Understanding Plant Breeders Rights (PBR) for Berry Varieties in Australia

Plant Breeders Rights (PBR) are a form of intellectual property protection granted to breeders of new plant varieties—including berries—giving them exclusive rights to control the use of their variety. This includes the right to produce, sell, propagate, import, export, or stock the protected berry plant or any of its propagating material (such as cuttings, runners, seeds, or tissue culture).

PBR is critical in the berry sector where innovation in yield, disease resistance, flavour, and shelf life often hinges on proprietary varieties.

Any variety protected by PBR in Australia is legally protected under the **Plant Breeder's Rights Act 1994**, and infringements can result in **significant penalties**, including legal action.

What makes a berry plant eligible for PBR protection?

To be granted PBR, a new berry variety—such as a strawberry, raspberry, blueberry, or blackberry—must meet four main criteria:

- **NEW** – The variety has not been sold in Australia for more than 12 months before applying, and no more than 4–6 years overseas (depending on the plant type).
- **DISTINCT** – It must clearly differ from existing known varieties by at least one identifiable botanical trait (e.g. berry size, colour, shape, growth habit, disease resistance).
- **UNIFORM** – The variety must be consistent in its key characteristics across all plants.
- **STABLE** – These characteristics must remain consistent over successive generations or cycles of reproduction.

Who owns the PBR on a berry plant?

The **breeder** is usually the initial rights holder but may transfer the PBR to a company, research organisation, or licencing agent. In berry breeding programs, PBR is often used commercially under licencing agreements with growers.

Can I grow a PBR-protected berry variety?

Yes, **but only if you are licensed** to do so. Many PBR-protected berry plants are available to commercial growers under contract. Growing, selling, or propagating a protected variety without permission is a breach of Australian law.

Even using plant material such as cuttings or runners from a PBR variety without authorisation is considered infringement.

How do I apply for PBR for a new berry variety?

Applying for PBR typically involves:

1. **Submitting a two-part application** to IP Australia.
2. Engaging a **Qualified Person (QP)**—someone trained and approved by IP Australia—to conduct or supervise a growing trial.
3. Demonstrating the new variety meets the criteria (new, distinct, uniform, stable).
4. Paying associated **application, examination, and annual renewal fees**.

The whole process typically takes around **2–3 years**.

What is a Growing Trial and why is it needed?

A **growing trial** is a real-world test—usually over one or two seasons—conducted under Australian conditions to prove that the variety is distinct, uniform, and stable (DUS testing). It must be managed or validated by a QP, and is a key part of the approval process for berry varieties.

What protection does PBR offer berry breeders?

Once granted, PBR allows the rights holder to:

- Control who can propagate, sell, or use the plant for commercial production
- Take legal action against unauthorised propagation or sale
- Licence others to grow the variety under agreed terms

PBR lasts **up to 20 or 25 years**, depending on the plant type.

Where can I find more information about PBR in Australia?

Visit the official IP Australia PBR page:
🌐 https://ipaustralia.gov.au

They provide guides, forms, lists of Qualified Persons, searchable databases of protected varieties, and step-by-step resources for applying or checking variety protection status.

This guide provides general information only and does not constitute legal advice. For tailored guidance, consult a Qualified Person or IP legal specialist.