

Plant breeder's rights – what it means for you

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This symbol indicates that a variety is protected under Plant Breeder's Rights (PBR).

What is PBR?

PBR is applied for and granted to plant breeders under The *Plant Breeder's Rights Act 1994*. It is a type of copyright which protects the Breeder's 'invention' of a new and uniquely different plant variety. It provides the right of commercialisation of this 'new' variety and as a flow on, via grower contracts, provides for the collection of royalties at one point during the production cycle. Royalties on most crops are collected as end point royalties (EPR)¹. Seed royalties (SR)² are collected at the point of seed sale.

PBR protection in field crops is normally valid for up to 20 years and effectively makes the cultivar the personal property of the breeder. Under registration, the breeder has the exclusive right to sell, produce or reproduce, import, export and hold stock of the variety. PBR allows the breeder to license another person or company to undertake these activities, so that maximum seed sales may be achieved.

This monopoly on propagating material does not include use of protected variety for private or non-commercial experimental or breeding purposes.

Benefits of PBR to breeding companies

The need for PBR introduction was twofold. Firstly it allows cost recovery for the breeding program. Breeding a new cultivar is expensive, taking at least 10 years and costing in the region of one million dollars. Prior to the introduction of PBR, most seed was kept and traded among farmers,

leaving little or no opportunity for the collection of royalties. Under these circumstances the breeder recouped little of the associated costs of breeding programs.

Secondly, the collection of royalties allows for adequate returns on investment, so that private funding of breeding programs is encouraged. In Europe, where new seed is normally purchased each year, very few public breeding programs exist and the public dollar is devoted to the development of germ plasm, which may be incorporated into breeding programs for crop improvement.

PBR in Australia provides returns on investment, giving incentive to companies and individuals to invest in plant breeding and in turn add value to rural industry by producing superior varieties. It also ensures the flow of genetic material from overseas, allowing improved varieties to be released into the Australian market, while remaining fully protected.

What PBR means to individual farmers

Purchase of a PBR protected seed variety means that for individual farmers there are restrictions.

The major restriction to those who purchase seed of a PBR protected line is that the current seed or the produce of subsequent harvests cannot be sold as seed for sowing without permission from the breeder or their agent.

This restriction includes seed sale and trading between farmers. There are, however, exemptions to these restrictions. Firstly, seed may be held over on-farm for use by that farm. PBR protected lines may also be used on-farm by either or both partners in a bona fide share cropping situation.

¹ End point royalty (EPR) is paid on every tonne of grain of nominated varieties produced and sold by growers. The EPR is collected by grain marketers and paid to the breeding organisation.

² Seed royalties (SR) are paid on nominated varieties at the point of purchasing the seed and the payment is forwarded directly to the PBR owner of the variety.



Use restrictions

The harvested crops of PBR varieties may only be sold for:

- stock feed
- human consumption
- milling
- fuel source.

PBR protected seed **cannot** be sold as a sowing source.

Some older varieties may have PBR protection but royalties are no longer collected on these varieties by the breeders. Growers should seek advice on these varieties from the breeder holding the PBR.

Some frequently asked questions

N.B. Answers provided here are of a general nature and may be altered by specific circumstances. If in doubt, legal advice should be sought and/or further information sought from the PBR Office.

Which varieties are PBR protected?

A full list of PBR protected varieties is available for downloading from the PBR office website at www.ipaustralia.gov.au. Individual variety queries should be directed to the PBR Office (contact details on last page).

What if I have a contract to grow seed for sowing?

Contracts to produce PBR protected lines of seed should be read carefully and the conditions for disposal of the harvested seed noted. These conditions may take the form of a buy back system, where the company requires all seed harvested to be delivered directly back to the company or a specified agent. In some instances permission may be given for the sale of seed to be undertaken by the individual producer with an applied royalty payment to be made.

What if there was no disposal agreement and the company won't buy the seed back?

If the contracted seed is not bought back by the company and no permission is given for private sale, then it may only be sold as feed or for processing as described earlier under use restrictions.

Can I sell the seed if it is only to be used for producing hay?

No. Seed cannot be sold as a sowing source for any purpose, unless permission is obtained from the breeder or their agent. This restriction includes barter systems where no money changes hands.

Can I keep seed for sowing on my own farm?

Yes. You may hold seed over on-farm and harvest successful crops from the seed. No seed harvested may be sold or traded as a seed source.

Can I use PBR lines in a share cropping situation?

PBR protected seed may be sown under a bona fide share cropping arrangement. However, the person not legally in possession of the seed may not produce seed outside this arrangement.

Can I sell the PBR line with the farm?

The seed line remains the property of the breeder and application to transfer the seed line to the new owner would need to be made. If the transfer is approved then the vendor has no further claim on the seed line.

What happens if I sell PBR seed as stockfeed and it is used as a seed source?

When selling PBR protected seed as stock feed a written document should be given to the buyer indicating that the line is PBR registered and that the grain is being offered for stockfeed only. If the buyer illegally sows this seed, they are liable to legal action.

What about seed merchants?

Seed merchants are bound by the same restrictions as individual farmers and cannot offer for sale, sell, advertise, import or export PBR protected varieties without the consent of the breeder or agent.

What are the consequences of selling PBR protected lines as seed without breeders permission?

Penalties for selling PBR protected seed illegally are substantial. For individuals the fine is \$55,000 while for companies the fine is \$275,000.

How do I know if I am buying a PBR registered variety?

Legitimate PBR varieties should carry the PBR logo branded on the bag. If considering buying seed that is not labelled and you are concerned that it may be PBR protected, contact the PBR Office (contact details on last page).

Buy quality seed

No matter what type of seed you are buying, always ensure a current analysis certificate is available.

Always check the germination and purity on the analysis and request another germination test if the analysis is more than a year old. Good merchants will have no problem supplying this information.

It's too late to consider low germination rates after the seed has been sown.

Poor storage over time can lower germination percentages dramatically.

Seed is expensive and no matter how good management practices are, a poor seed source will result in a poor crop.

What is certified seed?

- Certified seed gives assurances that the seed is true to varietal type. This ensures that the farmer gains the benefits attributed to that cultivar, for example disease tolerance.
- While certified seed does not guarantee freedom, weed seeds identified in the seed sample are listed on the statement of analysis, including declared and prohibited weed seed.
- All certified seed is tested for physical purity and germination to meet minimum standards; these percentages are also listed on the statement of analysis.

Follow the 'buyer beware' code of practice

Before purchasing seed for sowing purposes:

- Check the PBR status of the line.
- If PBR protected, be aware of the restrictions and follow them.
- Check the seed analysis certificate for weeds, purity and germination.
- Check the date of any seed test and ensure that it is current.

Further information on PBR

Plant Breeders Rights

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