

## Maintaining a plant variety right

### Managing your rights is your responsibility

It is important to understand that it is your responsibility as a variety Rights applicant or Rights holder to protect and maintain your interests in any protected variety. It is your responsibility to negotiate the terms of any licences you grant to grow and sell a protected variety and to take any necessary action against infringers of your Rights. The Commissioner has no power to intervene in such matters except in connection with applications for the issue of compulsory licences or compulsory sale orders (see [compulsory licences or compulsory sale orders](#)).

### Annual Grant fees (Renewal fees)

Although Plant Variety Rights are issued for a term of 20 or 23 years (see [Terms of a Plant Variety Right](#)), but a grant will only remain in force as long as you pay the annual grant fee.

Payment of **the annual grant fee is due each year on the anniversary date of the grant**. One month before the anniversary date the PVR Office will send you a reminder notice. To maintain your Rights it is important to pay the annual grant fee by the due date. You are allowed a month's period of grace after the anniversary date, but if you have still not paid after this extension has expired, you will receive a final notice informing you that the Commissioner intends to cancel the grant within 28 days. The grant will be cancelled unless you can show sufficient cause why it should not within 28 days from the date of that notice.

A tax invoice/receipt will be issued after payment has been received.

### Change of name, address or of ownership

If you hold Plant Variety Rights and have changed your name (for example, a business or trading name) or address, you must promptly notify the Commissioner of any changes. The Commissioner may require you to supply suitable documentary evidence of the change of name, address or ownership.

New owners have responsibilities too. Any persons claiming to have become entitled to existing Plant Variety Rights, or to share in such Rights, must supply the Commissioner with appropriate documentary evidence for registration of their title.

Failure or delay in notifying the Commissioner about such changes could mean that important information is sent to previous owners.

### It is important to label and advertise your Rights

If you have applied for, or been granted, Plant Variety Rights, it is very much in your interest to make this known to the public when you sell or offer propagating material or whole plants for sale. Plant and seed labels and any advertising material should clearly show that the variety is protected under the Plant Variety Rights Act. If you do not take all reasonable steps to ensure that this is done, then you will not be entitled to receive damages through legal proceedings against anyone infringing your Rights.

However, take care with the wording of advertising material and seed or plant labels because it is an offence under the [Plant Variety Rights Act](#) to falsely represent that a variety is protected or subject to an application for a grant.

In your own interest as a Rights holder, as well as to comply with the Act, make sure you always use the approved variety denomination when you or your agents or licensees sell reproductive material from the protected variety.

Here are some guidelines for wording that should protect your interests as a Rights holder while avoiding the possibility of committing an offence:

#### **If you have not made a Rights application and you don't hold a current grant of Rights:**

DO NOT use the word "Protected" or any wording that might imply that the variety is protected under the Plant Variety Rights Act 1987.

#### **If you have made a Rights application, but the Commissioner has not reached a decision:**

Suggested wording - "Provisional PVR protection", "Provisional Plant Variety Rights Protection" or "Provisionally protected under NZ Plant Variety Rights Act 1987".

DO NOT use the wording "Plant Variety Rights pending" or words implying that Rights will be granted. Such wording is misleading because it anticipates a decision favourable to the applicant.

**If the variety is protected by a grant of Plant Variety Rights:**

Suggested wording - "Protected by NZ Plant Variety Rights"; "Protected under NZ Plant Variety Rights Act 1987"; "NZ Plant Variety Rights Protection"; or words to that effect.

**Always use the approved variety denomination**

It is a requirement under the Plant Variety Rights Act that any person who sells reproductive material of a protected variety must use the denomination. It is permissible to add a commercial name or trademark to the approved denomination as this helps to establish your brand in the marketplace.

Note: Take care with plant labels printed overseas. They may not be appropriately worded for use in New Zealand.

## Orders affecting your Rights: compulsory licences or sale orders

Any person may request the Commissioner to consider whether reasonable quantities of reproductive material (plants, seeds, etc.) of a protected variety are currently available for purchase by members of the public at a reasonable price.

However this request may only be made three years after the date Rights were granted for the variety concerned. The request must be accompanied by payment of the prescribed fee. After considering the request the Commissioner may, if he considers it warranted, issue a compulsory licence or a compulsory sale order to the person who made the request.

A **compulsory licence** permits its holder to produce for sale and to sell reproductive material of the protected variety. A compulsory sale order is more appropriate for a person who wants to receive reproductive material of the protected variety, but has no interest in producing reproductive material for sale.

In every case the Commissioner will require the person granted a compulsory licence or sale order to pay a specified royalty to the holder of the Plant Variety Rights grant.

## Objections

Any person may lodge an objection in writing with the Commissioner against an application or grant of Rights if the person considers that:

1. a proposed denomination should not be accepted.
2. the applicant is not the rightful owner of the variety.
3. the variety is not new, or not sufficiently distinct, uniform or stable.

## Appeals against decisions of the Commissioner

- An appeal against the grant of Rights may be made [at any time] if the grounds for appeal are that the grant was made in contravention of the requirements of the Act.
- An appeal against any decision made by the Commissioner must be made within 28 days of receiving notice of the decision. An appeal can be made against any decision made by the Commissioner relating to:
  - an application
  - declining or cancelling a grant
  - imposing any condition or declining to modify any aspect of a grant; or
  - the issue, variation or revocation of a compulsory licence or sales order.

Such appeals should be made in writing to the District Court. For full details refer to sections 23 and 24 of the [Plant Variety Rights Act 1987](#).

## Offences

It is an offence under the Act to:

1. supply false information when applying for Rights
2. falsely claim someone is an applicant or holder of Rights
3. falsely claim when selling material of a variety that the variety is protected by Rights or is the subject of an application
4. sell reproductive material of a variety without using the approved variety denomination.

A person committing any such offence is liable, on summary conviction to a fine of up to \$1000.