



# Intellectual Property

SIMPSON GRIERSON 2007

## Plant Variety Rights

International agreement to which New Zealand is a party requires New Zealand to provide intellectual property protection for plant varieties, either through patent law or by an effective standalone system (or a combination of the two).

New Zealand currently provides protection for new plant varieties through the Plant Varieties Act 1987 ("PVRA"), existing patent law and through its membership of the International Union for the Protection of New Varieties of Plants ("UPOV").

### Plant Variety Rights Act

The PVRA provides for the Plants Varieties Rights Office to grant plant variety rights ("PVR") to owners who have bred or discovered new plant varieties. To be eligible for a PVR grant, the plant variety must be:

- ♦ new – the variety cannot have been

sold in New Zealand earlier than 12 months before the PVR application, or any sale overseas earlier than six years for woody plants or four years for all other plants prior to the application:

- ♦ distinct – is it distinguishable from all other known varieties by one or more characteristics, eg flower colouring or time of flowering?
- ♦ homogeneous – is the variety uniform in its material characteristics, subject to normal variation expected from its method of propagation? or
- ♦ stable – the variety must stay true to its description and characteristics after repeated reproduction or propagation.

PVRs give the owner exclusive rights to produce for sale, and to sell, reproductive material of the variety

concerned. In the case of vegetatively propagated fruit or vegetables, a PVR owner has the exclusive right to reproduce the variety for the commercial production of fruit, vegetables, flowers or other products.

Protection currently lasts for 23 years for woody plants or their rootstocks, and for 20 years for all other plant varieties, in each case from the date of granting the PVR and upon payment of an annual fee. PVRs constitute personal property; therefore they can be sold, assigned or licensed.

The grant of a PVR under the PVRA, however, does not prevent the sale of reproductive material of a protected variety for human consumption or other non-reproductive purposes or the use by farmers of seed saved from a previous year's harvest. The reproduction or use

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of a protected variety for non-commercial purposes, also does not infringe PVR. PVRs do not prevent others from breeding and selling new varieties derived from an existing protected variety, providing production of the new variety does not require repeated use of the original protected variety.

### **International Conventions**

In 1978 New Zealand ratified the 1978 UPOV Convention ("UPOV 78") and has been a member of UPOV since 1981. In 1991, UPOV member states agreed on a new enhanced convention ("UPOV 91") which expands plant variety rights. It establishes the right to authorise the export of reproductive material of a protected variety and rights over varieties essentially derived from a PVR holder's protected variety. While New Zealand is a signatory to UPOV 91, New Zealand is considering whether it should amend the PVRA to conform to the expanded rights under UPOV 91.

### **Optimum protection**

In order to maximise the advantage of any protection for plant varieties, you should seek advice from a skilled legal professional as early as possible.



*This newsletter is produced by Simpson Grierson. It is intended to provide general information in summary form. The contents do not constitute legal advice and should not be relied on as such. Specialist legal advice should be sought in particular matters.*

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