

# About Plant Breeder's Rights



Australian Government

IP Australia



## At a glance

- *protects new varieties of plants, fungi, and algae*
- *costs \$2,300 on average plus external fees\**
- *typically, 2.5 years to register, dependent on plant type*
- *lasts up to 20 or 25 years, dependent on plant type (requires annual renewal)*
- *tip — get advice from your qualified person*

## What's a plant breeder's right (PBR)?

A plant breeder's right (PBR) gives you the exclusive commercial rights over a new plant variety. This includes all plants such as trees, flowers, shrubs, vines as well as algae and fungi. A new variety is one that has not been sold with the breeder's consent beyond the allowable time period. To be granted a PBR, your plant must be a product of a selective breeding process, distinct, uniform, and stable.

## Protection period

PBR protection applies for up to 20 years for most plant species and up to 25 years for trees and certain vines (Actinidia (Kiwifruit), Bougainvillea, Campsis, Hedera and Vitis (grapevine)) and is dependent on paying an annual fee to maintain. After the protection period expires your variety reverts to the public domain and is available for everyone.

For more information about the protection period and when to renew your IP see our [website](#).

Our [short video](#) explains 'What are plant breeder's rights?'

## Is my plant eligible for a PBR?

For a plant to be granted a PBR, it must be:

- **a product of a selective breeding process** meaning it a new variety must have a breeder and must have undergone multiple cycles of selective propagation. It is important to note that it can't just be a plant found in the wild.
- **new or recently exploited**
  - For a new variety this means the plant hasn't yet been sold with the breeder's consent.
  - For recently exploited, this means that it has been sold with the breeder's consent, but only recently.
    - In Australia this means within 12 months before applying for a PBR
    - For varieties sold overseas this means within four years before applying for a PBR; in the case of trees and certain vines (Actinidia (Kiwifruit), Bougainvillea, Campsis, Hedera and Vitis (grapevine)), where you have up to six years before the application date.
- **distinct, uniform, and stable**
  - **Distinct:** Your new variety has specific characteristics that are clearly distinguishable from all other known varieties
  - **Uniform:** When propagated, offspring must be sufficiently uniform in the relevant characteristics
  - **Stable:** The relevant characteristics of your new variety remain unchanged after repeated propagation and or generations.
  - You will need to conduct a growing trial to demonstrate your plant variety meets DUS criteria. Although in some instances you may be able to use the results of a previous growing trial from overseas.

\*all prices are correct at time of publication

# An IP story:

## Almond breeding and PBR

Almond breeding is a growing industry for Australia, and with plant breeder's rights in place, it's becoming more competitive globally.

Dr Michelle Wirthensohn, Horticulture Innovation Australia senior research fellow and program leader of the almond breeding program discusses the importance for new varieties to be developed in Australia, saying how:

'The almond breeding program uses the plant breeder's rights to protect our intellectual property (IP), which is in this case, is the almond varieties. It allows us to decide who propagates the trees, and it generates an income stream which is very important to keep the almond breeding program going ahead.

PBR protection is very important because it gives us then the right to determine who gets to propagate our variety. We're also then able to commercialise overseas and charge royalties from overseas nurseries, and it's also money back for the funding body and for the university for the work that they've done.

The PBR protects the variety from misuse by the university being able to take someone to court, for instance if they propagate without a license from us.

I wouldn't launch new varieties without PBR protection because you then lose track of which nurseries have your budwood. You have no idea of how many of your trees are out there, and you also don't receive any royalties to help keep the breeding program going.'

To read more IP stories like this visit our [website](#).



## What can be protected with a PBR?

The benefits of a PBR are that it gives you exclusive commercial rights to:

- reproduce/propagate the plant and plant material for commercial purposes or license its propagation
- sell the plant material or license its sale
- import and export the plant material
- sell the right to another party
- stock the plant material for any of the purposes listed above.

\*NOTE: some exceptions to the use of the variety apply. See our [website](#) for more details.

## What does PBR not cover?

Even if you have a PBR, others will be allowed to use your new plant variety in the following way:

- private and non-commercial use
- experimental use
- breeding other plant varieties
- farm saved seed: [Farm saved seed](#) is permitted unless the crop is declared by regulation to be one where farm saved seed does not apply. Currently no crops have been declared in this way.



## Things to consider before you apply for a PBR:

### Make sure it's the right IP for your needs

A PBR gives you exclusive commercial rights to the new plant variety you have developed.

However, it might not be the only IP protection you need or, it might not be the right IP. You can also consider:

- a trade mark as a brand for your enterprise, or for a series of varieties. Note that a trade mark would be in addition to your PBR name since a variety name cannot be used as a trade mark, and a trade mark (a brand) cannot be used as a variety name.
- a patent could be potentially used for a plant. For example, it is possible to have a patent for a plant where you have bred, mutated, or genetically engineered the plant to contain a gene for disease resistance.
- a trade secret, which is another way of protecting your new variety by simply keeping the parentage of your hybrid, or your propagating technique, secret. This could be an option if no-one else knows how to produce your variety and you think it is unlikely that someone else will also breed the same one.

### Engage a Qualified Person to assist

As part of the application process, you must engage the services of an authorised expert — known as a Qualified Person (QP). They perform crucial roles in the application process that will ensure the technical rigour needed to obtain a strong PBR.

Your QP — who is an expert in the kind of plant you are trying to protect — collaborates with us to decide the best way to demonstrate your variety is distinct, uniform, and stable (DUS), supervise the growing trial and certify the results once your growing trial is completed.

## Examples of registered PBRs



**Barley**  
Spartacus CL



**Lettuce**  
Empire Rose



**Flower**  
Grevillea

## Applying for a PBR

The application process is split into two parts:

- Part 1 — Once accepted, gives you provisional protection while you undertake the second part of the process.
- Part 2 — Once examined and granted, gives you full protection.

If you're not sure if you want to go ahead with the full process, we recommend you just submit application part 1 you can always withdraw from the process if you believe that the application is not commercially viable.

## Choose a name for your variety

You'll have to include the name of your new variety in your application. If you're not sure of a name yet, you can assign a temporary name until the second part of the process.

There are rules for plant names such as how long the name is allowed to be, and which punctuation marks you are allowed to use.

The proposed name must be:

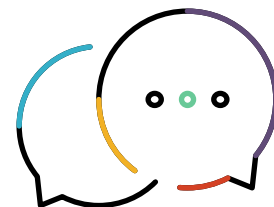
- unique and not able to be confused with other variety names in spelling or when pronounced
- not already in use as a trade mark in respect of live plants, plant cells and plant tissues.

This means you will need to search existing PBRs and trade marks to make sure that your chosen name has not already been protected.

We'd recommend that you don't start using the name until it's been accepted by us.

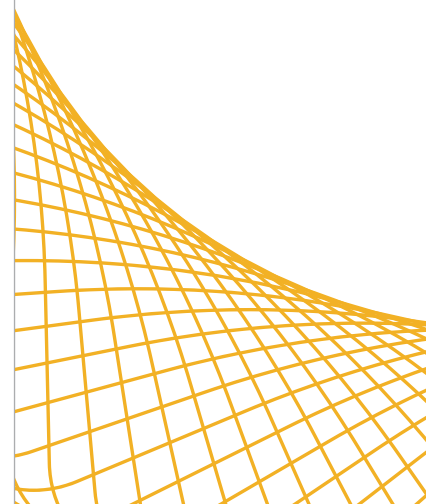
## You'll need to run a growing trial to meet distinct, uniform, and stable criteria

You'll need to set up and run a growing trial once part 1 of your application has been accepted. The aim of the trial is to show that you do indeed have a new variety that's [distinct, uniform and stable](#), according to our standards. It's possible in certain circumstances to use the results of a previous trial that was grown overseas if it meets our requirements.



*'We would not release a variety without intellectual property protection. It means that we can then determine who is able to use our varieties, who would license those varieties, such as our seed growers and then ultimately a licence onto the farmers who will grow that variety and provide a return back to AGT so we can reinvest in further plant breeding.'*

*Andrew of Australian Grain Technologies  
(published 19 August 2022)*



## How do I apply for a PBR?

There are several ways you can submit your application for a PBR.

1. For protection in Australia: apply via our online services.

You will need to:

- Complete and submit the following:
  - part 1 General Information (this is the application part 1 form)
  - nomination of Qualified Person
  - authorisation of Agent (if an agent is involved)
  - supplementary pages (if there is more than one applicant)
  - photograph(s) of the variety
  - pay the application fee.

Alternatively, you can submit hard copies to us.

2. For protection in Australia and overseas: apply via PRISMA — the international PBR application tool, run by the Union for the Protection of New Varieties of Plants (UPOV).

Applying for a PBR is a two-part process in Australia. Application 1 is the first step and provides provisional protection for your new plant variety. You will need to engage with an accredited Qualified Person (QP) with expertise in the type of plant you want to register. We recommend engaging someone early in the process to help ensure everything goes smoothly. The second part of the process is to complete and submit application part 2. This application part is where your QP is involved and required to complete and submit certification details.

## What's a growing trial?

You'll need to set up and run a growing trial once Part 1 of your application has been accepted. The aim of the trial is to show that you do indeed have a new variety that is distinct, uniform, and stable, according to our standards.

The trial shows us what happens when you grow your variety alongside existing varieties that are most similar to yours. You can set this up and complete it with the assistance of your qualified person (QP). Your QP collects data from the trial at different growth stages. You can do the trial yourself or pay to have it done at a centralised test centre (CTC) that specialises in your plant genus.

Most trials take between 3 and 12 months, however some may take up to 7 years or longer depending on the species you need to grow. In some circumstances, you may not have to run a trial, but only where we are satisfied that a suitable trial has already been run by an authorised organisation elsewhere in the world. If the data is available to us, you may not have to repeat their work.



*Check your PBR is available before you apply. Access the Australian Plant Breeder's Rights to see what varieties have been developed in Australia.*

## What's the IP Australia fee?

Fees are payable at different stages of the application process. Part 1 — application fees start at \$345. Part 2 — examination fees range between \$920 - \$1610 as well as a certificate fee if your variety is successful in being granted plant breeder's rights. There may be additional external fees in addition to your IP Australia application, such as engaging your QP.

Further information on timeframes and fees is available on our [website](#).

## Do renewal fees apply?

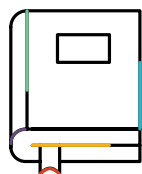
Yes. Annual renewal fees apply and start at \$400.00. These are payable on the grant anniversary via our online services.



### International protection

To seek international protection, you can register your IP through The International Union for the Protection of New Varieties of Plants (UPOV) online application tool [PRISMA](#) to secure protection in the member countries.

If the country, you are seeking protection in is not a member you will need to apply for a plant breeder's right separately (direct) in each country you seek protection in.



### Publishing

We're responsible for the administration of P legislation in Australia. Our role includes publishing and maintaining the [official journals](#) for IP rights in Australia. Each journal contains details of an IP right application at the different stages of the registration and grant process, which include:

- acceptance date
- grant date
- variations made
- notification of when it's open to public inspection.

This can be helpful if you need to provide evidence of the date something was published.



### Professional assistance

If you need some help or advice, [intellectual property \(IP\) professionals](#) can assist you along your IP journey. An IP professional is an expert in a professional field. They can help you during different stages of your IP journey by providing you with legal, financial, or business advice. Your time is important, and an expert's time can be expensive. It is useful to prepare before you meet them ask your IP professional if there is anything that you need to prepare ahead of your meeting.

# QP directory

## Engaging a Qualified Person (QP)

As part of the application process, you must engage the services of an authorised QP. A QP is an expert in a plant group, accredited by us to certify applications. They perform crucial roles in the application process that will ensure the technical rigour needed to obtain a strong PBR.

Your QP will work with us to decide the best way to demonstrate your variety is distinct, uniform, and stable (DUS), supervise the growing trial and certify the results once your growing trial is completed.

Check out our [Qualified Person's Directory](#) (QPD).

Allan searched on IP Australia's QPD and found Leslie Mitchell, a QP with expertise in fruit crops and accredited to certify applications. He explains 'Les did all the technical work and helped me through the process. So, it was very smooth. Les did all the photographs and measuring the flowers...[he] submitted it all for me.'

### Allan's top tips for success!

Allan's advice to other fruit grower's or businesses looking to invest in IP protection is:

- get a good QP to help you. As an apple grower, I don't have expertise in this area, and it really made the whole process easier.
- if you think you've got something – good - don't hesitate to do it! Being a fruit grower, I actually enjoyed the whole process.
- don't give up! It's a long-term process. There were a few times where I thought I am wasting my time with this, and my late father encouraged me to keep going. It was worth it.

Allan McLean  
— Crimson Snow® apples



For further information on PBRs head to <https://www.ipaustralia.gov.au/plant-breeders-rights>

Contact us: <https://www.ipaustralia.gov.au/about-us/contact-us>

Phone: 1300 651 010  
(9am to 5pm, Monday to Friday)

