



COVERSHEET

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| Minister | Hon Dr David Clark | Portfolio | Commerce and Consumer Affairs |
| Title of Cabinet paper | Policy decisions on Plant Variety Rights Regulations | Date to be published | 17 December 2021 |

| List of documents that have been proactively released | | |
|--|--|---|
| Date | Title | Author |
| November 2021 | Policy decisions on Plant Variety Rights Regulations | Office of the Minister of Commerce and Consumer Affairs |
| 24 November 2021 | DEV-21-MIN-0246 | Cabinet Office – Cabinet Economic Development Committee |
| November 2021 | Regulatory Impact Statement: Regulations to accompany new Plant Variety Rights Act | MBIE |

Information redacted

YES / NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

Policy decisions on Plant Variety Rights Regulations

Proposal

- 1 This paper seeks policy decisions for new Plant Variety Rights (**PVR**) regulations.

Relation to government priorities

- 2 The proposals in this paper form part of the wider review of the PVR regime. The review implements the Crown's obligations under the Treaty of Waitangi/ Te Tiriti o Waitangi (**the Treaty**) and international obligations in relation to the PVR regime under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**the CPTPP**).
- 3 Advancement of this review will help lay foundations for a better future for plant breeders and growers, as well as help strengthen the Māori-Crown relationship by assisting the Crown to meet its Treaty obligations in the PVR regime.

Executive Summary

- 4 The Plant Variety Rights Bill (**the PVR Bill**) was introduced to Parliament on 11 May 2021 as part of the wider review of the PVR regime. There are a number of administrative and procedural provisions in the PVR Bill that need to be implemented through new regulations. This Cabinet paper seeks approval for the policy decisions for these regulations.
- 5 The Ministry of Business, Innovation and Employment (**MBIE**) consulted on a range of options proposed for the new regulations in the public consultation paper, *Review of the Plant Variety Rights Act 1987: Proposed Regulations* (**the Consultation Paper**). The key proposal was that the new PVR regulations would be based, where it makes sense to do so, on the corresponding provisions from the Patents Regulations 2014 (**the Patents Regulations**). There are many elements that are common to both regimes and it is cost effective to utilise existing resources administered by the Intellectual Property Office of New Zealand (**IPONZ**).
- 6 Submitters representing plant breeders were generally supportive of the proposals apart from one issue related to the timeframe for supplying propagating material. I am persuaded by the concerns raised by submitters and am recommending a change to this proposal from the Consultation Paper.
- 7 Submitters representing Māori focussed predominantly on the proposed list of non-indigenous plant species of significance, raising the concern that this

closed list may not cover all non-indigenous taonga species. This needs to be balanced with providing sufficient certainty for breeders. I am recommending that the list be adopted as set out in the discussion document. If subsequent work (for example, as part of Te Pae Tawhiti – the whole of government response to Wai 262) identifies a more comprehensive definition of taonga species, then the definitions in the PVR legislation can be revisited.

- 8 The proposed new regulations I am putting forward are detailed in Annex 1 of this Cabinet paper. MBIE's Regulatory Impact Statement is attached as Annex 2.

Background

- 9 The Plant Variety Rights Act 1987 (the **PVR Act**) provides for the grant of fixed-term intellectual property rights, known as PVRs, to plant breeders over new plant varieties they have developed. The Commissioner of Plant Variety Rights (the **Commissioner**) grants these rights following an examination process. The PVR regime is administered by IPONZ, a business unit of MBIE.
- 10 The purpose of the PVR regime is to incentivise domestic plant breeders to develop new varieties of plants and international plant breeders to import their varieties into New Zealand.
- 11 A review of the PVR regime was initiated in February 2017 [CAB-16-MIN-0423 refers]. In addition to modernising a regime that is now over 30 years old, the purpose of the review is to meet the Crown's obligations under the Treaty and the CPTPP.
- 12 A new PVR Bill to replace the current PVR Act was introduced to Parliament on 11 May 2021 and passed its first reading on 19 May 2021. The Bill was referred to the Economic Development, Science and Innovation Committee (**EDSI Committee**), with a report back date of 19 November 2021. A total of 38 written submissions were received on the Bill from groups representing breeders, growers, the legal profession and Māori.
- 13 MBIE presented the Departmental Report on the PVR Bill to the EDSI Committee on 30 September 2021.
- 14 CPTPP requires the new regime to be in place by 30 December 2021. However, delays caused by the recent COVID-19 outbreak mean I now expect the new regime to be in place by mid-2022. This delay means that New Zealand will be in breach of the CPTPP obligation referred to above from 30 December 2021 until the date that the PVR regime is implemented. The delay could expose New Zealand to criticism from other CPTPP Parties, but this risk is considered manageable in light of the impact of COVID-19. Given that New Zealand negotiated a three-year transition period to implement a new PVR regime and that New Zealand will breach that obligation, it will be important to ensure that there is no further slippage in the timeframes for implementing the new PVR regime.

Analysis

New regulations are needed to implement the PVR Bill

- 15 There are a number of provisions in the PVR Bill that need to be implemented through regulations. These include, for example, the administrative requirements for PVR applications, time limits for providing information and propagating material to examine a PVR application, setting the conditions for growing trials and the procedures to be followed in hearings before the Commissioner.
- 16 The current regulations, the Plant Variety Rights Regulations 1988, are out of date and not fit for purpose. In particular, they are silent on a number of procedural aspects relating to the process for making applications for PVRs, leaving this to the discretion of the Commissioner. This does not provide sufficient certainty for PVR applicants and third parties (such as PVR holders and agents) on their rights and obligations under the legislation.

Proposed PVR regulations

- 17 The Consultation Paper was released by MBIE on 14 July 2021 [CAB-21-MIN-0151 refers]. The purpose was to seek feedback on proposed regulations to support the PVR regime and implement provisions of the PVR Bill.
- 18 A total of 17 submissions on the Consultation Paper were received from breeders, growers, Māori representatives and other stakeholders. Submitters generally agreed with the approach and preferred options set out in the Consultation Paper. A high level overview of the key elements of the proposed regulations submitters commented on is below.
- 19 An outline of the new PVR regulations I am recommending be adopted, following consideration of the submissions, is set out in Annex 1 to this Cabinet paper.

The new PVR Regulations will be based on the Patents Regulations

- 20 The Consultation Paper proposed that the new PVR regulations be based, where it makes sense to do so, on the corresponding provisions in the Patents Regulations. There are many elements that are common to both regimes. These include proceedings before the Commissioner (such as hearings, opposition and revocation procedures) and administrative procedures (such as those relating to PVR applications).
- 21 Utilising the same approach to administrative requirements and proceedings as another registration regime already administered by IPONZ is an efficient use of IPONZ resources. This avoids the need to establish separate systems and the additional cost of developing and maintaining new staff training material.
- 22 This approach was put forward as the preferred option in the Consultation Paper. It was pointed out that the alternative of drafting an entirely new set of regulations from scratch would not meet the objective of allowing the

Commissioner to implement the PVR Bill in an efficient and cost-effective manner.

- 23 Almost all of the submitters agreed that the proposed PVR regulations should be based on the Patents Regulations. A number of submitters pointed out that their agreement is on the basis that appropriate amendments are made to deal with the specific nature of PVRs. Only one submitter did not support this proposal and considered that the PVR regime is sufficiently distinct from patents that the corresponding regulations should be drafted from scratch.
- 24 The regulations I am proposing in Annex 1 are therefore based, where it makes sense to do so, on the corresponding provisions in the Patents Regulations.

PVR specific regulations

- 25 There are certain provisions in the PVR Bill where the processes differ significantly from the Patents Regulations or where there are no corresponding provisions in the patents regime. For these provisions it is not possible to adapt the existing Patents Regulations as outlined above and tailored regulations will therefore be required. These relate mainly to the examination of PVR applications.
- 26 The Consultation Paper sought feedback on a range of options that relate to denominations, the examination process, compulsory licenses, objections before grant, timeframes for providing information and propagating material, and the list of non-indigenous plant species of significance.
- 27 Details of the proposed regulations in relation to each of these areas are also found in Annex 1.

(a) Denominations

- 28 A denomination is the unique name that is given to the plant variety and which is used to identify the variety if a PVR is granted. It is required to meet certain criteria which are set out in the Bill.
- 29 These regulations will prescribe the time periods by which the applicant must supply a proposed denomination in the following two circumstances:
- 29.1 *In support of an application.* The PVR Bill, as introduced, requires a denomination be provided at the same time the application is made. Officials recommended to the EDSI Committee that this be amended so that the denomination is provided within a prescribed period following the application for a PVR. The Committee accepted this recommendation and the Bill was due to be reported back by 19 November.
- 29.2 *As a replacement denomination.* If the Commissioner or a third party has objected to the denomination originally supplied and a replacement denomination must be submitted.

(b) Examination

- 30 Once a PVR application is made, it will be examined to determine whether or not the variety described in the application meets the criteria of a PVR. The examination process differs significantly from that in the patents regime because the PVR regime is dealing with living organisms and therefore growing trials are required.
- 31 These regulations will prescribe the time limits for providing information and propagating material for examination and paying trial and examination fees. These will also empower the Commissioner to set the conditions of a growing trial and to decide which overseas trial report to rely on where there is more than one available.

(c) Compulsory licenses

- 32 Compulsory licenses are a mechanism used within the PVR regime to ensure protected varieties are made available to the public at reasonable prices and on reasonable terms. If an application for a compulsory license is accepted, the Commissioner grants a licence to reproduce and sell propagating material of the protected variety to the licensee without the permission of the PVR owner.
- 33 These regulations will prescribe the procedural steps, including the time limits to be followed, when a compulsory license application is filed. These are proposed in response to the uncertainty caused by the lack of procedural steps in the current PVR Act and Regulations.

(d) Objections before grant

- 34 The PVR regime provides that any person can make objections in relation to a PVR application. However, the current regulations do not set out any procedural requirements in relation to such an objection. This can unreasonably delay the grant of a PVR if the objector is slow to provide evidence or other documentation in support of their objection.
- 35 These regulations will prescribe the procedure to be followed including what is required from objectors and in applications, and the time frames involved before the Commissioner offers the applicant and objector the opportunity to be heard.

(e) Requests for propagating material and information from PVR holders

- 36 The PVR Bill provides that the Commissioner may request information and propagating material from PVR holders for the purpose of performing any functions or duties under the legislation. The Consultation Paper proposed 12 months as the maximum time period for complying with a request under clause 69 of the Bill. Extensions were seen as unnecessary given that clause 69(4) prevents cancellation if there is a 'reasonable excuse' for not meeting timeframes.

37 Submitters raised a number of concerns with this proposal, particularly for situations in which propagating material needs to be sourced from overseas. I agree with these concerns, and instead propose time limits for providing:

37.1 information be up to 12 months, extendible once by 12 months, if the Commissioner considers this reasonable

37.2 propagating material be 24 months, extendible (as many times as are necessary) by 24 months, if the Commissioner considers this reasonable.

38 These timeframes align with the timeframes for provision of information and propagating material in relation to examining an application.

(f) Non-indigenous plant species of significance

39 The PVR Bill contains provisions that give effect to the Crown's Treaty obligations (the **Treaty Provisions**). The Treaty Provisions require that applications for plant varieties that may be taonga are first considered by a Māori Plant Varieties Committee. This is achieved by referring applications that involve either indigenous plant species or any of a small number of 'non-indigenous plant species of significance' to that Committee first. The Bill requires the small number of species in this second group to be set out in regulations.

40 While the great majority of taonga species are indigenous, it was submitted early on in the review that species that came to Aotearoa New Zealand on the migrating waka are also considered taonga. The term 'non-indigenous plant species of significance' is intended to cover these species. The Consultation Paper proposed a list of ten plant species to be included in the regulations based on research carried out by a Māori academic, Karaitiana Taiuru. I note that, of these ten, only one – kumara – currently has active PVRs in relation to it in New Zealand. This suggests that commercial plant breeding is not common (if it takes place at all) in relation to the other species listed.

41 As well as written submissions on this issue, MBIE held a virtual hui on 25 August 2021 with Māori, plant breeders and others to discuss the list.

42 Submitters representing Māori predominantly focussed on this issue in the Consultation Paper. While there was general support for the idea that species that came to New Zealand on the migrating waka should be considered taonga, submitters differed on whether new species should be able to be added to this list and how broad the scope of potential additions should be.

43 Two of the three Māori submitters considered that it should be possible to amend the list from time to time. The third commented that more consultation was required to ensure that the list identified all non-indigenous taonga species. Submitters representing plant breeders were mainly concerned with certainty, so that they can effectively plan their business activities.

- 44 Māori submitters also raised concerns that the focus on species that came on the migrating waka may not capture all non-indigenous taonga species. Cannabis and the Māori potato were suggested at the hui, by way of examples. The former was not universally agreed to be taonga among Māori attendees at the hui. The latter presents its own challenges too for the PVR regime as it is not a separate potato species, though I also note that the great majority of potatoes in New Zealand are bred overseas.
- 45 It has been a challenge for this review to address wider issues of importance to Māori such as defining 'taonga species'. The scope of the PVR regime is too narrow for this question to be comprehensively addressed, and it is better considered as part of Te Pae Tawhiti, the response to the Wai 262 report. It is also important to provide as much certainty to plant breeders wishing to seek a PVR as possible. Having a list that could be amended quite broadly in the future creates uncertainty for breeders and risks disincentivising innovation.
- 46 Given these considerations, and the general support for including plant species that came to New Zealand on the migrating waka, I propose that the list be adopted in the regulations as set out in Annex 1. New species can be added to this list – perhaps as a result of further research – but only if they meet the definition in the PVR Bill, namely that they came on the migrating waka.
- 47 If subsequent work settles on a broader definition of 'taonga species', then the approach taken in the PVR Bill and the regulations proposed in this paper can be revisited.

Exposure draft of the PVR regulations

- 48 Stakeholders have requested to see an exposure draft of the regulations before they are finalised and I agree that this would be useful. These regulations set out much of the detail about how plant breeders and their agents will interact with IPONZ when they apply for a PVR and it is important that we get these details right.
- 49 I therefore seek Cabinet's agreement to authorise me, at the appropriate time, to approve the release of an exposure draft of the PVR regulations, and to make any subsequent changes to the regulations consistent with the overall intent set out in this paper.

Financial Implications

- 50 There are no financial implications from approving the proposed regulations in this Cabinet paper.

Legislative Implications

- 51 The recommendations contained in this Cabinet paper will lead to the drafting of new regulations to be made under the new PVR legislation. The PVR Bill was approved for introduction by Cabinet on 10 May 2021 [LEG-21-MIN-0051 and CAB-21-MIN-0156 refer].

- 52 The new PVR legislation will be binding on the Crown [DEV-19-MIN-0301 and CAB-19-MIN-0593 refer].
- 53 The Parliamentary Counsel Office has been consulted on the drafting of the proposed regulations.

Impact Analysis

Regulatory Impact Statement

- 54 MBIE's Regulatory Impact Analysis Review Panel has reviewed the Impact Statement prepared by MBIE (attached as Annex 2). The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

- 55 The Climate Implications of Policy Assessment (**CIPA**) team at the Ministry for Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 56 There are no material population group implications from the proposals reflected in this Cabinet paper.

Human Rights

- 57 The proposals in this Cabinet paper do not have any implications for human rights. The section 7 report [LPA-01-01-24] found the PVR Bill to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 58 The Ministry for the Environment, the Ministry for Primary Industries, Te Puni Kōkiri, the Ministry of Justice and Treasury have been consulted on this Cabinet paper. The Department of Prime Minister and Cabinet was informed.
- 59 MBIE has engaged with stakeholders and Māori organisations and individuals through the release of the Consultation Paper and through a hui on the specific issue of the proposed list of non-indigenous plant species of significance.

Communications

- 60 I do not propose any communications in relation to the policy in this paper. MBIE will lead communications with stakeholders when the paper is proactively released and when the exposure draft is released for consultation.

Proactive Release

61 I intend to release this Cabinet paper proactively within 30 business days.

Recommendations

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

- 1 **note** that in May 2021 Cabinet approved introduction of the Plant Variety Rights Bill (**PVR Bill**) which will replace the PVR Act [LEG-21-MIN-0051 and CAB-21-MIN-0156 refer];
- 2 **note** that new regulations will be required to implement provisions under the PVR Bill as the current PVR Regulations are out of date and not fit for purpose;
- 3 **agree** that the new PVR regulations be based on the Patents Regulations 2014 where it makes sense to do so, with specific adjustments to accommodate the unique nature of PVRs as set out in Annex 1 of this Cabinet paper;
- 4 **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 3;
- 5 **authorise** the Minister of Commerce and Consumer Affairs to approve the release of an exposure draft of the PVR regulations at the appropriate time;
- 6 **authorise** the Minister of Commerce and Consumer Affairs to make decisions consistent with the overall policy decisions in this paper on any matters that might arise during the drafting process or as a result of consultation on an exposure draft of the regulations;

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Appendix 1: Proposed Regulations

Preliminary

Fees and penalties

- 1 Prescribe that all fees and penalties are payable in accordance with the relevant schedule.
- 2 These regulations will be adapted from regulations 5 – 11 of the Patents Regulations 2014 with appropriate amendments where needed (for example to accommodate the different terms of a PVR).

Forms and documents

- 3 Mandate the use of the IPONZ Case Management Facility for filing documents as well as prescribing the filing and document requirements for applications.
- 4 These regulations will be adapted from regulations 12 – 22 of the Patents Regulations 2014 with appropriate amendments where needed.

Addresses

- 5 Require applicants, PVR owners, agents and any party to a proceeding under the Act to provide an address for service of legal documents and a communication address.
- 6 These regulations will be adapted from regulations 34 – 37 of the Patents Regulations 2014 with appropriate amendments where needed.

Agents

- 7 Prescribe the requirements if an applicant uses an agent to act on their behalf in dealings with the Commissioner.
- 8 These regulations will be adapted from regulations 38 – 44 of the Patents Regulations 2014 with appropriate amendments where needed.

Process for obtaining a grant of a PVR and other matters

Application for a PVR

- 9 Prescribe the formal requirements for PVR applications. In addition to the information required by section 36 of the PVR Bill, the applicant must provide, at the time of filing:
 - 9.1 The name and address of the breeder(s) applying for the PVR; and
 - 9.2 Their nationality or principal place of business.

I N C O N F I D E N C E

- 10 Require applications involving fruit, ornamental and vegetable varieties (including potatoes) to be accompanied by a colour photograph of the variety. This regulation will be adapted from regulations 5A of the Plant Variety Regulations 1988.
- 11 Prescribe the list of species for which propagating material must accompany the application and the quantities of material required. This regulation will be carried over from Schedule 1 of the Plant Variety Rights Regulations 1988.
- 12 Specify that propagating material required to accompany an application must be sent to a person nominated by the Commissioner.
- 13 Require the applicant to supply a denomination within three months of filing the application. An extension of up to one month may be requested by the applicant prior to the expiry of the three month period. The Commissioner may grant the extension if they consider it to be reasonable in the circumstances.
- 14 Where the Commissioner rejects a denomination proposed by an application, the prescribed time period under clause 51(1)(b) of the PVR Bill for proposing an alternative denomination is three months from the date of notification of the rejection. This time period is extendible by one month if the Commissioner considers it reasonable under the circumstances and the request is made before the three month period expires.
- 15 Prescribe the procedure for objection to grant of a PVR under clause 49 of the PVR Bill by adapting regulations 92 – 94 of the Patents Regulations 2014.

Examination

- 16 Prescribe the following time limits for the examination process:
 - 16.1 For propagating material provided under clause 46(1)(a): a minimum of one month from the date of the request, and a maximum of 24 months from the date of the request.
 - 16.2 For information provided under clause 46(1)(b): a minimum of one month from the date of the request, and a maximum of 12 months from the date of the request.
- 17 Specify when and how extensions may be granted to the prescribed periods listed above:
 - 17.1 Requests for extensions of time must be made before the expiry of the prescribed periods.
 - 17.2 In relation to the prescribed period for providing information, one extension of up to 12 months may be granted.
 - 17.3 In relation to the prescribed period for providing propagating material, an extension of up to 24 months may be granted.

- 17.4 There is no limit on the number of extensions that can be granted for the period for providing propagating material.
- 17.5 Extensions may be granted if the Commissioner considers it to be reasonable in the circumstances.
- 18 Prescribe the period for paying trial and examination fees to be two months from the date of the request. An extension may be granted if the request for extension is received before the time period expires, and the Commissioner is satisfied that there are genuine and exceptional circumstances justifying the extension.
- 19 Empower the Commissioner to prescribe the conditions for growing trials, including:
 - 19.1 The location and timing of the trial
 - 19.2 Trial design, and the varieties to be included in the trial
 - 19.3 Conditions under which the trial must take place
 - 19.4 How the trial will be overseen and by whom.
- 20 Provide that, where the Commissioner decides to rely on an overseas trial report under clause 47(2)(d) of the PVR Bill, and there is more than one such report available, the Commissioner has the discretion to determine which report to reply on.

Plant variety rights: other matters

Requests for information or propagating material

- 21 Prescribe the time periods for the provision of:
 - 21.1 Any information requested by the Commissioner pursuant to clause 69(1): a minimum of one month from the date of the request, and a maximum of 12 months from the date of the request.
 - 21.2 Propagating material requested by the Commissioner pursuant to clause 69(2): a minimum of one month from the date of the request, and a maximum of 24 months from the date of the request.
- 22 Specify when and how extensions may be granted to the prescribed periods listed above:
 - 22.1 Requests for extensions of time must be made before the expiry of the prescribed periods.
 - 22.2 In relation to the prescribed period for providing information, one extension of up to 12 months may be granted.

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- 22.3 In relation to the prescribed period for providing propagating material, an extension of up to 24 months may be granted.
- 22.4 There is no limit on the number of extensions that can be granted for the period for providing propagating material.
- 22.5 Extensions may be granted if the Commissioner considers it to be reasonable in the circumstances.

Substitution of applicants

- 23 Prescribe the procedures to be followed if a PVR application is assigned (substitution of applicant) including when a PVR applicant dies.
- 24 These regulations will be adapted from regulations 122 and 123 of the Patents Regulations 2014 with appropriate amendments where needed.

Registration of Assignments of PVR applications and granted PVRs

- 25 Prescribe the procedure to be followed for registrations of assignments of PVR applications and granted PVRs under clauses 70 – 73 of the PVR Bill.
- 26 These regulations will be adapted from regulations 124 and 125 of the Patents Regulations 2014 with appropriate amendments where needed.

Cancellation or nullification of a PVR

- 27 Prescribe the procedure to be followed where proceedings for cancellation or nullification of a PVR is initiated by the Commissioner or a third party under clauses 79 – 83 of the PVR Bill.
- 28 These regulations will be adapted from regulations 102 – 105 of the Patents Regulations 2014 with appropriate amendments where needed.

Surrender of a PVR

- 29 Specify the procedure to be followed if a PVR owner offers to surrender a PVR under clause 85 of the PVR Bill.
- 30 These regulations will be adapted from regulations 106 – 109 of the Patents Regulations 2014 with appropriate amendments where needed.

Restoration of lapsed and cancelled applications and PVRs

- 31 Prescribe the procedure to be followed if an applicant applies under clause 87 of the PVR Bill to restore a PVR application that has lapsed under clause 46(4)(a) or clause 48(5)(a) of the PVR Bill, or applies under clause 94 to restore a PVR that has been cancelled under clause 86(2) of the PVR Bill through failure to pay a renewal fee.
- 32 These regulations will be adapted from regulations 110 – 121 of the Patents Regulations 2014 with appropriate amendments where needed.

Compulsory licenses

- 33 Prescribe the procedure to be followed when the Commissioner considers an application for a compulsory license, including:
- 33.1 The Commissioner must provide the PVR owner with a copy of the application.
 - 33.2 The PVR owner may then file a counter-statement within two months of the application being sent to the PVR owner.
 - 33.3 If a counter-statement is received, the Commissioner must send a copy of the counter-statement to the applicant. If no counter-statement is received, the Commissioner must invite the applicant to file evidence.
 - 33.4 The applicant must file evidence in support of the application within two months of receiving the counter-statement, or within two months of the Commissioner inviting the applicant to do so. If no evidence is filed within the two-month period, the application is deemed to be withdrawn.
 - 33.5 The PVR owner may, if the applicant has filed evidence, file evidence strictly in reply within one month of receiving the PVR owner's evidence.
- 34 The time periods prescribed above may be extended by up to three months if the Commissioner is satisfied that an extension is justified in the circumstances, and the request for extension is filed before the time period has expired.
- 35 The time prescribed for providing information to the Commissioner pursuant to a request under clause 107(2) of the PVR Bill is two months from the date of the request. This time period may be extended by up to three months if the Commissioner is satisfied that an extension is reasonable in the circumstances, and the request for extension is filed before the time period has expired.

Administrative and other matters

PVR register

- 36 Prescribe any additional information to be contained in the PVR register and provide for access to searches, alteration and correction of the register.
- 37 These regulations will be adapted from regulations 128 – 132 of the Patents Regulations 2014 with appropriate amendments where needed.

PVR Journal

- 38 Prescribe what information regarding PVR applicants and granted PVRs must be published in the PVR journal pursuant to clause 145 of the PVR Bill.

- 39 These regulations will be adapted from regulations 8 of the Plant Variety Regulations 1988 with appropriate amendments where needed.

Miscellaneous

- 40 Set out provisions relating to form of evidence, amendment of documents, power to waive requirements of certain regulations and requirements about maintenance of records.
- 41 These regulations will be adapted from regulations 144, 145, 147, 148, 149 and 151 of the Patents Regulations 2014 with appropriate amendments where needed.

Procedural and evidential requirements for proceedings before Commissioner

- 42 Prescribe procedure that applies to proceedings before the Commissioner, including hearings in relation to:
- 42.1 Refusal to grant a PVR;
 - 42.2 Opposition to a grant;
 - 42.3 Cancellation and nullification of PVRs;
 - 42.4 Restoration of lapsed PVR applications or cancelled PVRs; and
 - 42.5 Compulsory licenses.
- 43 This will include provisions relating to:
- 43.1 Documents that must be filed;
 - 43.2 Case management;
 - 43.3 Halt or consolidation of proceedings;
 - 43.4 Extension of time limits in proceedings;
 - 43.5 Procedural and evidential requirements; and
 - 43.6 Form of hearings.
- 44 These regulations will be adapted from regulations 152 – 175 of the Patents Regulations 2014 with appropriate amendments where needed.

Non-indigenous plant species of significance

- 45 Prescribe the list of non-indigenous plant species of significance (defined under clause 54 of the PVR Bill) to be:

| Common Māori Name | English and/or Latin Names |
|--------------------------|--|
| Kuru | Breadfruit, <i>Artocarpus altilis</i> |
| Hue | Gourd, calabash, <i>Lagenaria siceraria</i> |
| Aute | Paper-Mulberry, <i>Broussentia papyrifera</i> |
| Karaka/Kōpi | <i>Corynocarpus laevigata</i> |
| Paratawhiti/Paraa | <i>Marrita fraxinea</i> |
| Perei | <i>Gastrodia Cunninghamsi</i> and <i>Orthoceras strictum</i> |
| Kūmara | <i>Ipomoea batatas</i> |
| Taro | <i>Colocasia esculenta</i> |
| Tī pore | Pacific Cabbage Tree, <i>Cordyline fruticosa</i> |
| Whikaho | Yam, <i>Dioscorea species</i> |

Appendix 2 – Regulatory Impact Statement