

# Plant Variety Rights Office (PVRO)

## Meeting Report – 2024 Technical Focus Group (TFG)

<b>Date</b>	28 August 2024	
<b>Location</b>	PVRO, MBIE, Grand Central Building 161 Cashel St, Christchurch	
<b>Apologies</b>	Emma Brown	Plant and Food Research
	Zac Hanley	Plant and Food Research
	Jacque Broadhead	PVR Examiner

### Participants

MBIE / IPONZ (Intellectual Property Office of New Zealand)		Other	
<u>Name</u>	<u>Role</u>	<u>Name</u>	<u>Company/Institution</u>
Matt Allan	Patents PVR Team Lead	Andy Warren	Bloomz
Chris Barnaby	PVR Lead	Louisa van den Berg	Bloomz
Gaby Cowcill	Patent Science	Nick Coumbe	Plant and Food Research
Manager		Josie Dawber	Plant and Food Research
Scott Gregan	PVR Examiner	Nate Parker	Plant and Food Research
Kylie Miller	Senior PVR Examiner	Helen Bellchambers	AJ Park
Cecilia R-Jackman	Senior PVR Examiner	Charlotte Tumilson	Grasslanz Technology Ltd
		Tony Hendrikse,	Eurogrow
		Tania McAnearney	Freshmax
		Malcom Woolmore	Kiwiflora International
		Heidi Jade	Zespri
		Wendy Cashmore	IP Partners
		Bob Matthews	Matthews Nurseries
		Samantha Matthews	Matthews Nurseries
		Tallulah Simpson	Waimea Group
		Caroline Elliott	Elliott's Nurseries
		Anna England	Elliott's Nurseries
		Thomas Chin	NZGSTA/PBRA

Topic	Speaker
Welcome and introduction	Chris Barnaby
<p>The meeting was opened on behalf of the Plant Variety Rights Office, and everyone was thanked for making the time and effort to attend this year's TFG meeting.</p> <p>Government fiscal restrictions have resulted in very tight budgets and impacted certain activity in the last year. As has much of the public sector, IPONZ has carried out reorganisation and certain rationalisation which has altered internal PVR reporting lines and structure. With the departure of Becky White in May 2024, Rob Garrett is currently the acting IPONZ National Manager.</p> <p>Participants expressed the view that the internal changes to PVR within the IPONZ structure, are not seen as positive from an external perspective and imply that the scheme is not valued and of lower importance. They also questioned what international users may make of these changes and consider this is a retrograde step in terms of the office reputation and standing in the local and international community. The study on the Economic, Innovation and Public Good Benefits of PVR was noted by participants as confirming the significant contribution the scheme makes to primary industry and wider society, however from a user's or industry perspective, IPONZ and MBIE do not in general appear to be acknowledging this.</p> <p>IPONZ acknowledged the view of PVR users and assured that the IPONZ internal changes will not change existing interactions and connections with industry and users.</p>	
Review of previous meeting action points	Chris Barnaby
<p><b>Action:</b> For annual renewals to have the option for quarterly or half yearly notification when the anniversary date is due.</p> <p><b>Response:</b> This has been considered but is not possible within the current legislation requirements. In addition, the current online system would require significant change. The system does provide for a monthly direct-debit system. Further information was provided under a later agenda item.</p> <p><b>Action:</b> Information regarding the formation of the Māori Plant Varieties Committee.</p> <p><b>Response:</b> Further information was provided later in the meeting in a specific agenda item</p> <p><b>Action:</b> A suggestion was made for website guidance updates to include links to the relevant legislation section of the Act or Regulations for specific matters. In addition, the database should be searchable by grant date and renewal date.</p> <p><b>Response:</b> Some more recent guidance revisions have included a greater frequency of links to legislation where it is practical and meaningful. There are limits to how many links are useful. If there are specific examples from participant experience, please provide that information to PVRO.</p> <hr/> <p>It should be noted that the PVR database is already searchable by grant and renewal date.</p>	

<b>Overview of PVRO activities and developments</b>	<b>Chris Barnaby</b>
<p><b>A presentation on the 2023/24 update was provided to the meeting and highlighted the following activities:</b></p> <p><b>PVR statistics (Annex):</b></p> <p>There has been a total increase in application numbers on the previous 12 months with a decrease in ornamentals and vegetable varieties and an increase in fruit crops and agriculture varieties.</p> <p>There has been a small decrease in grant decisions on the previous year with a slight decrease in the number of valid grants in force.</p> <p>The group suggested to add stats for domestic vs foreign breeders and country of origin for applicants. This information is available and annually provided to the UPOV Council.</p> <p><b>Implementation the PVR Act 2022</b></p> <p>A summary was provided of the main activities including review of operational practice and revision of website guidance and technical questionnaires.</p> <p><b>Continuing projects</b></p> <ul style="list-style-type: none"> <li>• Diversifying the crop or species skills across Examiners</li> <li>• Review of testing arrangements</li> <li>• Areas of common interest with IPONZ and MBIE</li> <li>• A National Seed Collection for agricultural species in cooperation with MPI</li> </ul> <p><b>Future activities</b></p> <ul style="list-style-type: none"> <li>• Cooperation with other authorities to improve knowledge of global varieties of common knowledge.</li> <li>• New techniques and technology</li> <li>• A focus on people - professional development for Examiners</li> <li>• Consideration of a central DUS test centre for kiwifruit</li> </ul>	
<b>IPONZ Fees Review</b>	<b>Chris Barnaby</b> <b>Gaby Cowcill</b>
<p>The fees review is underway and consultation with users is anticipated to begin in early December 2024. A new PVR fees regime is required to be in place by 1 July 2025. The current regime can only be considered an interim step towards a more sustainable, longer-term model. The PVR Economic, Innovation and Public Good Benefit study will be a key part of the review.</p> <p>Participants expressed concern that any large increases in fees resulting from a full cost recovery model will not encourage innovation and plant breeding and does not recognise public good. Any larger increases may result in more broader impacts with losses to the industry. Going further, participants considered that high fee</p>	

barriers that potentially impede use of PVR and provide no incentive for plant breeding are not consistent with wider Government aims of achieving increased export value, food security and environmental goals. Breeders and variety importers are under cost pressures from increases in quarantine fees and increased combined Government fees cannot be managed effectively. Participants suggested MPI be included in any Fees discussions. Participants requested the establishment of a reference group for discussion, which should meet in November, prior to any formal consultation. Participants also questioned any role in the process for the new Ministry of Regulation.

In a more wide-ranging discussion, some general comments from participants about the New Zealand PVR scheme indicated that the industry has the view that amendment to PVR Act 2022 is necessary. In addition, there is a need for an improved engagement process between industry and MBIE. The PVR scheme should provide better incentives for the breeding and importation of new plant varieties and any work on legislation should begin with this objective.

**Māori Plant Varieties Committee update**

**Chris Barnaby**

An update was provided on the continuing establishment process with interviews for members of the Committee underway. The Committee is required to be established by 18 November 2024, when Part 5 of the Act comes into operation. Discussion noted the following points:

- Funding of the Committee should be by the Crown and not users.
- There is a need for transparency in the Committee operations, methods, and approaches.
- The final Terms of Reference should be made public.
- Confidentiality needs to be provided for all parties, should the Committee make provisions for discussions on varieties prior to that variety being subject to a PVR application

**Reports on technical activities for agriculture, fruit, ornamentals, and vegetables.**

**Kylie Miller  
Cecilia Requejo-Jackman  
Scott Gregan**

Presentations on activity and developments from examiners.

**Vegetable, agriculture, fungi (& others) variety testing**

In the vegetable and fruit sector there were 31 new applications received from June 2023, and 24 varieties recommended for grant. Of the new applications, the dominant species was potato with 11 applications, followed by *Rubus* (5 applications), three grape and three hops applications. Four applications were NZ bred, 27 from overseas.

In the agricultural area there were 31 new applications received from June 2023, and 17 varieties recommended for grant. Of the new applications, twelve were grasses, eleven cereals and two clover. Twenty-

two applications were NZ bred, nine from overseas.

### **Rubus variety collection - Lincoln**

- The variety collection includes the PVR Reference Collection for *Rubus*, primarily raspberry and blackberry varieties.
- Of the example varieties listed in the 2003 raspberry UPOV Test Guideline (TG), the only variety present was 'Willamette'. In the recently updated raspberry TG, there are 14 varieties used as example varieties represented in the collection.

### **Revision of the UPOV test guidelines**

- Updated TG for raspberry
- The new potato TG was used in the 2023/24 season.
- Test guidelines under review: Hemp (*Cannabis sativa*), Bent/browntop (*Agrostis* L.) and Festulolium

### **Other**

PVRO currently does not have a centralised testing arrangement in place for endophyte applications. Future testing arrangements for fungal endophytes will be looked at as part of the wider review of testing arrangements. As an interim option, applicants have been requested to directly work with AgResearch (the former service provider) for culture and DUS testing, with guidance and support from the PVR Office.

### **Fruit crops**

- Currently there are 149 fruit varieties under application or test.
- 43 fruit applications were made in the 2023/2024 year, covering 12 species. Cherry applications made up 24% of total fruit applications.
- Blueberry and apple applications reduced from approximately 30% in 2022/23 to 10% in 2023/2024.
- 12% of fruit applications were from New Zealand breeders compared with 18% in 2022 and 30% in 2020.
- 32 fruit grant decisions were made in 2023/2024 covering 7 species.
- Seven UPOV technical guidelines were under review this year.
  - Japanese Plum
  - Japanese Pear
  - Grapevine
  - Passionfruit
  - Hazelnut
  - Guava
  - Goji

The national objective descriptions will be updated when the guidelines have been adopted.

### **Ornamental variety testing**

- In year to June there were 28 new applications for ornamental varieties.
- Currently there are 75 varieties under application or test corresponding to 21 different genera.
- Applications for varieties of rose, lavender, peperomia and tulip constitute 41% of total varieties currently under test.
- Approximately 63% of the applications under test belong to foreign applicants.
- In the past year 30 varieties were granted PVR rights, these corresponded to 18 genera.

#### **Use of Foreign test reports**

**Chris Barnaby**

Attention was drawn to the existing guidance document on the website:

- [Use of foreign test reports for DUS testing in New Zealand | Intellectual Property Office of New Zealand \(iponz.govt.nz\)](https://www.iponz.govt.nz/using-foreign-test-reports-for-dus-testing-in-new-zealand)

Foreign test reports are used for 10-15% of Grant decisions, with continuing work to potentially increase this usage.

Certain Strawberry and European Pear variety applications are currently under assessment regarding use of testing already carried out in Europe. A foreign test report has not previously been used for European Pear and infrequently used for Strawberry. More frequent usage must be consistent with current practice. The meeting was reminded that the variety description held by the Office is effectively the IP and could be used for matters of infringement and variety identification. In that regard the variety description drafted from foreign DUS testing must be sufficiently representative of the variety as expressed under New Zealand conditions.

#### **UPOV and international developments**

**Chris Barnaby**

A brief update on international activities was presented; a written report (Annex) was provided.

### **Review of testing arrangements and growing trial requirements**

MBIE and IPONZ are required to follow Government direction regarding lower costs in the public service and all expenditure is under scrutiny. Costs associated with testing and growing trials are a substantial component of the PVR budget and a review of arrangements is timely. PVR fees do not currently meet the operating costs for testing and examination. The review will be associated with the IPONZ fees review already underway.

A review will include a look at the effectiveness of current testing arrangements and the associated costing models. For the future, be prepared for probable changes to testing arrangements. This may include greater or a different testing responsibility for applicants.

### Other business

Provision of assistance for NZ breeders protecting varieties offshore

For national breeders and variety owners seeking protection for their varieties in foreign territories, it can be frustrating for DUS testing to be repeated in that territory when DUS has already been determined in NZ. There is an impression that relatively few territories recognise the NZ growing trial and are prepared to take over the NZ test report. Participants suggested that PVR IPONZ and MFAT could increase engagement with foreign authorities to progress mutual recognition of testing. This does already occur, however this is somewhat ad hoc and not in a structured or programmed manner. IPONZ agreed to give this further consideration.

### Date and place of next meeting

August 2025. Christchurch unless other invitations are received.

### Summary of action points

**Action:** For the 2025 meeting, participation of the Chair of the Māori Plant Varieties Committee. An update on the development of the Committee and applications (if any) were requested.

**Action:** Establishment of a PVR fees reference group which should meet in November 2024, prior to the formal consultation period anticipated in December 2024

**Action:** The participant invitation list for 2025 should include the following:

IPONZ General Manager

MBIE IP Policy Manager or representative

Ministry of Primary Industries Plant Imports Group Manager

Ministry of Foreign Affairs and Trade representative for IP

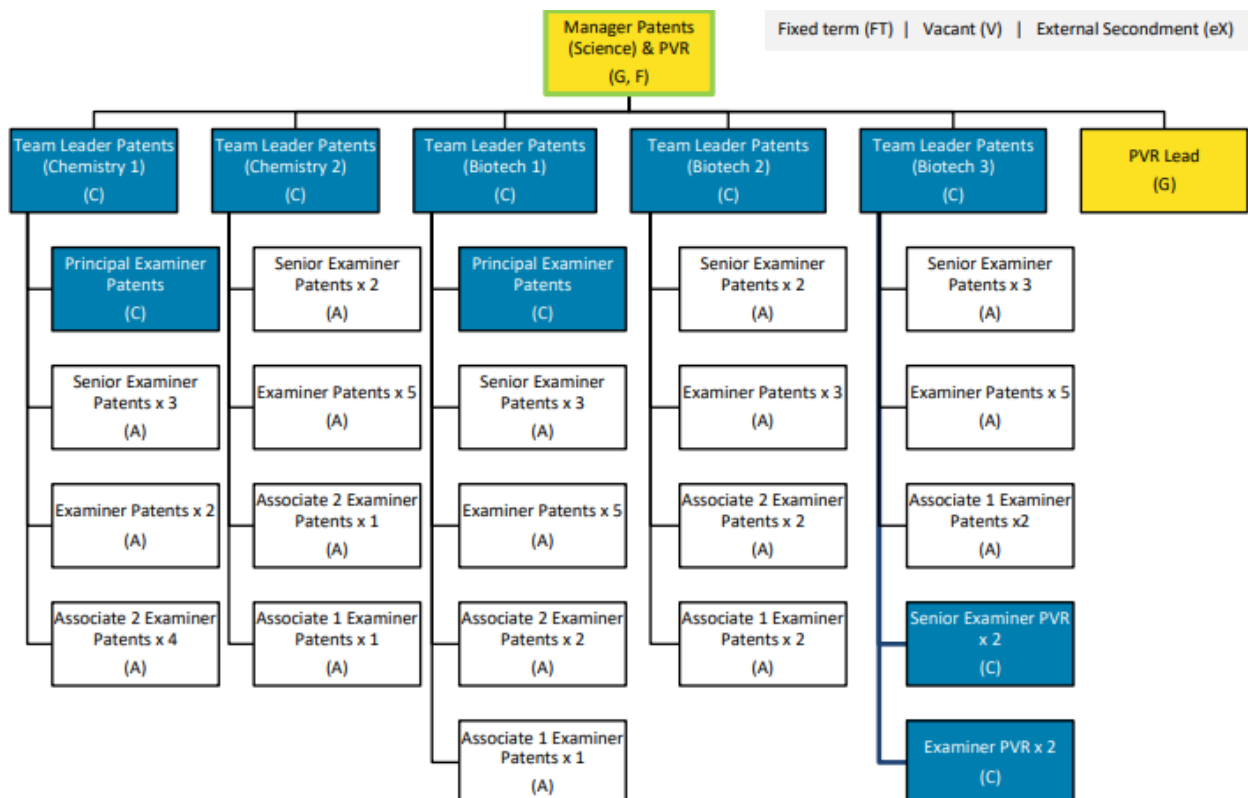
**Action:** Circulation to all participants the PVR IPONZ people list and responsibilities plus the organisational chart

Zespri concluded the meeting with a summary of enforcement and infringement strategy in China and description of recent prosecution activity in collaboration with Chinese authorities. The point was made that all available tools should be considered and for this example fruit in the market with unauthorised branding was targeted rather than the harder task of PVR infringement at the plant or grower level.

**Close of Meeting** – meeting finished at 4.10 pm.



IPONZ Patents and PVR organisational chart



Gaby Cowcill  
 Matt Allan  
 Chris Barnaby  
 Scott Gregan  
 Jacquie Broadhead  
 Kylie Miller  
 Cecilia R-Jackman

Patent Science and PVR Manager  
 Patents PVR Team Lead  
 PVR Lead  
 PVR Examiner  
 PVR Examiner  
 Senior PVR Examiner  
 Senior PVR Examiner

Vegetables, field crops, *Rubus* species, fungi  
 Cereals and pasture species  
 Temperate fruit species and *Actinidia*  
 Ornamentals, avocado and Citrus

## Tables of statistics

PVR STATISTICS – FINANCIAL YEARS JULY-JUNE YEARS 2018 - 2024										
APPLICATIONS										
Year to 30 June	Crop + Vegetable	Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Withdrawn	Lapsed	Refused
2018/19	20		13	1	42	35	111	19	8	2
2019/20	18		7	0	30	32	87	37	0	0
2020/21	Crop only 7	13	8	1	29	58	116	16	1	0
2021/22	3	15	17	0	31	27	93	10	0	2
2022/23	9	27	8	1	17	36	98	14	1	0
2023/24	21	16	14	3	43	28	125	15	5	0

PVR STATISTICS – FINANCIAL YEARS JULY-JUNE YEARS 2018 - 2024										
GRANTS										
Year to 30 June	Crop + Vegetable	Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Cancelled Surrendered	Expired	Valid
2018/19	18		6	2	22	30	78	50	27	1300
2019/20	25		12	1	29	31	98	72	28	1286
2020/21	15		7	1	35	30	88	63	30	1293
2021/22	4		9	-	21	45	79	45	32	1294
2022/23	Crop only 7	9	10	-	36	39	101	54	19	1316
2023/24	6	11	11	3	32	30	93	79	37	1293

Year of Grant 20 and 23 years		Number of grants		Total number of grants	Date Expired	Number	% at full term
1997/98	1994/95	131	103	234	2017/18	18	8
1998/99	1995/96	173	137	310	2018/19	27	9
1999/2000	1996/97	164	141	305	2019/20	28	9
2000/01	1997/98	152	131	283	2020/21	30	11
2001/02	1998/99	120	173	293	2021/22	32	11
2002/03	1999/2000	39	164	203	2022/23	19	9
2003/04	2000/2001	244	152	396	2023/24	37	9

## **UPOV and international developments – July 2023 to June 2024**

### **UPOV E-PVP tools**

UPOV has continued to develop tools for online activities for the administration of plant variety protection. The first was the application tool known as PRISMA which is now well established and in use by many authorities and applicants. In the last year there has been a new tool providing authorities with a range of administrative functions and a test report exchange module which can be used for the requesting and supplying of variety test reports. NZ has requested use of the test report exchange module and is working with the UPOV office to meet the access requirements.

Use of PRISMA requires registration through the World Intellectual Property user account system. Further information is available at <https://www.upov.int/upovprisma/en/index.html>

The East Asia Plant Variety Protection Forum has a programme to develop the online capability of authorities in the East and Southeast Asian region using the UPOV E-PVP tools. A series of virtual meetings have been held to develop the initiative and NZ was invited to participate as an observer state. NZ is considered well placed to provide online experience to the Forum programme with the existing IPONZ case management facility, as an established PRISMA user and the plan to use the test report exchange module.

### **Cooperation**

UPOV is planning further discussions to increase technical cooperation, including a project to identify barriers to cooperation. These barriers can be technical, legal, or administrative, depending on the authority and the state or region. A central element to cooperation is the exchange of variety test reports. In 2023/24, fifteen (15) foreign test reports were utilized for New Zealand Rights decisions and fifteen (15) test reports were supplied to foreign authorities, the majority to Australia.

PVR IPONZ has provided an information and support role to Ministry of Primary Industries and to Ministry of Foreign Affairs and Trade regarding a range of matters involving PVR and related activities. A PVR component has arisen in capacity building in agriculture and horticulture, and in market access and free trade matters.

### **Propagation and Harvested Material**

The UPOV Legal and Administrative Committee (CAJ) has continued the review of current UPOV guidance regarding propagating and harvested material. Discussions have focused on the need for a definition of “unauthorised use”. The concern is that this term implies some form of tangible evidence such as a contract but does not necessarily cover the situation where material of a variety has been legitimately imported into a territory where that variety has protection. The imported material itself originated from a territory which does not have a PVP scheme. What does unauthorised mean when in the territory of origin, there is no such authorisation necessary to propagate or produce that variety? Japan has provided the example of importation of fruit from a state with no variety protection. For a protected variety in Japan, can the variety

owner take control of the imported fruit in Japan because of unauthorised use in the territory where produced? The current wording of the Convention is not clear on this matter.

### **UPOV Technical Working Parties (TWPs) and Committees**

New Zealand virtually participated in all five working parties for 2024. Virtual sessions provide Examiners the opportunity to take part and obtain experience with international plant variety protection. Participation is important because all variety testing in NZ is based on UPOV testing guidelines. Guidelines need NZ contribution to ensure that the testing guidance is compatible with national requirements. An example is the discussions on certain species considered as table vegetables in much of the world where the varieties DUS tested in NZ are for forage and pasture use.

Chris Barnaby participated in sessions of the Council, Legal and Administrative and Technical Committees in March 2024 (virtually) and October 2023 in Geneva. As part of the programme to provide development opportunities for Examiners and future succession planning, Cecilia R-Jackman also took part in the October session in Geneva.

### **Asia Pacific Seed Congress**

The annual congress was held in Christchurch in November 2023. New Zealand Grain and Seed Trade Association organised PVRO participation which provided all Examiners exposure to many seed businesses and their people, over several days. Jacque Broadhead provided a presentation on the new PVR Act 2022 in the IP technical session and Chris Barnaby was a panellist for the discussion on Essentially Derived Varieties.

### **Distance Learning**

The introductory course and the advanced level course are both run twice a year and are available to anyone providing the participation is endorsed by PVRO. NZ continues to provide a tutor for each course.