



Review of the *Plant Variety Rights Act*: What are Plant Variety Rights?

A plant variety right is a type of intellectual property right

A plant variety right (**PVR**) is an intellectual property right designed to encourage people to develop and disseminate new varieties of plants. It grants plant breeders and developers the exclusive right to commercialise the **propagating material** (e.g. spores, seeds or cuttings) of new varieties they develop, for a certain amount of time.

What is the purpose of the PVR regime?

Plant breeding improves the performance of plant varieties, enabling growers and farmers to gain higher yields of better quality (e.g. disease resistance) that meet commercial and consumer needs. Harvested material from new plant varieties may lead to the production of new, improved products (e.g. craft beer from hops), more nutritious fruit and vegetables and more choice in general for consumers. A well-known protected variety is the kiwifruit 'Zesy002', which is commonly sold under the brand SunGold®.

Breeding new varieties of plants can involve considerable investment of time and money. The PVR regime is intended to provide incentives for plant breeders to develop new varieties, by providing them with an opportunity to get a return on this investment through the granting of exclusive rights for a certain period.

What is the scope of protection of a PVR?

Under the current regime, a PVR gives the person who bred a new plant variety the exclusive right to:

- › sell, or offer for sale propagating material of the protected variety; and
- › produce propagating material of the protected variety for the purposes of sale.

PVR owners of vegetatively reproduced varieties (fruit-producing, vegetable-producing, or ornamental varieties) also have the exclusive right to propagate the variety for the commercial production of fruit, flowers or other products.



However, there are some exceptions to these rights. Any person may do any of the following without seeking the PVR owner's permission:

- › **propagate, grow, or use a protected variety for non-commercial purposes** – for example, in private gardens
- › **use any variety for breeding to hybridise and produce a new variety from one or more protected varieties** – this is known as the 'breeder's exemption' and ensures that plant breeders can use protected varieties to breed new varieties even if they are not the PVR owner
- › **use propagating material from a protected variety for human consumption or other non-reproductive purposes** – for example, selling harvested sunflower seeds for human or animal consumption.

The term of protection is 20 years, unless the variety is a 'woody plant'. These are protected for 23 years. 'Woody plants' include grape vines, large shrubs, roses, trees, and rootstock. They have a longer term because they typically take longer to grow and are generally more difficult to propagate.

How does a plant variety qualify for a PVR?

To be eligible for protection, a plant variety must be:

- › **New** – meaning not sold in New Zealand for more than 12 months, and overseas for more than four or six years (depending on the type of plant)
- › **Distinct** – meaning distinguishable from any other known variety by one or more (morphological or physiological) characteristics – for example, colour of flowers, time of flowering, dimensions of leaves
- › **Uniform** – meaning that there is little difference between all the plants of a particular generation
- › **Stable** – meaning that successive generations retain the characteristics of the original variety.

The person applying for a PVR must also supply an acceptable **variety denomination**, which acts as the name of the protected variety.

How does a breeder apply for a PVR?

Applications for a PVR are made to the PVR Office (**PVRO**), which is a part of the Intellectual Property Office of New Zealand (**IPONZ**). The plant variety is then grown and tested to ensure it meets the requirements for a PVR. This process can take several years. If it meets the requirements, the PVRO will recommend to the Commissioner of Plant Variety Rights that a PVR be granted. IPONZ maintains a register of all New Zealand PVRs on its website [here](#).

PVRs, like other intellectual property rights, are geographically limited, meaning a separate application has to be made for each country that a breeder seeks protection in. Countries that are members of **UPOV** (the International Union for the Protection of New Varieties of Plants) – which includes New Zealand and most of New Zealand's main trading partners – all have the same set of requirements for the grant of a PVR. This means that the testing reports of one country can often be relied on by another country when considering the grant of a PVR.

