

# Plant breeder's rights

Plant breeder's rights (PBR), sometimes known as plant variety rights (PVR), are a form of intellectual property protection designed to protect new varieties of plants. PBR allows plant breeders to control the use of the plant variety and to gain commercial benefit from their investment in the development of new plant varieties. If a grower purchases a PBR protected variety they face restrictions on its use.

PBR were originally developed as an alternative to patents and were first recognised internationally by the 1961 International Convention for the Protection of New Varieties of Plants (UPOV Convention). UPOV 1961 was first revised in 1972 and again in 1978. The 1978 version of the Convention recognises the so-called 'farmer's privilege' allowing farmers to re-use propagating material from the previous year's harvest and to freely exchange seeds of protected varieties with other farmers. It also provides exemptions for non-commercial research, and for the development of new plant varieties. UPOV was revised again by the 1991 Convention, which strengthens PBR protection, removes the breeder's exemption from essentially derived varieties and leaves it up to individual countries to determine whether or not to apply the farmers' privilege within their territory. As of 30 April 2015, there were 72 UPOV members: 52 of which complied with UPOV 1991, 19 with UPOV 1978 and 1 with UPOV 1961/1972.

Importantly, PBR are territorial in nature, and varieties need to be registered in the country in which you are seeking protection. The duration of PBR is generally 25 years for trees and vines and 20 years for all other plants. This starts from the date the PBR is granted.

## How can a variety be protected by PBR?

In order to be protected, a plant variety must have a breeder and be new, distinct, uniform and stable as defined by the UPOV Convention:

<b>Breeder</b>	A breeder is a person who has bred or discovered and developed a plant variety, or their employer or contractor who has commissioned the work, and their respective successors in title.
<b>New</b>	A variety is generally considered new if it has not been sold (with the breeder's consent) for a period specified in national law.
<b>Distinct</b>	A variety is distinct if it is clearly distinguishable by one or more characteristics which can be clearly described from any other variety whose existence is a matter of common knowledge at the time of application.
<b>Uniform</b>	The requirement that the variety be uniform means that a variety must be sufficiently consistent in those characteristics that make it distinct.
<b>Stable</b>	A variety must remain true to description after repeated propagation or reproduction.

## How do you apply for PBR?

In order for a variety to be protected by the PBR system, it is necessary for the applicant to go through an administrative process that tests and evaluates whether the variety complies with the requirements for protection. Costs may include fees for the Application, Examination and issuing of a Certificate. There may also be an annual fee.

## What is the scope of PBR?

A valid PBR gives the owner (initially, the breeder) a number of rights. For example, holders of PBR have exclusive rights in relation to the propagating material to:

- produce or reproduce the material
- sell or offer for sale
- import or export the variety

While these rights are primarily in relation to the commercialisation of propagating material, they may also apply to harvested material, products obtained from harvested material, and to derivative varieties in certain circumstances.

## How do you know if a variety is protected by PBR?

In some countries PBR protected varieties are denoted by a PBR logo.

Lists of PBR protected varieties may be available from national PBR offices and official websites

## Exceptions to PBR

An important feature of the PBR system is the way in which the interests of breeders, growers, and researchers have been accommodated through the use of exceptions or limitations to the scope of the breeder's right. Some exemptions include:

- private or non-commercial purpose
- experimental purposes
- plant breeding
- farm saved seed

## PBR and contract

PBR and the contracts you sign are not directly related. PBRs are a framework that controls the use of the propagating material. In contrast, contracts deal with the commercialisation of varieties and may include details of prices, terms of trade and supply chain structures.

*This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.*

*This Fact Sheet was prepared independently by the Australian Centre for Intellectual Property in Agriculture (ACIPA).*

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