



TGP/9.1.2.1 Draft 1

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

Associated Document  
to the  
General Introduction to the Examination  
of Distinctness, Uniformity and Stability and the  
Development of Harmonized Descriptions of New Varieties of Plants (document TG/1/3)

**DOCUMENT TGP/9**

**“EXAMINING DISTINCTNESS”**

**Section TGP/9.1.2.1: General Procedures for Determining  
Distinctness: Breeder Testing (Australia)**

*Document prepared by expert from Australia*

*to be considered by the*

*Technical Working Party for Vegetables (TWV), at its thirty -sixth session to be held in  
Tsukuba, Japan, from September 9 to 13, 2002*

*Technical Working Party for Agricultural Crops (TWA), at its thirty -first session to be held in  
Rio de Janeiro, Brazil, from September 23 to 27, 2002*

*Technical Working Party for Ornamental Plants and Forest Trees (TWO), at its thirty -fifth  
session to be held in Quito, from November 18 to 22, 2002*

*Technical Working Party for Fruit Crops (TWF), at its thirty -third session to be held in  
San Carlos de Bariloche, Argentina, from November 25 to 29, 2002*

## **SECTION 9.1.2.1**

### **GENERAL PROCEDURES FOR DETERMINING DISTINCTNESS: BREEDER TESTING**

#### **PROCESS FOR ESTABLISHING DISTINCTNESS**

#### **UNDER THE IMPLEMENTATION OF AUSTRALIAN BREEDER'S TESTING SYSTEM**

In granting of Plant Breeder's Rights (PBR), an examination process is essential in confirming that a new variety meets the technical criteria of Distinctness, Uniformity and Stability (DUS). In most UPOV member states, DUS testing is predominantly done by the relevant official testing authorities at some centralised testing facilities. However, Article 7(1) of the 1978 revision of the UPOV Convention (UPOV 78) and the Article 12 of the 1991 revision of the UPOV Convention (UPOV 91) do not strictly require that the testing should be conducted by the official testing authorities but anticipate that other testing methods could be used.

One such method is the so-called "breeder testing" system where the breeder (or applicant or contractor to the breeder) becomes involved in or undertakes the DUS trial. The level of involvement of the breeder in a breeder testing system varies depending on national circumstances.

The process of establishing distinctness under the implementation of Australian breeder testing system is outlined in the following table:

Process for Establishing Distinctness under the implementation of Australian Breeder Testing System

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
Examination of the Part 1 Application <sup>1</sup>	<p>A brief description and a photograph of the variety are supplied.</p> <p>Claim of the main difference (s) of the new variety from the other most similar varieties of common knowledge.</p> <p>Full information on the origin and breeding of the variety is outlined.</p> <p>Indication of the main difference (s) from the parental material if the parents are varieties of common knowledge.</p>	<p>To establish a preliminary ( <i>prima facie</i> ) case that the variety is distinct from all other varieties of common knowledge.</p> <p>PBR offices review the Part 1 application. Check the claims against existing data/information.</p> <p>Once the <i>prima facie</i> case is established the application is accepted in the PBR scheme and the variety is protected under provisional protection for 12 months.</p> <p>The applicant nominates whether they wish to have the examination based on a comparative trial in Australia or on data provided by another contracting party. In both cases the data has to be verified by a PBR accredited Qualified Person (QP) <sup>2</sup>.</p> <p><i>Prima facie</i> case not established → Application refused.</p>

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p data-bbox="94 228 450 319"><b>Comparative Growing Trial in Australia</b></p> <p data-bbox="94 526 450 606"><b>Applicant obtains UPOV Test Report</b></p> <p data-bbox="94 766 450 798"><b>Provisional Protection</b></p>	<p data-bbox="450 228 999 367">The location of the trial could be in a breeder's or applicant's field or in a PBR accredited Centralised Testing Centre (CTC).</p> <p data-bbox="450 399 999 478">The QP to plan and supervise the comparative growing trial.</p> <p data-bbox="450 526 999 670">For application based on overseas UPOV test reports, the QP is advised on the need to verify the variety description under local conditions.</p> <p data-bbox="450 782 999 989">Upon request and at discretion of the Registrar the 12 months provisional protection period is extendable to allow the establishment of the comparative trial and record observations or to obtain the test report.</p>	<p data-bbox="999 228 2072 303">The QP reviews the Part 1 application and the UPOV Technical Guideline for the species (if available).</p> <p data-bbox="999 319 2072 399">By elimination process, The QP selects the most similar varieties of common knowledge for the comparative trial based on the following factors:</p> <ol data-bbox="999 430 2072 686" style="list-style-type: none"> <li>1) UPOV grouping characteristics.</li> <li>2) List of PBR varieties.</li> <li>3) List of other existing varieties.</li> <li>4) Suggestions from the PBR office.</li> <li>5) Parental/source material.</li> <li>6) Personal experience with the species.</li> <li>7) From other published information.</li> </ol> <p data-bbox="999 718 2072 782">The QP conducts the comparative growing trial using scientific methodologies. Record data and assessment methods.</p> <p data-bbox="999 813 2072 877">Confirm the relevant characteristics of the candidate and the comparator varieties with their states of expression.</p> <p data-bbox="999 909 2072 1085">The QP is encouraged to use morphological characteristics; especially those least affected by environmental factors are preferred. Other characteristics, e.g. Phenological, physiological or biochemical are also acceptable if these characteristics meet the requirements of TG/1/3. DNA data is not accepted for establishing distinctness.</p> <p data-bbox="999 1117 2072 1181">Quantitative differences are established based on statistical methods. Qualitative differences are established based on visual observation.</p> <p data-bbox="999 1212 2072 1276">Comparative photograph is taken to show the differences between the varieties in distinctive characteristics.</p> <p data-bbox="999 1308 2072 1391">On the basis of comparative trial, data and photograph, the QP submits the detailed description of the variety for publication in Part 2 application form.</p>

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p><b>Examination of the Part 2 Application<sup>3</sup></b></p> <p><b>Examination of the Comparative trial</b></p>	<p>The QP certifies the authenticity of the data and the scientific methodologies used in conducting the trial. There are severe penalties under the PBR Act for falsifying information or submitting misleading data.</p> <p>PBR office examines the Part 2 application and determines the need to independently examine the trial. If necessary, an independent examination is carried out by the PBR Examiner.</p> <p>If the PBR office does not examine a trial then the decision is made from information provided that the candidate variety is clearly distinct from other varieties of common knowledge that no further examination is warranted.</p>	<p><u>Where necessary, an independent examination of the comparative trial by the PBR Examiner at a time when the distinctive characteristics are visible. This ensures that the technical rigour is maintained in the trial and the QP's data is consistent and repeatable.</u></p> <p>PBR Examiner also checks the trial details and scientific methodologies and reserves the right to order another trial growing by an independent institution.</p> <p>PBR Examiner determines the distinctness from own observations in the form of a Field Examination Report. The Examiner's report and the Part 2 data must be consistent for a positive decision on distinctness.</p> <p>If the examiner's report is positive on the decision of distinctness but not consistent with QP's data, then further examination is necessary, or additional data is supplied by the QP.</p> <p>Where the examiner's report is negative the QP is advised and if appropriate, a further trial is conducted, otherwise the applicant is advised to withdraw the application</p> <p>The PBR examiner's decision, whether positive or negative, is reviewed by the Registrar.</p> <p>Distinctness (or U or S) not confirmed → Possible re-trial or withdrawal of the application</p>

MAINSTEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p><b>Publication of the detailed description of the variety for public review</b></p> <p>Public review process</p>	<p>A public notice is published in the <i>Plant Varieties Journal</i>, which includes a detailed description of the variety including its distinctive features along with photograph showing the comparative differences.</p> <p>There is a six-month waiting period after the publication of the detailed description in the <i>Plant Varieties Journal</i> to allow reasonable time for the public or industry to comment or object against a published description.</p>	<p>The 6-month public and peer review process is mandatory.</p> <p>When there is no objection or comments received within this public exposure period then the variety will proceed to a final examination for the grant of PBR. This public and peer review and transparency ensure the rigour of the breeder testing system.</p> <p>If an objection or comment on Distinctness (or U or S) is received within this public exposure period, the PBR office will review the objection and will give opportunity to the applicant to rebut the objection. If the issues are not resolved then a re-trial may be necessary including to re-publish (where necessary) the detailed description of the variety</p> <p>Where an objection is upheld and no further evidence in support of Distinctness (or U or S) is supplied → Rejection of Application.</p>
<p><b>Deposition of propagating material in a Genetic Resource Centre (GRC)</b></p>	<p>The applicant must deposit a sufficient quantity of the propagating material of the variety to an approved GRC.</p>	<p>Lodgement of the propagating material in GRC ensure the easy availability of the variety for any future comparative testing purposes and also the reasonable public access of the variety for any other reasons.</p>
<p><b>Final Grant Examination</b></p>	<p>Final examination checks that all the formal and technical requirements have been met, including DUS has been established and all objections have been resolved.</p>	<p>DUS is established → Final Grant of PBR</p> <p>DUS not established → Rejection of PBR</p>

<sup>1</sup> **Part 1 Application:** Australian PBR application comes in two parts, Part 1 and Part 2. The Part 1 Application is similar to the UPOV Technical Questionnaire and has general information about the variety, along with its origin and breeding history and other technical information. The Part 1 application is used to establish a *prima facie* case for the distinctness of the candidate variety.

<sup>2</sup> **Qualified Person:** A qualified person, or 'QP', acts as a PBR applicant's technical consultant. They accept responsibility for overseeing the comparative trial and for providing evidence that a variety is distinct, uniform and stable. This role may involve the QP consulting on choice of comparative varieties, experimental design, management regime, collection of data, statistical analysis, photography and preparation of the harmonised description of the variety.

<sup>3</sup> **Part 2 Application:** The Part 2 Application is submitted after the comparative trial has been completed. It contains the harmonised description of the variety including its distinctness, uniformity and stability. The QP certifies the authenticity of the description as well as the data and the scientific methodologies on which it is based.

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