

Plant Variety Rights Office (PVRO)

Meeting Report – 2023 Technical Focus Group (TFG)

Date	24 August 2023
Location	PVRO, MBIE, Grand Central Building 161 Cashel St, Christchurch
Apologies	Andy Warren (Bloomz) Thomas Chin (NZGSTA/PBRA)

Participants

MBIE / IPONZ (Intellectual Property Office of New Zealand)		Other	
<u>Name</u>	<u>Role</u>	<u>Name</u>	<u>Company/Institution</u>
Chris Barnaby	PVR Manager	Louisa van den Berg	Bloomz
Kylie Miller	Senior PVR Examiner	Nick Coumbe	Plant and Food Research
Scott Gregan	PVR Examiner	Josie Dawber	Plant and Food Research
Jacquie Broadhead	PVR Examiner	Helen Bellchambers	AJ Park
Cecilia R-Jackman	Senior PVR Examiner	John Caradus	Grasslanz Technology Ltd
		Tony Hendrikse,	Eurogrow
		Tania McAnearney	Freshmax
		Malcom Woolmore	Kiwiflora International
		Denise Cleverley	Kiwiflora International
		Heidi Jade	Zespri
		Tallulah Simpson	Waimea Group

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>IPONZ continued to expand in the last year, largely contributed to by the increasing numbers of patent and trademark examiners. The number of PVR Examiners has stayed the same.</p> <p>Warren Hassett, MBIE IP Policy, who retired in mid 2023, was acknowledged for his contribution to drafting the new PVR Act and for his long association with PVR Policy. Warren also provided a wider contribution to the development of IP policies over the last two decades.</p>	
Review of previous meeting action points	Chris Barnaby
<p>Action: Payment of PRISMA application invoices by card: This was again requested to be possible and IPONZ was requested that this option be investigated.</p> <p>Response: PRISMA applications by credit card were investigated and this option was put in place for use in August 2022.</p> <hr/> <p>Action: Review of the current DUS testing arrangements for potato: a meeting to progress this proposal was suggested between industry and the PVRO.</p> <p>Response: Industry has not raised the matter since the last meeting. If this was still something the industry would like to address, or if there are any specific issues with or alternatives to the current testing regime, PVRO would be happy to have a meet and talk about the future of potato DUS testing.</p> <hr/> <p>Action: Payment of annual renewal fees: a request was made for IPONZ to investigate the possibility of paying more than one year's fees in advance.</p> <p>Response: Payment of annual renewal fees outside of the current period (ie. payment of renewal fees in advance), is not permitted by the legislation.</p> <hr/> <p>Action: Tables of statistics: a suggestion was made for additional columns to be added to separate out refused, withdrawn and lapsed applications.</p> <p>Response: New columns were included in the table of statistics for this year's meeting.</p> <hr/> <p>Action: Inform the group on the progress of the public good-economic study on Plant Variety Rights in New Zealand.</p> <p>Response: The PVR economic and public good benefit study is nearing completion, undertaken by Business and Economic Research Ltd (BERL). No decision has been made regarding the external release of the final report.</p>	
Overview of PVRO activities and developments	Chris Barnaby

A presentation on the 2022/23 update was provided to the meeting and highlighted the following activities and developments:

- The new PVR law, which came into force on 24 January 2023
- Statistics on activities for 2022/23
- PVRO developments
- Continuing projects and future activities

PVR statistics (Annex) were presented to the meeting and the following were noted:

There has been a total increase in application numbers on the previous 12 months:

- Small increase in ornamentals
- Decrease in fruit crops
- Large increase in vegetables, mainly applications from foreign breeders.

Overall, it has been a busy year with an increase in grant decisions on the previous year, resulting in a small increase in the number of valid granted varieties.

Developments

- Introduction of new operational practice consistent with the new law and regulations
- Revision of information on the website
- Updating of case management system with respect to the new law
- The first NZ DUS test trial for Hemp (*Cannabis sativa*) varieties
- Review of variety collections and testing service provider partnerships.

Continuing projects

- Review of test guidelines and DUS testing practice
- Quarterly meets with MPI to improve information sharing on importation and biosecurity matters
- Provision of information and education regarding the new law
- Diversifying the crop or species skills across Examiners
- Areas of common interest with IPONZ and MBIE

Future activities

- Refining the implementation of the New Law including necessary changes to the IPONZ on line system and website information
- Evaluation and analysis of the study on the economic, innovation and public good value of PVR
- Cooperation with other authorities to improve knowledge of global varieties of common knowledge
- New techniques and technology
- A focus on people - professional development for Examiners

Discussion occurred regarding new techniques and technologies for examinations. The PVR Office is always open to new ideas and technology with regards to evaluations and analysis, but in general and compared to the

larger authorities, there is a need to take into account the resources required and the relatively low number of applications in New Zealand.

Regarding the study on the economic, innovation and public good value for PVR, meeting participants expressed the view that the report should be externally released, at the very least to the TFG participants.

Plant Variety Rights Act 2022 - New law presentation

Jacquie Broadhead

A presentation on the new PVR law, was provided, highlighting new elements and differences from the 1987 Act.

- Plant Variety Rights Act 2022
 - Plant Variety Rights Regulations 2022.
 - Came into force on 24 January 2023
- Discussion occurred regarding:
- The formation of the Māori Plant Varieties Committee and the protection of taonga species, especially around varieties bred in New Zealand compared to varieties bred overseas.
 - The concept of essentially derived varieties (EDVs) in the new law. Potential EDVs and their identification and use by breeders, falls into a similar framework as for infringements. It is out of the scope of the authority's activities to be monitoring the use of protected varieties for further breeding, potential creation of EDVs and their subsequent applications for protection. It is a breeder-to-breeder issue, with any actions being a private matter between the associated parties involved.
 - Changes to payment of annual renewals.

The requirements for renewals under the PVR Act 2022 are different to the 1987 Act, and there will be a period of transition from the old to the new. There are three factors to note where varieties protected under the old Act will transition to come under the new law:

- The fee increases from \$160.00 to \$385.00
- The period to pay changes from (old Act) one month before to two months after the anniversary date, to (new Act) three months before the anniversary date. If the payment has not been received by the anniversary date, a notice of cancellation will be issued and a further short period for payment will be permitted. When that period expires, the grant will be cancelled.
- The 1987 Act has no possibility for restoration.

There are two factors to note which will only apply to varieties protected under the new Act (no transitional provisions apply)

- The period to pay will be three months before the anniversary date. If payment is not received in that period the grant will be cancelled.
- new Act grants can be restored (with criteria) if they are cancelled due to non-payment of the fee.

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

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

Presentations on activity and developments from examiners.

Testing of pasture, forage and arable crops

- The number of applications for varieties of pasture species are down this year.
- There are 49 varieties in DUS trials in the 2023 to 2024 season, with an increased range of species, including oats, chicory, chewing fescue and *Penicillium roqueforti*.
- The first New Zealand hemp (*Cannabis sativa* L.) and balansa clover (*Trifolium michelianum*), DUS trials have been completed.
- UPOV test guides under review include hemp (*Cannabis sativa* L.), bent grass (*Agrostis* L.), festulolium (*xFestulolium* Asch. Et Graebn), and kale (*Brassica oleracea* L.).
- Updated UPOV test guidelines include barley (*Hordeum vulgare* L.), oilseed rape (*Brassica napus* L. *oleifera*), industrial chicory (*Cichorium intybus* L.), and swede (*Brassica napus* L.).
- A new pasture trial site has been fixed for the 2024/25 season. This will be leased for five years.

Fruit crops

- 17 Fruit Applications in 2022/2023 – down from 31 applications in 2021/2022.
- Apple and Kiwifruit were the highest percentage of applications both with 23%.
- 18% of fruit applications were from New Zealand Breeders.
- 36 Grant decisions were made in 2022/2023.
- The apple cultivar centre was significantly impacted by cyclone Gabrielle, with at least 80 varieties in the collection needing to be re supplied/propagated and planted.
- The following Technical Guidelines were finalised at the TWF and will be submitted to the Technical Committee for adoption later in 2023.
Sweet Cherry, Sour Cherry, Grapevine, Raspberry, Mulberry and Apple.
- Partial review for Blueberry will continue in 2023/2024

Ornamental variety testing

- Currently 88 varieties under test.
- New applications by year:
 - 2021 = 58 varieties, 67% were of foreign breeder.
 - 2022 = 27 varieties, 22% were of foreign breeder.
 - 2023 = 36 varieties, 75% were of foreign breeder.
- 2022-2023 year = 39 varieties were granted PVR rights.

Vegetable and fungi (and others) variety testing

There were 44 new applications received from June 2022, a significant increase in the number of varieties of vegetables, compared to the previous year. The dominant species were lettuce (12 applications) and potato (7 applications). Six applications were NZ bred, the remainder from Europe and North America.

***Rubus* variety collection - Lincoln**

- Formal agreement with Berryworld Ltd, for the planting, management and maintenance of the collection.
- The variety collection includes the PVR Reference Collection for *Rubus*, primarily raspberry and blackberry varieties.
- We are currently updating the collection, with a programme of replacing missing or unhealthy plants and adding more varieties.
- There will be an ongoing expectation that plant material for examination and comparison/example purposes, requested by PVRO, will be supplied in a timely manner and added to the collection.

Revision of the UPOV test guideline for potato

- The review of the potato guideline has finished, and the new test guideline was implemented in Oct 2022. There has been a reduction in the number of characteristics for examination in the new technical guideline.

Other

- The PVRO have now completed the trial to compare potato light sprouts from submitted vs harvested tubers. In the future, light sprout assessment will be carried out on the submitted tubers, with the harvested tubers assessment to be kept as a backup if required.
- Revision of the UPOV test guideline for raspberry (second year of consultation) has concluded and the revision is due for adoption by UPOV in late 2023.
- A fungal endophyte variety growing trial was completed, the first since 2018. PVRO and AgResearch have the intention to renew the contract for endophyte DUS testing.

Technical questionnaires (TQ)	Chris Barnaby
<p>PVRO is currently reviewing and updating TQs and will be making more available through the PVR website.</p> <p>Participants were reminded of the importance of fully completing the technical questionnaires (TQs).</p> <ul style="list-style-type: none"> • In addition to the listed questions, the TQ provides the opportunity to add technical information to aide examination. • The TQ is initially the most important resource for informing the PVR Office about the variety. That information can be used when considering testing arrangements, trial planning, comparison varieties and botanical identity. • Please include any technical information you may consider relevant for the variety in addition to the characteristic lists. Any characteristic information should be as accurate as possible. 	
UPOV and international developments	Chris Barnaby
<p>A brief update on international activities was presented; a written report (Annex) was provided.</p>	
Other business	
<p>The meeting was updated by a participant on proposals to significantly increase cost for MPI quarantine facilities. Users are looking at potential increases of up to 300%. For example, a small quarantine room which could hold about 15 small trees could potentially increase in cost from about \$50,000 to upwards of \$150,000. The group considered it useful for PVRO to be aware of such quarantine matters because potentially it could lead to fewer variety importations and a decrease in protection of foreign owned varieties.</p> <p>The cost of future quarantine facilities led to a broader exchange of views among participants regarding the significant delays and difficulties of getting plant material into New Zealand and how the germplasm supply for many species (and hence potential breeding opportunities) is being constrained.</p>	
Date and place of next meeting	
<p>August 2024. Christchurch unless other invitations are received.</p>	
Summary of action points	

Action: The suggestion was made for annual renewals to have the option for quarterly or half yearly notification when the anniversary date is during that period. This was also raised at last year’s meeting, but unfortunately it was not formally recorded in the meeting notes.

Action: Meeting participants expressed the desire to be informed about the formation of the Māori Plant Variety Committee.

Action: The website updates reported should include links to assist the ability to search the database by grant date and renewal date and also guidance paragraphs should provide links to legislation for specific matters.

Close of Meeting – meeting finished at 3:15 pm.

Tables of statistics

PVRO STATISTICS – FINANCIAL YEARS JULY-JUNE YEARS 2017 - 2023										
APPLICATIONS										
Year to 30 June	Crop + Vegetable	Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Withdrawn	Lapsed	Refused
2017/18	27		12	3	46	33	121	9	5	0
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

PVR GRANTS										
Year to 30 June	Crop + Vegetable	Vegetable	Pasture	Fungi	Fruit	Orn.	Total	Cancelled/ Surrendered	Expired	Valid
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	1293
2021/22	4		9	-	21	45	79	45	32	1294
2022/23	Crop only 7	9	10	-	36	39	101	54	19	1316

Year of Grant 20 and 23 years		Number of grants		Total number of grants	Date Expired	Number	% at full term
1996/97	1993/94	141	97	238	2016/17	17	7
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

UPOV and international developments – July 2022 to June 2023

A new UPOV Vice Secretary General

Peter Button's term is coming to an end, and he has decided not to seek to re new. This ends more than twenty years' service to UPOV in several positions. A selection process for a new VSG was carried out earlier in 2023 and consensus was achieved by the UPOV member states. Yolanda Heurte, the current Senior Legal Counsellor was selected as the new VSG and will take up the role late in October 2023.

UPOV PRISMA Online Application Tool

There have been several upgrades in the last year and the capability increases each time. The number of states connected steadily increases and the there is increasing coverage of species.

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

In May 2023, PVRO held a Regional Describer training day in Christchurch and two of the participants were from PBR Australia. This was an opportunity to learn about DUS testing arrangements in each country and to share variety evaluation expertise.

In 2022, twelve (12) foreign test reports were utilized for New Zealand Rights decisions and nineteen (19) test reports were supplied to foreign authorities.

Essentially Derived Varieties (EDV's)

The UPOV Consultative Committee has continued the review of current UPOV guidance and to date has been unable to reach consensus. The primary cause of the differing views is the interpretation of the number of characteristic changes permitted in an EDV. One view is that only a single change to the essential characteristics caused by the act of derivation is permitted. The other view allows for more than just one change to an essential characteristic caused by the act of derivation providing that there remains overall conformity with the original variety. The discussions continue.

Propagating and Harvested Material

The UPOV Legal and Administrative Committee (CAJ) has continued 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. An interest point of discussion is the legal understanding of consent and that of permission. There are some different interpretations of breeder's consent and that of breeder's permission. Both forms of wording are used in the current guidance and do not lead to consistency. The discussion continues.

UPOV Technical Working Parties (TWPs) and Committees

New Zealand virtually participated in the working parties for Ornamentals, for Agriculture, for Vegetables and for Biometrics and Molecular Markers. Virtual sessions provide all Examiners the opportunity to take part and obtain experience with international plant variety protection. The working party for fruit was held in person, in Nîmes France and Kylie Miller and Chris Barnaby took part. Participants were very enthusiastic to be back in this format after three years of virtual sessions. The French hosts put together a programme in line with proposals made in the wider UPOV discussions to improve the value and effectiveness of TWPs. One of the key changes is more of a practical hands on DUS testing experience for participants and a day was spent in the orchard, evaluating apricot, peach and plum.

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. This year there was a special session held in Geneva for the election of a new Vice Secretary General.

IT tools for Variety Denominations

The Community Plant Variety Office of the European Union (CPVO) requested a discussion regarding the use of the Trademark search tool ACSEPTO. This tool is part of the PTOLEMY system and is designed for searching the Trademark database. PVRO also uses this tool to identify any trademarks that may have similarity to proposed denominations. The CPVO has a programme of automation for denomination checking and was interested in the capability of the tool and what it may have to offer. The meeting was useful for all and the participation of IPONZ Trademarks is acknowledged.