

Submission on issues associated with the Plant Variety Rights Act 1987 to inform the Act's review by the Ministry of Business, Innovation and Employment

Submitted by: New Zealand Plant Producers Incorporated

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Executive summary

NZPPI is the peak industry body for plant producers in New Zealand. Our industry employs approximately 4000 people and is worth an estimated \$500 million.

Our members grow seedlings and plants for food, forests, for urban and rural landscapes and for home gardens.

Our industry underpins the success of New Zealand's thriving primary industries, including forestry, horticulture, viticulture and farming.

Plant producers are a vital part of the success of our primary sector, providing innovation through the selection and production of plant varieties that are suited to New Zealand and create value both domestically and in international markets. This innovation enables New Zealand growers and farmers to remain competitive domestically and internationally.

Many of our members propagate or own the rights to plants that are protected by the Plant Variety Rights Act (PVRA). The PVRA is therefore an important piece of legislation that supports the success of our sector.

NZPPI welcomes the opportunity to provide comment on the Plant Variety Rights (PVR) Act 1987 review in its earliest stages. Our members have interests across the PVR regime, including as plant breeders, germplasm importers and as plant producers who propagate and grow plants that are covered by the PVR regime.

NZPPI supports MBIE's intention to align the future PVR regime with New Zealand's international obligations as required under the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP), through ratification of International Convention for the Protection of New Varieties of Plants (UPOV) 1991, or a similar regime that gives effect to it.

Our submission highlights the importance of the PVR regime to our members and to New Zealand and the areas of the current PVR regime that need to be addressed to ensure that the system is operating effectively.

Issues identified

The current PVR regime is overly complicated and expensive

Our members have expressed concerns around how difficult and confusing acquiring PVR can be. Some of these concerns would be addressed by better clarifying definitions in the Act, such as replacing “owner” with “breeder” and “grantee” with “holder”. While these are relatively minor changes, we suggest that they would significantly improve the ease with which the Act is understood.

We note the PVRA is silent on costs associated with gaining PVR, but have been informed that costs can be prohibitive, particularly given the high proportion of small- and medium-sized enterprises in the nursery sector. We are aware that issues associated with cost are also discussed in Horticulture New Zealand’s submission. Any modifications to the Act should provide greater certainty about the costs associated with gaining and holding PVR.

Making New Zealand’s PVR regime less confusing and more cost effective should support increased innovation and encourage overseas breeders to bring new varieties into the country, creating widespread benefits for New Zealanders.

There is not enough protection against essentially derived varieties

Under the current PVR regime it is too easy for a breeder who does not have the rights to a plant variety to make minor, non-functional changes, and gain their own PVR for a variety that is functionally no different. This free riding disincentivises innovation and has the potential to significantly impact breeders that invest heavily in developing new varieties.

We acknowledge that there is a trade-off between strengthening the rights of variety holders and ensuring that other breeders can still develop new, similar varieties. We believe that alignment of the updated PVRA with UPOV91 would provide an appropriate balance.

Addressing saved seeds is required

The current PVRA is not meeting the needs of breeders by protecting their investment on an ongoing basis and specific mechanisms should be put in place to ensure that breeders are able to collect royalties on seeds collected from their PVs.

Alignment with UPOV91 should support greater protections for our breeders from losses that could be accrued because of seed saving.

Current mechanisms for managing infringements and enforcement of PVR are not adequate

Effective and efficient mechanisms for enforcing PVR and significant penalties for infringing PVR are required to ensure that the PVR regime provides the protection that it is intended to. The current PVR regime does not provide enough protection for those holding PVR. Penalties for those infringing PVRs are minimal and enforcement of a breeder’s rights can be difficult, time-consuming, and costly.

NZPPI recommends that alternative methods than the court system are available for protecting a variety owner’s rights. This should help to ease costs associated with the enforcement of variety rights.

We also recommend greater penalties for infringing a variety owner’s rights. The current penalty of \$1000 is insignificant compared to the hundreds of thousands of dollars that a rights owner could lose because of their rights being infringed.

There are problems with governance of the system and expertise in the management of Plant Variety Rights

We have been told of limited capacity in the PVRO and of difficulties communicating with the PVRO. There have also been concerns raised about the expertise in the management and protection of plant variety rights that is currently available in New Zealand. An updated PVRA should be more specific about the expertise required within the PVRO and provide greater clarity about the skills breeders can expect the PVRO to have.

Conclusions

NZPPI thanks MBIE for the opportunity to make a submission on key issues associated with the PVRA. We look forward to being part of an ongoing discussion about changes to the PVR regime and are available at any time for further discussions with MBIE.

NZPPI hopes we can work towards a PVR regime that is aligned to UPOV 91 that is user-friendly, effective, and efficient.

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