



NZ Plant Breeding & Research Association

Submission on the

Exposure draft of proposed new PVR regulations

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SUBMISSION ON THE EXPOSURE DRAFT OF PROPOSED NEW PVR REGULATIONS

1. I am writing on behalf of the New Zealand Plant Breeding and Research Association.
2. The PBRA represents members who are the predominant developers and suppliers of new and improved plant genetics to the New Zealand pastoral and arable industries. Our members are also key users of the PVR system.

In brief

3. The PBRA welcomes the opportunity to provide comment on the Exposure Draft.
4. The PBRA is largely supportive of the proposed regulations as presented in the Exposure Draft.
5. However, the Exposure Draft in our opinion unfortunately omits regulatory instruments to mandate the payment of royalties by farmers who save and reuse protected varieties, and enable administration and collection of remuneration on farm saved seed (FSS). Inclusion of these empowering regulations is required for plant breeders to recover royalties due and are important to will be a game changer and encourage the further development and release of more new and innovative cultivars.
6. Conversely, until the regulations mandate farmers who save seed of a protected variety to pay remuneration, plant breeders will continue to receive nil recognition for their breeding efforts and may be disinclined to commit to new and future R&D investment.
7. The PBRA urges MBIE to develop regulations to empower the FSS provisions in the Plant Varieties Act.

Support for Regulations

8. In our previous submissions to MBIE (and others), we have confirmed that plant breeders and farmer representatives have consensus for the setting of regulations related to the use of farm saved seed of protected varieties.
9. In particular, the PBRA and farmer representatives have advised Parliament's Economic Development, Science and Innovation Committee and MBIE officials that:
 - Farmers are not against royalties (on farm saved seed)
 - Farmers are working with plant breeders on the design of a royalty administration and collection regime and
 - Farmers are agreed that royalty requirements be included in the Regulations

10. The PBRA view is that there is now a short but ideal opportunity and timing to include regulatory measures for farm saved seed matters, as part of this consultation.
11. Framing new regulations for farm saved seed now and in the way it was intended, as part of the current MBIE work remit is common sense. Doing so, would be administratively convenient, be cost effective and would not create any additional resourcing demands on the Ministry.
12. The PBRA concern is if the timeframe is not now, then it would most likely take many years to work through, prolong uncertainty and confusion for FSS users and will cost plant breeders and NZ Inc lost opportunities.
13. Finally, we wish to stress again that there are no stakeholders standing in the way of MBIE officials and the development of regulations on farm saved seed. Our practical proposals, detailed below, should enter into force on 1 September 2022 along with the rest of the regulatory framework.

In more detail

14. The Plant Variety Rights legislation will be passed by Parliament in the coming days.
15. Section 15(2) and 150(r) (iii) of the legislation both recognise and enables provisions around the appropriate use of farm saved seed and remuneration to protect plant breeder rights to be made.
16. Disappointingly, the current version of the Exposure Draft does not incorporate the exception for the use of farm-saved seeds, with limitations to this right under the Regulations.
17. The PBRA wishes to engage constructively with officials and we propose that a new Part and Schedule on **Farm Saved Seed** be included to cover the requirement for farmers to pay remuneration as a condition of exercising their rights under clause 15. Specifically, relevant new clauses to account for:
 - different provisions for different circumstances and
 - the plant varieties to which clause 15 applies
- 18 To address these issues, the Draft regulations could go further and be improved by including a new part. The draft part below is illustrative of what is required by plant breeders:

Plant Variety Right Regulations 2022

Part x

Farm Saved Seed

These Regulations specify the information which is necessary to be provided for the purposes of section 15 of the Act.

1. Information to be supplied by farmer

(1).On the request of a relevant rights holder or agent, a farmer shall supply the following information—

(i) the name and address of service of the farmer;

(ii) whether the farmer has performed a relevant activity in respect of seed of the variety(ies) in which the relevant rights holder or agent has plant breeders' rights; and

(iii) the address of the holding on which the farmer has performed such a relevant activity.

(2) If the farmer has performed such a relevant activity, he shall also supply the following information with the information referred to in paragraph (1)—

(i) the amount of farm saved seed used; and

(ii) the name of the protected variety(ies) used for planting

2. Information to be supplied by the relevant rights holder

On the request of a farmer a relevant rights holder or agent shall supply the following information—

(a) the name and address for service of the relevant rights holder or agent; and

(b) the amount of royalty charged for that protected variety(ies).

3. Period in respect of which inquiry may be made

A request may be made under regulations x, in respect of the current seed year.

4. Confidentiality

(1) A person who obtains information pursuant to these Regulations shall owe an obligation of confidence in respect of the information to the person who supplied it.

(2) Paragraph (1) shall not have effect to restrict disclosure of information—

(a) for the purposes of, or in connection with, establishing the amount to be paid to the holder of rights pursuant to section 1(2) and obtaining payment of that amount, or

(b) for the purposes of, or in connection with, establishing whether plant breeders' rights have been infringed, or

(c) for the purposes of, or in connection with, any proceedings for the infringement of plant breeders' rights.

5. Formalities

(1) All requests for information pursuant to these Regulations shall be in writing.

(2) All information supplied pursuant to these Regulations shall be in writing.

(3) The time period within which information must be supplied in response to a request made pursuant to these Regulations shall be 28 days

6. Offences and penalties

(1) No person shall, in response to a request made pursuant to these Regulations—

(a) intentionally fail to provide information;

(b) refuse to provide information; or

(c) knowingly or recklessly provide false information.

(2) A person shall be guilty of an offence who, without reasonable excuse, contravenes or fails to comply with regulation 1.

(3) A person guilty of an offence under paragraph (2) shall be liable to a fine of \$ (to be specified)-

7. Specification of Species and Groups

The species and groups listed in the **Schedule x** are specified for the purposes of section 15(2) of the Act.

Schedule x Farm saved seed species and groups

Common name	Botanical name
<i>Fodder/forage plants</i>	
Ryegrass	Lolium
Clover	Trifolium
Lucerne	Medicago
Cocksfoot	Dactylis
Fescue	Festuca
Brome	Bromus
Brassicas	Brassicaceae
Fodder beet	Beta vulgaris
Chicory	Cichorium intybus
Timothy	Phleum
Plantain	Plantago
<i>Cereals</i>	
Wheat	Triticum
Barley	Hordeum
Oats	Avena sativa
Triticale	Triticosecale
Ryecorn	Secale cereale
<i>Pulses</i>	
Peas	Pisum
Beans	Phaseolus vulgaris

Comment

- 19 The above proposed regulatory framework provides clarity on the expectations and responsibilities on farmers who save seed of protected varieties as well as for plant breeders.
- 20 Plant breeders need the ability to effectively track the FSS practice.
- 21 In addition, the regulations being fair for breeders need consequences for non-compliance. If there are no consequences, then the regulations are pointless.
- 22 The task and responsibility for collecting information on the protected varieties and amount retained for FSS during the latest sowing season and the raising of invoices and collection of royalties from farmers, and their costs, will be handled by breeders and borne entirely by breeders.
- 23 Royalty rates on protected varieties will be set in conjunction with farmer representatives and will be published into the public domain.

Subpart 7 Miscellaneous

PVR Register

Section 77 Other PVR information that must be entered in PVR register

- 24 Given that section 77, as per section 130 (1) (g) and (2) of the Act, provides for the PVR register to contain relevant information the PBRA sees this as an opportunity for the register to enable a listing of all current varieties with a PVR and varieties relevant for farm saved seed purposes.
- 25 The PBRA recommends that the PVR register list all current varieties with a PVR and varieties relevant for farm saved seed purposes to ensure good public visibility and for users to have a one-stop-shop to access the information.

Conclusion

- 26 The plant breeding industry of NZ is urging MBIE officials to develop and include regulatory instruments to mandate the administration and collection of royalties on farm saved seed. The PBRA considers this as an urgent priority. We feel it is imperative it comes into effect on 1 September 2022.
- 27 The collection of farm saved seed remuneration is reliant on legal obligations on farmers to provide accurate information and payment to rights holders.
- 28 The PBRA stresses again that farm saved seed remuneration is an important stimulus for the development of quality plant varieties and for intellectual property rights of breeders to release new and improved seed.
- 29 Finally, the PBRA stands ready to discuss with MBIE officials how our pragmatic industry options can be incorporated into the final regulations.

Thomas Chin

Thomas Chin
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