



Plant Breeder's Rights: what does it mean?

key messages

- Plant Breeder's Rights (PBR) are used to protect new varieties of plants that are distinct, uniform and stable.
- A PBR is legally enforceable and gives the owner, exclusive rights to commercially use, sell, direct the production, sale and distribution of, and receive royalties from the sale of plants.
- If you breach the PBR, the PBR grantee can initiate legal action seeking damages or an account of profits.



Plant Breeder's Rights are exclusive commercial rights to a registered plant variety. The rights are a form of intellectual property (IP), like patents and copyright, and are administered under the *Plant Breeder's Rights Act 1994* (the Act).

Plant Breeder's Rights are one means of conferring seed variety status.

In relation to propagating material of the registered variety, successful applicants have exclusive rights to:

- produce or reproduce the material
- condition the material for the purpose of propagation (conditioning includes cleaning, coating, sorting, packaging and grading)
- offer the material for sale
- sell the material
- import the material
- export the material
- stock the material for any of the purposes described in (i) to (vi).

PBR impacts for producers

If you buy PBR protected seed, there are no restrictions on using that particular batch of seed on farm except you are not permitted to produce propagating seed to re-sell unless you are licenced to do so.

Generally, the use of plant material produced by that seed is also free provided it is not sold or conditioned as propagating material or contains propagating material exported to countries where PBR protection is not available. This means producers cannot sell, trade, barter or gift seed between themselves.

If in doubt, contact the PBR grantee and determine whether their authorisation is required.

Varieties covered by PBR and the PBR grantee are available on the [IP Australia website](#).

Breaching PBR

If you breach the PBR, the PBR grantee can initiate legal action against you seeking damages or an account of profits.

The *PBR Act* provides for penalties for infringement of the breeder's right

Enforceable by law: If you buy PBR protected seed, you are not permitted to produce propagating seed to re-sell unless you are licenced to do so (Photo: Catriona Nicholls)

of up to \$90,000 for individuals and more than \$460,000 for companies. There are penalties for other unlawful acts in relation to the legislation.

Put another way, companies could now be 'risking the farm' with a "catch me if you can" attitude to PBR.

The Australian Seed Federation (ASF) has actively participated in the review of the enforcement of PBR that commenced during 2005. The review concluded during 2010, with several recommendations being accepted by government that are currently in the process of being legislated. Two of the recommendations make it easier to enforce rights and make the potential cost to infringers greater:

- Including PBR matters within the jurisdiction of the second tier of the Federal Court to provide PBR owners with an appropriate forum for enforcing their rights
- introducing exemplary damage provisions into the *Plant Breeder's Rights Act 1994* (the PBR Act)

If in doubt about whether you may be at risk of breaching the PBR, approach the PBR grantee and determine whether their authorisation is required.

Please be aware ignorance of the law is not a defence against legal action.

Remember: If you buy PBR protected seed, there are no restrictions on the use of that particular batch of seed on your farm except you are not permitted to produce propagating seed to re-sell unless you are licenced to do so.

This PII snapshot was developed in conjunction with the Australian Seed Federation (ASF) to provide a quick overview of the key considerations when buying pasture seed.

FURTHER INFORMATION

More information about Plant Breeder's Rights can be found on the [IP Australia website](#)

More information about current pasture varieties and their PBR status can be found on the ASF Seed Products Database on the [ASF website](#).



Know before you sow: Varieties protected by PBR are identified with the PBR logo