



Appendix C - Plant breeders' rights

The *Plant Breeders Rights Act 1994 Act* was introduced to support the competitiveness and sustainability of Australian primary industries by encouraging investment in plant breeding; facilitating access to elite varieties from overseas; and speeding technology transfer.

The scope of protection granted by PBR focuses on the commercial use of a variety's propagative material and extends to the exclusive right to: produce or reproduce; condition for propagation; offer for sale; import or export; or stock the material for any of the previous purposes. In certain circumstances these rights can be extended:

- to include the harvested material or products obtained from harvested material if the grantee has not had reasonable opportunity to exercise their rights on the propagative material; and
- to another variety that has been essentially derived from the PBR variety (including other varieties that cannot be reproduced without the repeated use of the PBR variety).

Balanced against the rights granted to the owner of the new variety, certain rights are also allowed for public and private interests. These include:

- farm saved seed (the ability of farmers to save seed of a PBR variety to establish subsequent crops of that variety). It is important to note that patents do not include a similar provision;
- the right to use the variety as a food, food ingredient or fuel; or for any other purpose that does not involve reproduction (including the production of sprouts); and
- any act that is done privately for non-commercial purposes, experimentation or for the purpose of breeding other plant varieties.

PBR promotes producer access to new varieties by imposing important conditions. Grantees are required, within two years of the grant of PBR rights, to provide reasonable public access to the variety. Reasonable access is defined in terms of price, quality and quantity to meet market demands. Should reasonable public access not be provided, compulsory licenses can be issued for the production and sale of the variety. A compulsory license entitles the grantee to 'reasonable remuneration' consistent with the normal course of business.

Another condition of continuing PBR protection is access by breeders of other new varieties to the propagative material of a PBR variety for the purposes of testing and comparison.

PBR protection is available to varieties in all plant species, provided they satisfy the eligibility criteria of distinctiveness, uniformity and stability. Varieties covered include fungi and algae (but excluding bacteria, bacteriodes, mycoplasmas, viruses, viroids and bacteriophages). Protection lasts for 25 years in the case of trees and vines, and 20 years for other species.

Australia's PBR regime accords with the relevant convention of the International Union for the Protection of New Plant Varieties, and falls within the bounds of the World Trade Organisation's agreement on the Trade Related Aspects of Intellectual Property. Administration of the PBR schemes in all 44 UPOV member countries is similar, allowing a high degree of reciprocity.