

How to apply for a plant variety right

Who can apply?

Only the owner of a new variety is entitled to a grant of Rights. The owner is the breeder or discoverer of the variety, the owner's employer (for example, a company), or a subsequent legal rights holder, known as a "successor-in-title". An application can also be made by an agent on behalf of the owner.

Any person or business from anywhere in the world can submit an application, but all applications must be in English and indicate an address-for-service in New Zealand.

New Zealand breeders (individuals or organisations) normally prefer to deal directly with IPONZ/the PVR Office. Overseas breeders generally arrange for their New Zealand agent to attend to the details of application.

Experience shows it is best for all concerned if the appointed agent has first-hand knowledge of the new variety. Often the obvious and appropriate agent for the PVR application is the individual or organisation in New Zealand primarily responsible for handling plant material of the new variety (for example, importing, evaluating, bulking-up, and distribution). For example, the agent for an overseas crop variety could be a local seed company or the agent for a fruit or ornamental variety could be a local nursery.

a) Application made through agent

The agent must provide the Commissioner with evidence of the necessary authority to act for the variety owner. An authorisation [based upon the model] in our [Forms and fees section](#) would be acceptable.

b) Application made by successor-in-title

If you claim to be the successor-in-title of the breeder, you must supply documentary evidence to the Commissioner sufficient to establish your legal rights to ownership of the variety.

How do I apply?

To apply for Plant Variety Rights, post or deliver to the [IPONZ/PVR Office](#) the following:

- An application form, fully and legibly completed in English
- A completed technical questionnaire applicable to the particular genus.
- Colour image or photographs, where applicable, that accurately represent a fruit, ornamental or tree variety. In the case of every application for fruit, ornamental, tree or vegetable variety you should supply a photograph or image as specified.
Supply a colour image or photograph representative of the variety and displaying as well as possible its chief distinguishing feature(s). The image or photographs may be of the whole plant of the new variety and/or of plant parts such as the fruit or the flowers, whichever is most appropriate. Do not supply an image or photograph of the original bred or discovered plant, or in the case of a new mutation or sport the plant part from which the variety originated. Instead you should supply the image or photograph based upon plants or trees propagated from the original plant or plant part
- A seed sample for an arable crop, pasture plant, amenity grass or vegetable variety. See [the table below](#) for more information about the specific types of seed that must accompany an application.
- Payment of [the relevant fee](#).

Where do I find the forms?

You can [download application forms and the most commonly used questionnaire forms](#) from this website.

When should I apply?

1. Do you have a variety? Check first that you actually have a variety (a single plant does not constitute a variety). There is no point in applying until you have successfully propagated a new variety and completed any required selection for uniformity and stability. See [What is a Plant Variety Right?](#) for more information.
2. Be aware of the time limits. If you have already sold material of the variety you must apply before the time period permitted for prior sales expires. See [What is a Plant Variety Right?](#) for more information.
3. Be aware of trial closing dates. Some varieties are evaluated by the [IPONZ/PVR Office](#) in central growing trials. To ensure your variety is included in the coming season's trials, you must apply by these closing dates

Ornamentals

Roses	Make application by 31 March
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Agricultural crops

White clover	Make application by 15 January
Grasses	Make application by 1 February
Winter cereals	Make application by 15 April
Grass endophytes	Make application by 1 July
Spring cereals, peas, forage brassicas (spring sown)	Make application by 15 July
Potatoes	Make application by 1 August
Forage brassicas (summer sown)	Make application by 1 November

In the case of agricultural and vegetable varieties you have tested, you will need to time your application so that you will be able to meet the final deadline of 18 months after the date of application for supplying information from the growing trials ([see section 16\(c\)](#)).

How can I claim priority?

Being the first to claim Rights for a new variety is always important, but note that if you post your application, it is officially dated from when your application form, technical questionnaire, fee, and any required seed samples or photographs actually arrive at the IPONZ/PVR Office, NOT from the postage date.

If you have already applied for Rights in another country that belongs to the [International Union for the Protection of New Varieties of Plants](#) (UPOV) ([see section 29](#)) you may be able to claim priority based on this earlier application. If you wish to do this, complete the relevant priority claim section on the application form.

The advantage of claiming priority is that the date of an overseas application becomes regarded in effect as the application date in New Zealand. This may give you precedence over competitors hoping to protect a similar variety.

Note: If you have made more than one application overseas, you can only claim priority for the first application. Also, you must apply for a New Zealand right within 12 months of the first overseas application if you are to claim priority.

What is “Provisional Protection”?

Provisional Protection gives your variety interim protection “as if the Rights have been granted” while the application is under consideration. It automatically applies once your application has been accepted and ceases when the Commissioner issues or refuses a grant. If you have released your variety into the market, you are entitled to take legal proceedings under this interim protection against any person or organisation you consider is infringing your Rights.

There is however an important condition: if the Rights are eventually refused, the Provisional Protection becomes void from the start, or in other words was never of value.

What does Provisional Protection mean in practical terms?

If you can readily identify and distinguish the new variety and you are reasonably certain that Plant Variety Rights will be granted, you should with confidence be able to sell reproductive material of the new variety knowing that you can take effective legal action to protect your interests against any infringements.

However, if you cannot readily identify the variety or doubt it is eligible for Rights, then Provisional Protection is of questionable value. It might be wise to wait for the Commissioner's final decision before marketing the variety.

What seed must I send?

Include the specified seed sample with your application for any of the plants listed below. It is in your interest to ensure that the seed sample accurately represents the variety you will supply in commerce and is the highest grade possible with regard to the number of generations required to achieve genotypic and phenotypic stability for that species. Note that seed from the earliest stage breeding multiplications is often not suitable and may not represent the commercial variety in later generations.

Because the submitted seed sample will be used both in trial comparisons and to provide the definitive description for that variety, we recommend you supply a sample equivalent to certified "Basic" generation.

Seed should also be fresh and of the highest possible viability. The table below gives the minimum germination level required. Please also supply a germination test certificate (including a vigour test in the case of peas) no more than three months old. The seed also must:

- not have been subject to any chemical treatment
- be free of disease and insect contamination
- meets basic seed standards for purity.

For grass species the seed submitted for DUS testing must be endophyte free. Endophyte free is defined as having a level of endophyte present in the seed sample of no more than five percent. Should the submitted new seed sample not be determined free of endophyte, a second seed sample will be required to be submitted.

All submitted seed samples supplied at application and any additional seed requested for DUS testing will be subject to random testing for the presence of endophyte.

Kind of plant	Seed (g)	No of ears	Minimum germination %
Arable crops and vegetables			
Peas	3000		90*
Barley, oats, ryecorn, tritcale and wheat	2000	100	90
Beans, lentils, lupins and maize	2000		90
Linseed	1000		90
Sunflower	1000		85
Beets	500		85
Asparagus	100		90
Borage	100		70
Cucurbits	100		Contact IPONZ/PVRO
Allium, amaranthus and phacelia	50		85
Capsicum and radish	50		Contact IPONZ/PVRO
Chicory	50		60
Forage brassicas	50		90
Brassicas (other than forage brassicas)	30		90
Carrot, lettuce, parsnip and tomato	30		Contact IPONZ/PVRO
Evening primrose	10		75

Grasses

Brome	500	75
Ryegrass	500	85
Cocksfoot, crested dogstail, fescue, koeleria and paspalum	50	75
Bents and yorkshire fog	10	90
Phalaris	10	70

Other pasture plants

Serradella and sulla	100	85**
Plantain	50	90
Lotus, lucerne and red clover	50	85**
Yarrow	25	85
White clover	10	85**

* Also vigour (conductivity) must not exceed 24 microsiemens/g

** Includes hard seed