

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

<b>Name</b>	New Zealand Apples & Pears Inc (NZAPI)
<b>Email</b>	
<b>Organisation/iwi</b>	This submission is made on behalf of the New Zealand apple and pear industry. NZAPI is the representative organisation for the New Zealand apple and pear industry. NZAPI is a body corporate duly incorporated under the Incorporated Societies Act 1908 with its registered office at 507 Eastbourne Street West, Hastings. Funding for NZAPI is provided by the Commodity Levies Act 1990 through a compulsory grower levy.
<b>Interest</b>	NZAPI is the industry organisation for the New Zealand Apple, Pear, and Nashi Pear Industry. It owns PREVAR which is charged with commercialising new varieties that are assigned from the Plant & Food Research apple and pear breeding programme.

The *Privacy Act 1993* applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box.

## 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?

NZAPI is supportive of the purpose set out in the Issues Paper. PVR should enable the development of innovative plant material. Protect and reward the investment required in that development. Provide significant deterrents for those that deliberately compromise those investments.

'Dissemination' could be changed to 'use' instead

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

A lack of clarity on the process along with high costs excludes many SME's from using PVR's. Does the regime provide enough deterrent to those wishing to circumvent its rules.

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.

There is no benefit for the New Zealand PVR regime not being consistent with UPOV 91. NZAPI supports its member in commercialising new varieties globally. It supports consistency across its global partners. A lack of protection for PVR's will stifle these partnerships.

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?

UPOV 91 is a common platform that can provide consistency and clarity that a sui generis scheme may not provide.

## Farm-saved seed

5

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

No comment

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?

NZAPI supports the UPOV 91 feature of extending rights to harvested material

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

There needs to be clarity around what is termed 'normal use'

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.

Owners have to provide for controls by incorporating these controls into contractual arrangements.

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.

The current benefits are low.

## 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.

Essentially Derived Varieties require appropriate rights for all parties. For example where a breeder seeks rights over an essentially derived variety bred from parent varieties they don't have the rights for.

The distinctiveness element also take into account features that are of low commercial value while excluding features that have commercial value such as harvested material.

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.

Yes there is a need to protect the investment in varieties from which EDV's are derived.

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?

Compulsory licences undermine the value of the current PVR regime essentially providing only 3 years protection compared with over 20.

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.

The potential risk is a complete break down of protection that is unacceptable to New Zealand and our potential partners. What is a reasonable amount of protected material at a reasonable price?

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?

Enforcement is a critical part of the regime. Currently there is a lack of clarity on legal recourse, penalties, and the rights of parties. Penalties are out of step with other areas of business such as fraud.

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?

Yes it is common but is resolved generally by legal threats. However this take time and cost.

30 How prevalent are PVR infringements and offences?

Not uncommon.

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.

See above

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.

See above

### 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?

[Click here to enter text.](#)

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?

[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?

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?

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.