

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

Name	
Email	
Organisation/iwi	Patent Attorney (Australia and New Zealand)
Interest	The submitter acts on behalf of clients involved in scientific research directed to the protection of fresh and marine environments and the sustainable development of primary industries, including aquaculture.

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Release of information

For more detail on how MBIE proposes to release submissions, please see page ii of the Issues Paper.

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.

[Click here to enter text.](#)

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?

[Click here to enter text.](#)

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.

[Click here to enter text.](#)

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?

[Click here to enter text.](#)

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?

[Click here to enter text.](#)

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.

[Click here to enter text.](#)

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?

[Click here to enter text.](#)

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.

[Click here to enter text.](#)

35

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

The establishment of a Māori Advisory Committee to advise the (Assistant) Commissioner in respect of his/her consideration of the kaitiaki interest and the granting of exclusionary rights by the Crown in respect of all forms of intellectual property is supported.

This support is subject to the advice of the Māori Advisory Committee being published so as to allow all stakeholders to increase their understanding of the scope of the kaitiaki interest when applied on a case-by-case.

The establishment of a Māori Advisory Committee whose advice is binding on the (Assistant) Commissioner is not supported as part of a piecemeal review of the intellectual property rights regime.

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?

[Click here to enter text.](#)

'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?

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Offensive names

38

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

[Click here to enter text.](#)

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?

The removal of the exclusion of alga from the definition of 'plant' as currently provided in the *Plant Variety Rights Act 1987* is supported.

This support is subject to:

1. A Māori Advisory Committee being established to assist with the (Assistant) Commissioner's consideration of the kaitiaki interest in varieties of algal species for which protection is sought; and
2. An invention not being excluded from protection under the *Patents Act 2013* merely because an embodiment that is not specifically claimed is capable of being protected as a plant variety.

The removal of the exclusion would remove the anomaly of varieties of microscopic or macroscopic algae being excluded from protection under the current PVR legislation, whereas varieties of microscopic or macroscopic fungi are eligible for such protection.

The removal of the exclusion would also more closely align the scope of protection obtainable in New Zealand with that obtainable for varieties of algal species in countries such as Australia and the United States.

Examples of the protection obtainable for varieties of algal species in other countries include United States Plant Patent nos. 4,511 (*Dunaliella bardawil*), 221,091 (*Botryococcus braunii* 'Ninsei') and 23,858 (*Chlamydomonas reinhardtii* 'DG8-108').

Other comments

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

[Click here to enter text.](#)