



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Review of the Plant Variety Rights Act 1987: Release of Regulations Consultation Document	Date to be published	13 August 2021

List of documents that have been proactively released

Date	Title	Author
July 2021	Review of the Plant Variety Rights Act 1987: Release of Regulations Consultation Document	Office of the Minister of Commerce and Consumer Affairs
7 July 2021	DEV-21-MIN-0151 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair: Cabinet Economic Development Committee

REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987: RELEASE OF REGULATIONS CONSULTATION DOCUMENT

Proposal

- 1 To seek approval to release the consultation document *Review of the Plant Variety Rights Act 1987: Proposed Regulations* (see Appendix 1).

Relation to government priorities

- 2 The proposals in this paper are part of the wider review of the Plant Variety Rights Act 1987 (**the PVR Act**). The review implements the Crown's obligations under the Treaty of Waitangi and obligations in relation to New Zealand's plant variety rights regime under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Background

- 3 The PVR Act provides for the grant of plant variety rights (**PVRs**), which are a form of intellectual property right granted to plant breeders over their new plant varieties. PVRs are granted by the Commissioner of Plant Variety Rights (**the Commissioner**) after an examination process.
- 4 The grant of PVRs is intended to provide an incentive for local plant breeders to develop and disseminate their new plant varieties and for foreign plant breeders to permit their new varieties to be released in New Zealand. The ability to make use of new and improved plant varieties is crucial to maintaining the competitiveness of plant-based sectors such as agriculture and horticulture.
- 5 The PVR regime established by the PVR Act is administered by the Intellectual Property Office of New Zealand (**IPONZ**), a business unit of the Ministry of Business, Innovation and Employment (**MBIE**). IPONZ also administers legislation in relation to other registered intellectual property rights, including the Patents Act 2013, the Trade Marks Act 2002, and the Designs Act 1953.
- 6 In November 2019 and March 2021 Cabinet made policy decisions to amend the PVR Act (see DEV-19-MIN-0301 and CAB-21-MIN-0063.02). A new PVR Bill to replace the PVR Act was introduced to Parliament on 11 May 2021. It received its first reading on 19 May 2021 and was referred to the Economic Development, Science and Innovation Committee.

New PVR Regulations needed

- 7 The regulations associated with the current PVR Act, the Plant Variety Rights Regulations 1988 (**the PVR regulations**) have remained largely unchanged since 1988. They are now out of date and no longer fit for purpose.
- 8 The PVR Bill, when enacted and in force, will need to be supported by new regulations. These regulations will mainly deal with procedural and administrative issues relating to the implementation of the PVR Bill (as opposed to, for example, the criteria for granting a PVR, or the nature of the rights granted by a PVR).
- 9 The consultation document attached as Appendix 1 seeks public submissions on the regulations required to implement the new PVR regime.

PVR Fees

- 10 The fees associated with the PVR regime are set out in the Plant Variety Rights (Fees) Order 1999 (**the Fees Order**). IPONZ has recently commenced a review of these fees.
- 11 Officials are undertaking initial targeted consultation with stakeholders rather than publicly consulting on fees through the regulations discussion document at this time. This will enable a meaningful discussion with PVR stakeholders who are well placed to understand and comment on the technical aspects of the regime. Targeted consultation will allow IPONZ to test assumptions and marshal the necessary evidence to guide the development of future fee options.
- 12 Once feedback from the initial targeted consultation has been received and analysed, officials will develop options and an accompanying discussion document for public consultation on PVR fees.
- 13 I will be returning to Cabinet to seek approval to release a discussion document on revised PVR fees in October 2021.

Key features of the PVR regulations consultation document

- 14 The PVR regulations consultation document considers the regulations that will be needed to support the new PVR regime. The current PVR regulations are not sufficient for this purpose. For example, they do not take account of the fact that IPONZ now carries out many of its functions online.
- 15 There are also provisions where the current PVR Act refers to something prescribed in the regulations, but where the regulations are silent. In addition, the current PVR Regulations are silent on many procedural aspects relating to the process for making applications for PVRs, examining and granting the applications, and dealing with issues that arise after grant. They effectively leave many of these aspects to the discretion of the Commissioner of Plant Variety Rights.

- 16 In light of this, MBIE considers that a complete review of the PVR regulations is required, rather than simply amending the current regulations. This is the approach taken in the consultation document.
- 17 The PVR regime set out in the new PVR Bill has many similarities with the patents regime established under the Patents Act 2013. Many of the procedures required for the new regime are similar to those set out in the Patents Regulations 2014, although there are some procedures unique to the PVR regime.
- 18 Given this similarity, the consultation document proposes that where procedures under the PVR Act are the same as, or similar to, procedures in the Patents Regulations, these procedures be adapted as appropriate for the new PVR regulations.
- 19 In addition, if existing IPONZ processes, including information technology processes, can be adapted rather than developing new ones, this will minimise the cost to IPONZ of administering the PVR regime. As the costs of running the PVR regime are recovered from applicants and PVR owners, this will keep PVR fees lower than might otherwise be the case.
- 20 The regulations consultation document also seeks feedback on the proposed list of 'non-indigenous species of significance'. These species are not indigenous to New Zealand but are still considered taonga as they were brought here on the migrating waka. The PVR Bill provides that this list be set in regulations.

Next Steps

- 21 Subject to Cabinet's agreement, the consultation document will be out for public consultation for a period of six weeks from 14 July 2021. I will return to Cabinet seeking policy decisions on the new regulations later in the year.
- 22 The regulations will then be drafted and ready to come into force with the majority of the provisions of the new PVR Bill on 1 July 2022.

Financial Implications

- 23 There are no financial implications from the proposals in this paper. I will be returning to Cabinet seeking approval to release a discussion document on revised PVR fees in October 2021, and then to seek agreement to a revised schedule of PVR fees in mid-2022, in time for the fees to come into force on 1 July 2022.

Legislative Implications

- 24 There are no legislative implications from the proposals in this paper, though I do anticipate legislative change once policy decisions on the proposed PVR regulations and fees are made by Cabinet.

Impact Analysis

Regulatory Impact Statement

- 25 The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirmed that the discussion document meets the requirements and can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

Climate Implications of Policy Assessment

- 26 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal at this stage as there is no direct impact on emissions. The CIPA team will work with the Ministry of Business, Innovation and Employment to assess the emissions impacts of policy proposals as appropriate as they are advanced.

Population Implications

- 27 No significant population implications arise from the proposals in this paper.

Human Rights

- 28 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 29 MBIE has consulted the following agencies: the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Office of Māori Crown Relations – Te Arawhiti, the Ministry of Justice, the Ministry for Primary Industries, the Department of Conservation, the Ministry for the Environment, the Crown Law Office, Local Government New Zealand, the Treasury and the Department of Prime Minister and Cabinet.

Communications

- 30 MBIE will publish the consultation document on its website. MBIE will advise interested parties by email when the consultation document is available.

Proactive Release

- 31 I propose that this Cabinet paper be proactively released on the MBIE website within 30 business days, with any redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **agree** that the attached consultation document *Review of the Plant Variety Rights Act 1987: Proposed Regulations* be released for public consultation;
- 2 **authorise** the Minister of Commerce and Consumer Affairs to make editorial and minor content changes to the consultation document prior to its public release;
- 3 **note** that the consultation document will be released for public consultation from 14 July 2021 and will be open for submissions for a period of six weeks;
- 4 **note** that targeted consultation with stakeholders on preliminary issues relating to the PVR fees review will commence by 14 July;
- 5 **note** that the Minister of Commerce and Consumer Affairs intends to return to Cabinet later in 2021, with (i) a paper seeking policy decisions on proposed new regulations to replace the Plant Variety Rights Regulations 1988; and (ii) a paper seeking approval to release a discussion document on revised PVR fees.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

IN CONFIDENCE

**APPENDIX 1: REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987 -
PROPOSED REGULATIONS (CONSULTATION DOCUMENT)**

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