



Australian Government

IP Australia

# Application for a declaration of essential derivation



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- how you may make a complaint about a breach of the Privacy Act and how we will deal with your complaint; and
- IP Australia's Privacy Contact Officer details.

Any personal information you provide will be used for the purposes of processing this form. IP Australia may also contact you, using the contact details you have provided, to request your feedback on our products and services.

In accordance with the PBR Act, IP Australia may make this completed form available to any person, upon request and payment of a fee.

IP Australia will publish the:

- Applicant name;
- Agent name; and
- Town, State and Country of the applicant's address

in the Register of Plant Varieties, the Plant Varieties Journal and the Plant Breeder's Rights Database. Once information is available on the internet, IP Australia has no control over its subsequent use and disclosure. You should be aware that the information (including personal information) held in IP Australia's online IP Rights databases is also available on request, subject to our terms and conditions.

You should also be aware that the Registrar for Plant Breeder's Rights may need to:

- contact the grantee of the Plant Breeders Right for which you are seeking a declaration, regarding your application; and
- disclose the contents of your application to the grantee of the Plant Breeder's Right.

If you do not provide the personal information required on the form, IP Australia may not be able to process this form.

IP Australia will not otherwise use or disclose your personal information without your consent, unless authorised or required by or under law.

### Consent

By completing this form, in addition you provide your consent to your personal information being handled in accordance with this privacy notice, including being disclosed as provided above.

When you provide your consent to your personal information being disclosed to overseas recipients, including publication online, you understand that IP Australia will not be accountable for any subsequent use under the Privacy Act, nor are you able to seek redress under that Act, for the actions of any overseas recipient.



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## Sections 1 to 3 to be completed by the Applicant

**Note:** This application must be accompanied by the prescribed fee.

### Section 1: General information about the Applicant and varieties concerned

Name of Applicant:

(person making this request for declaration of essential derivation)

Address:

State

Postcode

Country (if not Australia)

#### Contact Details

Contact person:

(if different from applicant)

Telephone (  )

Fax (  )

Mobile Number:

Email address:

#### Initial Variety (details of your granted PBR variety)

PBR Application No.

PBR Certificate No.

Variety name:

Botanical name:

Has the initial variety itself been declared to be essentially derived from another variety?

Yes

No

#### Second Variety (details of the variety you are claiming is essentially derived)

PBR Application No.

PBR Certificate No.

(if granted)

Variety name:

Botanical name:



### Section 3: Declaration by the Applicant

As the grantee of the initial variety stated in this application, I apply under Section 40 of the *Plant Breeder's Rights Act 1994* for a declaration that the second variety stated in this application is essentially derived from the aforementioned variety.

By ticking this box

I/We: 


Date: 

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(DD/MM/YYYY)

declare to be authorised to complete this application and that the information given in all parts of and attachments to this form are true and correct.\*

**\* THE PENALTY UNDER SECTION 75(1) FOR MAKING A FALSE STATEMENT IN SUPPORT OF AN APPLICATION IS SIX MONTHS IMPRISONMENT.**

## **Section 4 to be completed by IP Australia**

### **Section 4: Process for assessing an application for essential derivation**

#### **Prior declarations affecting initial variety**

Has the initial variety been declared essentially derived from another variety? Yes  No   
If yes, then refuse application for essential derivation and notify applicant

#### **Application must contain *prima facie* case of essential derivation**

Has a *prima facie* case been established?..... Yes  No

If no, has the applicant been notified with reasons for the decision?..... Yes  No

If yes, has notification been sent to grantee of second variety allowing 30 days (or other such period as allowed by the delegate) in which to establish that the second variety is not an essentially derived variety of the initial variety? Yes  No

#### **Final Declaration**

After considering all relevant information, is the delegate satisfied that the grantee in the second variety has rebutted the *prima facie* case? Yes  No

If yes, notify both the applicant and grantee of second variety of result; and provide reasons to the applicant.

If no, declare that the second variety **is** essentially derived from the initial variety; notify both the applicant and grantee of second variety, and provide reasons to the grantee of the second variety.

Reason:


Written notification of the declaration has been provided to the grantee of the initial variety and the grantee of the second variety Yes  No

Registrar of Plant Breeder's Rights (Delegate of the Secretary)	Date:
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