



Review of the *Plant Variety Rights Act*: What the PVR regime does, and doesn't, cover

The scope of the PVR regime is narrow

The PVR regime grants certain intellectual property rights over the **propagating material** (e.g. seeds, cuttings etc) of newly developed plant varieties. These rights prevent other people from using propagating material in certain ways without the PVR owner's authorisation (e.g. selling seeds).

The international agreement covering PVR protection (**UPOV**), of which New Zealand is a member, sets out the criteria for a cultivated variety to be granted a PVR. There are five in all. These are described in the accompanying information sheet '*What are plant variety rights?*' If a cultivated variety meets these criteria, then a PVR is granted.

PVRs...

...do not guarantee a right to develop or commercialise a new plant variety

It would be very difficult to get a PVR over a variety that could not legally be imported or grown in New Zealand, as the growing trials necessary for the testing could not take place. For example, an overseas variety of heather (designated as an "unwanted organism" under the *Biosecurity Act 1993*) cannot be imported, so the breeder would not be able to provide the plant material for the growing trials. But even if a PVR were granted (for example, if overseas test reports could be relied upon) the grant does not confer a positive right to grow the variety. Having a PVR would not allow owners to do anything with their varieties that would be unlawful under other legislation.

...do not include rights over the plants or other harvested material relating to the variety

PVR owners have control over the variety, not the plants themselves. In practice, this means that the PVR owner's rights are exhausted at the point of sale of the propagating material of their protected variety (unless other contractual arrangements are made, which is not uncommon in the commercial context). For example, if a consumer was to buy a tomato plant of a protected variety, the PVR owner would have no rights over the tomatoes produced.



...are not permanent rights

PVRs currently expire after 20 or 23 years, depending on the type of the variety.

...cannot be granted to plants that are simply 'discovered'

The requirements for PVR protection require significant human input in the development of a variety. It is not possible to obtain a PVR for a single plant found in the wild – it must be developed into a variety that is distinct, uniform and stable. Developing a PVR-eligible variety involves significant skill and know-how, and generally requires several generations of propagation and evaluation.

...are not concerned with genetic modification

The PVR regime does not have anything to say about genetic modification. Genetic modification is regulated under the *Hazardous Substances and New Organisms Act 1996*. Any research involving genetic modification must be approved by the Environmental Protection Authority, which must also approve any release of genetically modified organisms.

...are only held over a small number of indigenous plant species

Estimates of the number of indigenous plant species in New Zealand vary anywhere from 2,500 to 7,000. Only about 20 of these species have PVRs associated with them. These account for approximately 7% of all current PVRs granted in New Zealand.

