

Introduction to plant variety rights

The Plant Variety Rights Office of New Zealand (PVRO) may grant plant variety rights (PVR) for new plant varieties. The owner of the PVR has the right to exclude others from

- reproducing for sale,
- selling, or
- offering for sale
- whole plants or reproductive material of the protected variety.

For some types of plants, the PVR owner may also exclude others from propagating harvested material for commercial production.

What can be protected

All types of plants and fungi are eligible for protection. A variety must be new, distinct, uniform and stable.

- **New:** The plant's reproductive material must not have been sold in New Zealand for longer than one year, or overseas for longer than four years (or six years for woody plants), before filing in New Zealand.
- **Distinct:** The plant must be distinguishable in at least one characteristic from another variety of common knowledge.
- **Uniform:** All members of a population of the plant variety must be mostly homogenous, having regard to the variety's particular features of reproduction or propagation.
- **Stable:** The plant variety's essential characteristics must be consistent with its description after propagation.

"Variety" excludes any botanical variety but includes any cultivated variety, cultivar, clone, hybrid, stock or line of a plant.

The application

The PVR owner or the owner's agent may apply to PVRO for a plant variety right. The owner is the person who bred or discovered the variety, and any successor in title.

The application process varies depending on the type of plant you seek a PVR for. For all types, you must complete a technical questionnaire. Here are some of the other requirements.

- For fruit and ornamental varieties, you must provide colour photographs of the plants.
- You need to supply a specified quantity of seed for some arable crops and vegetables, grasses and other pasture plants.
- You may need to make specimens of the new variety's growing plants available for inspection.
- For most plants, comparative trials must be conducted. PVRO arranges some trials, and other trials may be done privately.

Part of the PVR right is the exclusive right to use the varietal name of the plant. In New Zealand, you must use the varietal name during all plant sales, in a way that distinguishes the varietal name from any trade mark or other descriptive name of the variety. We recommend you choose a trade mark for the variety. The advantage of using both a trade mark and a varietal name with a variety is that the trade mark rights continue even though the varietal name goes into the public domain once the PVR rights expire.

The term of a PVR for woody plants is 23 years. For non-woody plants, the PVR term is 20 years. The term starts at the date of grant. You must pay annual grant fees for the entire PVR term.

Infringement

From the date of filing the PVR application, your variety has provisional protection. Provisional protection gives you rights to take action against infringers, provided your application successfully continues to grant. If you need to enforce your rights, you may be entitled to damages if you have given the offender notice that the variety is protected.

Overseas protection

New Zealand is a member of the UPOV Treaty for plant varieties. You can get equivalent plant variety protection in the 50 member countries and throughout the European Union for new varieties bred in New Zealand.

Talk to A J Park for the best advice about plant variety rights.