

Plant Variety Rights Office (“PVRO”) Technical Focus Group (“TFG”) Meeting Report

Date	<i>10 August 2022</i>
Location	Plant and Food Research, Canterbury Agriculture and Science Centre, Lincoln.
Apologies	Heidi Jade Zespri; Malcolm Woolmore and Denise Cleverley Kiwi Flora; Cecilia Requejo-Jackman Senior PVR Examiner; Josie Dawber Plant and Food Research

Participants

MBIE / Intellectual Property Office of New Zealand (“IPONZ”)	Other
Chris Barnaby, PVR Manager Kylie Miller, Senior PVR Examiner Scott Gregan, PVR Examiner Jacquie Broadhead, PVR Examiner Warren Hasset, Senior Policy Advisor, MBIE Scott Kaiser, Principal Advisor, MBIE Jessica Kloosterman, Senior Advisor, MBIE Diane Imus, Business Manager, MBIE Tiantian Zhang, Senior Advisor, MBIE	Thomas Chin, NZ PBRA Louisa van den Berg, Bloomz Andy Warren, Bloomz Emma Brown, Plant and Food Research Helen Bellchambers, AJ Park Nikki Templeton, AJ Park Joy Lin, Grasslanz Technology Tony Hendrikse, Eurogrow Tania McAnearney, Innovar Global Jo Stephens, Gourmet Blueberries Tallulah Simpson, Waimea Group

Topic	Speaker
Welcome and Introduction	Chris Barnaby Emma Brown
<p>Emma Brown opened the meeting on behalf of Plant and Food Research.</p> <p>IPONZ has a new General Manager, Becky White will start in the near future.</p> <p>Overall, IPONZ is growing in size with larger numbers of patent and trademark examiners.</p>	
Review of Previous Meeting Action Points	Chris Barnaby
<p>Action: Table of statistics: A suggestion was made to add an additional column to the Grants table to provide information on the number of Rights that will expire in the next financial year.</p> <p>Response: Table presented in the overview showing the termination of applications from 2016/17 to 2021/22.</p> <p>Action: UPOV PRISMA payment system: The new invoice process recently introduced is not viewed very well. A clear preference was made for card payments. The process will be reviewed and options will be considered again by IPONZ Systems and MBIE Finance.</p> <p>Response: Credit Card payments continue to be unavailable for payment of invoices and this remains a concern for users. The issue has not been resolved and some expressed concern about possible delays in application acceptance. Chris confirmed that potential delays have been taken into consideration during the application process and adverse effects avoided. The matter of card payments will be further considered.</p> <p>Action: Workshop on technical PVR matters: The group considered that users would benefit from a session focusing on the more complex areas of PVR such as use of testing characters, selection of similar varieties and Essential Derivation. A time in the first six months of 2022 could be aimed for.</p> <p>Response: A new law technical workshop took place on 20th July 2022 at the Seed Industry Office, Templeton, Canterbury. The cooperation of the NZ Grain and Seed Trade Association is acknowledged.</p>	
Overview of PVRO activities and developments	Chris Barnaby
<p>A presentation on the 2021/2022 PVRO updates was displayed to the meeting, which noted the following:</p> <ul style="list-style-type: none"> • Progress of the new law • Fees discussion and planning for longer term funding • Operational preparations for the new law • Some disruption to testing due to the pandemic • Attendance at international virtual meetings continues • Communication and contact challenges <p>The PVR stats (Annex) were displayed to the meeting and the following points were noted:</p> <ul style="list-style-type: none"> • There has been a decline in applications from the previous year, with a decrease in ornamental applications following last year's increase, and a significant increase in pasture applications. Vegetable, 	

agricultural and fruit crops remain steady.

- On average 9% of grants expired at the full term during the years 2016/17 to 2021/22.
- The number of overall varieties under test has steadily increased over the last couple of years.

Developments

- Operational practice in relation to the new law has been reviewed so that applications should proceed smoothly from the first day of the new law.
- The first industrial hemp trial is being planned.
- A video covering Plant Variety Protection in New Zealand was made and a link was provided in the pre meeting documents (see Annex).

Application and Examination under the new law

- Under the new law, the criteria for grant and general examination practice remain largely unchanged.
- There will be changes to certain features in the online application.
- Photos will be required for vegetables including potatoes.
- Denominations will be required within six months from the application date.
- Timelines for the payment of trial and examination fees will change.

From an internal PVRO perspective, the old and new law will be run on two parallel systems. The old system will not finish until all the applications are concluded and grants have expired under the old law. This is a similar pattern to what occurred in patents when the 2013 law was introduced.

Continuing Projects

- Chris reported that he was continuing to meet with MPI to be informed regarding plant material entering the country.
- There were concerns from participants about the length of time it takes for plant material to get through quarantine.
- The group was informed that MPI had put 600 genera on their list that could not be imported into New Zealand. A lot of paperwork and time is required to get these back on the accepted list.

The Future

- Implementation of the new law
- Study to determine the economic and public good value of PVR for New Zealand.
Concerns were raised over who would carry out the study and that industry would be contacted to give their feedback.
- Ever increasing numbers of varieties of common knowledge and what is the consequence of this for DUS testing.
- Developments in DNA profiles and molecular techniques, which will become more important moving forward.

Use of foreign test reports	Chris Barnaby
<p>A presentation on the application of Test Reports in New Zealand.</p> <p>Test reports can be used for any application and any genus. The PVRO will make the decision to use a test report on a variety-by-variety basis and it is up to the authorities involved, not the applicant. Criteria determining the use of a test report are the availability of a test report, varieties of common knowledge and existence of a UPOV test guideline. The level of DUS testing experience in the country whose test report is being requested may be a consideration. International practice is adhered to during this process. The annual use of test reports for a NZ Rights decision is variable and has increased in recent years.</p> <p>Test reports from the USA. Variety descriptions from the USPTO are not considered test reports because official DUS testing is not carried out. Applicants can request the use of a test report, with the final decision being that of the PVR office. The group advised that overseas breeders making application in many countries, would like test reports to be used more frequently.</p>	
Reports on technical activities for agriculture, vegetable, fruit and ornamentals	Jacque Broadhead Scott Gregan Kylie Miller
<p>Presentations were received on activity and developments for each species group.</p> <p style="text-align: center;">Testing of Pasture, Forage and Arable Crops</p> <p>Applications were up from last year with 23 new applications received, 2 of which were from Europe and 4 from the USA. There are two applications under test in total.</p> <p>There are a good selection of pasture varieties including chicory, balansa clover, browntop and chewing fescue. 12 varieties were granted this year and 3 varieties were withdrawn before testing.</p> <p>An update on the Technical Working Party for Agricultural Crops 2022 was given. This was held as a virtual and in person meeting. New Zealand participated virtually.</p> <p>UPOV International Test Guidelines Under Review</p> <p>Cocksfoot, rye and wheat will be adopted later this year. Full revisions for Oil Seed Rape, Hemp, Fodder Beet and Kale are continuing.</p> <p>Agricultural Trials</p> <p>After the initial Pukeko problems, where most of the red and white clover plants were lost in the spaced plots, the rest of the trials in the 2021/22 season went well. A trial was carried out to look at different fencing options</p>	

to protect the crops from bird and rabbit damage.

The grasses, plantain, clover and wheat trials are in the ground for the 2022/23 season. The spring trials will include barley, swede, kale and quinoa.

Fruit Crops

Number of fruit applications were viewed by the meeting. A total of 31 had been accepted in 2021/2022.

Fruit applications by species were displayed to the meeting. Application for varieties in the main species were Apple 29%, Cherry 16%, Raspberry 16%, Blueberry 16% and Strawberry 13%.

Out of 31 applications received, 28 were from foreign breeders and 3 were from New Zealand breeders.

A total of 20 grant decisions were made, 9 for blueberry varieties.

Continuing challenges

- Communication both nationally and internationally due to the current global pandemic. The office continues to attend virtual meeting both nationally and internationally.
- National COVID restrictions.
- General access to reference and comparator material for use in DUS trials. The office will continue to communicate with owners regarding access to plant material for DUS purposes. The continued use of Foreign Test Reports on a variety by variety basis may reduce the need for access to plant material for testing.

New for 2021/2022

- Further development of Strawberry, Apricot, Apple, Raspberry and Sweet Cherry Technical guidelines.
- Partial review of the Blueberry Technical Guideline.
- First Cherry application with bi coloured flesh. International interest in this variety as it appears to be the first of its kind.
- Five new Cherry applications in the last 12 months, taking the total number of Cherry varieties under test to 16.

Vegetable and fungi (and others) variety testing

Applications in this grouping include potatoes (26 current applications), lettuce (12 current applications), hops, fungal endophytes, capsicum, tomato, onion, peas, raspberry/blackberry (*Rubus*) (14 current applications), yam, spinach and grape.

There were 25 new applications received from June 2021. Two applications were NZ owned, 16 from Europe and seven from the USA. A large proportion of applications for foreign owned varieties continue to come from the Netherlands. Overall, there was a small 20% increase in vegetable applications from 2021.

2021/22 PVRO potato trial – back to more “normal” size

- a small trial in 2020/21 with just one application (due to delays in plant material coming through quarantine). Frustrations with quarantine delays, importation waiting times, getting material into

New Zealand etc. Resulted in a much smaller potato growing trial.

- 2021/22 potato growing trial – seven applications (25 varieties total including comparators).
- COVID has caused a shift in trial timelines with the trial being planted later.

PVRO research – light sprout comparison of harvested vs submitted tubers

- Delays in completing examination due to delayed trials and COVID lockdowns.
- Normally, light sprout examination is carried out using the harvested tubers from the growing trial. This did not happen in 2020 due to COVID delays and lockdowns.
- In 2020/2021 season, a trial was initiated to make observations on both tubers submitted from applicants, and tubers harvested from the growing trial.
- To date there is high relative consistency of light sprout characteristic expression between tubers harvested vs submitted.

Revision of the UPOV test guideline for potato

- The review of the potato guideline has been ongoing for three years and is likely to be finalised this year.
- Overall, the list of characteristics for examination in the new technical guideline has been reduced. The main changes include:

Lightsprout characteristics – unchanged.

Leaf characteristics – removal of four characteristics with small ranges of expression.

Tuber characteristics – texture of skin added, useful for Russet varieties and potentially for grouping.

Other

Revision of the UPOV test guideline for raspberry (first year of consultation).

First fungal endophyte trial since 2018.

Ornamental Variety Testing

- A total of 45 grant decisions were made in the 2021/22 year to June.
- There has been a decrease in ornamental applications following last year's increase.
- Great diversity of ornamental applications. Currently there are 92 varieties under test belonging to 34 different genera.
- A noticeable number of applications and enquiries about protecting varieties for indoor use coming mostly from Europe.
- Attendees were made aware of the importance of including the variety denomination in the commercial labels.
- Examination of applications using a foreign test report is decided on a variety-by- variety basis.
- The PVR Office uses and encourages testing using living variety collections for certain genera. Living variety collections are a valuable resource that promotes DUS testing efficiency and industry cooperation. Some of these collections are located and maintained by commercial nurseries on behalf of

PVRO.

UPOV and international developments

Chris Barnaby

A summary was provided of the report (Annex) circulated to all participants prior to the meeting.

Any Other Business

At the request of a participant, a summary was provided by MBIE of the PVR Bill's progress in Parliament. The expectation is that the Bill will come into force later this year. Great disappointment and frustration were expressed by several participants regarding the overall consultation process and the Bill's final outcome and there was a view that already there was a need to begin preparation for future revision and improvements.

MBIE provided a summary of progress for the PVR fees review. Formal proposals have yet to be considered by Cabinet. The PVR fees review was discussed, and some participants remain concerned as to the how the final outcome may impact their business. The proposed fee increases are an interim step to allow time to develop a longer-term model. The development process will include a study to determine the economic, innovation and public good value and benefit of the PVR scheme. Participants supported the planned impact study and requested that the organisation engaged to carry out the research was selected with great care.

Plant and Food Research – Variety protection and related IP activity

Emma Brown
Samantha Baldwin

The first presentation provided an overview of Plant and Food's intellectual property portfolio, in particular protecting varieties and a summary of the business's international network of partners.

The second presentation provided an overview of the breeding programmes for annual species.

Date and Place of next meeting

The next meeting will be held in August 2023 and unless there is another invitation, at PVRO, MBIE, Christchurch

Summary of Action Points

Payment of PRISMA application invoices by card: This was again requested to be possible and IPONZ was requested that this option be investigated.

Review of the current DUS testing arrangements for potato: A meeting to progress this proposal will take place between industry and PVRO.

Payment of annual renewal fees: A request was made for IPONZ to investigate the possibility of paying multiyear fees in advance

Table of statistics: A suggestion was made that the application ended column be separated out into refused, withdrawn and lapsed columns

Inform the group on the progress of the public good-economic study on Plant Variety Rights in New Zealand. Circulate the terms of reference to the group.

Close of Meeting

Annex

PVRO STATISTICS – FINANCIAL YEARS JULY-JUNE YEARS 2016 - 2022

APPLICATIONS

Year to 30 June	Crop + Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Withd/Lap/Refused
2016/17	27	10	2	37	55	131	17
2017/18	27	12	3	46	33	121	14
2018/19	20	13	1	42	35	111	29
2019/20	18	7	0	30	32	87	37
2020/21	20	8	1	29	58	116	17
2021/22	18	17	0	31	27	93	11

PVR GRANTS

Year to 30 June	Crop + Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Cancelled/Surrendered	Expired	Valid
2016/17	20	6	2	26	46	100	80	17	1298

2017/18	17	7	-	5	50	79	54	18	1301
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	1289
2021/22	4	9	-	21	45	79	45	32	1281

Developments within UPOV and International July 2021 to June 2022

As reported last year, the global pandemic has continued to impact on UPOV activities and PVRO's international engagement. UPOV meetings have continued in a mostly virtual form and these have provided both positive and negative experiences for all involved. For PVR Examiners, this has provided opportunities for international experience which otherwise may not have been possible.

Member States

The membership of UPOV numbers seventy-eight (78), with two members being regional organisations comprising multiple states. Ghana became the 78th member in November 2021. Sixty (60) members have national law consistent with the 1991 Convention and 18 members have national law consistency with earlier Conventions.

UPOV PRISMA Online Application Tool

In January 2022 version 2.7 was released which now has 70+ user states, translation of predefined responses, an increased range of language options, new payment facilities and option to receive updates on developments.

To use PRISMA there is a requirement to register through the World Intellectual Property user account system. Further information is available at <https://www.upov.int/upovprisma/en/index.html>

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.

International Cooperation

UPOV continues to put great emphasis on this with a focus on providing IT tools which will encourage interaction between authorities, including the takeover of test reports and sharing of technical information. The web-based tools are information focussed, allowing individual authorities to find out which organisations have experience in testing which species and how bilateral cooperation may work.



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need

UPOV has organised a study to determine what member states or want from Technical Working Parties. Member states representative of longer term members through to new members and developed and developing states were interviewed to collect information and views. The report is currently being drafted and will be released and discussed at the Technical Committee in October.

The East Asia Plant Variety Protection forum (EAPVPF) and UPOV are developing a system to provide electronic application options for all EAPVPF states. This will include information on testing arrangements and availability of DUS test reports. This project is viewed as a pilot and could eventually be further developed for use by UPOV member states in other regions.

New Zealand was invited by the Dutch authority and UPOV to provide a video on national DUS testing arrangements to be used in the annual international plant variety protection training course administered by The Netherlands. The video can be viewed here - <https://youtu.be/xd2kD-NOJhY>

Essentially Derived Varieties (EDV's)

The UPOV Legal and Administrative Committee (CAJ) has continued the review of current UPOV guidance. An agreement was reached late in 2021 on new guidance, however before final adoption, several member states expressed reservations and requested further consideration. The additional discussion is scheduled for the UPOV October sessions this year. The key item is whether the balance between the right to use protected varieties for further breeding and the level of recognition provided to the breeder of the initial variety is reasonable in the draft text. There are views that it is weighted too much in favour of the breeder of the initial variety.

Propagating and Harvested Material

The UPOV Legal and Administrative Committee (CAJ) has begun the review of current UPOV guidance. Taking into consideration that the Convention was drafted thirty years ago the current explanatory note is not considered entirely applicable to the current marketing practices for protected plant material. Technology has also changed the understanding of what could be propagating material and when propagating material may be considered to be harvested material. Discussion will continue later this year.

UPOV Technical Working Parties and Committees

New Zealand virtually participated in the working parties for Ornamentals, for Fruit, for Agriculture and for Biometrics and Molecular Markers. Virtual sessions provide all Examiners the opportunity to take part and obtain experience with international plant variety protection.

New Zealand participated in sessions of the Council, Legal and Administrative and Technical Committees. In addition, NZ is currently a member of the Technical Editorial Committee.

Asia Pacific Seed Alliance forum on Intellectual Property (IP) Protection in the Seed Industry under RCEP

A virtual forum was held on IP usage, in particular plant variety protection, in Southeast Asian agriculture. The forum was supported by ASEAN and China. The forum was provided with an overview of what the RCEP provides for IP used for trading in agriculture. This was supported by the sharing of regional and national experiences in using IP and dealing with infringement cases. The longer-term objective is for greater regional cooperation under the agreement.

Korea Seed and Variety Service (KSVS) seminar on the use of image analysis in DUS Testing

KSVS hosted a virtual seminar for the Asia Pacific region sharing their experience with image analysis. Image analysis technology is increasing precision in the measurement of plant parts and in the recording of colour. PVRO was invited to be part of a panel discussion to summarise the advantages and challenges of this increasingly valuable tool. NZ's contribution appears to be valued coming from a unique position of a developed country but with a small scheme.