Plant Variety Rights Act 1987 review: Issues Paper – Submission template

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Interest	Plant breeder/developer, licensee and licensor, supporter of Wai262 recommendations, with a high vested interest in the continuing success of growers, supply chain entities, marketers and other developers of economic value leveraging innovation including through proprietary plant varieties.

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Responses to Issues Paper questions

Your submission may respond to any or all of the questions from the Issues Paper. There is an additional box at the end for any other comments you may wish to make.
Text boxes will expand as you complete them.

Objectives of the PVR Act

1 Do you think the objectives correctly state what the purpose of the PVR regime should be? Why/why not?

We recommend that the word **'dissemination'** be replaced with **'use'** in objective (a). The revised objective would be as follows:

a) to promote innovation and economic growth by incentivising the development and **use** of new plant varieties while providing an appropriate balance between the interests of plant breeders, growers and society as a whole;

We would also support further clarification of the definition of **'balance'** in the context of this objective, as discussed at the workshop held in Hawke's Bay 1 November 2018.

With the above considerations taken into account, we consider the objectives sufficiently clear. Our rationale for this support is underpinned by a strong belief that a well-articulated, transparent, enforceable, and accessible PVR regime is a valuable and essential component of a modern, fit for purpose commercial operating environment in an innovation-driven economy such as New Zealand.

2 Do you think the PVR regime is meeting these objectives? Why/why not?

This review is timely and important - as noted in the Minister's introduction of the issues paper "As a country with a strong track record in agriculture and horticulture, a high-functioning plant variety rights regime can have significant economic benefits for New Zealand. However, the regime is now over 30 years old, and much has changed in the industry during this time."

The current PVR regime has fallen behind the innovation-led progress across the sectors of the economy it is designed to serve – both in a plant breeding and a business innovation context – and, is out of touch with contemporary NZ society as well. For example, not giving sufficient direct consideration to our obligations to Māori under the Treaty of Waitangi, specifically the importance to Māori of kaitiaki relationships with taonga species and mātauranga Māori.

As a science company we endorse that modernising the regime to make it more consistent with other commercial and intellectual property legislation in New Zealand is overdue.

3	What are the costs and benefits of New Zealand's PVR regime not being consistent with UPOV 91 (e.g. in terms of access to commercially valuable new varieties, incentives to develop new varieties)? What is the size of these costs/benefits? What are the flow on effects of these costs/benefits? Please provide supporting evidence where possible.

There are numerous benefits that strongly support aligning NZ's PVR regime with UPOV 91. By updating PVR legislation to be aligned with UPOV 91 we will ensure that:

- NZ's legislation becomes aligned with what is considered the international standard for plant variety protection;
- NZ's PVR regime is modernised to be better aligned to that of our current and future trading partners;
- Potential trading partners have increased clarity and certainty in NZ's PVR position;
- NZ's standing in the international intellectual property field is improved; and
- Ongoing access to new plant varieties is more assured.

4	Do you think there would be a material difference between implementing a sui generis regime that gives effect to UPOV 1991 (as permitted under the CPTPP) and actually becoming a party to UPOV 91? If so, what would the costs/benefits be?

Implementing a sui generis regime that gives effect to UPOV 91 will require the same level of design and creation, investment in development and implementation, if not more, than simply acceding to UPOV 91. Such an approach is also associated with the risk that a sui generis regime may not reap the benefits of the value accorded to the UPOV 91 "brand".

We are generally supportive of the practical way in which the NZ PVR Office interacts with the overarching UPOV system. For example:

- Being open to purchase of test reports resulting from DUS trials in other jurisdictions
- Being open to supplying test reports to enable objective description requirements to be met efficiently in other jurisdictions
- Their open and constructive participation in relevant UPOV working groups in the drafting of international technical guidelines and flowing that experience and knowledge into development of domestic objective descriptions.

The value to NZ in participating in UPOV and the working groups would be lost if we adopted a sui generis regime.

Farm-saved seed

5	Are there important features of the current situation regarding farm-saved seed that we have not mentioned?

The articulation of the current situation is chiefly technical. The issues paper overlooks the change in farming scale, practice, vertical integration, and value generation – especially the contribution of technological and market opportunity gained through outcomes of plant breeding.

6	Can you provide any additional evidence/information that would assist us to understand this issue? For example, the nature and extent of royalties that are currently paid in different sectors, and the proportion of crops planted each year using farm-saved seed.

Growers being able to save seed of a protected variety without paying royalties to the PVR owner is one example of the current regime being out of step with the contemporary innovation economy.

The current PVRA allows these actions completely independent of the rights holder. There is no requirement for permission from the rights holder, no obligation to recompense the "loss of opportunity" for the seed sales to developers or commercial agents, or duty to pay royalties on that seed.

The scale of retention and trading of farm saved seed is estimated by relevant industry bodies to result in a loss of royalties of at least $2M per annum. The loss of opportunity for recovery of a fair-share of the commercial benefit also means a less predictable environment for research and variety development investment.

7	Do you think there are problems with the current farm-saved seed arrangements? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

Retention of seed or other reproductive material for use in subsequent seasons is reasonably facilitated in section 18 of the PVRA for home gardeners and the general public, where use is for private purposes.

However, the farm saved provisions are out of step with the growth in scale and vertical integration of contemporary farming practices that leverage value from proprietary plants.

It's perceived the current legislation unreasonably circumvents the natural right of the breeder to share fairly in the commercial benefit derived from use of the breeding innovation. Ideally any revision to this farm saved system would reflect a fair share of value to the breeder directly related to the benefits created from the commercialisation of the new variety.

8	Do you think there are benefits of the farm-saved seed arrangements? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

Cost saving for farm businesses has been touted as the rationale for the retention of farm saved seeds provisions. Reliance on this rationale has enabled this practice to be operate on farms at a considerable scale. In turn that has effectively exempted those operations from contributing a fair return to the breeder.

The 'cost saving' rationale needs to be reconsidered carefully in the context of maintaining a robust and sustainable plant breeding industry. The cost saving rationale is weak compared with the measurable increased value farming businesses capture from implementation of the improvements and technological advances achieved through plant breeding, and the flow-on benefits to the economic competitiveness of NZ primary industry.

Further, the potential impact of high volume retention – and unregulated trading – of farm saved seed has implications for the viability of long term R&D activities, and potential for "false economy" in farming business by substituting seed cost savings for genetic purity of the saved seed which can quickly degrade over time influencing yield, pest and disease resistance and quality. Ultimately resulting in a decline in overall productivity and profitability for the farmer/grower.

In addition, the increased consumer interest in provenance of fresh foods and food ingredients is best served where the provenance of the underpinning varieties is transparent and traceable – including recognition and respect for the associated intellectual property rights.

9	Do PVR owners use mechanisms outside the PVR regime to control farmers' use or saving of the seeds of their protected varieties? What are these?

End point royalties are used in some instances where farmers sell harvested material produced from saved seed. Many such schemes lack a robust contractual audit trail back to the breeder, and cannot be applied where harvested material may not be sold e.g. is consumed as stock feed on-farm. Without specific provisions in legislation it is difficult for the PVR owner to adequately exercise their rights in relation to the saving of seeds.

10	Do you think farmers should have to get permission from the PVR owner before sowing the farm-saved seed of a protected variety? Why/why not?

Express permission from the breeder would be desirable in the interests of transparency, auditability, and the provenance interests expressed by consumers. Open information sharing in this way gives another level of certainty and assurance to the regime, and will provide insights for breeders that will inform future plant breeding directions and innovations.

11	What do you think the costs and benefits of a mandatory royalty scheme would be? What could such a scheme look like (e.g. should it cover all, or only some, varieties)?

The payments of royalties should be mandatory but the design and implementation of the mechanisms for sharing that benefit back to the breeder should be at the discretion of the breeder.

Collective industry wide schemes tend to be more akin to voluntary levy collections, without a key focus on returning a proper share of benefit to the breeders of innovative plant varieties. If the design and implementation of the mechanisms of royalty collection are restricted by legislation then there is a risk to continuity for current benefit sharing practices and/or arrangements.

As a general principle a thriving economy is fully enabled where technical innovation and evolution is matched with equal or greater innovation and evolution in the operating environment. This includes commercial practice. Over-legislating within the PVR regime has potential to chill that.

Rights over harvested material

12	Are there important features of the current situation regarding rights over harvested material that we have not mentioned?

The summary provided in the issues paper regarding the current state of harvested materials rights has been limited to only two paragraphs (151 & 152) – these largely rely on 'what PVR owners say' on this issue.

Those can be distilled as:

1. Some PVR owners argue that because they do not have rights over the harvested material under the PVRA, they cannot adequately control the supply or the standards of the harvested material of their protected variety; and

2. Being able to collect a royalty at different points will encourage investment in new varieties by enabling a better return on investment.

Those aspects are both important, and we support that revision and modernising of the PVR regime must take both into consideration.

The Issues Paper would benefit from inclusion of further illustration of the provisions and opportunities regarding harvested material in the context of UPOV 91. Developing the discussion using cases in crops where the harvested material is both useful for "consumption" but is also propagating material is important.

13	Do you agree with our definition of 'harvested material'? Why/why not?

An additional level of challenge and complexity is introduced where any user of the regime is required to consider intent or "normal" use when implementing their operation in compliance with the PVR regime, or in making judgements (e.g. within an enforcement context). We favour objective approaches to modernising the scope of the right instead of overly prescriptive and subjective approaches to any definition. Especially in the context of achieving a user-friendly regime that is both contemporary and relatively future-proofed.

14	Do you think there are problems with the current scope of PVR owners' rights over harvested material? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

We strongly support the extension of the rights to cover harvested material and products made from the harvested material of the protected variety and suggest that need could be met by a well-articulated "scope of the right" compared with attempting to carve in, or out, certain categories or parts of the protected plant of any genera or species in any specific harvested material or end use context.

15	Do you think there are benefits to the current scope of PVR owners' rights over harvested material? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

Click here to enter text.

Rights over similar varieties

16	Are there other important features of the current situation regarding distinctness that we have not mentioned?

See response to Question 18

17	Are there other important features of the concept of EDVs that we have not mentioned?

See response to Question 18

18	Do you think there are problems with the current approach for assessing distinctness? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

Under the PVR Act, a variety can be considered distinct even if the difference between the new variety and existing varieties is **minor**, and/or distinctness is assessed on the basis of a trait that is not of commercial importance.

The current situation is perceived as unhelpful in that it creates risk and uncertainty for users of the NZ PVR system. That risk and uncertainty flows-on to affect both confidence and the "value" proposition in the production, supply, market value chain and ultimately outcomes for users and consumers. The potential to diminish breeding investment and variety commercialisation confidence is real - the concerns are mutual for NZ-based innovation and imported innovation.

Investors in genuinely *innovative* plant breeding and development run the risk that other parties may quickly meet or supersede the innovation of their plant breeding. This has potential to:

- diminish the time available to recoup return on investment,
- reduce the breeder/developer's appetite and capacity for risk,
- slow the rate of genuine step-change, or breakthrough innovation.

For some parties this might be perceived as a desirable mechanism for "keeping prices" down, improving ease of access, and time to the next "new" product. However, the flipside is a reduction over time of investment, genuine innovation, measureable product advance, ultimately leading to reduced consumer enthusiasm for a multiplicity of "new" products without discernible benefits. Confusingly similar products can be available in the "market" affecting consumer/user confidence in product integrity.

At present, concerns for PVR owners arise primarily around the following:

- low threshold this situation creates for coat-tailing breeding and development investment;
- the inherent potential for 3rd parties to undermine breeders' and IP developers' reasonable opportunity to achieve return on investment; and
- the potential for market value cannibalisation or crowding to result.

None of the above outcomes adequately serve the breeder/developer, NZ economic growth & sustainability goals, or ultimately the consumer. If PVR legislation aides in facilitating the above then the ultimate outcome is rapid obsolescence of products. This in turn may cause '*innovation'* to fall back to mere "cosmetic" improvements to retain market share/a higher price.

Further, if the evaluation of distinctiveness continues to rely predominantly on observable morphological differences, there is the real risk it will not be fit for purpose to deal with new breeding techniques and technologies. It's conceivable that new breeding techniques and genetic technologies will allow creation of:

- morphologically distinct varieties, but lacking any measurable impact on performance
- varieties not morphologically distinct, but delivering measurable impact on performance.

Operationally, the risk to post-application evaluation of distinctiveness in NZ being based mainly on minor or "mere cosmetic" differences is somewhat mitigated by the legislation still adhering to UPOV 1978. Under that convention it is conceivable to give emphasis in decision-making to a pre-determined subset of "important" characteristics in the objective description. Where steps are implemented to shift NZ to a regime aligned with UPOV 91, it will be important to 'firm up' methods to mitigate this risk.

In a broader economic and investment context, the current situation may facilitate development of multiple varieties with small visibly discernible differences compared with existing varieties. This can be achieved without even incremental "improvement" – a difference per se may not be an improvement.

Typically, in an innovation context, disruption and therefore introduction of something *distinctly* different leads to entirely new, sometimes unforeseen, outcomes. Allowing ''me too" varieties to come easily to market through decisions based on "minor" differences seems inherently the wrong intention for an innovation based regime.

In crops with long breeding and commercial proof of concept timelines any economic advantage introduced through plant variety innovation can easily be diluted or foreshortened where "copycat" varieties become easily available. That outcome is relatively enabled by a regulatory process encouraging decisions based on "minor" differences.

Additional resources that are relevant to this issue are:

- A view developed by consensus among a representative body of international fruit and ornamental plant breeders is available from the CIOPORA (The International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties) website. Papers provided there set out the drivers and mitigations for moving to prescribed "Minimum Distances": ***https://bit.ly/2QyFolC***

- An example from another rights holder's perspective of the scope for potential commercial difficulties, economic implications, and professional reputational damage can be gleaned from communications relating to the NZ PVR matter of Cordyline Red Foundation and Cordyline Roma 06: ***https://bit.ly/2QyFolC***.

- In other sectors the threshold and demand for innovation (and differentiation on the basis of that innovation) is much higher. A pertinent range of those challenges is set out and discussed in the following paper: "Economic issues and perspectives on innovation in new resistant grapevine varieties in France". ***https://bit.ly/2EyMzUG***

19	Do you think there are benefits with the current approach for assessing distinctness? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

See response to Question 18

20	How might technological change affect the problems/benefits of the current approach for assessing distinctness that you have identified?

See response to Question 18

21	Do you have any examples of a plant breeder 'free-riding' off a variety? How often does this happen? What commercial impact did this have? Please provide evidence where possible.

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22	Do you think there are problems with not having an EDV regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

We agree that it is problematic not having an EDV regime.

We suggest that an EDV concept is established and implemented through an objective approach and a clear and self-evident definition. We support that the EDV concept should establish dependency for varieties, which are phenotypically distinct and predominantly derived from the initial variety (i.e. the protected variety).

We perceive the concepts and supporting rationale set out in the CIOPORA Position Paper "Essentially Derived Varieties" is a useful and objective basis for development of an appropriate EDV concept.

For reference: ***https://docs.wixstatic.com/ugd/53e3d5_a6fec4442fce4747a945a1303817eb75.pdf***

23	Do you think there are benefits of not having an EDV regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

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24	How might technological change affect the problems/benefits of not having an EDV regime that you have identified?

Advances in biotechnology tools increase the potential to create essentially derived varieties. By not having an EDV regime breeders of the original variety lose an opportunity to receive a fair return on their investment.

Compulsory licences

25	Are there important features of the current situation regarding compulsory licences that we have not mentioned?

Effectively, this section of the Act creates a three-year term as opposed to 20-23 years envisaged by the PVRA. In our view this is a significant factor in devaluing the current PVRA, undermining the proprietary right that is reasonably anticipated through the granting of a PVR. The flow-on effect diminishes the potential to establish and sustain value in a dynamic plant-based industry economy by eliminating "certainty".

This is further compounded by the lack of relevant legal precedent and the fact that no mitigating factors are allowed to be taken into consideration where compulsory licence applications are lodged e.g. harvested material being available to the public at reasonable prices, and the low threshold for submissions of such licence applications.

Other relevant issues for consideration include:

- A broad and undefined scope of "public" is also unhelpful.
- There are no restrictions or requirements on who might apply for a compulsory licence; any party whether NZ-based, or not, may apply.
- The party making the application does not have to demonstrate they are able, capable, have reasonable capacity, or even intend, to make use of the variety obtained under compulsory licence.
- No equitable or reasonable remedies to "nuisance" applications are contemplated by the legislation.
- There are no restrictions in the current s21 to prevent the export of the plant material obtained under a compulsory licence. Therefore there is a serious risk that if there is an application for a compulsory licence granted, the variety may pass to a competitive company, or country (export destination).
- Safeguards to effectively manage commercial competition in NZ are already provided for under the Commerce Commission; s21 of the PVRA is redundant in that context.
- When a compulsory licence application is filed, the current test is whether or not reasonable quantities of reproductive material of a reasonable quality are available for purchase by members of the public at a reasonable price. There is no guidance for the Commissioner as to how to determine what is "reasonable".
- Unlike other jurisdictions, the s21 test does not require any overall public benefit analysis to be undertaken.
- Reference in section 200 of the Issues Paper to the compulsory licence being a mechanism for breeders to access an innovative variety are better handled through the "breeders right".

Opting to retain compulsory licensing provisions in the PVR regime calls into question the relevance of PVR as a preferred IP tool. Commercialisation models proven to create and deliver value end to end through proprietary varieties would not risk reliance on PVR.

26	Do you think there are problems with the current compulsory licence regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

An independent comparative study[1] carried out in 2016 shows that the compulsory provision in the PVRA is unsophisticated and does not represent international best practice. In particular, the NZ provision is out of step internationally in a number of areas - particularly the inclusion of s 21(3).[2] No other countries have an equivalent to 21(3).

The comparative study also noted that compared with on best practice internationally, the PVRA compulsory licence provisions provide no test of *public interest,* which is the test now adopted for compulsory licence provisions in UPOV 91.

The commercial reality is that for NZ companies or companies from offshore operating in New Zealand, s 21 in its current form is a disincentive to investment. Investment in developing new plant varieties is presently at risk of being seriously undermined.

Companies that have already relied on NZ's plant varieties regulatory system now find that system has exposed them and their rights to unjustifiable risk (including the export of reproductive material) rather than enabling and supporting commercialisation models proven to create and deliver value end to end through proprietary varieties.

27	Do you think there are benefits with the current compulsory licence regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

No benefits of the current situation are perceived. The coat-tailing and disruption factor enabled by the compulsory licence provisions is perceived as a very real threat to achieving and sustaining that success in those sectors.

What's at stake? According to the Ministry for Primary Industries' December 2018 Situation and Outlook Report, pipfruit (apples and pears) exports are expected to reach 378 thousand tonnes (21 million cartons) and $780 million for the year ending December 2018.

Enforcement: infringements and offences

28	Are there important features of the current situation regarding infringements and offences that we have not mentioned?

The current PVRA lacks transparency and guidance on what recourses for action and remedies/penalties any party can expect in the case of infringements of rights.

The current limitations on penalties for infringement of a PVR contained within the current PVRA (S37) are out of step with the contemporary operating environment and as a result are not an adequate deterrent to infringement.

To give context to the scale of measurable damage infringement of a PVR can cause, Zespri is currently seeking damages of up to $30m for infringement of its IP rights to G3 and G9 kiwifruit. This case involves the defendant allegedly taking plant material from New Zealand to China that has been planted in at least 167 hectares of orchard.

29	Have you been involved in a dispute relating to the infringement of a PVR? How was it resolved? How was it resolved (e.g. was alternative dispute resolution used)? How effective was the process?

[1] A private briefing paper; made available to MBIE in 2016 through the office of Minister Joyce.

[2] Preventing consideration of the availability of reproductive material where the reproductive material in use "is subject to the condition that all or any of the produce from that material must be sold or offered to a specified person …" (e.g. the licensor).

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30	How prevalent are PVR infringements and offences?

Infringements and offences against PVR-protected varieties are perceived as frequent and common. Given the weaknesses in the enforcement provisions of the current Act the frequency of actions against those infringing against PVR-protected varieties *under the provisions of the Act*, are perceived as low.

31	Do you think there are problems with the infringement provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

Yes, there is no meaningful penalty to deter parties from infringing an owner's right. The cost to try and protect a right which is being infringed is high, the onus is on the right holder to gather evidence and bring the action, - and, there is no certainty that the infringement will be brought under control, and no certainty of any level of remedy commensurate with the investment required to bring the action, or to mitigate or compensate the potential damages caused by the infringement.

32	Do you think there are problems with the offence provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

See response to Question 31

The kaitiaki relationship and the PVR Act

33	How does the current PVR regime assist, or fail to prevent, activity that is prejudicial to the kaitiaki relationship? What are the negative impacts of that activity on the kaitiaki relationship?

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34	What are the problems that arise from the PVR grant process, or the grant of PVR over taonga species-derived varieties more generally, for kaitiaki relationships? Please provide examples.

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35	What role could a Māori advisory committee play in supporting the Commissioner of PVRs?

The four cornerstone recommendations brought forward by the Waitangi Tribunal have parallels in other NZ legislative e.g. NZ Trademark legislation. The implementation of those updated IP systems demonstrates that those recommendations can be brought into contemporary legislation and applied pragmatically.

We are strongly supportive of those Waitangi Tribunal recommendations being clearly incorporated into legislative update of the NZ plant variety IP systems.

36	How does industry currently work with kaitiaki in the development of plant varieties? Do you have any examples where the kaitiaki relationship was been considered in the development of a variety?

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'Discovered' varieties

37	Are there examples of traditional varieties derived from taonga species that have been granted PVR protection? Do you consider there is a risk of this occurring?

We are not aware of specific examples. However, we support the principle that a plant arising as "mere discovery" should not be eligible to be considered for PVR.

We support the approach set out in UPOV 91 "*With regard to "discovered and developed", a discovery might be the initial step in the process of breeding a new variety.* ***However, the term "discovered and developed" means that a mere discovery, or find, would not entitle the person to obtain a breeder's right.*** *Development of plant material into a variety is necessary for a breeder to be entitled to obtain a breeder's right. A person would not be entitled to protection of an existing variety that was discovered and propagated unchanged by that person."*

We acknowledge support of breeders reasonably accessing landrace varieties and unimproved or wild germplasm providing appropriate informed consent from the source of origin.

We also support development of additional safeguards in the NZ PVRA (if required beyond the model of UPOV 91 principles) that provide specific guidance to users of the PVR system with respect to ensuring "that taonga species-derived cultivated varieties known to Māori could not receive PVR protection, and to ensure that non-kaitiaki are not able to gain protection for varieties developed over time in a traditional context (traditional varieties)."

Offensive names

38	What characteristics might make a variety name offensive to a significant section of the community, including Māori?

Rather than consider specific examples, we confirm we support the principle that a name proposed for a variety in conjunction with a PVR application ""must conform with international usage relating to the names of cultivated plants", including relevant UPOV guidance.", and specific rules implemented regarding offensive names, for example as operates under the NZ *Trade Marks Act 2002* .

Transparency and participation in the PVR regime

39	What information do you think should/should not be accessible on the PVR register? Why?

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40	As a plant breeder, do you gather information on the origin of genetic material used in plant breeding?

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Other Treaty of Waitangi considerations

41	What else should we be thinking about in considering the Crown's Treaty of Waitangi obligations to Māori in the PVR regime? Why?

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Additional issues

42	Do you have any comments on these additional issues, or wish to raise any other issues not covered either in this section, or elsewhere in this paper?

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Other comments

43	Are there any additional comments you wish to make about the PVR Act review Issues Paper?

Clarification of the defined term for the party holding the IP rights would be welcomed.

For example – we propose replacing the “PVR owner” with “rights holder”.

On the rationale that this is a more equitable definition, and fits better with the implementation of the regime i.e. a right is attained by achieving the regulatory requirements of the scheme.