

# Submission template

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## Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues

### Instructions

This is the template for those wanting to submit by Word document a response to the *Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues* discussion document.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised by 5pm on Monday, 21 September 2020. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your responses to the discussion document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission, please:
  - a. Delete this first page of instructions.
  - b. Include your e-mail address and telephone number in the e-mail accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
  - c. If your submission contains any confidential information:
    - i. Please state this in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
    - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

5. Send your submission as a Microsoft Word document to [PVRActReview@mbie.govt.nz](mailto:PVRActReview@mbie.govt.nz)

Please direct any questions that you have in relation to the submissions process to [PVRActReview@mbie.govt.nz](mailto:PVRActReview@mbie.govt.nz).

# Submission template

## Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues

### Your name and organisation

██████████	████████████████████
██████████	████████████████████
<b>Organisation/Iwi</b>	Eurogrow Potatoes

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

### Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because...  
[Insert text]

## Responses to questions in the discussion document

### Treaty of Waitangi issues

1	<b>Definitions</b> Do you agree with our proposed definition of 'indigenous plant species'? If not, do you have an alternative to propose?
	<i>[No response]</i>
2	<b>Definitions</b> Do you agree that 'non-indigenous species of significance' be listed in regulations and that the list reflect the table above? If not, why not? Are there species that should be on that list that are not?
	<i>[No response]</i>
3	<b>Disclosure obligations and confidentiality</b> Are there any confidentiality considerations in relation to the additional information required under the new disclosure obligations? If so, how should this information be treated?
	<i>[No response]</i>
4	<b>Māori Advisory Committee - appointments</b> Do you agree with the proposal to change the name of the Committee to the 'Māori PVR Committee'? If not, do you have any other recommendations?
	<i>[No response]</i>
5	<b>Māori Advisory Committee - appointments</b> Do you agree with our proposed amendments to the appointment process? If not, why not? Do you have any alternative amendments to propose?
	<i>[No response]</i>
6	<b>Māori Advisory Committee - appointments</b> Do you agree with our proposed amendments to the criteria for appointment? If not, why not? Do you have any alternative amendments to propose?
	<i>[No response]</i>
7	<b>Māori Advisory Committee – decision making processes</b> Do you agree with the proposed list of considerations the Committee is required to take into consideration when determining whether an application? If not, why not?
	<i>[No response]</i>

8	<p><b>Māori Advisory Committee – decision making processes</b></p> <p>Are there any additional factors that should be added to the list of relevant considerations?</p>
	<p><i>[No response]</i></p>
9	<p><b>Māori Advisory Committee – decision making processes</b></p> <p>Do you agree that the Committee should take an investigative approach to decision-making (Option 1)? If not, why not?</p>
	<p><i>[No response]</i></p>
10	<p><b>Māori Advisory Committee – decision making processes</b></p> <p>Do you agree that the Committee should be required to reach a unanimous decision and only in the event that, despite all efforts, a decision cannot be reached can the Chair of the Committee allow a decision to be made by either a consensus or a vote (Option 3)? If not, why not?</p>
	<p><i>[No response]</i></p>
11	<p><b>Māori Advisory Committee – decision making processes</b></p> <p>Do you agree the Committee should only facilitate discussions between kaitiaki and breeders on the issue of mitigations (Option 2)? If not, why not? Is there an alternative you wish to propose?</p>
	<p><i>[No response]</i></p>
12	<p><b>Post-determination considerations</b></p> <p>Do you agree with our preferred option for a first stage review of determinations of the Committee (Option 3)? If not, why not? Is there an alternative you wish to propose?</p>
	<p><i>[No response]</i></p>
13	<p><b>Post-determination considerations</b></p> <p>Do you have any thoughts about either the timeframe for initiating this first stage review or the proposal of adding a person to the Committee when they are reviewing a determination, and who might be appropriate?</p>
	<p><i>[No response]</i></p>
14	<p><b>Post-determination considerations</b></p> <p>Do you agree with our proposal for imposing a time limit in relation to a review of a determination of the Committee? If not, why not?</p>
	<p><i>[No response]</i></p>
15	<p><b>Post-determination considerations</b></p> <p>What do you think is an appropriate timeframe for an aggrieved party to notify Commissioner and the Committee of their intention to seek judicial review?</p>

	<i>[No response]</i>
16	<b>Post-determination considerations</b>
	Do you agree with our preferred option and process for objections after grant in relation to the kaitiaki condition (Option 2)? If not, why not? Is there an alternative you wish to propose?
	<i>[No response]</i>

## Operational issues

17	<b>Information available to the public</b>
	What are your views of the problem identified by MBIE?
	<i>[I support full public disclosure of information]</i>
18	<b>Information available to the public</b>
	What do you think about the options outlined by MBIE? What would be your preferred option and why? Are there other options that could be adopted?
	<i>[Support Option 1]</i>
19	<b>Information available to the public</b>
	If you support Option 3 what timeframe would you suggest for the information to be made public and why?
	<i>[Insert response here]</i>
20	<b>Supply of plant material in relation to a specific application</b>
	Do you consider that these provisions regarding the supply of plant material for a specific application are causing any problems? If so, why?
	<i>[This area is difficult to comply with in the potato industry as all imported material must be cleared in quarantine. Currently there are only two quarantine options, SASA in Scotland and MPI in Auckland. Both have considerable back logs and wait times to get material into and through the facilities. SASA currently is accepting material for testing from July 2021 and MPI is now 2022. Material takes about 9 months to clear quarantine and get to us. We then have to establish in tissue culture and start propagation with progeny suitable for PVR assessment approximately 2 years after arrival here. We ask that the PVR Act allows consideration of this delay in providing plant material for testing on a case by case basis, allowing extensions on this basis. As PVR applications currently must be made in NZ within four years of first commercial sale overseas the window is mostly impossible to comply with. Also, we have been informed by SASA that Covid 19 has further delayed current clearance of material.]</i>
21	<b>Provision of propagating material for comparison and reference purposes</b>
	What are your views of the problem identified by MBIE?

	<i>[We are okay with this]</i>
22	<p><b>Provision of propagating material for comparison and reference purposes</b></p> <p>Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?</p>
	<i>[We are okay with this]</i>
23	<p><b>Provision of propagating material for comparison and reference purposes</b></p> <p>Do you agree that if material is not provided lapse or cancellation could occur? Can you think of other ways to enforce this requirement? What is the appropriate timeframe?</p>
	<i>[Disagree, if there are extenuating circumstances causing supply then some flexibility should exist ]</i>
24	<p><b>Should growing trials be optional or compulsory?</b></p> <p>What are your views of the problem identified by MBIE?</p>
	<i>[Okay with status-quo]</i>
25	<p><b>Should growing trials be optional or compulsory?</b></p> <p>Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?</p>
	<i>[Support preferred option seems to provide some flexibility and discretion]</i>
26	<p><b>Who should conduct growing trials?</b></p> <p>What are your views of the problem identified by MBIE?</p>
	<i>[Should look at cost efficiency matched with technical competence. Consideration should be given to automatic acceptance for overseas varieties that have already passed UPOV trial requirements. PVR office should give this some credence. Seems like multi country duplication of trials is not at all efficient use of resources? ]</i>
27	<p><b>Who should conduct growing trials?</b></p> <p>Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?</p>
	<i>[Okay with preferred option other than overseas clearance being acceptable]</i>
28	<p><b>Trial and examination fees</b></p> <p>What are your views of the problem identified by MBIE?</p>
	<i>[Very expensive part of PVR process for us, look at accepting overseas UPOV approval as all that is required, drop trials completely]</i>
29	<p><b>Trial and examination fees</b></p> <p>Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?</p>

*[Probably best of options offered but again consider overseas trials and tests as valid]*

**Trial and examination fees**

30

What would be the appropriate timeframe for payment of trial and examination fees in options 2 and 3?

*[Option 3 is fine]*

**Hearings and appeals relating to decisions of the Commissioner of PVRs**

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Do you agree that the Act should include provision for a right to be heard along the lines of that in section 208 of the *Patents Act 2013*. If not, why?

*[Some means of appeal must be provided for]*

**Hearings and appeals relating to decisions of the Commissioner of PVRs**

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What is your view on where appeals to decisions of the Commissioner should be considered (i.e. District Court or High Court)? Why?

*[No real issues were held]*

## Other comments

*[Insert response here]*