MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr Duncan Webb	**Portfolio**	Commerce and Consumer Affairs
Title of briefing	Plant Variety Rights scheme fees review 2022	**Date to be published**	1 March 2023

List of documents that have been proactively released		
Date	**Title**	**Author**
November 2022	Plant Variety Rights scheme fees review 2022: proposed fees	Office of the Minister of Commerce and Consumer Affairs
16 November 2022	DEV-22-MIN-0266 Minute of Decision	Cabinet Office
November 2022	Plant Variety Rights scheme fees review 2022: proposed fees – Cost Recovery Impact Statement	MBIE

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below:

- Some information has been withheld for the reasons of legal professional privilege

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Stage 2 Cost Recovery Impact Statement: Plant Variety Rights Scheme Fees

Agency Disclosure Statement

This Cost Recovery Impact Statement (CRIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE).

This CRIS provides an analysis of MBIE's recommendation to the Minster of Commerce and Consumer Affairs to amend the *Plant Variety Rights (Fees) Order 1999* to recover up to $0.812 million from users of the PVR scheme from 12 December 2022. The scheme was set up based on full cost recovery but is currently operating at a deficit due to a decrease in volume of applications and rising fixed costs over the years.

Four options have been assessed for recovering the annual costs of administering the PVR scheme ($1.394 million per annum):

- Option A: status quo – no change in fees
- Option B: full cost recovery
- Option C: partial cost recovery – for financial years 2022/23 to 2025/26 ($2.000 million of interim Crown funding spread over four years)
- Option D: partial cost recovery – for financial years 2022/23 to 2024/25 ($2.000 million of interim Crown funding spread over three years)

MBIE has assessed each of these options against a number of criteria, including whether the proposal meets the public interest considerations, whether it is financially sustainable, and mitigates the impact on the users of the scheme.

The PVR scheme is currently running a deficit., from 2018/19 this has been mitigated by the surplus position of the Registration and Granting of Intellectual Property (IP) Memorandum Account. Legal professional privilege

Crown funding was reprioritised to enable the fees to be set at a partial cost recovery level for an interim period. This was to mitigate the impact of fee increases on users and to mitigate the risk to the PVR scheme should the increase in fees result in lower volumes of applications.

MBIE's preferred fees option (Option D) includes the following assumptions:

- That the level of Crown funding per annum will set the fees at an equitable level between users and at a level which aims to minimise barriers to entry and the risk of a reduction in application volumes.

- That subsequent fees review will be undertaken before 2025/26 as well as an economic analysis to determine the appropriate level of cost recovery through fees or other methods of funding the PVR scheme.

- That the operating costs of the PVR Office will remain stable at the minimum viable level of $1.394 million per annum.

Date: 9 November 2022

Ross van der Schyff

General Manager Business and Consumer
Te Whakatairanga Service Delivery
Ministry of Business Innovation and Employment

Executive summary

This CRIS outlines a proposed revision of the current fee structure, increased fee levels, and the introduction of two new fees (request for hearing fee and application for cancellation/nullification fee).

The *Plant Variety Rights Act 1987* (PVR Act) provides for the grant of intellectual property (IP) rights known as PVRs. PVRs give plant breeders exclusive rights over their new plant varieties for a limited time.

The PVR scheme is currently operating at a deficit due to declining volume of applications and an increase in operating costs, the preference for centralised testing. Fees have not been increased since 2002. The deficit is currently being mitigated by the surplus position of the Registration and Granting of Intellectual Property Rights memorandum account (Memorandum Account). This includes revenue recovered from fees of other IP schemes, such as patents and trade marks, offset against their costs.

Cabinet agreed to consult on fee proposals in April 2022 and a public discussion document was released for consultation from 13 April 2022 to 20 May 2022.

Submitters largely agreed with the proposed fee structure as well as the introduction of two new fees (request for hearing and application for cancellation or nullification). However, they strongly disagreed with the proposed fee increases. They expressed the view that as an important contributor to the economy and innovation, the PVR scheme should not be based on full cost recovery. They also submitted that together with costs from COVID-19 business disruptions and other rising costs, fee increases may cause a decrease in the volume of applications received by the PVR Office, further increasing cost pressures.

The fee proposals have been assessed in line with Treasury and Office of the Auditor General guidelines, and against the following cost recovery objectives:

- financial sustainability
- administratively fair and equitable
- mitigating the impact of fee increases
- public interest considerations.

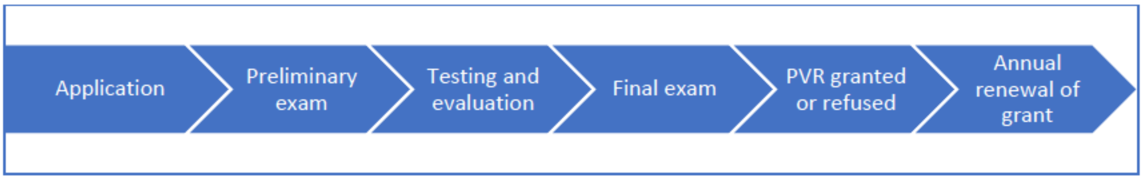
MBIE will conduct further economic analysis of the PVR scheme to determine whether full cost recovery is an appropriate model for funding the PVR scheme (and if so at what level). This analysis, in addition to analysis of the volumes, and the revenue collected from the proposed fees, will inform a future review of all fees charged under IP schemes, which will occur before 2025/26.

Status quo

The PVR Office, a part of the Intellectual Property Office of New Zealand (IPONZ) in MBIE manages the granting of PVRs in New Zealand.[1] It decides whether to grant an applicant the exclusive right over the new plant varieties for a limited time, based on whether the proposed variety is distinct, uniform and stable. [2] A PVR is granted after an examination process, which includes testing in a growing trial carried out by the PVR Office, the applicant or another approved testing provider. A new variety protected by a PVR is known as 'a protected variety'.

The lifecycle of a PVR is illustrated in Figure 1, below.

Figure 1: PVR from application to grant



The objective of the PVR Office is to provide a tool to control the commercialisation of a plant variety in New Zealand. The granting of PVRs is intended to act as an incentive for domestic plant breeders to develop new varieties of plants, and for international plant breeders to permit their new plant varieties to be available in New Zealand.

New Zealand is required to have a PVR scheme through its international commitment under the International Union for the Protection of New Varieties of Plants (UPOV) Convention. It is also required by the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The PVR Act (section 38(1)(k)) gives the Governor-General the power to make regulations to prescribe fees and charges by Order in Council. The current PVR fees are set in *Plant Variety Rights (Fees) Order 1999* (Fees Order) and were last adjusted in 2002.

In May 2021, a *Plant Variety Rights Bill* (PVR Bill) was introduced to Parliament. This Bill is intended to replace the current PVR Act to modernise the scheme and implement the Crown's obligations under the Treaty of Waitangi in relation to PVRs, as well as to meet New Zealand's obligations under the CPTPP. As part of the modernisation of the PVR scheme, the associated regulations and fees have also been reviewed. The authority for charging fees has been replicated in the PVR Bill, so will remain the same in substance. Parliament is now considering the PVR Bill (Committee of Whole House).

This fees review takes into account the current forecast cost based on forecast volumes and changes that will occur as a result of the PVR Bill. This CRIS sets out the proposed changes to the fees, the fee structure, the introduction of two new fees (request for hearing and

[1] References to the PVR Office in the remainder of this document should be read as "PVR Office, IPONZ" unless otherwise stated.

[2] The current terms under the PVR Act are 23 years from grant for woody plants or their rootstock, and 20 years from grant for all others.

application for cancellation or nullification – proposed in the regulations associated with the PVR Bill), and the ability to recover a third-party vendor charge directly from applicants or charge hourly rates as appropriate. The fee structure and fees have been reviewed to ensure that the costs of the PVR Office activities are recovered efficiently and in an equitable manner.

The targeted consultation undertaken has guided the development of the cost model prior to the discussion document being released. $2.000 million of Crown funding was reprioritised to enable the fees to be set at a partial cost recovery level for an interim period, until the next fees review.

The PVR Fees Order Regime – 2002 to date

The PVR Office charges fees for the activities it must undertake to assess whether an application meets the requirements for the grant of a PVR. A PVR must go through several phases before it can be granted or refused. A breeder makes an application, a preliminary examination occurs, the variety is tested in a growing trial (undertaken by the PVR Office, by the applicant or by another approved party) and lastly there is a final examination leading to the grant decision.

The current PVR fees are set in the Fees Order and were last adjusted in 2002. At that point, the scheme was receiving a relatively higher volume of applications as the use of PVRs by the industry was in a growth phase. Before 2002 the fees were over-recovering costs, so the fees review at this time recommended that fees be reduced. Over time, the volume of applications has now declined to a lower sustained or mature level, following the pattern of most national PVR schemes in other parts of the world.

Types of fees

1. Application fee: the initial fee payable when an application for a PVR is submitted. Currently there are two different application fees depending on the type of plant variety.
2. Examination fee and growing trial fee: the existing fee structure provides for a trial **or** a variety examination fee to be charged to all applicants. A growing trial fee is applicable if the growing trial is to be conducted by or on behalf of the PVR Commissioner, which effectively includes the examination fee[3]. Otherwise, a prescribed examination fee is applicable.
3. Annual grant fee: annual fee to keep the grant of a plant variety right active for the upcoming year. Currently all plant varieties pay the same for an annual grant fee, no matter how long the grant has been active, and regardless of the plant variety.
4. The Fees Order also sets out a fee for a request for a compulsory licence, and an hourly rate fee for recouping costs for searching and photocopying services, and to charge for costs incurred in setting up an overseas growing trial. However, these processes are used very irregularly.

Figure 2: Schedule to the Fees Order

[3] A growing trial can be carried out by the PVR Office, the applicant or another approved testing provider, e.g. foreign test trial reports from overseas testing body.

Item	Herbage, agricultural crops, vegetables, fungi Fee ($)	Fruit or nut plants Fee ($)	Other plants Fee ($)
Application for grant	500	500	350
Examination of data (including any material)	600	300	230
Test trial by Plant Variety Rights Office—	–	500	450
grasses and white clover (per year)	3,200	–	–
wheat, barley, oats, forage brassicas, ryecorn, triticale, and peas (per year)	2,300	–	–
grass endophytes	1,500	–	–
potatoes—			
first year	1,600	–	–
each later year	500	–	–
Annual grant fee	160	160	160
Request under section 21(1) of the Act (compulsory licences and sales)	600	600	600

The combination of lower volumes than were occurring in 2002, rising costs and costs incurred for work outside the normal application process, for which fees cannot be charged, has resulted in a forecast operating deficit of approximately $0.956 million per year.

Expenditure for the scheme has increased since 2002 for two reasons:

1. The strong preference from the industry is for the PVR Office to be primarily responsible for variety testing arrangements. The PVR Office has regular communication with applicants and industry and has consistently heard over many years that PVR testing is not compatible with the commercially focused activity of plant breeders. A more centralised approach improves testing efficiency and quality for all. PVR applicants have supported and cooperated in this strategy, but this has resulted in the PVR Office absorbing the cost of testing varieties and the contracting of third parties for testing services.

2. The cost of these services has increased. In the past, the third parties contracted to provide these services did so for free or with minimal charges as they viewed this as a public good across the industry. However, this practice has changed significantly over the past 15 years, resulting in the PVR Office having to absorb increased costs with limited ability to pass on these charges to applicants.

The resulting deficit has been mitigated by the surplus position of the Registration and Memorandum Account. This Memorandum Account includes revenue recovered from fees of other IP schemes, such as patents and trade marks, offset against their costs. Legal professional privilege [redacted]

[redacted]

[redacted]

[4] The Treasury (March 2022) *Guidelines for Setting Charges in the Public Service 2017*

Cost recovery principles and objectives

The review and fee setting process has been underpinned by the cost recovery principles set out in the table below.

Principle	Description
Authority	The PVR Act (section 38(1)(k)) gives the power to make regulations to prescribe fees and charges by Order in Council. The current PVR fees are set in the Fees Order. In May 2021, a new PVR Bill was introduced to Parliament. This Bill is intended to replace the current PVR Act to modernise the scheme and implement the Crown's obligations under the Treaty of Waitangi in relation to PVRs, as well as to meet New Zealand's obligations under the CPTPP. As part of the modernisation of the PVR scheme, the associated regulations and fees have also been reviewed. The authority for charging fees has been replicated in the PVR Bill (section 143), so will remain the same in substance.
Efficiency	MBIE conducted an analysis of expenditure type, time spent by staff on different activities and volumes of each service delivered to calculate the cost of providing the PVR scheme. The costs are set at the minimum viable level for the PVR Office to operate at this time, and no improvements are proposed as part of the fee increase. Assumptions about future volumes have been based on a historical view adjusting for the impact of COVID-19.
Transparency and consultation	The fee levels and underlying fee structure were reviewed. This process helped to inform the proposed updates, which enables transparency with how costs are allocated to each fee. Public and targeted consultation was undertaken on the proposed fee structure and levels, and feedback from submissions as well as engagement with stakeholders has informed the options presented in this CRIS.

The options proposed for fee levels have been assessed against the cost recovery objectives listed in the table below.

Objectives	Description
Financial sustainability	• Ensure that the PVR Office is sufficiently funded and not in a deficit position. • Ensure that fee payers meet their fair share of the costs of providing the service, Legal professional privilege
Administratively fair and equitable	• Crown funding for the Māori Plant Varieties Committee to recognise the Crown's Te Tiriti o Waitangi obligations and the importance of recognising and protecting the kaitiaki relationship with certain plant varieties. • Restructure the fees so that it is clear what service is covered by each fee.

Mitigating the impact of fee increases on users	• Recognising that fees from the past 20 years have not kept pace with market rates, and that a substantial increase may impact PVR volumes as users may not be able to afford to access the service. • Use reprioritised $2.000 million interim Crown funding to mitigate the impact of fee increases on users who are also experiencing other rising costs and the impacts of COVID-19 on their business.
Public interest considerations	• Impact on the wider New Zealand economy • Impact on taxpayers and the Crown accounts. • Compliance with international obligations and does not present a reputational risk to New Zealand • Ensuring the scheme remains accessible • Ensuring fees are not a barrier to entry • Does not curtail innovation and enterprise • Ensuring fees do not undermine policy objectives.[5]

[5] One of the basic premises of UPOV is that anyone can be a breeder.

Policy rationale: Why a user charge? And what type is most appropriate?

The PVR scheme was originally set up as a full cost recovery model as the characteristics of the service provided are that of a private good.[6] The granting of a PVR enables one person to accrue benefits and exclude others from its use. The guidance from the Treasury recognises that purely private goods are not commonly provided by the public sector, and if the government provides a good or service there is likely to be an element of public benefit from having provided the good or service.[7]

As a private good, the people who benefit from the output are those who apply for, are granted, and hold a PVR. On average, there are 100 accepted applications to the PVR Office per year, and there are between 1,200 and 1,300 PVR grants renewed every year. Users of the PVR scheme can be any of the following: domestic and international plant breeding private companies, individual plant breeders, domestic and international universities, foreign government organisations, Crown Research Institutes, and industry organisations. Anyone can be a plant breeder or make an application for a PVR.

In general, it is more equitable to charge those who benefit directly or singularly from the service provided rather than spread the cost across the general public through taxation. However, there are some circumstances in which it is appropriate to charge at less than full cost, such as where full cost recovery would undermine the policy objectives of the scheme, or where charges are being phased in.[8] A decision to charge at less than full cost recovery requires the shortfall to be made up from general taxation which has economic costs and affects budget constraints.

In the targeted consultation undertaken while developing the cost model and fee structure, users expressed concern that the scheme was based on full cost recovery and did not agree that the service provided a solely private good. A decision was made to propose fees at a partial cost recovery level to avoid undermining the underlying PVR policy objectives as well as account for the public benefits arising out of the scheme, including the wider contribution to the New Zealand economy.[9] $2.000 million was reprioritised from COVID-19 funding that was in the Commerce and Consumer Affairs: Official Assignee Functions departmental appropriation, to set the fees at a level that provides for partial cost recovery. This will enable the fees to be set at a lower level for an interim period, until the next fees review.

Table 1 outlines the assessment of each possible option against the objectives of the fees review.

---

[6] The full cost recovery model is also applied to other registrable IP rights, including patents, trade marks and designs.

[7] The Treasury (March 2022) *Guidelines for Setting Charges in the Public Service 2017,* pg 19.

[8] Ibid, pg 27.

[9] Although New Zealand's PVR volumes are low, the scheme supports varieties which have a key role in agricultural and horticultural exports that contribute greatly to the New Zealand economy. For instance, pasture varieties are critical to both the dairy industry and the meat and wool industry, contributing to the combined export value of $28 billion. Arable exports are valued at $236 million for the 2019 season, with clover and ryegrass seeds, a number being protected varieties, contributing a combined $80 million in value to the New Zealand economy. However, it is not known how much of this value comes from protected varieties versus varieties which were never protected or where the protection has lapsed. The further economic analysis which is planned will seek to evaluate the level of public benefit from protecting a PVR.

Table 1: Options analysis

Key: Positive (+1, +2) Neutral (0) Negative (-1, -2)

Objectives	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
Financial sustainability	**(-4)**	**(+4)**	**(+2)**	**(+4)**
Ensure that the PVR Office is sufficiently funded and not in a deficit position.	(-2) Continuation of the status quo would lead to further deficits.	(+2) Full cost recovery would sufficiently fund the PVR Office.	(+1) Partial cost recovery + Crown funding would not fully fund the PVR scheme in the first year, but would sufficiently fund the PVR Office for the following three years, until a fees review in 2026/27.	(+2) Partial cost recovery + Crown funding would sufficiently fund the PVR Office until the next fees review before 2025/26.
Ensure that fee payers meet their fair share of the costs of providing the service, Legal professional privilege	(-2) Fees do not cover the costs of services and therefore users are not paying for the benefit they receive. Legal professional privilege	(+2) Full cost recovery would ensure that fee payers are covering the costs of the service, Legal professional privilege	(+1) Partial cost recovery and interim Crown funding over four years would ensure that fee payers are covering some of the costs of the service Legal professional privilege	(+2) Partial cost recovery and front loading the interim Crown funding over three years would ensure that fee payers are covering some of the costs of the service Legal professional privi
Administratively fair and equitable	**(-3)**	**(0)**	**(+4)**	**(+4)**
Crown funding for the Māori Plant Varieties Committee (MPVC) to recognise the Crown's Te Tiriti o Waitangi obligations and the importance of recognising and protecting the kaitiaki relationship with certain plant varieties.	(-2) No Crown funding is made available for funding the MPVC.	(-2) No Crown funding is made available for funding the MPVC.	(+2) Crown funding is available to fund the MPVC.	(+2) Crown funding is available to fund the MPVC.
Restructure the fees so that it is clear what service is covered by each fee.	(-1) Users are somewhat familiar with the current fee structure.	(+2) Costs would be allocated to the most appropriate fee and the structure would be more transparent.	(+2) Costs would be allocated to the most appropriate fee and the structure would be more transparent.	(+2) Costs would be allocated to the most appropriate fee and the structure would be more transparent.
Mitigating the impact of fee increases after 20 years of reduced fees	**(+2)**	**(-2)**	**(0)**	**(+2)**
Recognising that fees from the past 20 years have not kept pace with market rates, and that a substantial increase may impact volumes as users may not be able to access the service.	(+2) Continuation of current fees is not expected to impact volumes.	(-2) Full cost recovery would result in significant fee increases and volumes may decrease in response, causing	(-1) Lower amount of interim Crown funding per annum would mean higher fees for	(0) Higher amount of interim Crown funding per annum would mean a smaller increase in fees for users (compared to

Objectives	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
		further cost pressures and an ongoing deficit.	users (compared to option D) and may further impact volumes.	other options) and will minimise the impact on volumes.
Use reprioritised $2.000 million interim Crown funding to mitigate the impact of fee increases on users who are also experiencing other rising costs and the impacts of COVID-19 on their business.	(0) No Crown funding available in status quo option.	(0) No Crown funding available in full cost recovery option.	(+1) Fee increases still impact users, but interim Crown funding mitigates a proportion of the increases.	(+2) Fee increases still impact users, but interim Crown funding mitigates a higher proportion of the increases.
Public interest considerations	**(0)**	**(-2)**	**(-2)**	**(0)**
Impact on the economy.	(0) No impact on the economy foreseen.	(-2) Increased fees highly likely to lead to decreased volumes and therefore a decrease in protected plant varieties. This limits the availability of plant varieties in NZ and could impact NZ's primary sector and consumer choice.	(-1) Although fees increase, the interim Crown funding may mitigate some of the risk of decreased volumes and a decrease in protected plant varieties. This may limit the availability of plant varieties in NZ and may impact NZ's primary sector and consumer choice.	(0) Increased level of interim Crown funding per annum is expected to mitigate the impact on volumes, thereby not affecting the availability of plant varieties in NZ.
Impact on taxpayers and the Crown accounts.	(-2) An increasing deficit which cannot be recovered from users will impact on Crown accounts as it cannot be recovered from elsewhere.	(+2) No impact on taxpayers as full cost recovery requires users to fully fund the costs of running the PVR Office.	(-1) Use of reprioritised interim Crown funding means that general taxpayers are subsidising the PVR scheme, and this funding is not available for the general budget.	(-1) Use of reprioritised Crown funding means that general taxpayers are subsidising the PVR scheme, and this funding is not available for the general budget.
Compliance with international obligations; ensuring the scheme remains accessible and fees are not a barrier to entry; ensuring fees do not undermine policy objectives.	(+2) Current fee levels are not a barrier to entry and therefore do not undermine policy objectives.	(-2) Fees set at a level of full cost recovery could present a barrier to entry to the scheme and undermine the policy objectives.	(0) Partial cost recovery through interim Crown funding ensures that the scheme is accessible and does not undermine policy objectives.	(+1) Partial cost recovery with a higher level of Crown funding available per annum ensures that the scheme is accessible and does not undermine policy objectives.
Totals	**(-5)**	**(0)**	**(2)**	**(10)**

The level of the proposed fee and its cost components (cost recovery model)

Expenditure vs revenue of the PVR scheme

At current volumes, the annual expenditure of the PVR scheme is $1.394 million against revenue collected of $0.438 million. The costs broken down by output in table 2 below are at the minimum viable level to operate a trusted and credible PVR Office. The most significant costs relate to personnel and contracts in relation to growing trials and examinations. Together these make up over 70 per cent of the costs. The remainder of the costs are largely fixed and independent of the volume of applications filed. Expenditure has been reviewed to ensure the PVR Office is operating efficiently.

Table 2: Annual costs of running the PVR scheme

Expense type	Total cost $000s
Personnel	572
Outsourced growing trials	358
Variety collections	97
Travel	59
Māori Plant Varieties Committee (MPVC)	20
Office expenses	2
MBIE overheads	286
Total expenses	**1,394**

The annual costs are currently recovered through several fixed fees. The revenue currently collected under each fee is shown in table 3 below:

Table 3: Current revenue from fees

Fee types	Total revenue $000s
Application for grant (referred to as an application fee)	96
Examination of data (referred to as an examination fee)	14
Test trial by the PVR Office (referred as a growing trial fee)	124

Annual grant confirmation (referred as an annual renewal fee)	204
Request under section 21(1) of the Act (referred to as a compulsory licence fee)	0
Total revenue	**438**

The cost recovery model

Table 4 below summarises the direct and indirect costs of the PVR scheme compared to the revenue recovered through the services provided. The number of accepted application volumes is low, meaning there is little opportunity to leverage economies of scale, as specific technical expertise is required to assess different varieties.[10]

Table 4: Expenditure vs revenue across activities

Type	Applications and Renewals ($000s)	Examinations and Growing Trials ($000s)	Management, support, MBIE overheads, education, MPVC ($000s)	Total ($000s)
Total revenue from fees	300	138	-	438
Total expense	342	452	600	1,394
Surplus / (deficit)	(42)	(314)	(600)	(956)

MBIE considered how best to allocate both the direct and indirect costs to the different fee types as the cost model was developed. This was to ensure that the model was equitable and did not undermine policy objectives. For example, some of the management and support costs were allocated to the annual renewal fee, rather than the application fee so that the cost of obtaining a PVR (application, examination, and growing trial fees) do not present a barrier to entry to the scheme. Following allocation of the indirect costs, it was possible to determine the unit cost based on the average volume of applications for each plant variety category.

Once the unit cost was determined, the interim Crown funding was applied across the different fee types. The Crown funding was allocated across each of the fee categories with a view to mitigate the cost of increases equitably across fee payers.

Fixed fees

Fees to obtain a PVR (application, examination, and growing trial)

Application fee:

For options B, C and D MBIE proposed creating a single application fee which applicants would pay regardless of the plant variety category, as the costs of processing applications do not substantially vary by variety.

[10] There were 122 applications in 2021/22, 118 in 2020/21, 87 in 2019/20 and 111 in 2018/19.

Examination fee and growing Trial fee:

For options B, C and D MBIE proposed decoupling the variety examination fee and growing trial fee by creating a single variety examination fee which applicants would pay irrespective of who conducts a trial. This aims to create transparency about how costs are allocated to the different fees, as well as to increase certainty for applicants about the costs associated with a PVR application.

In options C and D, the Crown funding has been allocated to cover specific costs such as variety collections or seed libraries, with the remainder distributed across varieties. In Option D the interim Crown funding is distributed over three years rather than four. As well as having more Crown funding per annum, the Crown funding has been allocated differently so that no fee category experiences an increase of over 100 per cent from the status quo. This ensures the level of increase is equitable across different types of plant variety.

Table 5 shows a comparison of the fee options outlined in the Policy Rationale section above – status quo, full cost recovery and two partial cost recovery options using the interim Crown funding.

Table 5: Comparison of fees for each option (GST exclusive)

Fee type	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
Application fee				
All varieties	N/A	$770	$625	$625
Herbage, agriculture, vegetable, and fungi	$500	N/A	N/A	N/A
Fruit and nut plants	$500			
All other plants	$300			
Examination fee				
All varieties	N/A	$3,940	$770	$770
Agriculture and vegetable crops	$600	N/A	N/A	N/A
Fruit and nut plants	$300			
All other plants (including ornamentals)	$200			

Fee type	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
Growing trials (per year of trial)				
Agriculture and vegetable crops				
Seed propagated varieties (Cereals, peas, forage)	$2,300	$12,500	$4,200	$4,200
Vegetatively propagated varieties (potatoes, hops)	$1,600	$3,310	$2,400	$2,800
Fruit and nut				
Strawberry varieties	$500	$290	$125	$290
Other varieties – year 1	$500	$4,530	$2,200	$530
Other varieties – subsequent years	$500	$1,310	$800	$700
Ornamentals				
Rose varieties	$450	$130	$105	$130
Other varieties – year 1	$450	$3,600	$1,500	$310
Other varieties – subsequent years	$450	$700	$700	$450
Other varieties				
Grasses, white clover	$3,200	$11,200	$6,300	$4,510
Grass endophytes, fungi, other	$1,500	$5,400	$2,800	$2,800

Renewal fees

The renewal fee is charged annually to keep the grant of a PVR active for the upcoming year. The rights holder pays this fee the year following the grant of a PVR and then every subsequent year for the life of a PVR. The purpose of a renewal fee is to provide an incentive for a PVR grant holder to allow their PVRs to cease if their protected varieties are not meeting their business needs, meaning anyone can use the variety. It also ensures the PVR Office has an accurate record of valid protected varieties and allows the PVR Office to track the varieties which have been surrendered and are potentially no longer in the market.

Two options were proposed for renewal fees – a flat fee, and one which is tiered based on the length of time that the PVR is held. A tiered fee would enable renewal fees to start at a lower rate and increase the longer a PVR is kept active. A tiered fee was proposed as this is a mechanism which is used in other IP schemes to incentivise rights holders to surrender those rights if they are no longer receiving a benefit from them.

However, feedback from consultation was that PVRs are different from other IP rights, and most submitters preferred a flat fee, even though that may be higher in the first few years after grant than a tiered fee. In addition, a tiered renewal fee is more administratively burdensome for the PVR Office, and the transitional arrangements would be more complex. Therefore, the renewal fee will remain flat.

The table below shows the difference in rates for each of the four options.

Table 6: Renewal fees comparison (GST exclusive)

Fee type	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
Single fee	$160	$430	$429	$385

Other fees

In addition to the fixed fees outlined above, there is one existing fee for a compulsory licence application which is rarely used. The PVR Bill and associated regulations will introduce new processes for which a fee will be payable. This is the ability to apply for a cancellation or nullification of a PVR grant, and the ability to request a hearing. Table 7 below outlines the proposed fees for these processes.

Table 7: Comparison of current and proposed fees for compulsory licence applications and hearing process (GST exclusive)

Process	Current fee	Proposed fee (Options B-D)
Compulsory licence application	$600	$1,000
Cancellation or nullification application	N/A	$350

Request for hearing	N/A	$850

Compulsory licence application fee

Any person may lodge an application for a compulsory licence for the variety concerned after at least three years following the date a PVR is granted. A compulsory licence may authorise the licensee to undertake production, reproduction, selling, import or export of a protected plant variety or any other activities which are restricted under the PVR Act.

A compulsory licence application is used when a variety's availability is perceived to be restricted and not widely available to the public. For example, if imported fruit of a New Zealand protected variety was sold in New Zealand, but the plant was not available to grow in New Zealand, an individual may make a compulsory licence application to the PVR Office to gain access to grow this fruit.

A compulsory licence application fee must be accompanied by the payment of the prescribed fee and a detailed explanation of why a compulsory licence should be granted. The explanation must be substantive and should include supporting documentation from at least one other party. Before deciding a compulsory licence application, the PVR Office must provide the grant holder the opportunity to be heard. As such, the PVR Bill sets out a new hearings process, which would follow a compulsory licence application.

On receiving a compulsory licence application, the PVR Office must consider whether it is in the public interest to grant a compulsory licence, in addition to several other criteria. This would follow a similar process to an application for a PVR, as well as informing concerned parties and rights holders. If all parties involved are not able to agree, a hearing process would be initiated.

As compulsory licence applications for PVRs are lower in volume and higher in complexity than other IP areas, fees need to be increased to cover costs. MBIE proposes to increase the fee from $600 to $1,000 per application (see Table 7).

Cancellation or nullification application fee

The PVR Bill introduces a process for an individual to apply to have a PVR cancelled or nullified. As this is a new fee, it has been aligned with similar fees from other IP schemes. Therefore, it will be set at the same level as an application for revocation of a patent - $350 (GST exclusive).

Request for a hearing fee

The PVR Bill also introduces the ability for applicants or other parties to request a hearing. A hearing may be on the exercise of the Commissioner's discretion, including a decision to refuse a PVR compulsory licence application. Like the cancellation or nullification application fee, this is new and will be aligned with the request for a hearing fee charged under other IP schemes - $850 (GST exclusive).

Once the evidential stages of a proceeding are complete, the case will be passed on to an independent Assistant Commissioner who will hear both parties before issuing a formal written decision, which will normally include an award of costs to the successful party.

Impact analysis

Impact on users

A PVR must go through several phases before it can be granted or refused. Therefore, it is useful to compare the total fees which may be payable by applicants throughout the life of a PVR application.

Table 9 below shows the total fees which may be payable by an applicant throughout the life of a PVR application: application fee, growing trial fee, and examination fee. The table shows total fee payable for an example variety from each category within fee options A, B, C, and D and the percentage increase (from the status quo).[11]

Table 9: Comparison of total fees (Total fee = Application + Growing trial + Examination (Percentage increase)) - GST exclusive

Example variety	Option A (status quo)	Option B (full cost recovery)	Option C (partial cost recovery + interim Crown funding spread over four years)	Option D (partial cost recovery + interim Crown funding spread over three years)
Agricultural variety (seed-propagated)	$5,700	$29,710 (421%)	$9,815 (72%)	$9,795 (72%)
Fruit or nut variety (not strawberries)	$1,300	$9,240 (611%)	$3,595 (177%)	$1,925 (48%)
Ornamental variety (not roses)	$1,030	$8,310 (707%)	$2,895 (181%)	$1,705 (66%)
Grass variety	$6,980	$27,110 (288%)	$13,995 (101%)	$10,415 (49%)

Option B – Full cost recovery is not a viable option because fee increases of over 300 per cent would mean many small-to-medium sized businesses would lose not just access to, but confidence in the PVR scheme. With increases of this size, it is likely that applications would reduce by roughly 50 per cent across all plant species. These large increases in fees are likely to undermine the policy intent of the PVR scheme, curtail innovation, and present a reputational risk to New Zealand.

---

[11] Agricultural and grass varieties are based on two years of growing trials, as this is the ordinary practice

Table 10: Potential impacts of large fee increase on stakeholders

Stakeholders	Potential impact
Domestic PVR applications	Price out many local breeders, many of which are small to medium sized businesses.
	Diminish innovation within New Zealand due to reduced access to the scheme. This would likely impact many protected varieties that are currently contributing to exports, primarily apples, kiwifruit and grasses.
New Zealand growers	Lead to more restrictive and limiting one-off contractual agreements between individual New Zealand growers and variety owners.
Wider New Zealand	Reduce access to improved plant varieties, disadvantaging businesses and residents. This also may restrict the availability of new varieties to enhance food security, tackle climate change, drought, floods, new pests and disease.
International PVR applicants	Disincentivise international applicants from registering their new varieties in New Zealand, effectively reducing available varieties domestically. Industry reliance on international varieties for certain crop groups such as vegetables is currently very high.

Options C and D include a level of interim Crown funding to mitigate the level of fee increase and impacts on users of the scheme through partial cost recovery. As well as mitigating the risks, the reprioritised interim Crown funding recognises that the PVR scheme provides a level of public good to New Zealand:

- The PVR scheme directly supports New Zealand's wider international reputation to uphold IP protection principles and support economic viability to breeders and growers regardless of business size. This view aligns with the UPOV 91's core principle that anyone can be a plant breeder with equal access to plant variety protection schemes.
- New Zealand is required to have a plant variety rights scheme under its international commitments, such as the TRIPS and CPTPP agreements.
- The proposed Māori Plant Varieties Committee is an important aspect of the scheme under the PVR Bill, which recognises the Crown's Te Tiriti o Waitangi obligations and the importance of recognising and protecting the kaitiaki relationship with plants.
- The PVR Office holds collections of varieties, in partnership with other organisations, which could be considered a national germplasm collection and national resource. New Zealand has probable broad biodiversity targets under the Convention on Biological Diversity, which require it to maintain the genetic resources of introduced species that are important for economic, biological and cultural reasons by conserving their genetic diversity.

Alongside supporting New Zealand's international reputation and the public good, an accessible PVR scheme has wider societal benefits. Protected varieties, or cultivars, are used in pastoral farming, arable farming, vegetable production, fruit growing, cut flower and gardening industries, all of which contribute to the New Zealand economy.

In Option D the interim Crown funding is distributed over three years rather than four. As well as having more Crown funding per annum, the Crown funding has been allocated differently so that no fee category experiences an increase of over 100 per cent from the status quo. This ensures the level of increase is equitable across different types of plant variety. However, option D provides less certainty after 2024/25, as it relies on a full review and setting future fees one year earlier than Option C would.

Impact on the PVR Office

The PVR Office currently has approximately 350 to 380 varieties under various stages of examination and receives approximately 122 valid applications and 1,200-1,300 renewals a year. Although the varieties currently under examination and testing will not be impacted by the fees increase, the users who submit new applications or renew their PVR grant will be impacted by the fee increases. This may impact over 500 businesses and organisations, both in New Zealand and internationally.

Option A will impact the PVR Office's ability to conduct its operations, Legal professional privilege The proposed operating budget for the PVR Office of $1.394 million per year is the minimum required to run a viable PVR Office. Legal professional privilege No enhancements such as improvements to IT or additional resourcing have been proposed through this fees increase, although PVR Office examiners will continue to receive training and development and engagement with the industry.

Options B, C, and D - there is a risk that fee increases may affect the level of applications or renewals received by the PVR Office (Option B). The interim Crown funding seeks to mitigate this risk by reducing the level of cost recovery needed, thereby ensuring that high costs are not a barrier to entry for PVR scheme users (Options C and D). Option D is preferable to Option C as it accounts for the transitional arrangements, and front loads the interim Crown funding in the first year Legal professional privilege

In addition to the interim Crown funding, MBIE will be completing a full review of the Memorandum Account and fees charged under the various IP schemes in New Zealand. This will occur before 2024/25.

International comparison

In creating the final proposal for fees, comparisons were made to fees charged in other countries.

Table 11 below shows the total cost of obtaining a PVR in other countries. Many countries charge a certification fee upon a right being successfully granted, so the calculation for the total fee is Application + Examination + Certification (where applicable). All fees have been converted to their equivalent in New Zealand Dollars (NZD).

It does not include the cost of growing trials as the testing arrangements in other countries range from broad centralised systems only to the breeder carrying out all testing. New Zealand is quite unusual in that it operates a mixed system with centralised testing for some species and breeder testing for others, with arrangements in between. The New Zealand arrangement takes account of the small number of providers available to complete the required testing in New Zealand, the technical skills and resources required and an expectation from the industry that the PVR Office undertake this activity.

Table 11: Comparison of international fees with New Zealand (Option D used for comparison)

	NZ (proposed)	Australia	Canada	European Union	Japan	United Kingdom	United States of America
Total cost to obtain PVR	$1,395	$2,495	$1,510	$4,354	$641	$1,726	$8,059
Annual renewal fee	$385	$434	$362	$536	$434	$345-$808 (depending on crop type)	N/A
Number of applications (A) & renewals (R) received annually	A: 94 R: 1,278	A: 316 R: 2,768	A: 338 R: 1,995	A: 3427 R: 29,010	A: 713 R:8,299	A: 130 R: 1,166	A: 444 R: 8,310

Consultation

What was consulted on

Consultation about changes to the PVR fees occurred in several phases. First, targeted consultation was undertaken with PVR scheme users, applicants, and rights holders about the structure of fees. A targeted consultation document was sent to stakeholders, and a workshop was held with the PVR Technical Focus Group in August 2021. Following that, the cost model was finalised and interim Crown funding obtained so that public consultation could be on a partial cost recovery model. In April 2022, a discussion document was released on MBIE's website and sent to stakeholders. In addition to publicly releasing the document, MBIE held a virtual Q&A/discussion session, providing submitters with the ability to get answers or clarify areas of concern prior to making a submission. Multiple meetings were also held with stakeholders about the proposed changes.

The discussion document proposed several options for the fee structure and showed the difference between full cost recovery and partial cost recovery, where the interim Crown funding was spread over four years.

Submissions and feedback received

Twelve written submissions were received about the proposed changes from industry groups, IP experts, and plant breeders/growers. These were analysed and summarised in addition to the verbal feedback received from the virtual Q&A/discussion session and meetings with stakeholders.

Key feedback from submitters expressed that the quantum of increase for the fees was high, would have impacts on their businesses, and may have an impact on the number of applications received by the PVR Office.

Many submitters stressed that innovation in plant breeding is key to success in primary industries and outlined their desire for the PVR scheme to actively support innovation and investment. Other views expressed by submitters were that PVRs support a level of public good and that the proportion of Crown funding should be increased.

In general, submitters supported the proposed fee structure:

- single application fee, regardless of variety
- single examination fee, regardless of variety
- decoupling the examination fee from the growing trial fee
- changing the categories applicable to growing trials.

Submitters were divided in support in relation to tiered renewal fees. Of the nine who commented on the proposal, three submitters were supportive, one was neutral, and the remaining five disagreed with the proposal for a tiered approach to renewal fees.

Finally, in response to the compulsory licence application fees, several submitters stated that the proposed fee should be higher. They submitted that the fees should weigh factors beyond the cost of providing the service, including how a compulsory licence necessitates a significant financial investment by the rights holder in response, and therefore the fees should be set at a higher level to discourage frivolous compulsory licence applications.

Response to feedback

Three key changes have been made to the proposed fees in response to feedback from submissions and discussions with stakeholders.

Renewal fees

The final proposed renewal fee will be the flat renewal fee. As mentioned above, feedback from stakeholders stated that PVRs are different from other IP rights because they do not necessarily accrue in value over the lifetime of a PVR. In addition to stakeholders' concerns about the proposed tiered renewal fee, it is also more administratively burdensome for the PVR Office. Therefore, the tiered renewal fee will not be proposed.

Quantum of fee increase

In response to concerns about the quantum of the increase, two changes have been made. The first proposes to spread the interim Crown funding across three years rather than four, which has allowed for a further reduction in growing trial fees. The second adjusts the cost model so that the charges across the growing trial categories are more equitable and the total cost of obtaining a PVR does not increase by more than 100 per cent.

Compulsory licence application fee

No changes were made to the proposed compulsory licence application fee, despite the feedback from submitters. The new PVR Bill has raised the threshold for a grant of a compulsory licence and requires applicants to have made reasonable efforts to secure a licence from a PVR holder. Because of these developments, there is minimal risk of frivolous compulsory licence applications, especially since there is no evidence that frivolous applications have been filed in the past. In addition, there is no authority in the PVR Act or PVR Bill to allow over-recovery of the costs of processing a compulsory licence application as a disincentive.

Conclusions and recommendations

As set out in the Policy Rationale section above, there are four options:

- Option A: status quo
- Option B: full cost recovery
- Option C: partial cost recovery – four years ($2.000 million of interim Crown funding spread over four years)
- Option D: partial cost recovery – three years ($2.000 million of interim Crown funding spread over three years)

MBIE's preferred option is Option D. As shown throughout this CRIS, this option meets the cost recovery objectives, balances the impact on the scheme users versus the PVR Office, and incorporates feedback from consultation. These are summarised in the table below.

Table 12: Proposed fees – option D

Fee type	Proposed fee (GST exclusive)
Application	$625
Examination	$770
Growing trials (per year of trial)	
Agriculture and vegetable crops	
- Seed propagated varieties (cereals, peas, forage)	$4,200
- Vegetatively propagated varieties (potatoes, hops)	$2,800
Fruit and nut	
- Strawberry varieties	$290
- Other varieties – year 1	$530
- Other varieties – subsequent years	$700
Ornamentals	
- Rose varieties	$130
- Other varieties – year 1	$310
- Other varieties – subsequent years	$450
Grasses, white clover	$4,510
Other plant varieties including grass endophytes, fungi, and algae	$2,800
Other fees	
Annual grant fee	$385
Compulsory licence application	$1,000

Cancellation or nullification application	$350
Request for hearing	$850

Implementation plan

Subject to the passage of the PVR Bill and implementation of the associated regulations, the fees will be incorporated into the new regulations and published in the *New Zealand Gazette*. The adjusted fee amounts will apply to any application made following that date. Any varieties which have been applied for or are already under trial or examination before that date will remain under the existing fee structure.

For renewals, the first renewal of an existing PVR after the implementation date will be the current renewal fee. Following that, subsequent renewals will be charged at the level of the new fee. This will enable businesses to plan for the increased renewal fee. MBIE will implement the new fees through their usual business practices, updating their systems and sending communications to stakeholders about the fee changes. Collateral will be developed to explain the new fees and any new processes.

Review, monitoring and evaluation

The cost recovery model is supported by the interim Crown funding of $2.000 million Legal [redacted] and to mitigate the impact of fee increases on users of the PVR scheme.

However, the current underlying principle of the PVR scheme is still that it is funded from users and should therefore set fees at full cost recovery model. In the next two years, additional economic analysis of the PVR scheme will be undertaken to determine how the scheme should be funded in the future when balanced with the wider public benefits that flow on to the New Zealand economy and society.

A subsequent fees review of the PVR scheme will be part of a wider review of all the fees charged by IP schemes in New Zealand and their impact on the Memorandum Account. This will be completed in the next three years, with the aim of having new fees in place before 2025/26. During this period MBIE will continue to monitor the volume of applications, as well as the origin of applications (domestic/overseas) and reflect this in the next fees review.