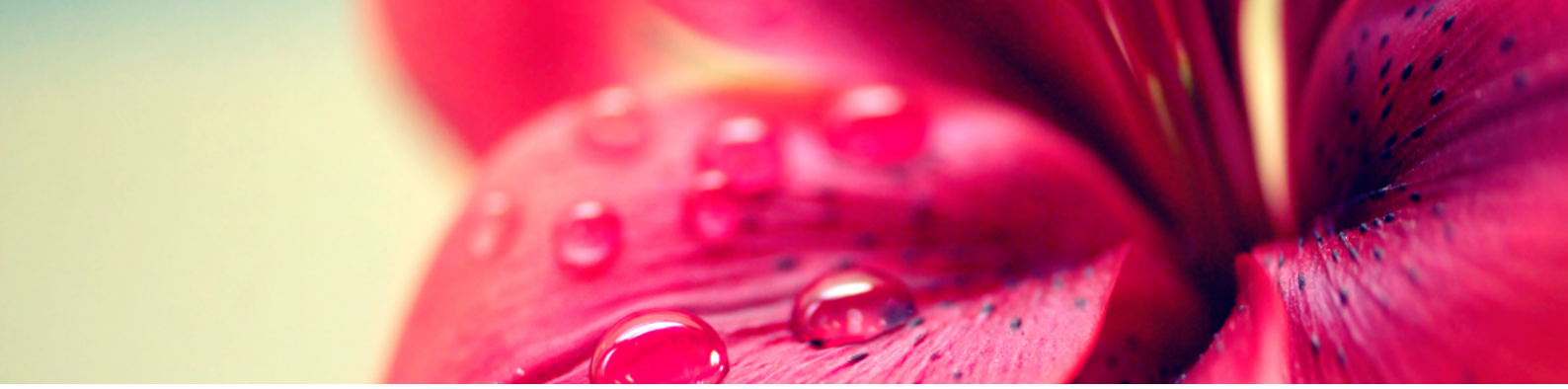
Workshop participants also said they would benefit from more information and guidance on the use of overseas test reports and asked whether international cooperation with other PBR offices could be strengthened to make the experience smoother for applicants.

Other solutions related more to the IT systems, forms and correspondence and related processes across PBR.

Next steps

While every participant’s experience was unique, the data collected from each workshop was quite consistent. This has painted a very useful picture of the priorities and challenges people face in and around PBR examination timeframes, and a valuable temperature check on what options we should explore further for reform.

IP Australia is now considering all the data and feedback as part of our ongoing IT modernisation agenda, reviewing current PBR policy and processes, and considering future proposals for legislative change to consult on further.



EXAMINATION TIMEFRAMES ISSUES

In this workshop series, we explored PBR examination timeframes issues that stood out as pain points in depth. Workshop participants were provided with hypothetical scenarios to consider. These scenarios are available online.

- **ISSUE A: Detailed description submission delays.**

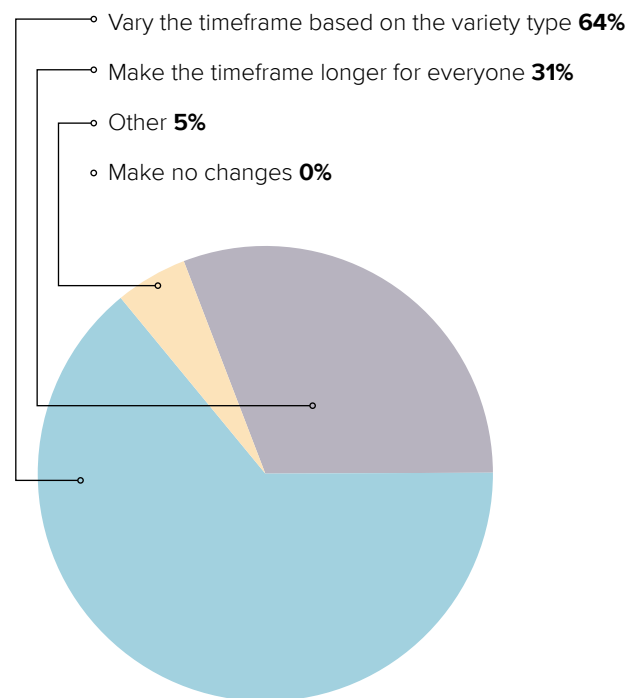
The PBR Act specifies a timeframe of 12 months from the date of acceptance, or a further period as allowed by the Registrar of PBR, for a detailed description to be lodged with the PBR Office. We heard from participants that it is quite often unrealistic for a detailed description to be ready within 12 months and additional time is often needed to complete growing trials.

- The PBR Office commonly allows nine months from the 'proceed date', which is nominated by the applicant in their initial application as a further period within which to submit a detailed description. Often more time is still required beyond this date. New or adjusted proceed dates are often not communicated between PBR applicants and the PBR Office, which can result in PBR applications stalling for a very long time at this stage. Our data shows that, on average, detailed descriptions are submitted three years from the date of acceptance, but some examples go well beyond that. We asked workshop participants about the timeframe and whether they thought changes should be made.

- **Feedback:** In the workshops we had an overwhelming response to change the PBR legislation to increase the time for filing a detailed description. Most suggested varying the timeframe based on the plant type, noting that different plants have different growth cycles and that the timeframes could reflect this. Some suggested the New Zealand model could be useful guidance for Australia.¹ Some workshop participants thought delays would be reduced if they had more guidance around conducting trials, selecting appropriate varieties of common knowledge (VCK, the existing varieties being compared to the new variety in the growing trial) and lodging a detailed description. Some hoped to see more information online about other

Figure 2

ISSUE A: TO ADDRESS THE ISSUE OF DETAILED DESCRIPTION DELAYS WE SHOULD.....



pending PBR varieties earlier (with a suggestion to collect and publish an early interim description) to help decide more efficiently whether it is a suitable VCK for their growing trial. From an international perspective, workshop participants said there is a lack of clarity around when overseas data will be made available to use as part of a PBR application in Australia, and that overseas comparative plant varieties need to survive quarantine before they can be used in Australian growing trials.

¹ From IPONZ website: "To avoid unnecessary delays, the PVR Office will set realistic deadlines for the applicant to provide documents, information or plant material. Should a deadline not be met, the application could lapse."

• **ISSUE B: Document submission for grant delays.**

After the detailed description of a new variety is lodged with the PBR Office, documents (such as a form confirming the submission of propagating material to a Genetic Resource Centre and certification by the QP) are required to be submitted before a PBR can be granted. Often these documents are not filed at the same time as the detailed description, there is no formal deadline to submit them, and they are required to be submitted by the applicant and by the QP. Any delays with submitting these documents subsequently delay the grant of the PBR.

• **Feedback:** Some participants outlined that the current online systems are difficult to navigate, and it is hard to determine what documents are still outstanding unless they are contacted by the PBR Office about them. This, again, is leading to considerable delays in the document submission process. However, participants ranked this issue as having less of an overall impact on them – noting that varieties continue to benefit from provisional protection if there is a delay at this point in the process.

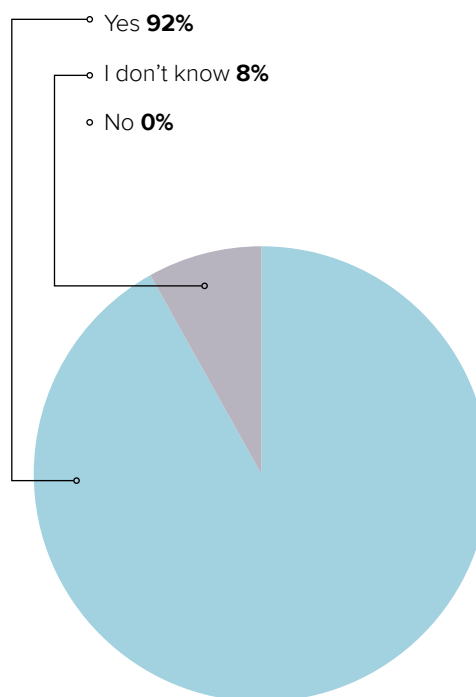
• **ISSUE C: No general extension of time provisions in the PBR system.**

There are no general extension of time provisions in the current PBR legislation. Provisions exist in legislation for other IP rights (patents, trade marks and designs) that set out a process for extending deadlines and timeframes in the examination process if there has been an error or omission by the applicant or agent, circumstances beyond the applicant's control, or where other special circumstances may exist to justify the extension of time.

• **Feedback:** 92% of workshop participants said that a general extension of time provision should be introduced into the PBR Act. In discussions, participants said they would expect to find these provisions useful and that they would add clarity, but that adequate flexibility needs to be retained in PBR and requesting extensions of time should not be too onerous on applicants. Those with experience across multiple IP rights also said it appeals to have this part of law and practice align more closely.

Figure 3

ISSUE C: SHOULD WE INTRODUCE A GENERAL EXTENSION OF TIME PROVISION IN PBR ACT?



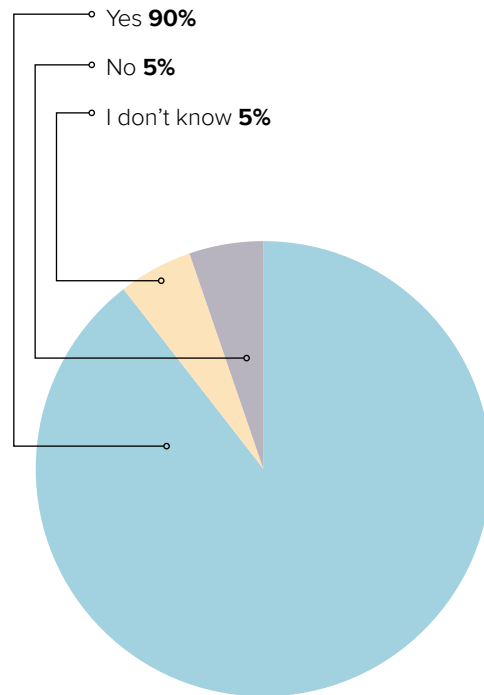
- **ISSUE D: No grace period for PBR renewals.**

PBR owners must pay an annual renewal fee to maintain their PBR. Under the legislation, the renewal fee is due each year on the date the PBR was granted. Current practice is to allow the PBR holder 30 days to pay from when they are notified that the fee is due. If the deadline is missed, the PBR Office will initiate a process to revoke the PBR. In contrast to this, other IP rights have a specified 6-month grace period within which to pay a renewal fee. Patents, trade marks and designs all have a consistent process (including fees where applicable) for circumstances where the IP right owner has missed the deadline to renew their right, but then is able to retain their right.

- **Feedback:** 90% of participants told us they would like to see a 6-month grace period for payment of renewal fees (noting that late fees may be charged). Participants highlighted the need for any process and fee changes to be considered specifically for the PBR context.

Figure 4

ISSUE D: SHOULD THERE BE A 6-MONTH GRACE PERIOD TO PAY RENEWAL FEES?

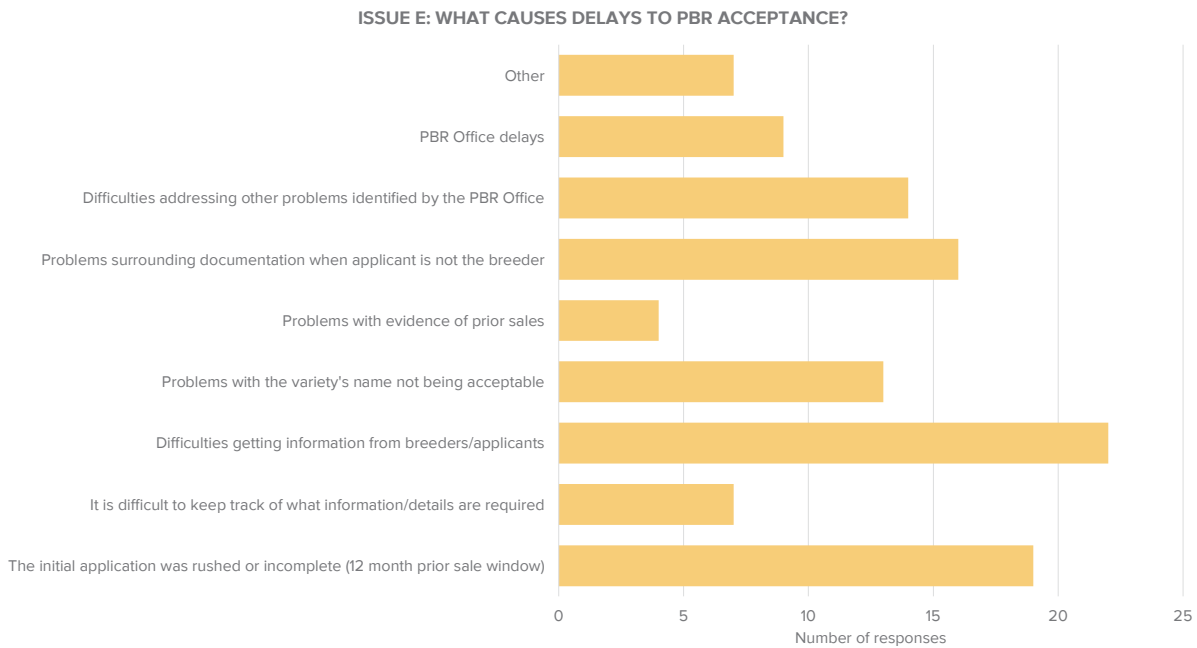


• **ISSUE E: Delays to acceptance of an application.**

The PBR Office must assess applications and issue a report within eight weeks, and the PBR legislation says that the applicant must provide missing or additional information in response 'as soon as practicable'. There are no clear timeframes outlined in legislation for an application to be accepted. The PBR Office's practice is to request that the applicant responds within 30 days and to initiate rejection proceedings if the applicant has not provided the missing or additional information after quite some time beyond that initial 30 day period.

• **Feedback:** Participants indicated that the causes of delays to PBRs being accepted are varied, with the top three reasons being difficulties getting information from breeders and applicants, rushing to complete the application to submit within the prior sale window (12 months for domestic applications, and 4 years for sale overseas), and problems around the documentation required when the applicant is not the breeder. Workshop participants also let us know that it can be challenging responding to an examiner's report within the 30-day response timeframe, especially when the report is sent by post and takes several days to reach them. Some also suggested they would benefit from clearer instructions and an easier online process for completing and submitting the initial application, and we continue to receive feedback on the sequencing and complexity of PBR forms and documentation.

Figure 5

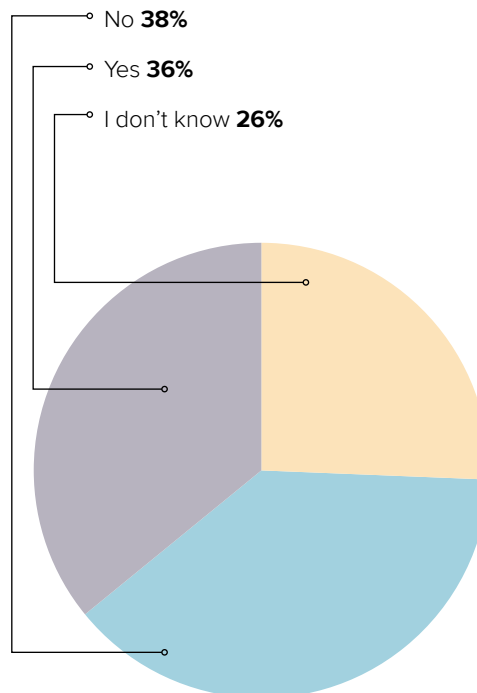


- **ISSUE F: Timing of examination fee.** The PBR examination fee is due 12 months after the PBR application is accepted, but in reality, the growing trial may not yet be ready for examination by the PBR Office or may not have even begun. Some PBR applicants may decide to withdraw their PBR application before the growing trial has been examined and seek a refund of the examination fee from the PBR Office.

• **Feedback:** The data captures varied responses regarding the timing of examination fees, with 26% of participants undecided and an equal scale for and against changing the timing or staging of examination fees, and general indications that this isn’t an issue they feel impacts them very strongly. Some participants flagged that the examination fee’s current timing encourages early decision making and a level of commitment from the applicant in the process and may be helping prevent applications stalling and therefore extending provisional protection (see below).

Figure 6

ISSUE F: DOES THE TIMING OR STAGING OF EXAMINATION FEES NEED TO CHANGE?



- **ISSUE G: Application stalling with provisional protection.** After a PBR application has been accepted by the PBR Office, until it is granted, it benefits from provisional protection. In many cases, PBR applicants experience genuine delays in this window. However, we also hear that some PBR applicants intentionally draw out this window to ‘test the market’ with the provisional PBR protection in place for as long as possible. This can effectively increase the overall term of PBR protection and create uncertainty for other plant breeders, PBR applicants, and the broader industry about their freedom to operate.

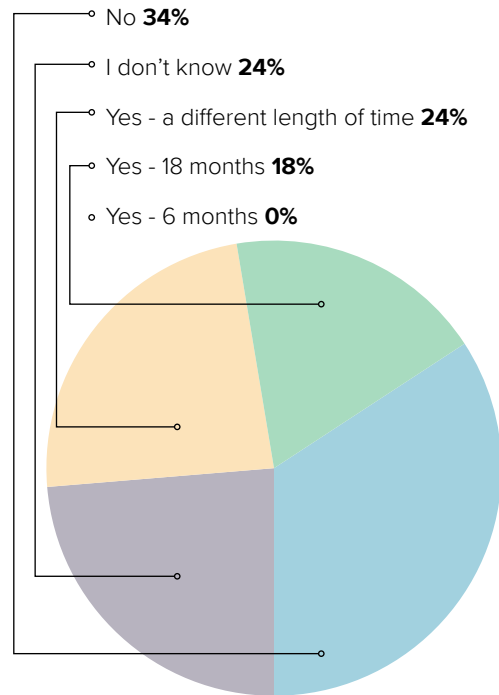
• **Feedback:** Participant feedback on this issue was varied. The majority outlined that PBR application delays are genuine and due to factors beyond their control, such as environmental factors or access to plant material. Some participants indicated they were unclear about document submission deadlines and PBR administrative processes around extensions of time. There were discussions about how other changes suggested during the workshop might impact and mitigate issues with delays at this point in the process, as well as suggestions for more information online about applications with provisional protection to increase clarity and transparency, especially where there are long delays. Many participants emphasised how important the provisional protection period is for them. However, delays should be genuine and reasonable.

- ISSUE H: Waiting for completion of an overseas distinctness, uniformity, and stability (DUS) test.** Applicants who are bringing in varieties from overseas often tell us they would like to rely on test results from growing trials underway or already completed overseas, rather than conduct a separate growing trial in Australia. However, there is often uncertainty, both for applicants and the Australian PBR Office, around when test results from overseas offices will become available to use.

Feedback: There were varied responses between participants, depending on whether they deal with overseas test data and quarantine requirements or not. Most participants who rely (or want to rely) on overseas test data to secure PBR rights in Australia feel there are practical issues with how it works today. There were consistent issues raised about using overseas test data. One issue is that waiting for overseas test data can lead to delays in Australia. Participants also spoke about challenges with the logistics of acquiring and paying for data from overseas offices and ensuring the data contains adequate detail to be acceptable for Australian examination. Related to this, some spoke of a lack of clear guidance and understanding of what's required for overseas test data to be acceptable in Australia. Participants also indicated that they, or their clients, often already have US plant patents and are not sure whether US plant patent data will be suitable for examination by the Australian PBR Office, and if not, why not.

Figure 7

ISSUE H: SHOULD THERE BE A TIMEFRAME FOR LODGING OVERSEAS TEST REPORTS BEFORE AN AUSTRALIAN TRIAL IS REQUIRED?





THANK YOU AND NEXT STEPS

IP Australia is now considering how all the data and feedback can best inform our ongoing IT modernisation agenda, review of current PBR policy and processes, and consideration of future proposals for legislative change. Options for legislative change will be considered by the Australian Government. Further review, development and stakeholder consultation is required to inform the Government's consideration. This will follow on from the IT modernisation efforts currently underway, which is the key priority of IP Australia for PBR for the 2023/2024 financial year.

Earlier in 2023 we published a similar [report](#) following a series of workshops with members of the QP cohort about their experiences and challenges. We've reported on some overlaps in feedback from the two series of workshops, about PBR systems, forms, correspondence, and processes. The QP workshops also pointed to other issues, such as concerns of a potential shortage of QPs under the current model where a QP is mandatory for every PBR application, along with the requirements to become a QP and the ongoing training and support QPs are seeking. The team is continuing to explore what could be done differently to manage these risks and issues. Please also refer to the earlier published [2021/2022 interview research](#) we conducted with over 100 people with different perspectives across the PBR ecosystem.

We really appreciate the engagement across the workshops and want to thank everyone who contributed their time, energy, and ideas through the workshops. We also thank everyone who filled out a feedback survey following the workshops. We're glad to report we received a 100% satisfaction rate regarding the workshop facilitation, content, and pre-reading scenarios, and have captured all the feedback in our internal reporting system.

We look forward to keeping the momentum going for PBR and to keep engaging as we progress. To discuss any of the above or provide further feedback please contact our inbox:

PBR.Reform@IPAustralia.gov.au



RELEVANT LINKS

For further information please contact our inbox:

PBR.Reform@IPAustralia.gov.au

Information about PBR matters will be sent out to IP Australia's What's New subscribers, please subscribe to our [newsletter](#)

For information about policy issues or to contribute to policy discussions, please refer to the [Policy Register](#)

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