

What is a plant variety right (PVR)?

A grant of Plant Variety Rights for a new plant variety gives you the exclusive right to produce for sale and sell propagating material of the variety. In the case of vegetatively-propagated fruit, ornamental and vegetable varieties, Plant Variety Rights give you the additional exclusive commercial right to propagate the protected variety for the commercial production of fruit, flowers or other products of the variety.¹

Benefits of a PVR

As a Plant Variety Rights holder you may license others to produce for sale and to sell propagating material of the protected variety. Rights holders commonly collect royalties from the commercialisation of their protected varieties.

As with other types of proprietary rights, you may bring civil action against persons or businesses infringing your rights. For example, as a Rights holder you would be entitled to seek an injunction against, or if appropriate, claim damages from, another person or business that deliberately sold seeds or plants of the protected variety without your permission.

As a Rights holder you can also take action against another party using the approved denomination (registered name) of your protected variety to sell propagating material of another variety of the same genus or species.

Like other personal property, the Rights to a protected variety may be sold, licensed, mortgaged or assigned to another person or business.

The protection given to a breeder by a grant of Plant Variety Rights resembles that given to an inventor by a patent grant, but there are significant differences between these two forms of intellectual property rights. This means that you cannot use the term "patent" when referring to a variety protected by the [Plant Variety Rights Act](#).

Limits or exceptions to a grant-holder's Rights

Other persons are free to:

- grow or use a protected variety for non-commercial purposes
- use the plants or parts of the protected variety for human consumption or other non-propagating purposes
- use a protected variety for plant breeding (although the repeated use of a protected variety for the commercial production of F1 hybrid seed is not permitted without the authority of the Rights holder).

The kinds of plants in the Rights scheme

Plant Variety Rights are presently available for varieties of any kind of plant other than algae and bacteria.

Note: Following international custom in the world of plant variety protection the word "variety" is used not in the sense of a "botanical variety" but rather as being synonymous with "cultivar" or "cultivated variety".

Criteria used to determine eligibility for Rights

A grant of Plant Variety Rights may be made for a variety if:

- it is new
- it is distinct, uniform and stable - commonly abbreviated to DUS
- an acceptable denomination (variety name) is proposed

a) New

A variety is considered to be new if propagating material, whole plants or harvested material of it has not been sold or offered for sale with the agreement of the owner:

1. in New Zealand for more than **one year** before the date of application, or
2. overseas, for more than **6 years** before that date in the case of woody plants, or more than **4 years** in the case of non-woody plants.

The prior sale rules do not apply where:

1. the sale is part of a contractual arrangement to increase the applicant's stock, or for evaluative trials or tests where all the material produced directly or indirectly, plus any unused propagating material, becomes or remains the property of the applicant; or
2. any surplus plant material produced during the breeding, increasing of stock and trials or tests of the variety is disposed of for non-propagating purposes.

b) Distinctness

The variety must be distinct from all commonly known varieties existing at the date of application, in one or in some combination of the following characteristics: morphological (such as shape, colour); physiological (such as disease resistance); or other (such as the milling characteristics of a new wheat).

c) Uniformity

The variety must be sufficiently uniform.

d) Stability

The variety must remain true to its description after repeated propagation.

e) Denomination

You must propose a denomination for the new variety that conforms to internationally accepted guidelines (see [International Union for the Protection of New Varieties of Plants \(UPOV\)](#)). If the denomination you propose is not acceptable the Commissioner will reject it and ask for an acceptable alternative.

Term of Plant Variety Rights grants

Plant Variety Rights are granted for a term of 20 years in the case of non-woody plants, or 23 years in the case of woody plants, beginning from the date when Rights are granted.

Further Information

New Zealand is a member of the International Union for the Protection of New Varieties of Plants (UPOV). UPOV have developed recommendations for members regarding variety denominations.

Summary of UPOV recommendations for variety denominations

Recommendation 1

The variety shall be designated by a denomination which is generic. The use of the denomination cannot be restricted by any other designation, such as a trademark, even after the Right for the variety has expired.

Recommendation 2

1. The denomination must enable the variety to be clearly identified and may not consist solely of figures unless that is the established practice for that genus or type of variety e.g. parent lines, inbred lines, hybrids
2. The denomination must not be liable to mislead and should not convey the impression that the variety: has particular characteristics which in fact does not; gives the impression that only the variety possess a character, when other varieties also have or may have the same character; is derived from another variety when it is not; is bred by a particular breeder when that is not the case.

3. The denomination must not cause confusion concerning the value or identity of the variety by the use of some superlatives, simple descriptive phrases and the use of a denomination which is very similar to another existing denomination. A difference of a single letter or number between two denominations may be considered to cause confusion and poorly identify the variety.
4. The denomination must be different from any existing variety of the same genus or species or a closely related species. The re use of a denomination is generally to be avoided, but where it relates to a variety which no longer exists may be acceptable.

Recommendation 3

The denomination of the variety shall be proposed by the breeder to the Plant Variety Rights Office. It is not the role of the Plant Variety Rights Office to propose a variety denomination. Should the denomination be rejected, the breeder is required to propose another denomination. The denomination shall only be approved by the Plant Variety Rights Office at the time of grant of the Right.

Recommendation 4

The prior rights of third persons shall not be affected by the use of the proposed denomination. A denomination cannot be accepted if another right, already granted to a third party under any intellectual property legislation, is already in use.

Recommendation 5

A variety must be submitted to all UPOV member states under the same denomination. The Plant Variety Rights Office will accept denominations submitted in other states unless the denomination is unsuitable for New Zealand. This recommendation reflects the importance of a single variety denomination for each variety world wide.

Recommendation 6

The Plant Variety Rights Office will publish all proposed variety denominations in the Plant Variety Rights Journal and ensure that all UPOV member states are kept informed of matters concerning variety denominations in New Zealand.

Recommendation 7

There is an obligation and a requirement under the Plant Variety Rights Act 1987 for any person who offers for sale or markets propagating material for a variety within New Zealand to use the denomination of that variety, even after the Right for that variety has expired.

Recommendation 8

When a variety is offered for sale or marketed it is acceptable to associate a trademark, trade name or other indication with the variety denomination. The denomination must be easily recognisable and placed between single quotation marks.

Variety Denomination Classes

A variety denomination cannot be used more than once in the same class. In most cases a denomination class is equal to a genus, with the following exceptions forming special classes.

Class 1.1 Brassica oleracea

Class 1.2 Brassica other than Brassica oleracea

Class 2.1 Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima

Class 2.2 Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris

Class 2.3 Beta other than classes 2.1 and 2.2.

Class 3.1 Cucumis sativus

Class 3.2 Cucumis melo

Class 3.3 Cucumis other than classes 3.1 and 3.2

Class 4.1 Solanum tuberosum L.

Class 4.2 Solanum other than class 4.1

Class 201 Secale, Triticale, Triticum

Class 202 Panicum, Setaria

Class 203 Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris,
Phleum and Poa

Class 204 Lotus, Medicago, Ornithopus, Onobrychis, Trifolium

Class 205 Cichorium, Lactuca

Class 206 Petunia and Calibrachoa

Class 207 Chrysanthemum and Ajanía

Class 208 (Statice) Goniolimon, Limonium, Psylliostachys

Class 209 (Waxflower) Chamelaucium, Verticordia

Class 210 Jamesbrittania and Sutera

Class 211 Edible Mushrooms

Agaricus bisporus, Agaricus blazei,

Agrocybe cylindracea,

Auricularia auricula, Auricularia polytricha (Mont.) Sacc.,

Dictyophora indusiata (Ventenat:Persoon) Fischer

Flammulina velutipes, Ganoderma lucidum (Leyss:Fries) Karsten

Grifola frondosa

Hericium erinaceum,

Hypsizigus marmoreus, Hypsizigus ulmarius,

Lentinula edodes

Lepista nuda (Bulliard:Fries) Cooke, Lepista sordida (Schumacher:Fries) Singer,

Lyophyllum decastes, Lyophyllum shimeji (Kawamura) Hongo,

Meripilus giganteus (Persoon:Fries) Kärten

Mycoleptodonoides aitchisonii (Berkeley) Maas Geesteranus

Naematoloma sublateritium

Panellus serotinus

Pholiota adiposa, Pholiota nameko

Pleurotus cornucopiae var.citrinooileatus, Pleurotus cystidiosus, Pleurotus cystidiosus subsp. Abalonus, Pleurotus eryngii, Pleurotus ostreatus,
Pleurotus pulmonarius

Polyporus tuberaster (Jacquin ex Persoon) Fries

Sparassis crispa (Wulfen) Fries

Tricholoma giganteum Masee

New Zealand is a member of the International Union of Plant Varieties. For more information about these recommendations please see the [UPOV site](#).

Footnote

¹Image of ZESPRI™ GOLD & ZESPRI trade mark label showing the registered plant variety known as Hort16A. © ZESPRI Group Limited 2008. Reproduced with the permission of ZESPRI Group Limited. All rights reserved.
