

SUBMISSION

SUBMISSION ON THE REVIEW OF PLANT VARIETY RIGHTS FEES

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To: Intellectual Property Office of New Zealand (IPONZ)

Name of Submitter: Horticulture New Zealand

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for Business, Innovation and Employment (MBIE) for the opportunity to submit on the proposed plant variety rights fees.

As HortNZ is an industry good organisation working in the interests of its members (commercial fruit and vegetable growers), we provide general comments in response to the consultation document, where relevant to the horticulture industry.

This submission is being made by Horticulture New Zealand and is supported by the following organisations:

- Citrus New Zealand
- Hawke's Bay Fruitgrowers' Association
- Katikati Fruitgrowers Association
- NZ Apples & Pears Inc
- New Zealand Asparagus Council
- New Zealand Avocado
- Strawberry Growers New Zealand Inc
- Summerfruit New Zealand
- TomatoesNZ
- Vegetables New Zealand Inc.

HortNZ's Role

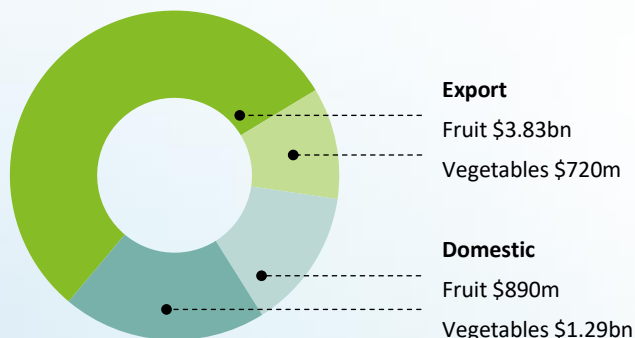
Background to HortNZ

HortNZ represents the interests of approximately 6,000 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruit, vegetables and berries and employ over 60,000 workers.

There is approximately 80,000 hectares of land in New Zealand producing fruit, vegetables and berries for domestic consumers and supplying our trading partners with high quality food.

It is not just the economic benefits associated with horticultural production that are important. The rural economy supports local communities and primary production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



Industry value \$6.73bn

Total exports \$4.55bn

Total domestic \$2.18bn



Executive Summary

Horticulture industry growth in New Zealand is enabled by increased production of premium varieties for export, and through exploration of opportunities to grow new fresh fruit and vegetables in the future. Grower access to new varieties and genetics will help to facilitate this continued growth.

While the body of the submission explains our position in full, the key points are summarised below:

- The Fit for a Better World strategic roadmap has identified horticultural development as an important transformational opportunity. Progress in this area will likely be hindered if PVR fees are set at a rate that stifles breeding efforts.
- New Zealand Inc. benefits from an internationally credible PVR regime.
- HortNZ believes that it is reasonable for application fees to be charged for services relating to a specific application, but not for maintenance of the PVR office, which we see as a core function. As such, the scheme should remain partially funded by the crown.
- The PVR fees need to be set at a level that does not deter domestic innovation and access to varieties developed offshore if the New Zealand horticulture sector is to keep up with domestic production challenges and international competitors.
- A reasonable transition period is required for implementation of any new fee structure.
- The horticulture sector welcomes any opportunity to continue to engage with MBIE and to discuss this submission.



Submission

1. Strategic direction of the sector

The New Zealand government released a Fit for a Better World in 2020, which is a strategic roadmap for accelerating the food and fibre sectors economic potential (Ministry for Primary Industries 2020). One of the roadmap themes is *Productivity: adding \$44 billion in export earnings over the next decade (2020 to 2030) through a focus on creating value.*

The horticulture sector is a key player in the prosperity theme, with horticulture development identified as an important transformational opportunity:

“The horticulture sector has many high-growth performers, including kiwifruit, apples and wine – and there are others that could develop to sustainably provide similar levels of return. To enable this we would accelerate access to new high-value plant varieties and cultivars and support the commercialisation of new products. \$45.3 million has been invested through Budget 2020 to ensure resilience and management of biosecurity, market and environmental risks, as well as improvements to biosecurity facilities for importing new plant materials. Work will continue on regulatory settings to better manage risk” (Ministry for Primary Industries 2020, page 10).

The emissions Reduction Plan focus area four is transition to lower-emissions land use and systems (The Ministry for the Environment 2022). The Plan suggests that over the course of the first emissions budget, the Government will continue to fund initiatives that support a more sustainable, productive and inclusive primary sector.

Diversification to horticulture presents an opportunity to reduce emissions while increasing food production, as identified by the Climate Change Commission. ‘Ināia tonu nei: a low emissions future for Aotearoa’ includes the assumption (in the Demonstration Path) that 2,000 ha of land will be converted to horticulture per year from 2025 and notes that the Commission expect this could increase if *“barriers – such as water availability, labour, supply chains and path to market – are addressed”* (Climate Change Commission 2021). Opening up more opportunities for conversion to lower emissions production systems and land uses, including horticulture, is listed as a critical outcome (Climate Change Commission 2021).

New Plant varieties are critical to New Zealand horticulture. They enable diversification of farming systems by increasing the production of new varieties of fruit and vegetables to grow our export markets and to support the develop of varieties that will be resilient to a changing climate.

In order to meet the strategic objectives of government and industry, the sector needs ready access to safe and novel plant varieties now and into the future.

2. Importance of the PVR system for New Zealand horticulture

New Zealand fruit and vegetable growers are the one-step-removed end users of the Plant Variety Rights (PVR) system. Any increase in costs incurred by applicants is likely to be passed on to growers. In some instances, businesses that grow fruit and/or vegetables also develop new varieties and apply for PVRs. Any increase in costs that prevents people accessing the PVR system will mean New Zealand growers have reduced access to new varieties. This is detrimental in three ways:

- a) Domestic consumers won't be offered locally grown new varieties that may be superior to existing varieties in a range of ways (nutritional, flavour, storage longevity etc).
- b) Growers may not have access to varieties that are more resistant to pests, diseases and changes in climate, reducing our food production resilience.
- c) New Zealand growers who export their produce may struggle to compete with global competitors who have access to new and desirable varieties that we do not.

In order to keep up internationally New Zealand must have access to new and innovative varieties. We need to ensure that domestic breeders have access to the PVR system to encourage local innovation, as well as ensuring that offshore breeders will provide their varieties for growing in New Zealand.

3. Comments on the proposed fees

HortNZ recognise that much has changed since the fees were last set in 2002 – two decades have passed. HortNZ also understands that the PVR regime needs to remain internationally credible, and that a certain level of funding is required to achieve this. How that funding is apportioned is important.

3.1.1. CROWN-INDUSTRY SPLIT

An accessible PVR system is not only critical to the horticulture sector, but to all New Zealanders as acknowledged in the consultation documents “*MBIE understands that an accessible PVR regime contributes to a level of wider public good*” (IPONZ 2022 page 10). The public benefit includes the horticulture sectors ability to provide domestically grown nutritious and healthy food for New Zealanders, and the ability for the public to grow new varieties of fruit, vegetables and ornamentals in their home gardens.

HortNZ understand that the fees set this year will be reviewed after a four year monitoring and evaluation period to understand volume of applications and the economic benefits. Due to the significant public good/benefit, HortNZ believe that the PVR system should not become a fully cost recovered scheme in future. Crown investment in the PVR system is investment that benefits the nation.

Whilst HortNZ agrees that applicants should be charged fees for the time and services they receive relating to their application, they should not be expected to cover the costs of running the PVR office such as overheads (a significant cost). Maintaining the PVR office should be a crown funded function. In addition, as the Plant Variety Rights Act 1987 is administered by the Ministry of Business, Innovation, and Employment, crown funding of the PVR office would ensure impartiality.

HortNZ believes that the PVR office needs to be able to operate regardless of the number of applications received. Users of the PVR system should not be subject to fluctuations in fees depending on the volume of other applicants using the system at any one time. The discussion document indicates that the number of applications has risen and fallen over the past two decades and is not consistent. This illustrates the difficulty in forecasting potential future use of the system and using this to attempt to set appropriate fees. Decoupling funding of the PVR office from funding the processing of applications should help to manage this challenge.

3.1.2. OVERALL APPROACH

HortNZ agree that cross-subsidisation between different users of the intellectual property system is undesirable, as outlined by the Treasury cost recovery guidelines (The Treasury, 2017). The horticulture sector would not like to be subsidising applications in other areas, but nor does the sector expect other applicants to subsidise the PVR system.

HortNZ is supportive of implementing a single application fee where analysis has indicated that the work required is near equivalent across all of the different types of application. Whilst we agree with a single application fee, HortNZ do not believe it should cover fixed costs as outlined above.

HortNZ does not have a view on whether the annual renewal fee should be a flat fee for the life of the PVR or a tiered fee that changes over time. However, we argue that regardless of the approach taken, the total renewal fees over the life of the PVR should be the same. The renewal service provided does not differ based on the fee structure. As proposed, the tiered approach would result in significantly total higher renewal fees which appear unjustified. The proposed renewal fees seem excessive compared to the expected costs of processing a renewal.

3.1.3. POTENTIAL IMPLICATIONS OF COST INCREASES

HortNZ can foresee a number of potential implications if fees for applicants are significantly increased. These include:

- A cost prohibitive barrier that prevents innovation, particularly for smaller or emerging sectors, would be undesirable. Those sectors without significant capital will not become bigger sectors (and therefore contributing more to the New Zealand economy) if innovation is stifled and they get left behind. Those who

were emerging industries in the previous two decades will have had fewer cost barriers compared to those who are emerging industries now and entering their growth curve.

- It is likely that the increase in costs for seeking a plant variety right will be passed on to growers, many of whom already have tight profit margins. If the cost of nursery stock increases as a result of higher PVR fees, new varieties may be out of reach for some growers.
- An increase in fees may be a deterrent for offshore breeders. It is important that they see the New Zealand market as a viable one if we are to continue to have overseas varieties available domestically.

3.1.4. TRANSITION PERIODS

HortNZ believes that a reasonable transition period is needed to allow varieties that have been under development for many years, and carefully budgeted for, to come through the system based on the existing fee structure.

References

Climate Change Commission (2021) Ināia tonu nei: a low emissions future for Aotearoa. Accessed online: <https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/inaia-tonu-nei-a-low-emissions-future-for-aotearoa/>

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