

# 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?
	Yes

### 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.
4.2	<i>I support a three month time limit for submitting a replacement denomination – as pointed out in the consultation period, three months should be ample time to come up with, and submit a replacement denomination, assuming communications in these regards being forwarded and acted upon in a timely manner.</i>
	<b>Denominations</b>
4.3	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?
	<i>I believe that the time limit for submitting a replacement denomination should be extendible by up to 3 months, to allow for: delays caused by delayed forwarding of correspondence by agent(s); delays in carrying out actions by agent(s); or for delays resulting from inability of relevant person(s) within an Applicant organisation to meet/ collaborate on devising a replacement denomination in a timely fashion, despite best intentions and attempts</i>
	<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.

	<p><i>Yes. However, in my opinion the extension provisions should be applied a little more leniently than they currently are – they tend to be applied a little too harshly currently, especially where importation of plant material from overseas is concerned – a little more understanding in this regard should be applied. In addition, in my opinion, the PVR Office/ MBIE should be moving away from carrying out testing of plant varieties – this should be left in the hands of Applicants, overseen by suitably qualified persons (approved and certified by the PVR Office). If this occurred, then time limit for submitting plant variety material would then become would be tied in with grant of PVR.</i></p>
4.4	<p><b>Examination</b></p> <p>If you disagree with MBIE’s proposal, what alternative time limit regime should be adopted?</p>
	<p><i>I do not disagree, but see above.</i></p>
4.5	<p><b>Examination</b></p> <p>Do you consider that the two month period for paying trial or examination fees is reasonable? If not, please explain why.</p>
	<p><i>In my opinion, either the time period for paying trial or examination fees should be longer, like 6 months, or extensions for paying those fees should be more easily obtained. This is particularly important for overseas applicants where more extensive chain(s) of communication, and therefore delays which may be beyond the control of the Applicant, may be involved.</i></p>
4.6	<p><i>Furthermore, as noted above, I am not in favour of the PVR Office/ MBIE handling comparative growth trials (which, incidentally, would also be in contrast to IPONZ’s ‘hands-off’ approach to patent handling), and under a regime where the PVR Office/ MBIE does not handle field trials, the urgency for payment of examination fees disappears.</i></p>
	<p><b>Examination</b></p> <p>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?</p>
	<p><i>See above</i></p>
4.7	<p><b>Examination</b></p> <p>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?</p>
	<p><i>As noted above, I do not agree with the PVR Office/ MBIE being involved in carrying out field trials. Examination of the reported results, and assessment and approval of field trials may be appropriate, but the actual carrying out of, assessment of, and reporting of comparative growth trials should, in my view, be done by suitable Qualified Persons, approved and certified by the PVR Office/ MBIE.</i></p>

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.
	Yes
4.9	<b>Compulsory licenses</b>
	Do you agree with the proposed procedure for dealing with compulsory license applications? If not please explain why.
	Yes
4.10	<b>Compulsory licenses</b>
	If you disagree with the proposed procedure, what other procedure could be used?
	<i>[Insert response here]</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.
	Yes
5.2	<b>Objections before grant</b>
	If you disagree with the proposed procedure, what alternative procedure do you suggest be adopted?
	<i>[Insert response here]</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>No – I think that a deadline of three months, extendable as discussed below, be set.</i>
5.4	<b>Requests for propagating material or information from PVR owners</b>
	MBIE proposes that the proposed time periods not be extendable. Do you agree with this proposal? If not what extensions should be available and under what grounds should extensions be provided?

	<p><i>In my view this is unnecessarily strict. Furthermore, different plants and, indeed, different countries have different requirements and may present different challenges in getting plant material to the PVR Office/MBIE. The time limit should be extendible on presentation of sufficient evidence justifying the time extension sought, and such evidence should be assessed in a sensible and understanding manner, rather than in a martial law kind of manner. Evidence should show appropriate steps having been taken and genuine attempt(s) have been made to get the material/information to the Office in a timely manner, but that further time is required. Evidence should also show that there is reason to believe that the material/information will be forthcoming within the extended time period, barring any circumstances beyond the control of the Applicant.</i></p>
5.5	<p><b>Non-indigenous species of significance</b></p> <p>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.</p>
	<p><i>Regulations listing non-indigenous species of significance should enter into force with the Bill’s Treaty provisions, thereby allowing further time for the MPVC to finalise the list of such species, thereby providing greater certainty to all.]</i></p>
5.6	<p><b>Non-indigenous species of significance</b></p> <p>Do you have any other comments on the list and the entries in it?</p>
	<p><i>None]</i></p>

## Other comments

*[Insert response here]*