

# Plant Breeder's Rights

In Australia rights relating to new and distinct plant varieties are regulated by the Plant Breeder's Rights Act (PBR Act). Griffith Hack has one of Australia's leading practices in respect of plant breeders rights (PBR).

Our lawyers have a broad range of experience relating to PBR including:

## Applications for grant

- Filing applications for grant
- Assistance with examination requirements
- Oppositions to grant

## Commercialisation of PBR

- Commercialisation structures
  - Trial growing agreements
  - Grower (non-propagation) agreements
  - Marketing agreements
  - Associated trade mark registrations and licensing arrangements
  - Export agreements
- Implementation of end point royalty (EPR) systems
  - Advising on implementation of EPR systems to ensure validity of EPR payments/deductions
  - Drafting licensing, growing and export agreements on a variety-by-variety basis and as part of a closed loop EPR system

## Infringement and revocation proceedings

- Infringement advice including advice on the application of the farm saved seed provision of the PBR Act
- Infringement proceedings including:
  - assistance with establishment of genetic library
  - seeking orders for sampling and genetic testing of potentially infringing varieties
- Revocation proceedings

## Recent matters representative of our experience include:

- *Fleming's Nurseries Pty Ltd & Anor v Tony Hannaford (Federal Court proceeding no. VID 1432 of 2005)*

This matter involved alleged infringements by the respondent of PBR in the 'Sweetheart' cherry variety. The respondent cross claimed alleging that the 'Sweetheart' cherry PBR was invalid but subsequently abandoned that claim. The applicants obtained an order from the Federal Court allowing them to take samples of plant material growing on the respondent's property and genetically test that material to determine whether the sampled material was of the same variety as the 'Sweetheart' cherry variety. The matter settled prior to trial but after the results of the genetic testing were made available. The Court was prepared to make declarations of infringement by the respondent of the 'Sweetheart' cherry PBR.

- *Fleming's Nurseries Pty Ltd & Ors v Portikal Thirteen Pty Ltd & Ors (Federal Court proceeding no. VID 1588 of 2005)*

The applicants alleged infringement by the respondents of several PBR protected stone fruit varieties. The proceedings settled prior to trial on the basis that the respondents undertook to refrain from engaging in any further infringing conduct and disclosed details of all dealings with the infringing plant material.

## Key contacts

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