



Australian Government  
IP Australia



# Qualified Persons (QP) Workshop Outcomes

2023



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## BACKGROUND

In November and December 2022, the PBR Reform Program team invited QPs from around Australia and New Zealand to join workshops on the role of QPs and the future of PBR.

As of late 2022, the QP cohort consisted of 183 individuals accredited by IP Australia. Nearly 60 expressed interest in attending a workshop and told us their preferences for online or in person (and where). Based on these responses, we set up four different workshops: two in person in Melbourne (29th November) and Brisbane (1st December), and two virtual (6th December and 9th December).

The workshops focused on testing our research findings directly with QPs, capturing feedback and perspectives from QPs, and working with QPs to explore ideas for the future. They form a key part of our work to identify opportunities for change and develop recommendations for reform, particularly in relation to QPs and how the PBR system works with and for them.

A broad range of crops/industries were represented across the workshops, including ornamentals, fruit and broadacre. There was also a broad range of experience, from some who have only been a QP for a few months to others with over 30 years of QP experience.

## This report and commitment to privacy

We want to be transparent about the information we collect and what we do with it.

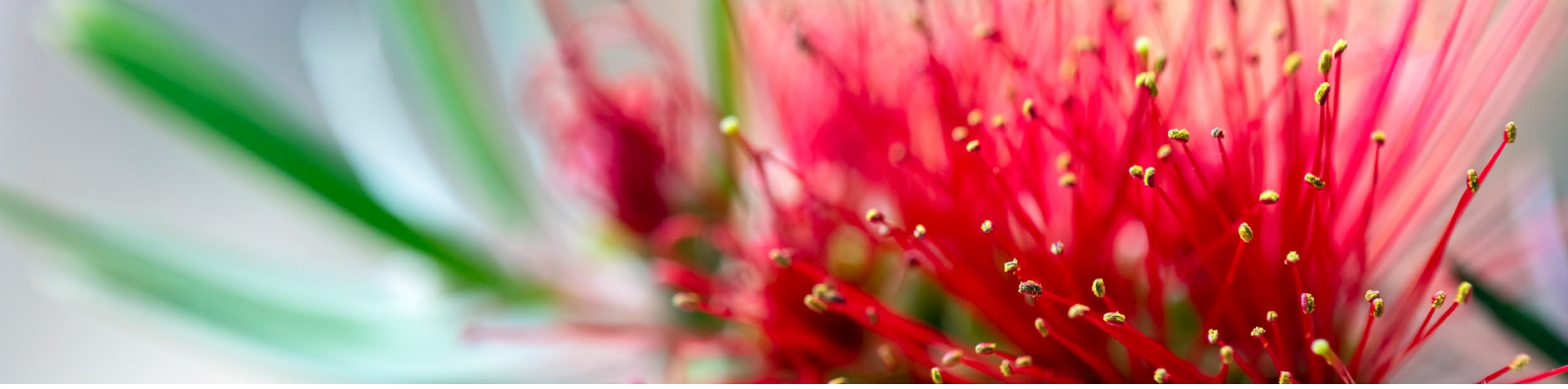
The information in this report, and what we share publicly, is and will remain de-identified. Our aim was to create a safe environment for those attending the workshops to share feedback. This is also why we are not sharing recordings of the workshops and are instead sharing this report.

This report provides an overview of discussions that took place during the workshops and the issues and ideas raised by QPs who attended. Readers are encouraged to reflect on these and are welcome to provide any feedback in response.

The report does not represent IP Australia's views or conclusions, or a commitment to progress ideas raised in the workshops.

We will continue to keep QPs (and other stakeholders with an interest in the future of PBR) updated as next steps progress, along with ongoing opportunities to be involved.

Information about how these workshops were run and the messages IP Australia presented are captured in a slide deck accompanying this report.



# WHAT WE HEARD FROM QUALIFIED PERSONS

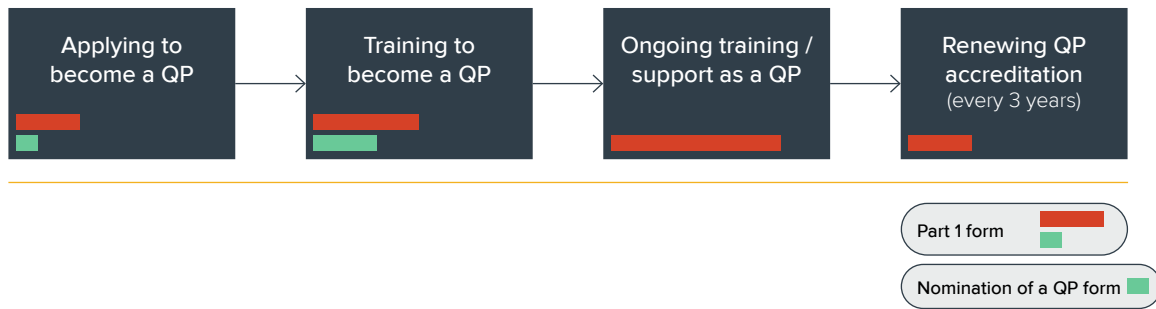
## Feedback about the current process

In each workshop, QPs were asked to reflect on the QP and PBR process, illustrated in a simplified process map, shown below.

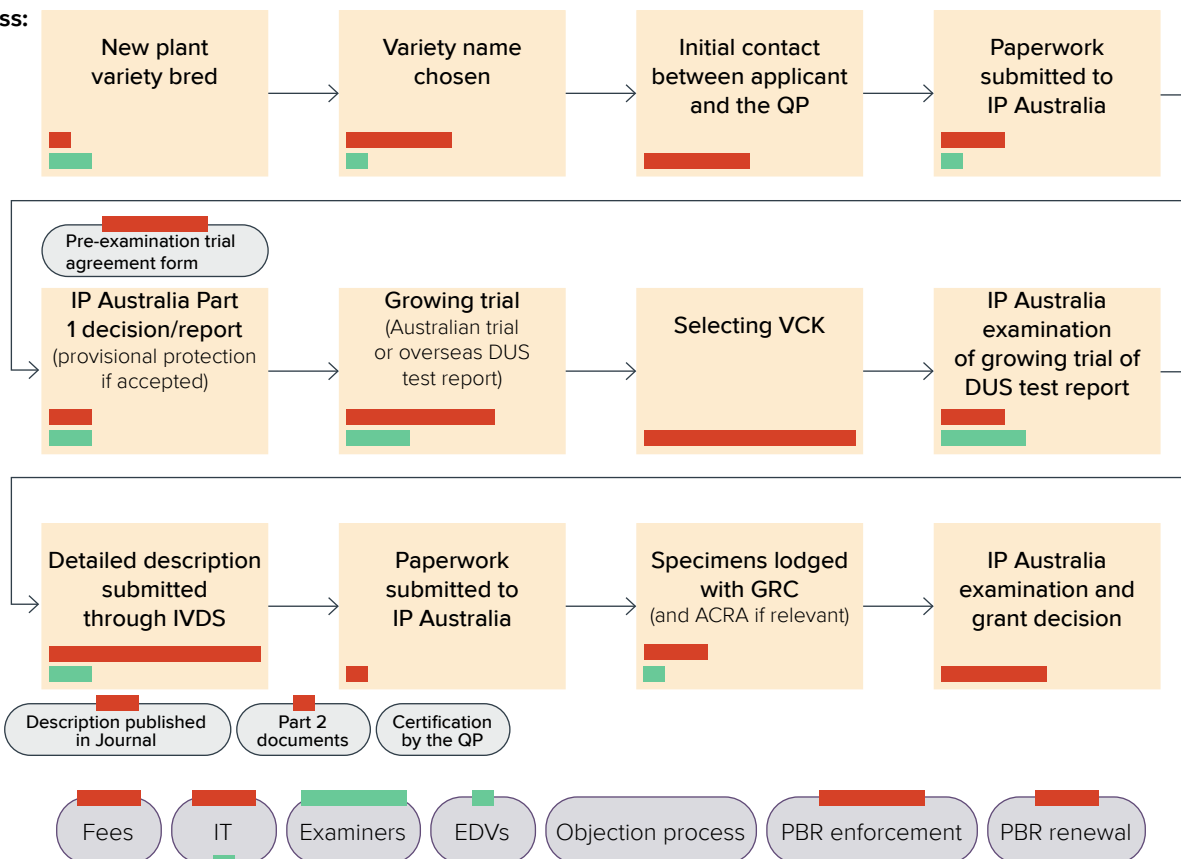
Consolidating the red and green post-it notes across all four workshops creates the following map. The size of each red and green bar indicates the relative quantity of feedback against each part:

QPs had the opportunity to add red post-it notes to the map where they experience pain points or frustrations and green post-it notes where things work well in their experience.

### QP Process:



### PBR Process:



As shown above, there are aspects of the system that stand out as pain points. We explored these aspects in more in-depth discussions.

In particular:

- **Ongoing training and support as a QP:** most people who attended the workshops felt there is a lack of ongoing, formalised training and support for the cohort of accredited QPs. Many expressed that the PBR office and examiners are very supportive, approachable, and helpful throughout the PBR process. However, outside the context of a particular PBR application, training and support is limited. This seems to particularly affect newer QPs, and those who infrequently go through the PBR process. We also heard there is only limited, occasional, ad hoc sharing of experience and knowledge between QPs (though this differs between industries).
- **Selecting varieties of common knowledge (VCK):** this was raised in all the workshops and discussed in detail. This was both in the context of how difficult it can be identifying which varieties to select as VCKs, and the challenges accessing the material to use in a growing trial (e.g. when the holder of the material is reluctant to release it, or where it only exists out of Australia).
- **Detailed description submitted through IVDS:** this was also raised in all the workshops and is a notable point of frustration in the process. Many QPs spoke of challenges they found with the system – noting its age, limitations in functionality, and inefficiency in the user experience.

Many of the pain points and frustrations highlighted across the process map also connected back to forms, paperwork, and IT systems interactions, with most feedback relating to outdated and unconnected systems and duplicative paperwork.

We also heard some broader challenges that flow across or connect different parts of the process, for example:

- The (often undesirable) flow-on effects of an applicant initiating the PBR process without seeking the support/advice of a QP first. This includes scenarios where an applicant has nominated a QP in the application's paperwork without contacting or letting the QP know first.
- Use of overseas trial data (with the view of it replacing the need to conduct a growing trial in Australia, where available and appropriate), and its impact on the sequencing of the process, paperwork, and role of the QP in PBR.
- Whether the future holds opportunities for molecular techniques to be used in the PBR and examination process in different ways.



## Ideas for the future

Guided by the placement of the red points, and the depth of discussions, we crafted sets of “how might we...” questions. These were used to stimulate brainstorming ideas of how to address the challenges. There were many similarities in the themes in the four workshops.

We ended up with nine different “how might we” questions overall:

	How might we...
#1	... improve ongoing training and support for QPs?
#2	... define the requirements to become a QP?
#3	... address challenges in selecting and accessing varieties of common knowledge (VCKs)?
#4	... better capture the information needed throughout the PBR application process?
#5	... improve paperwork and forms across the process?
#6	... improve IVDS to support QPs in their work?
#7	... better connect QPs with applicants and other QPs?
#8	... assist applicants in getting QPs involved earlier?
#9	... build understanding around issues of PBR enforcement?

Through the brainstorming process, QPs came up with an incredible 272 ideas in response to the questions.

At the start of each day, we also asked for anonymous responses to the question:

*If you could wave a magic wand and change anything about how the QP system works, what would you change and how?*

We received another 57 responses to this question. Many of the more specific ideas, such as those relating to IT and training, also ended up coming up as solution ideas throughout the day. A few others provided some overall insight into what was front of mind for QPs – including views relating to continuing PBR’s legacy and the inclusivity of the PBR and QP community.

### Improving ongoing training and support for QPs

When it came to **ongoing training and support**, a common suggestion was for IP Australia to reinstate some form of ongoing, regular training for QPs – and lots of different thoughts and ideas for how these could be structured, targeted, and delivered as an evolution of the annual in-person training workshops that used to occur.

We also received many different ideas about ways to formalise the support QPs receive from the PBR office and from each other, and how to cater for the different needs of newer and more experienced QPs. Some discussions were particularly focused on those QPs who do not engage with the PBR

application process regularly and so do not regularly interact with the PBR office and examiners, or are the only QP operating in an industry. These ideas included different styles of in-person and online training and information sessions, forums, or meetings.

We heard desire for two-way interactions, in meetings or in writing, where:

- QPs can raise questions/scenarios with the office
- Answers are shared amongst the rest of the QP cohort so people with similar challenges can learn from others, and
- IP Australia more regularly shares updates and information with the QP cohort as a whole.

## Defining the requirements to become a QP

Some workshops had quite detailed discussions about what should be the **requirements to become a QP**. Conversations were focused on whether the current balance is right, and whether the current approach sets clear expectations up front for prospective QPs, while not putting excessive barriers in place that could exclude people unnecessarily, and lead to a potential shortage of QPs in the future.

We received feedback that the current requirements are probably striking the right balance, but the process to apply to become a QP needs to be more clearly conveyed with more information upfront, and formalised somewhat with a clearer process and structured application form.

There were also lots of ideas for further exploration about attracting and setting clear expectations for people who might want to become QPs, especially as some of the most experienced QPs approach retirement. This currently varies greatly from industry to industry.

## Addressing challenges in selecting and accessing varieties of common knowledge (VCKs)

### Challenges selecting and accessing VCKs

stimulated lots of discussion and ideas for the future in all of the workshops. Most solution ideas related to ways QPs would like online information and databases to work and better facilitate the task of searching for and identifying potential VCKs.

This included a desire to be able to do the following:

- Search across and dig into the wealth of data that exists behind the IVDS system
- Be able to search the text of detailed descriptions on the public-facing PBR search system online for keywords that would help identify potential VCKs, and
- Be able to filter PBR data on the search system by their grouping characteristics.

The significant challenges of practically accessing VCK material to use in a trial mostly raised further questions to explore. This was especially so when it comes to potentially grouping out varieties that are difficult/expensive to source for inclusion in a trial, or support from the office to help facilitate negotiations when a variety is particularly needed for a trial. Though, as some mentioned, being able to rely on overseas data is how they would prefer to alleviate the need to access VCKs in challenging scenarios involving overseas material.

## Better capturing the information needed and improving paperwork and forms throughout the PBR application process

The majority of feedback and discussion around **paperwork and forms**, and capturing the information needed through the application process, related to QPs' experiences with IP Australia's online services, forms and payment systems. The majority of solution ideas related to reducing duplication in the various forms and creating a better user experience.

For example, we heard consistently that it is challenging and frustrating to find, interact with, fill out, and submit the current PDF forms. Ideas included an online system more functionally in line with the other IP rights IP Australia administers, or more on par with international filing systems such as PRISMA. Another idea was a better system for getting multiple signatures on a single form and tracking the progress/status of documents once submitted.

Similarly, challenges were raised relating to paying invoices and understanding how the online payment systems work. Solutions were focused on easier and better connections between the written correspondence from the PBR office and invoices that include clearer and more direct information on how to pay them.

QPs also suggested improving the content and substance of the forms and paperwork, including reducing duplication between part 1, the pre-examination trial agreement form and part 2 paperwork, and clarifying language and questions.

## Improving (or replacing) IVDS to support QPs in their work

**Improving IVDS** was a key topic in every workshop. The accompanying slide deck includes some more information about IP Australia's ongoing plans for PBR IT modernisation, including improvements to IVDS and search systems in the future.

Specific improvements QPs raised for IVDS related to the usability and efficiency of the system, saving and returning to work in progress, navigating back and forth through the system, being able to re-use previously submitted information, and being able to print and save from the system.

More fundamentally, some questioned why IVDS is its own separate system, and suggested the functions of IVDS could be integrated into IP Australia's online environment, and be a single place to submit information related to distinctness, uniformity and stability.



### Better connecting QPs with applicants and other QPs

When discussing the issue of **connecting QPs with applicants and other QPs**, questions were raised about whether people were even aware of, or could easily find, the QP directory on IP Australia's website. Those who knew about it and are familiar with it questioned how well it serves its purpose of helping applicants (especially those navigating PBR for the first time) find the right QP for them.

We received requests to improve/update the information on the QP directory and include more, if not all, QPs on that listing – not just those who are consultant QPs. Some also suggested making the QP directory more prominent and easier to find on IP Australia's website.

### Assisting applicants in getting QPs involved earlier

There was quite a lot of discussion about how to **encourage PBR applicants to get a QP involved earlier in the PBR process**. This also tied into questions about the online QP directory and whether applicants are made aware of it early enough in the process.

Ideas related to more public education and awareness to try tackle gaps in knowledge and expectations PBR applicants may have before they engage a QP.

Consultant QPs suggested ways applicants could more clearly and transparently nominate QPs, including having QPs and applicants co-sign certain forms.

### Building understanding around issues of PBR enforcement

The ideas mostly related to encouraging an information exchange between industry and IP Australia on **issues of enforcement**. This was suggested as a way of facilitating QPs sharing more information back to the PBR applicants they work with about the value of PBR.



## Other discussion topics

Each workshop ended with time for other discussions and questions.

Topics included:

- **How the COVID-19 pandemic has affected work of QPs:** for example, experiences of interacting virtually with applicants and the PBR office through the course of a PBR trial or experiencing delays/challenges. Though, some reported that from their perspective, a QP's work was "business as usual" and experienced no major shifts.
- **What happens when things go wrong between QPs and applicants:** for example, arranging for the ending of a relationship between a QP and the applicant, or receiving a PBR application part way through from an applicant after they had ended a relationship with a different QP.
- **Practical realities of Genetic Resource Centres (GRCs) as part of the PBR process:** when it comes to storing and accessing plant material with and from GRCs, the overarching purpose is well understood and appreciated, but there are very different practices across different industries.
- **Role of the Australian Cultivar Registration Authority (ACRA) in the PBR process:** while only applicable to PBR applications for native Australian species, the feedback we received was that this part of the process adds cost and complication but does not seem to be adding significant value for PBR applicants.
- **Ideas for future public education and awareness opportunities and channels/ways to reach various industries with information about PBR:** we greatly appreciate the list of leads we received (including industry trade days, conferences, and magazines) and welcome your ideas.
- **Using molecular techniques in PBR, whether part of the PBR examination process directly and/or as a supplementary piece of the enforcement puzzle:** a conversation we will explore in more depth with PBR stakeholders throughout 2023.





## WORKSHOP Q&A

Throughout the workshops we opened an anonymous online Q&A page. We were able to answer some questions directly in the workshops on the day, but committed to gathering questions and sharing responses with the entire QP cohort as part of this report:<sup>1</sup>

### **Is the PBR process map (used in these workshops) available on the IP Australia website?**

We created the process map specifically for these workshops. But we would appreciate feedback to ensure the process map is accurate and representative, and whether others could benefit from it.

### **What parameters constitute an essentially derived variety (EDV) and could it be less opaque?**

The parameters of what constitutes an EDV are [specified in section 4 of the PBR Act](#), noting that the variety must also be registrable in its own right.

IP Australia has published an [independent report on EDVs](#) from the University of Queensland that has a discussion of what an essentially derived variety is and guidance on how the EDV provisions work. The report makes several recommendations for potential reform to the EDV scheme. The government is currently consulting on and considering the recommendations and has not taken any decisions on possible reform. [Consultation](#) is open on these reports until 31 March 2023.

### **Is a variety of common knowledge (VCK) always necessary?**

A VCK is always necessary, unless it is the first variety of a species to seek PBR protection. If this is the case, then the new variety must be compared with the parent population. The need for VCK is included in the PBR legislation.

### **Can IVDS allow for alternative statistical analysis methods, beyond the ones the PBR office currently accepts?**

Not at this stage. We have to be consistent in our approach across applications and different methods of statistics could produce different results. We accept the traditional analysis of variance (ANOVA) method for the statistical analysis of variances between the comparator and the candidate variety. The UPOV document [TGP/8 Use of Statistical Procedures in DUS Testing](#) provides more details on statistical procedures for DUS assessment.

### **Are the IP Australia IT/webpages and IVDS systems to be upgraded? Submitted documents often get lost, is this being addressed? Will QPs be involved in the testing of new systems?**

IP Australia's general website, including the information about PBR, was updated and refreshed in late 2022: <https://www.ipaustralia.gov.au/>

Through our initial research we heard and captured lots of information about the limitations of current IT systems. Discussions throughout the QP workshops reiterated the issues with our IT systems, and the flow-on effects these issues have across the PBR process.

The good news is that work is being done by our IT areas to modernise systems that are used to administer PBR, including search systems and IVDS.

The first step is to move our internal administration systems into a modern secure platform. This will improve the availability and portability of PBR data so that it can be used to create new services for customers.

System stability and the availability of current customer facing systems are the current focus.

We will keep QPs in the loop and provide opportunities for anyone interested to be involved in consultation and testing.

<sup>1</sup> Some of these questions are combinations of multiple questions or the language has been tweaked for clarity.

### **How does IP Australia prevent duplications between PBR and trade mark applications?**

PBR examiners search the trade marks register to determine if there are any existing trade mark registrations or applications which would prevent acceptance of the nominated variety name or synonym in a PBR application.

Trade mark examiners search the PBR register and the UPOV database, and conduct general internet research, to determine whether a trade mark or elements of a trade mark are plant variety names. An objection may be raised if a plant variety name is included in a trade mark. Objections may be able to be overcome with restrictions to the goods covered by the trade mark or with conditions limiting the scope of the trade mark and the way it can be used.

IP Australia has also recently published an independent report by the University of Queensland on [plant variety names](#). The report includes a discussion on the interaction of the Trade Marks Act and PBR Act and includes a number of recommendations. The Government is considering the recommendations and has not taken any decisions on possible reform. [Consultation](#) is open on these reports until 31 March 2023.

### **How much time does a QP have after the part 1 application to submit part 2?**

Part 2 information should be submitted as soon as possible once the growing trial and field examination are complete and the relevant information is available. The PBR Journal is published quarterly, and we encourage the part 2 to be submitted in time for the upcoming Journal edition, so that the description can be published without delay.

### **Do we have any female QPs?**

Yes. IP Australia doesn't keep data on the gender of QPs but it is clear that female QPs are in the minority.

### **What is the reason for having a limit on prior sales?**

The PBR Act's prior sale limit is based on the requirements of the UPOV Convention. Under the UPOV Convention a plant variety must be new, distinct, uniform, and stable for it to be registrable.

[Article 6](#) of the UPOV Convention specifies the requirements for newness (referred to as novelty) and includes a four year time limit for prior sales which occur in other countries (six years for trees and vines) and a one year limit for sales which occur in the same country. This is to balance the requirement that a variety be 'new' for it to be registrable, and the time needed for a breeder to decide whether they want to commercialise in other jurisdictions.

### **Is there a process for QP accreditation to other species?**

Yes. If you would like to add species to your listing, please write to the PBR office requesting the additional accreditation and state your experience with the other species. There is no fee involved.

### **Where is the new pre-examination trial agreement form on the IP Australia website?**

The form isn't available on the website as it's not always necessary to fill one out. The PBR office will send a pre-trial examination agreement form to the QP if one needs to be completed.

We are currently seeking feedback on this form. Please contact us if you have any feedback on the content.





## THANK YOU AND NEXT STEPS

Thank you to everybody who contributed their time, energy, and ideas through this process.

We also thank everyone who filled out a feedback survey. It was an incredibly positive and constructive experience for us, and we were glad to see that reflected in the feedback we received from those who attended.

If you want to add your thoughts and ideas into the mix, please email [PBR.Reform@IPAustralia.gov.au](mailto:PBR.Reform@IPAustralia.gov.au)

If you want to contribute to policy discussions:

- Policy Register:  
<https://www.ipaustralia.gov.au/about-us/public-consultations/intellectual-property-policy/policy-register>
- Public consultations:  
<https://consultation.ipaustralia.gov.au/>

The PBR Reform team will now spend some time consolidating and considering all the ideas generated through the workshops. Solutions will be developed and consulted on as the reform program continues this year.

An overarching theme throughout our research has been the potential shortage of QPs, noting that a QP is a mandatory element of every PBR application. We are exploring what could be done differently to manage these risks. This was a point captured in our [2021/2022 interview research](#), which included interviews with some QPs, but primarily perspectives of applicants who were seeking the services of a QP. Discussions at the workshops with QPs also emphasised this point from various angles. For example, several QPs (including some who have been involved with the PVR/PBR system since its introduction) pointed out they are looking towards retirement, and others noted the reason they had become a QP in the first place was because there was no one else available.

There are a number of other initiatives within the program that may influence ideas generated here. Please see our website for more information on these other initiatives.

