

Plant Variety Rights Act 1987 review: Issues Paper – Submission template

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I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons and grounds under the *Official Information Act 1982* that I believe apply, for consideration by MBIE.

Responses to Issues Paper questions

Your submission may respond to any or all of the questions from the Issues Paper. There is an additional box at the end for any other comments you may wish to make.

Text boxes will expand as you complete them.

Objectives of the PVR Act

1 Do you think the objectives correctly state what the purpose of the PVR regime should be? Why/why not?

Click here to enter text.

2 Do you think the PVR regime is meeting these objectives? Why/why not?

Click here to enter text.

3 What are the costs and benefits of New Zealand's PVR regime not being consistent with UPOV 91 (e.g. in terms of access to commercially valuable new varieties, incentives to develop new varieties)? What is the size of these costs/benefits? What are the flow on effects of these costs/benefits? Please provide supporting evidence where possible.

Click here to enter text.

4 Do you think there would be a material difference between implementing a sui generis regime that gives effect to UPOV 1991 (as permitted under the CPTPP) and actually becoming a party to UPOV 91? If so, what would the costs/benefits be?

Click here to enter text.

Farm-saved seed

5

Are there important features of the current situation regarding farm-saved seed that we have not mentioned?

[Click here to enter text.](#)

6

Can you provide any additional evidence/information that would assist us to understand this issue? For example, the nature and extent of royalties that are currently paid in different sectors, and the proportion of crops planted each year using farm-saved seed.

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7

Do you think there are problems with the current farm-saved seed arrangements? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

8

Do you think there are benefits of the farm-saved seed arrangements? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

9

Do PVR owners use mechanisms outside the PVR regime to control farmers' use or saving of the seeds of their protected varieties? What are these?

[Click here to enter text.](#)

10

Do you think farmers should have to get permission from the PVR owner before sowing the farm-saved seed of a protected variety? Why/why not?

[Click here to enter text.](#)

11

What do you think the costs and benefits of a mandatory royalty scheme would be? What could such a scheme look like (e.g. should it cover all, or only some, varieties)?

[Click here to enter text.](#)

Rights over harvested material

12

Are there important features of the current situation regarding rights over harvested material that we have not mentioned?

[Click here to enter text.](#)

13

Do you agree with our definition of 'harvested material'? Why/why not?

[Click here to enter text.](#)

14

Do you think there are problems with the current scope of PVR owners' rights over harvested material? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

15

Do you think there are benefits to the current scope of PVR owners' rights over harvested material? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

Rights over similar varieties

16

Are there other important features of the current situation regarding distinctness that we have not mentioned?

[Click here to enter text.](#)

17

Are there other important features of the concept of EDVs that we have not mentioned?

[Click here to enter text.](#)

18

Do you think there are problems with the current approach for assessing distinctness? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

19

Do you think there are benefits with the current approach for assessing distinctness? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

20

How might technological change affect the problems/benefits of the current approach for assessing distinctness that you have identified?

[Click here to enter text.](#)

21

Do you have any examples of a plant breeder 'free-riding' off a variety? How often does this happen? What commercial impact did this have? Please provide evidence where possible.

[Click here to enter text.](#)

22

Do you think there are problems with not having an EDV regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

23

Do you think there are benefits of not having an EDV regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

24

How might technological change affect the problems/benefits of not having an EDV regime that you have identified?

[Click here to enter text.](#)

Compulsory licences

25

Are there important features of the current situation regarding compulsory licences that we have not mentioned?

The timing of an application for a compulsory licence: Under s21(1) of the PVR Act 1987 any person may at any time after the expiration of 3 years from the making of a grant request the Commissioner to consider whether or not reasonable quantities of reproductive material of a reasonable quality of the variety concerned are available for purchase by members of the public at a reasonable price.

The decision maker: Under s21(2) of the PVR Act if, after considering submissions and evidence from the applicant and the PVR owner, the Commissioner is satisfied that there are not available for purchase by members of the public at a reasonable price reasonable quantities of reproductive material of reasonable quality, the Commissioner shall issue a compulsory licence to the applicant and/or an order requiring the PVR owner to sell to the applicant reproductive material.

The procedure followed when a compulsory licence is applied for: s21(2), s21(5) of the PVR Act.

26

Do you think there are problems with the current compulsory licence regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

There are a number of problems with the current compulsory licence regime. These include the following some of which are outlined in MBIE's Issues Paper:

1. no definition of "reasonable quantities", "reasonable quality" or "reasonable price" in the PVR Act. Existing licenced use should be taken into account by the Commissioner when considering whether reasonable quantities, etc. are available for purchase.
2. there is no provision for taking into account mitigating factors in the PVR Act. Special or surrounding circumstances should be factored into the consideration of whether or not reasonable quantities of a reasonable utility of the variety are available for purchase.
3. a compulsory licence can be sought after only 3 years have passed since the grant of the PVR. This period is far too short for commercialisation purposes leaving little time for the PVR owner to produce reasonable quantities of propagating material; commercialise the variety; etc. The PVR owner should be afforded a reasonable period following grant to produce and commercialise the variety without risk of challenge for a compulsory licence – this period could be determined based on the plant variety concerned.
4. the PVR Act does not prevent compulsory licensees from exporting propagating material obtained under a compulsory licence;
5. the applicant is not required to establish that they are capable of utilising the variety concerned in New Zealand;
6. the small number of compulsory licence applications and decisions on those applications means there is a lack of legal precedent. We submit it would be beneficial for both the applicant and the PVR owner to introduce a more prescribed procedure for the consideration of an application for a compulsory licence and for the terms and conditions of the licence. At present the Commissioner considers whether or not to grant a compulsory licence application and determines the royalty or payment payable by the licensee/purchaser to the PVR owner as well as any other terms and conditions the Commissioner thinks fit. It would be more appropriate for an expert or panel of experts in the field concerned to determine the application and the terms of any granted compulsory licence in much the same way as the Copyright Tribunal hears disputes about copyright licensing agreements, etc. The Commissioner is not best place to determine the commercial position;
7. the balance of convenience in applying for a compulsory licence heavily favours the applicant as the application fee is low. While both the applicant and the PVR owner need to file submissions and evidence to support their positions, the input and cost for the incumbent rightsholder is significant in comparison to the applicant. This is highlighted by the fact that five applications for a compulsory licence have been made in recent years all by the same company all of which were withdrawn following settlement between the applicant and the rightsholder.

27

Do you think there are benefits with the current compulsory licence regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

Enforcement: infringements and offences

28

Are there important features of the current situation regarding infringements and offences that we have not mentioned?

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29

Have you been involved in a dispute relating to the infringement of a PVR? How was it resolved? How was it resolved (e.g. was alternative dispute resolution used)? How effective was the process?

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30

How prevalent are PVR infringements and offences?

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31

Do you think there are problems with the infringement provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

32

Do you think there are problems with the offence provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

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The kaitiaki relationship and the PVR Act

33

How does the current PVR regime assist, or fail to prevent, activity that is prejudicial to the kaitiaki relationship? What are the negative impacts of that activity on the kaitiaki relationship?

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34

What are the problems that arise from the PVR grant process, or the grant of PVR over taonga species-derived varieties more generally, for kaitiaki relationships? Please provide examples.

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35

What role could a Māori advisory committee play in supporting the Commissioner of PVRs?

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36

How does industry currently work with kaitiaki in the development of plant varieties? Do you have any examples where the kaitiaki relationship was been considered in the development of a variety?

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'Discovered' varieties

37

Are there examples of traditional varieties derived from taonga species that have been granted PVR protection? Do you consider there is a risk of this occurring?

[Click here to enter text.](#)

Offensive names

38 What characteristics might make a variety name offensive to a significant section of the community, including Māori?

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Transparency and participation in the PVR regime

39 What information do you think should/should not be accessible on the PVR register? Why?

[Click here to enter text.](#)

40 As a plant breeder, do you gather information on the origin of genetic material used in plant breeding?

[Click here to enter text.](#)

Other Treaty of Waitangi considerations

41 What else should we be thinking about in considering the Crown's Treaty of Waitangi obligations to Māori in the PVR regime? Why?

[Click here to enter text.](#)

Additional issues

42 Do you have any comments on these additional issues, or wish to raise any other issues not covered either in this section, or elsewhere in this paper?

[Click here to enter text.](#)

Other comments

43 Are there any additional comments you wish to make about the PVR Act review Issues Paper?

[Click here to enter text.](#)