



Application for a Declaration of Essential Derivation

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- how you may make a complaint about a breach of the Privacy Act and how we will deal with your complaint; and
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In accordance with the PBR Act, IP Australia may make this completed form available to any person, upon request and payment of a fee.

IP Australia will publish the:

- Applicant name;
- Agent name; and
- Town, State and Country of the applicant's address

in the Register of Plant Varieties, the Plant Varieties Journal and the Plant Breeder's Rights Database. Once information is available on the internet, IP Australia has no control over its subsequent use and disclosure. You should be aware that the information (including personal information) held in IP Australia's online IP Rights databases is also available on request, subject to our terms and conditions.

You should also be aware that the Registrar for Plant Breeder's Rights may need to:

- contact the grantee of the Plant Breeders Right for which you are seeking a declaration, regarding your application; and
- disclose the contents of your application to the grantee of the Plant Breeder's Right.

If you do not provide the personal information required on the form, IP Australia may not be able to process this form.

IP Australia will not otherwise use or disclose your personal information without your consent, unless authorised or required by or under law.

Consent

By completing this form, in addition you provide your consent to your personal information being handled in accordance with this privacy notice, including being disclosed as provided above.

When you provide your consent to your personal information being disclosed to overseas recipients, including publication online, you understand that IP Australia will not be accountable for any subsequent use under the Privacy Act, nor are you able to seek redress under that Act, for the actions of any overseas recipient.



Application for a Declaration of Essential Derivation

Sections 1 to 3 to be completed by the Applicant

Note: This application must be accompanied by the prescribed fee.

Section 1: General information about the Applicant and varieties concerned

Name of Applicant:
(person making this request for declaration of essential derivation)

Address (can be a PO Box):
 State Postcode
 Country (if not Australia)

Contact Details

Contact person:
(if different from applicant)
Telephone () Fax ()
Mobile Number:
Email address:

Initial Variety (details of your granted PBR variety)

PBR Application No.
PBR Certificate No.
Variety name:
Botanical name:

Has the initial variety itself been declared to be essentially derived from another variety?

- Yes
- No

Second Variety (details of the variety you are claiming is essentially derived)

If the second variety is the subject of an existing PBR then provide details:

PBR Application No.
PBR Certificate No. (if granted)
Variety name:
Botanical name:

Second Variety (continued)

If the second variety is not the subject of an existing PBR then provide details:

Variety name:

Botanical name:

Breeder:

Breeder Address:

The above information must be sufficient to enable the Registrar to notify the breeder of the second variety of the application for essential derivation.

If you are unable to reasonably identify the breeder of the second variety then outline steps you have undertaken to attempt to obtain the information

Note: To further consider the application, the information provided must be sufficient to satisfy the Registrar that reasonable steps have been undertaken in an attempt to identify the breeder of the second variety.

Section 3: Declaration by the Applicant

As the grantee or an exclusive licensee of the grantee of the initial variety stated in this application, I apply under Section 40 or 41 of the *Plant Breeder's Rights Act 1994* for a declaration that the second variety stated in this application is essentially derived from the aforementioned variety.

By ticking this box

I/We:

Date:

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(DD/MM/YYYY)

declare to be authorised to complete this application and that the information given in all parts of and attachments to this form are true and correct.*

*** THE PENALTY UNDER SECTION 75(1) FOR MAKING A FALSE STATEMENT IN SUPPORT OF AN APPLICATION IS SIX MONTHS IMPRISONMENT.**

If you are submitting this form to IP Australia via email, please print to PDF prior to attaching to your email. If not printed to PDF prior to attachment, your email may be blocked by ICT security policy.

Section 4 to be completed by IP Australia

Section 4: Process for assessing an application for essential derivation

Note: Grantee also includes an exclusive licensee of the grantee.

Prior declarations affecting initial variety

Has the initial variety been declared essentially derived from another variety? Yes No
If yes, then refuse application for essential derivation and notify applicant

Application must contain *prima facie* case of essential derivation

Has a *prima facie* case been established?..... Yes No

If no, has the applicant been notified with reasons for the decision?..... Yes No

If yes, has notification been sent to grantee of second variety allowing 30 days (or other such period as allowed by the delegate) in which to establish that the second variety is not an essentially derived variety of the initial variety? Yes No

Final Declaration

After considering all relevant information, is the delegate satisfied that the grantee or breeder of the second variety has rebutted the *prima facie* case? Yes No

If yes, notify both the applicant and grantee or breeder of the second variety of result; and provide reasons to the applicant.

If no, declare that the second variety **is** essentially derived from the initial variety; notify both the applicant and grantee or breeder of the second variety, and provide reasons to the grantee or breeder of the second variety.

Reason:

Written notification of the declaration has been provided to the grantee of the initial variety and the grantee or breeder of the second variety Yes No

Delegate of Registrar of Plant Breeder's Rights	Date:
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