



Notes from the Virtual Q&A/Discussion session on Plant Variety Rights Fees held 11 May 2022

INTRODUCTION

This paper summarises the questions and answers raised during the virtual Q&A session held on 11 May 2022. The purpose of the session was to provide stakeholders with the opportunity to ask questions or points of clarification about the Plant Variety Rights (PVR) fees review discussion document, *Review of Plant Variety Rights Fees*.¹ This document captures the discussion from that session but does not attempt to be minutes taken verbatim. The feedback received during this session will be used to refine the proposed fees along with any written submissions received. A list of participants can be found at the end of this document.

MEETING AGENDA:

1. Introductions and background
2. Questions received
3. Discussion of proposed cost model and fees
4. General Q&A

1. INTRODUCTIONS AND BACKGROUND

To begin the meeting, MBIE discussed how the fees under the *Plant Variety Rights Act 1987* were last adjusted in 2002. At that time, the regime was receiving a relatively higher volume of applications as the regime was in a growth phase; costs were being over-recovered and so the fees were reduced.

The combination of declining volume over the last 20 years, rising costs, costs no longer being provided by external provider as gratis, and incurred costs outside the normal examination process, resulted in a forecast operating deficit of approximately \$0.892 million per year.

The fees proposed in the discussion document, *Review of Plant Variety Rights Fees* cover existing services only and support the minimum viable level of funding for a reputable PVR regime in New Zealand.

¹ New Zealand Intellectual Property Office, March 2022, *Review of Plant Variety Rights Fees: Discussion Document*, Ministry of Business, Innovation and Employment, ISBN 978-1-99-102257-8.



2. QUESTIONS RECEIVED PRIOR TO THE VIRTUAL SESSION

The table below summarises MBIE's response to questions and comments received prior to the virtual session, as well as questions that arose during this section of the agenda.

Questions received prior to the virtual session	MBIE's response
1. Will the examination fee only be charged once for a variety at the end of the DUS trials? E.g., for a multi-year DUS trial there will be a trial/field evaluation charged for each year of the trial and one examination fee at the end of the DUS trial?	Yes, an examination fee will only be charged once for a variety at the end of the DUS trials.
2. Why are the total tiered fees more than the total flat rate fees? E.g., Tiered fees for 20 years = \$9,500 compared to \$429 x 20 years = \$8,580.	The cost model is currently not based on totals over 20 years (i.e., it is based on projected volumes of renewals and annual recovery). The total cost less Crown funding divided by projected volumes provides for the flat fee. The tiered levels are set to recover the same cost as the flat fee but is dependent on volume projection for volumes within each tier. The cost recovered for both options per year is the same.
3. Why are the tiered fees subsidised by the Crown, but the flat rate fees aren't (appendix two of the discussion document)?	The tiered fees include the same level of Crown funding as the flat fee option.
4. In the transition period when will renewals of existing grants be transferred to the new renewal fees?	For varieties granted before the fee change, the first renewal after the fee change will be the old fee, and subsequently the renewal fee will be the new fee. For Rights holders under the current law, they will get one more annual renewal under the current fee at \$160.00. For those varieties granted after the fee change (either under the old Act or the new Act) the renewal fee will be the new fee.



Questions received prior to the virtual session	MBIE's response
5. Is the hearing process mentioned in Question 15 of the fees discussion document specifically about the compulsory licence hearing process that is outlined in the regulations? Why is this being asked about in the fees consultation document and not in the regulations consultation document?	It is about aligning the fee, not the process – it would cover more than compulsory licences – any aspect of hearings.
6. Table 13 in the discussion document outlines the proposed fees for field evaluations. Why are strawberries and roses singled out and have significantly cheaper fees? Will these crops always be cheaper to run DUS trials for? Could the PVR Office end up in a situation, in the future, where strawberries and roses cost a similar amount to run a DUS trial as other crops, however they won't be able to charge the right amount to recover the costs?	The criteria for determining the cost of field evaluation are stated in point 7 of the cost model summary document. Strawberry does not fit the evaluation type for other fruit species and similarly roses differ from other species in the ornamental group. With the planned future review of fees every 3-4 years there will be opportunity to reconsider rose and strawberry should that be needed.
Additional Comments and questions received during the virtual session	MBIE's response
1. Many attendees expressed a preference for a flat renewal fee over a tiered renewal fee. This was due to the view of the renewal process being both automated, in addition to the value of a PVR not necessarily relating to its longevity as much it is related to sale volumes.	Noted
2. Fee hikes would have a detrimental impact as many businesses plan many years in advance for their PVRs. Due to this, there should be a longer transition period so businesses could realign their budgeting. Without this, it would be difficult to sustain their PVRs within existing businesses' budgets and this would cause a drop in PVR volumes.	Noted



Additional Comments and questions received during the virtual session	MBIE's response
<p>3. Many attendees were curious around the policy process surrounding fees reviews and the requirements surrounding Regulatory Impact Statements (RIS) and Cost Recovery Impact Statements (CRIS). What is the sequencing of this process?</p>	<p>The <i>Review of Plant Variety Rights Fees Discussion Document</i> was found to contain the necessary elements of a Regulatory Impact Statement (RIS) by MBIE's Regulatory Impact Analysis Review Panel. This meant IPONZ was eligible for an exemption to produce a separate Impact Assessment on the grounds that the RIS would substantively duplicate the discussion document.</p> <p>Any formal submissions received, including through the virtual session, will be used to inform the analysis of the impact on stakeholders. This will be incorporated into a Cost Recovery Impact Statement (CRIS) in the coming weeks, once the formal submission process for the discussion document has been closed.</p> <p>This is in line with current Treasury guidance: Link</p>
<p>4. Where can you demonstrate the recognition of the impact of the rise in costs to industry?</p>	<p>Section 3 and Section 4 of the discussion document outline the impact of the rise in costs to Industry. This is also mentioned earlier in the paper when discussing the reprioritisation of Crown funding.</p>



3. DISCUSSION OF PROPOSED COST MODEL AND FEES

The table below summarises MBIE's response to questions and comments received during the discussion of the proposed cost model and fees.

Questions / Comments	MBIE's response
1. Has there been research into the fees of other jurisdictions?	<p>We have looked at the fees from other jurisdictions. However, they are not always directly comparable because they do not always operate on a full cost recovery model. Full cost recovery model for services is specific to the political context that we operate in New Zealand.</p> <p>There is a need to consider foreign authority functions and structure, methods of examination and testing, and the national legislation.</p>
2. Have you assessed the impact of the new fees on application volumes, i.e., higher fees will lead to lower application numbers?	<p>Part of the process of adjusting fees includes monitoring and evaluation. We recognise that increased costs may impact the application numbers, and any data you have to support this will be useful. We will monitor the impact over the next two to three years with the aim to revise the cost model in four years.</p>



Questions / Comments	MBIE's response
<p>3. Need to take an investment mindset – PVR serves the country in so many ways (public good). It is important that we continue to stay connected both internationally and domestically. Need the senior people in the PVR office to engage in raising the quality and the effectiveness of the system. Need a strong succession plan for Chris Barnaby (PVR Office Manager) – people who are well versed, well represented and respected. UPOV Council – NZ has made a valuable contribution to date, but we need to make sure we continue to have well versed respected people to represent NZ at these councils. Don't want the international relationships to be impacted by cost cutting measures. Wants to see a shift from the individualistic and private reward analysis.</p>	<p>Noted</p>
<p>4. Echo comments about the investment process. It is narrow-minded to see PVR as a private gain. The public benefit can't be undervalued.</p>	<p>Noted</p>
<p>5. Is there a cap on the charges for outsourced trials, and will growers have to negotiate with third parties?</p>	<p>When the fees are prescribed in regulations, we cannot charge any higher than those fees. There is a proposal to directly on-charge for some activity e.g., direct charging for an externally sourced service and/or charging an hourly rate with the agreement of the applicant.</p> <p>It is currently possible, by mutual agreement, for third parties to directly charge applicants for certain services. MBIE wouldn't rule out the possibility of continuing this direct relationship. The main difficulty is that there are very few external providers who can provide DUS testing services, which means that PVRO/Applicants, are locked into using one or two organisations.</p>



Questions / Comments	MBIE's response
<p>6. There appears to be duplication with every country wanting to do their own PVR trial. What is the process for using overseas trial data for applications? In Australia there are approved persons they can contact for their trials.</p>	<p>There is a set of criteria on how we determine what is acceptable for the use of foreign results, publicly available on the IPONZ website. Often the primary reason for the non-use of foreign test reports is the presence of similar varieties in New Zealand that are not included in the foreign testing (this applies to potatoes). Happy to discuss the DUS testing of potatoes further.</p> <p>The Australian QP system is not used in NZ for several reasons, happy to discuss further.</p>
<p>7. Has the Treasury criteria of equity been considered? There is an equity issue where you don't raise your charges for such a long time.</p>	<p>We have considered equity between users of the scheme, but also recognise that costs haven't been increased in some time – therefore Crown funding has been sought to lessen the impact of the increases on users.</p>

4. GENERAL Q&A

The table below summarises additional questions and comments received during the virtual session.

Questions / Comments	MBIE's response
<p>1. Wanting to avoid frivolous applications for compulsory licences. Will you consider criteria for compulsory licences? It's not generally 'mum-and-dad' breeders who apply for compulsory licences, and it costs a lot to respond to one of these applications. The fee should be set higher (say at \$20,000) to discourage this kind of behaviour.</p>	<p>We will look at whether we have the authority to do so. We heard about the discrepancy between the fee in the targeted consultation, so have raised it. In addition to the compulsory licence fee, there is the hearings process fees, some of which would need to be paid by the applicant. However, since there have not been many compulsory licence applications in the history of NZ's PVR Office, any evidence in submissions will be very useful.</p>
<p>2. Has MBIE consulted wider government policy colleagues?</p>	<p>We have consulted with the Treasury about the fees and have engaged with the Ministry of Foreign Affairs about the implementation dates.</p>



Questions / Comments	MBIE's response
3. Concerns about equity – disincentivising plant variety rights through an increase in fees would have a detrimental impact on wider government policy work (including MPI's Fit for a Better World). It's not the fault of growers that the fees have not been increased in 20 years, it's the fault of central government. From an industry, public good, equity point-of view, there should be a four-year moratorium to overcome issue of covid and equity.	We recognise that the proposed fee increases will affect stakeholders' long-term planning. However, the scheme is under-recovering so fees must increase.
4. Will a memorandum account be set up for this, and something like the Plant Market Access Council has done where growers are also responsible for monitoring the memorandum account?	PVR is currently a part of the Registration and Granting of Intellectual Property rights memorandum account.
5. There appears to be cross-subsidisation between different varieties of plants. Why can this be done here and not elsewhere?	The guidance about cross-subsidisation is that there should not be any between users of different government services.
6. The consultation document says, "modernisation structure aims to increase transparency for users... fair and equitable." Need to make sure it is fair and equitable.	Noted
7. There needs to be balance and fairness between those who have already applied and those who will in the future. Someone may have been able to apply for the application but the increase in renewal fees might make it now prohibitive.	Noted
8. The Māori Plant Varieties Committee should be completely Crown funded as this is a Treaty obligation. It should not be at the cost of the average grower.	The Māori Plant Varieties Committee's ongoing costs (\$20,000) have been covered by the Crown funding.



Questions / Comments	MBIE's response
9. What are the costs of setting up the Māori Plant Varieties Committee?	The PVR Office is not responsible for setting up the Committee and therefore does not have oversight of the cost. The PVR cost model is set to recover annual operating costs and not one-off setup costs.
10. How have MBIE overheads been calculated? They are sitting at \$300,000 or so, which is almost the same as the Crown funding of \$500,000.	MBIE overheads are calculated by MBIE's finance team based on things such as number of FTE, property, etc. They are then allocated to each business unit. We welcome any thoughts on how Crown funding is allocated.
11. Most of the comments provided to MBIE today are not directly covered in the questions posed in the discussion document? Can we get a guarantee that these comments and concerns will factor into analysis? Trusting that these comments won't just be fobbed off.	Very happy to give this assurance that these questions and comments will be addressed. Consultation takes form in many ways; this virtual session is one of them. The 16 questions in the document are only there as a guide. If you provide submissions outside of these, we are going to take them into account. Any submissions, including the comments from today, will help shape our analysis and feed into further documents such as the Cost Recovery Impact Statement.

NEXT STEPS

Submissions on the PVR fees review discussion document close 20 May 2022. Once received by MBIE, submissions will be analysed, summarised and incorporated into advice to the Minister on changes to the fees. This advice will include a completed Cost Recovery Impact Statement. Following Cabinet decisions on the fees, regulations will be drafted, and stakeholders notified about changes to the fees.



LIST OF PARTICIPANTS

Stakeholders	
Name	Organisation
Nate Parker	Plant and Food
Nikki Templeton	AJ Park
Helen Bellchambers	AJ Park
Penny Walsh	AJ Park
Andy Warren	Bloomz
Louisa van der Berg	Bloomz
Mark Wilson	Lifetech
Luke Merson	Plant and Food
Thomas Chin	Grain and Seed
Anna Rathe	Hort NZ
Sophie Badland	NZ Wine
Chris Claridge	Potatoes NZ
Josie Dawber	Plant and Food
Matt Glenn	Kiwifruit Breeding Centre
Alice Moore	Berryco (Freshmax)
Lynell Tuffery Huria	Kāhui Legal
Wendy Cashmore	Plant IP Partners Limited
Tania McAnearney	Innovar Global Limited (Freshmax)
Humphrey Foote	Davies Collison Cave (IP Firm)
Nicola Robertson	Apples and Pears
Joy Lin	Grasslanz
Tony Henriske	Euro Grow

MBIE	
Name	Role
Scott Kaiser	Acting Principal Advisor
Jessica Kloosterman	Senior Advisor
Chris Barnaby	Manager, PVR Office
Diane Imus	Business Operations Support
Hayley Means	Advisor
Aidan Burch	Senior Policy Adviser
Cecilia Requejo-Jackman	Senior PVR Examiner
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