

Plant Variety Rights Act 1987 review: Options Paper

Your name and organisation

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Responses to questions in the Options Paper

1

Objectives of the PVR Act

Do you have any further comment to make on the objectives of the PVR Act?

The PVR act needs to be fit for purpose. Please refer to Gilliland et al 2019. Revising official herbage cultivar evaluation to meet evolving EU and stakeholder needs. EGF Eucarpia joint symposium Zurich June 24-27. In Improving sown grasslands through breeding and management ed Huguenin-Elie et al pp 475-493.

Currently the PVR system does not use science to define varieties on the basis of genotypic difference yet your options paper itself refers to varieties as "defined by the expression of the characteristics resulting from a given genotype or combination of genotypes" (first bullet of page 53). It is now possible to define genotypes and differences between them, either individual clones or populations (allelic frequency based differences using a standard set of SNP markers). Such a diagnostic is necessary now in order to make variety distinction fit for purpose. Genotype difference or a key phenotype difference (in the case of a gene edited plant, or a single key mutation) could be used to scientifically define a cultivar. Without doing this the whole current PVR system just continues to paint over cracks with officers in the field being pressured to try and define subtle differences in phenotypes over several seasons with seemingly more and more difficulty (this gets exponentially harder as the total number of varieties increases as you have to be different to everything that has come before). Examples of the fallibility of the current system include observing differences between closely related varieties whilst, no differences were observed between obviously distinct varieties!

2

Meeting our CPTPP obligations

Do you agree with our analysis and conclusion of the CPTPP options? If not, why not?

[Insert response here]

3

Treaty compliance – criteria for analysis

Do you agree with the criteria that we have identified? Do you agree with the weighting we have given the criteria? If not, why not?

[Insert response here]

4

Treaty compliance – key terms

Do you agree with our proposed approach to these key terms?

Do you have any comments on the principles listed above and how they might apply in practice? For example, would it be useful to specifically list non-indigenous species of significance?

[Insert response here]

5

Treaty compliance – options analysis

Do you agree with the proposed options? Are there alternatives we have missed?

Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

6

UPOV 91 alignment – criteria for analysis

Do you have any comment to make about our approach to, and criteria for, the preliminary options analysis in this paper?

[Insert response here]

Definitions – breed

Our preferred option is to incorporate the definition of “breed” that was considered in the previous review to address concerns around discovery of varieties in the wild.

Do you agree? If not, why not?

[Insert response here]

Definitions – general

Do you have any comments on the definitional issues discussed in this Part?

[Yes - see the response to 1 above currently field officers are charged with finding discreet phenotypic differences between new cultivars and old. This is becoming increasingly hard especially in open pollinated heterozygous pasture species. For the breeder it now becomes a lottery as to whether a new genotypic combination (with superior yield) will have a phenotypic difference to all cultivars that come before it and resources are spent on playing this game (and it is a game). We now have scientific knowledge to define the difference between genotypes by way of allelic frequency differences or through obvious phenotypic differences (e.g. a specific mutation or gene edit). By using these two approaches a variety can be precisely identified and differentiated. This should now be a starting point for the definitional issues in this part.

Scope of the breeder’s right

Do you have any comments about these new rights required by UPOV 91?

[Insert response here]

Exceptions to the breeder’s right

Do you have any comments about the exceptions required by UPOV 91?

[Insert response here]

Term of the right

Do you agree with the proposed options? Are there alternatives we have missed?

Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Essentially derived varieties

Do you agree with the proposed options? Are there alternatives we have missed?

Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Rights over harvested material

Do you agree with the proposed options? Are there alternatives we have missed?

Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Farm saved seed

- 14 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Compulsory licences – general issues

- 15 Do you agree with the discussion and the proposals in relation to the five issues discussed above? If not, why not?
Other than the two substantive issues below, are there other issues we have missed?

[Insert response here]

Compulsory licences – grace period

- 16 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Compulsory licences – section 21(3)

- 17 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Enforcement – infringements

- 18 Do you agree with the discussion and the proposals in relation to the four issues discussed above? If not, why not?
Should the PVR Act provide that infringement disputes be heard in the District Court?
Are there others issues relating to infringements that we have missed?

[Insert response here]

Enforcement – offences

- 19 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Exhaustion of the breeder's right

- 20 Do you have any comments about the exhaustion provision required by UPOV 91?

[Insert response here]

21	Cancellation and nullification of the breeder’s right Do you have any comments about the cancellation and nullification provisions required by UPOV 91, and MBIE’s additional proposals discussed in this section? <i>[Insert response here]</i>
22	Extending coverage to algae Do you have any comments to make about whether or not algae should be included within the definition of “plant” for the purposes of the PVR regime? <i>[Insert response here]</i>
23	Provisional protection Do you agree with our preferred option for dealing with provisional protection? If not, why not? <i>[Insert response here]</i>
24	Transitional provisions What is your view on the options presented here in relation to this issue? Are there alternatives we have missed? How should transitional provisions apply to EDVs? <i>[Insert response here]</i>

Other comments

[Insert response here]