

# Plant Breeder's Rights

- Plant breeder's rights (PBR) are used to protect new varieties of plants by giving exclusive commercial rights to market a new variety or its reproductive material.
- To conform with the 1991 revision of the International Convention for the Protection of New Varieties of Plants (the UPOV Convention), the Australian Parliament has passed the Plant Breeder's Rights Act 1994 (Cth) (replacing the Plant Variety Rights Act 1987 (Cth) which has been repealed).
- PBR owners can direct the production, sale and distribution of the new variety, receive royalties from the sale of plants or sell those rights.
- To be eligible for protection the IP owner must show that the new variety is distinct, as well as being uniform and stable. The IP owner must also demonstrate by a comparative trial that the proposed plant variety is clearly distinguishable from any other variety, the existence of which is a matter of common knowledge.
- Applications are accepted from the original breeder of a new variety (from their employer if the breeder is an employee of an organisation) or from a person who has acquired ownership rights from the original breeder. Overseas breeders or owners must appoint an agent to represent their interest in Australia.
- Plant breeder's rights do not extend to the use of a grower's crop (that is, the grower does not have to pay a royalty on the crop produced), nor does it extend to the use of the variety in plant breeding or retention by growers of seed for the production of another crop on their land.
- PBR Protection lasts for up to 25 years for trees or vines and 20 years for other species. Varieties protected by PBR may only be produced for sale, sold, imported, exported or conditioned with the authority of the owner.
- Registration of PBR is administered by Plant Breeder's Rights Australia in the Department of Agriculture, Fisheries and Forestry (AFFA). There is a registration and examination process that is legally enforceable and gives exclusive commercial rights to a new plant variety.

## Lawyers at DLS can:

- draft and negotiate confidentiality and non-compete agreements regarding PBR and other IP rights;
- draft and negotiate agreements for the licensing, sale or acquisition of CL and other IP rights; and
- act in relation to IP disputes.

**For further information, contact:**

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