

## The Latest In Plant Variety Rights: Part II

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### RECENT DEVELOPMENTS

This part of the presentation will cover some recent developments on the technical side of plant variety rights (PVR) and should assist existing or future applicants. I will conclude with some general comments on labelling protected varieties that will be of interest to all as protected varieties are becoming increasingly common.

**The Requirement to Supply Photographs and the Technical Questionnaire at the Time of Application.** It has been proposed to amend the Plant Variety Rights Act 1987 to make it compulsory for a photograph of the variety and the correct technical questionnaire for the species or genus to which the new variety belongs, to be supplied at the time of application. The Commissioner would then be unable to accept an application if photographs and the technical questionnaire are not supplied.

This change has arisen because the PVR Office has experienced difficulties in obtaining technical information from some applicants. This delays the testing of the variety and is unacceptable. The consequence of any delay in testing is the unnecessary prolonging of the period of provisional protection and it may unfairly disadvantage another applicant who has a close or similar variety. It is hoped that the Act will be amended soon.

**What is the Real Purpose of the Technical Questionnaire?** Many technical questionnaires for new varieties are completed inadequately. It is important that all questions are answered. Absent or vague information makes the technical examination more difficult. The major purpose of the technical questionnaire is to inform the PVR Office why the applicant considers that the new variety is different or distinctive from all others. The technical questionnaire is a preliminary technical look at the variety. *It is by no means a complete and detailed description of the variety.* I urge all applicants to fill out the technical questionnaire as fully as possible. We can never have too much technical information.

**The Supply of Plant Material to the PVR Office and PVR Growing Trials.** The PVR Office has a general policy of requiring plant material of a variety under test to be made available for PVR evaluation purposes within 12 months of the application date. This 12-month deadline has some limited flexibility depending on the type of plant and quarantine requirements for imported varieties. The period may be extended at the discretion of the Commissioner. This deadline is to ensure that no unnecessary delays occur in testing the new variety. The majority of ornamental varieties, other than roses, are tested on the applicant's property in a PVR growing trial. For this situation the PVR Office would reasonably expect the trial to be established within the 12-month deadline even if actual evaluation did not occur until later. I can supply more information to those who have particular questions about PVR growing trials.

The PVR Office normally requests plant material to be supplied for reference purposes in addition to plant material for a PVR growing trial. The plant material requirements for reference purposes should not be confused with those for growing trial purposes. In some cases, several of the plants supplied for evaluation purposes will be retained for reference purposes at the conclusion of the evaluation trial.

**Labelling Protected Varieties.** There has been, and continues to be, confusion over what is required under the Plant Variety Rights Act 1987.

With respect to labelling there are two specific offences under the Act.

- 1) To sell reproductive material, including whole plants, of a variety without using the approved variety name or denomination. All nursery owners and retailers must be clear about the difference between a protected variety name and a commercial or trade mark name. This requirement does not exclude the use of other names but the variety name must be present somewhere on the label.
- 2) To falsely claim when selling material of a variety, that the variety is protected by Plant Variety Rights or is the subject of an application. This may occur when using imported labels. A variety protected in Australia may or may not be protected in this country. A plant variety right only applies in the country in which it was issued.

In conclusion, the changes we have made should help applicants clarify why they consider a variety is distinct and reduce the time a variety is under test. With labelling, marketing practice may suggest otherwise, but use of the variety name is a legal requirement. Be cautious about the use of imported labels. Variety protection information on the label may be misleading or incorrect for this country.