

# Submission template

## Review of the Plant Variety Rights Act 1987: Proposed Regulations

### Your name and organisation

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## Responses to questions in the discussion document

### The Regulations

2.1	<b>PVR regulations - general</b>
	Do you agree with MBIE's proposal that the new PVR regulations be adapted, as far as possible, from corresponding provisions in the Patents Regulations 2014?  Agree that it makes sense to have consistency in areas of commonality such as appeals, proceedings, hearings etc. Need to cater for Plant Specific requirements not covered by Patents Regulations

### Regulations adapted from the Patents Regulations

3.1	<b>Regulations adapted from the Patents Regulations</b>
	Do you agree with the outline of regulations to be adapted from the Patents Regulations set out in the table above? If not, please explain which aspects of the outline you disagree with, and why?  Yes

### PVR specific regulations

4.1	<b>Denominations</b>
	Which of the two options for the time limit for submitting a replacement denomination do you support? Please explain why.  Denomination must be set within a set period. We need to have some certainty in this area
4.2	<b>Denominations</b>
	If you favour option (i) should the prescribed period for submitting a denomination be extendible? If so how long should any extension be, and on what grounds?  Yes this should be extendible, for example we have on occasion received plant material from breeders that has a breeding line number, with no denomination set. We would like to be able to use the same denomination the breeder chooses for other countries or territories. Maximum extension of 12 months should cover this.
4.3	<b>Examination</b>
	Do you agree with MBIE's proposals for the time limits for providing information and propagating material in relation to a PVR application? If not please explain why.

The time limits for providing information is acceptable to Eurogrow. The timeline for providing propagating material is too short. This is due to a shortage of quarantine space and a backlog of material coming from overseas breeders. Eurogrow believe the current time frames are too short. There is a long lead in period, including duration of quarantine and initial propagation and crop establishment means conforming to the proposed timeframes is difficult. Varieties selected from foreign breeders for importation to New Zealand are only in their infancy in production in their homeland. As such they are still experimental and pre commercial in their homeland. The current 4-year period from first distribution/sale in their homeland leads to a few problems including:

- Premature selection of varieties for importation that have no proven commercial uptake overseas
- Premature selection of varieties with limited knowledge of potential shortcomings such as disease susceptibility, yield reliability, post-harvest performance (storage, cooking ability out of storage etc.)
- Applications for PVR often with varieties not even in New Zealand as they are still waiting for or passing through limited quarantine space
- Inability to comply with the PVR requirement of providing material for evaluation at the time of PVR application

The above factors lead to considerable waste and unrecoverable costs. This includes use of quarantine space, quarantine costs, PVR costs and the like as outlined earlier of \$7,000 to \$7,500 per variety. To illustrate this, since 2005 Eurogrow has imported 91 new potato varieties to New Zealand. The current status is:

- Commercial or pre commercial 12 lines that make up a combined 17% of our sales
- Still under evaluation 37 lines
- Production ceased 42 lines

A strike rate of 1 in 7 to 1 in 8 making it to market is very wasteful. For every variety making it to market the importation and associated costs are in the vicinity of \$50-60,000.

For many of the lines that do not make it to commercial sales the reasons behind this are generally the same in their home country where many also fail. Enabling a longer period for distribution/sale in their home territory would lead to more accurate selections based on more pre-commercial evaluation overseas. This in turn would lead to less wasted use of quarantine space and less cost to us as importers. Eurogrow request the proposed 4-year period be extended to 10-years from first distribution overseas.

Parallel to this Eurogrow request the period of distribution in New Zealand is also extended to 3-years from the proposed 12 months.

#### **Examination**

4.4

If you disagree with MBIE's proposal, what alternative time limit regime should be adopted?

Time limit for providing propagating material should be left to the discretion of the Commissioner on a case by case basis. The extension/delay provides no material benefit to the applicant as they have yet to propagate and evaluate the material as they also do not have propagating material of their own in NZ

4.5	<b>Examination</b>
	Do you consider that the two month period for paying trial or examination fees is reasonable? If not, please explain why.
	Time period is fine
4.6	<b>Examination</b>
	MBIE proposes that the prescribed period be extendible only under genuine and exceptional circumstances. Do you agree with this? If not, what extension (if any) should be available, and under what criteria?
	Yes, should only be extendible under genuine and exceptional circumstances
4.7	<b>Examination</b>
	MBIE has proposed that the regulations empower the Commissioner to set the conditions of a growing trial. Do you agree with the conditions proposed by MBIE? Are there any other conditions that you think the Commissioner should have the power to set?
	Yes, but needs to be practical and balance costs to applicants against required outcomes
4.8	<b>Examination</b>
	MBIE proposes that where the Commissioner chooses to rely on a growing trial conducted by an overseas authority, and two more such reports are available, the Commissioner should determine which report to rely on. Do you agree with this proposal? If not please explain why.
	We support the use of overseas trial reports as an alternate to NZ trials. This avoids duplication of costs. Okay for Commissioner to choose reports
4.9	<b>Compulsory licenses</b>
	Do you agree with the proposed procedure for dealing with compulsory license applications? If not please explain why.
	Okay with what is proposed
4.10	<b>Compulsory licenses</b>
	If you disagree with the proposed procedure, what other procedure could be used?
	<i>No comment</i>

## Other Issues

5.1	<b>Objections before grant</b>
	Do you agree with the procedure proposed for objections before grant? If not please explain why.
	<i>Agree</i>

5.2	<b>Objections before grant</b>
	If you disagree with the proposed procedure, what alternative procedure do you suggest be adopted?  <i>No comment</i>
5.3	<b>Requests for propagating material or information from PVR owners</b>
	Do you agree with the proposed time periods for providing information or propagating material relating to a granted PVR? If not please explain why.  <i>[oaky with what is proposed]</i>
5.4	<b>Requests for propagating material or information from PVR owners</b>
	MBIE proposes that the proposed time periods not be extendible. Do you agree with this proposal? If not what extensions should be available and under what grounds should extensions be provided?  See response to 4.3 above- delays in quarantine create problems in meeting requirements. Eurogrow request the proposed 4-year period from first overseas sale be extended to 10-years from first distribution overseas.  Parallel to this Eurogrow request the period of distribution in New Zealand is also extended to 3-years from the proposed 12 months.
5.5	<b>Non-indigenous species of significance</b>
	When should the regulations listing non-indigenous species of significance enter into force? Should they enter into force with the Bill's non-Treaty provisions, or be left until the Treaty provisions come into force? Please give reasons for your response.  <i>No comment</i>
5.6	<b>Non-indigenous species of significance</b>
	Do you have any other comments on the list and the entries in it?  <i>No comment</i>

## Other comments

**Farm Saved Seed, Sections 15 and 16 of your consultation document. I refer you to my submission on the PVR Act and ask that potatoes be added as a plant variety to which this section does not apply**

**Section 15. Exception to PVR: farm-saved seed**

**Sub Section 2 refers to "However, this section does not apply in relation to a plant variety of a kind specified in the regulations as one to which this section does not apply."**

**Problem: Allowing farm saved seed removes income from seed sales and collection of royalties due back to the breeder**

**Suggested Resolution: Ensure that potatoes are on the list of the kind specified in the regulations to which farm saved seed does not apply**

Eurogrow has assumed that potatoes are included as one of the “kind specified in the regulation as to which this section does not apply” (regulations were not yet available at the time of preparing this submission). The grounds for this are simple. Potatoes are themselves the seed, generally as small potatoes. Allowing farm saved seed means that a customer would only have to purchase seed once, then simply retain potatoes from subsequent crops as their seed source. This prevents any commercial return to the breeder and seed producer on an ongoing basis and creates uncertainty for businesses that supply seed.

Should potatoes not be included as one of the kind specified, breeders or their representatives must have the right to contract out of allowing farm saved potato seed by right. The key reason for this within the seed potato industry that seed is a six-year bulk up pipeline from tissue cultures through to commercial seed sale. The final year commercial seed has six years of investment in addition to 9-10-years of plant breeding and allowing farm saved seed could spell commercial ruin for the seed supplier and the growers of this seed if it were unable to be sold. Merely allowing the breeder to collect a royalty on farm saved seed only recoups about 5-7% of the cost of seed produced. The surety of likely sale of the final seed generation is vital to commercial viability.

The end requirement for potatoes of approximately 3,000 kg of seed per hectare is unique with no other crop getting near such volumes. Examples of other crops are 3kg per hectare for carrot seed; 30-40kg per hectare for onions. This large seed volume required per hectare has large costs associated to its production and supply.

Potato seed bulk up is a slow six-year process relative to many other crops. Starting with one tissue plant in year zero, approximately 0.5 kg of seed is produced. This seed is replanted to produce about 5-7kg of second-generation seed, and so on for 6 years till commercial sale. Typically, a 100-tonne seed potato sale program starts with one hundred tissue plants at year zero and ends up at 100 tonnes six years later. Royalty on the 100 tonnes is in the vicinity of \$50/t or \$5,000. The seed crop of 100 tonnes is worth about \$90,000 (most of which goes back to the seed producing farmer, approximately \$75-80,000). If farm saved seed is allowed, then in a year where potato prices are low farmers may elect to plant farm saved seed only. While the ability to get the \$5,000 royalty may exist, the ability to recoup the extra \$85,000 of commercial/supplier value must also be protected. Without this you create potential for a boom-bust seed supply industry, with potential for seed potato farmers to go broke.

Farm saved seed has not undergone industry seed certification so potential exists for poor quality and/or disease spread to occur. Current example is recent discovery of Potato Mop Top Virus in a processing line at McCain's Timaru factory. Ability exists via seed certification and field crop inspections to monitor and intercept the problem, eliminating or at least significantly reduce the risk of virus spreading.

Further example is that farm saved seed of lower quality can have a detrimental impact on the subsequent crop and can result in consumer problems. Example of this was Bolesta farm saved seed potatoes being used for production of crops for use by ETA to make crisps. Farm saved seed had virus in it that caused the crop to not cook properly. ETA removed Bolesta variety from their approved lines for processing, variety failed in NZ after this.