

# 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?  <i>Yes, there are similar procedures in common with the Patents Regulations, such as hearings and revocation procedures, and administrative procedures. Aligning the PVR regulations with the Patents Regulations where possible makes the most of IPONZ resources.</i>

### 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?  <i>Yes, they are comprehensively covered.</i>

### 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.  <i>We support that a replacement domination should be submitted within a set period. Three months, with opportunity for extension, seems a reasonable length of time to allow for this process.</i>
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?  <i>We support the ability to apply for an extension, should this be requested. We recommend that the length of time available for an extension is not set, but that the applicant submits an upper limit when they request an extension. This allows some flexibility to the applicant to know whether their PVR would be granted before spending time and resources submitting a new denomination.</i>
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.

	<i>Yes, acknowledging that the applicant may submit unlimited requests for a further 12 month extension each year, if material needs to be imported from overseas into limited post-entry quarantine space.</i>
<b>4.4</b>	<p><b>Examination</b></p> <p>If you disagree with MBIE's proposal, what alternative time limit regime should be adopted?</p>
<b>4.5</b>	<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>Yes</p>
<b>4.6</b>	<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>Yes. We recommend that the length of time available for an extension is not set, but that the applicant submits an upper limit when they request an extension and provides the reasons for these exceptional circumstances.</i></p>
<b>4.7</b>	<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>The conditions proposed by MBIE are appropriate,</i></p>
<b>4.8</b>	<p><b>Examination</b></p> <p>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.</p> <p><i>We support that the final decision lies with the Commissioner, however the applicant has expertise to bring to bear about which report is most appropriate. We consider that the applicant should be able to make a case to the Commissioner about which growing trial report is used and the Commissioner makes the final decision.</i></p>
<b>4.9</b>	<p><b>Compulsory licenses</b></p> <p>Do you agree with the proposed procedure for dealing with compulsory license applications? If not please explain why.</p>

4.10	<i>Yes, it makes sense to align the procedure with those in the Trade Marks Act, giving both the PVR owner and the licensee applicant an opportunity to file evidence, and then be heard before the Commissioner makes a decision.</i>
	<b>Compulsory licenses</b>
	If you disagree with the proposed procedure, what other procedure could be used?

## 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>Yes we agree that the proposed procedure is appropriate for PVR grants.</i>
5.2	<b>Objections before grant</b>
	If you disagree with the proposed procedure, what alternative procedure do you suggest be adopted?
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>We agree with Option (ii) – setting minimum and maximum time periods for providing information or propagating material relating to a granted PVR.</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?
	<i>Clause 69(4) of the PVR Bill provides that, if a PVR owner fails, without reasonable excuse, to comply with such a request within the time prescribed, the PVR may be cancelled. The use of the term ‘without reasonable excuse’ suggests that if the PVR owner is able to provide a reasonable excuse for not complying with a request within the prescribed time, they will not have to comply with it. However for completeness, we see merit in providing a process for Commissioner and PVR owners to reach an agreement on the extended time frame for providing material or information.</i>
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.

*The regulations listing non-indigenous species of significance should enter into force after the Treaty provisions come into force. This will enable further engagement with iwi and hāpu on the species they consider culturally significant. Note: this may be a larger range of species than the species brought to NZ on migrating waka.*

#### **Non-indigenous species of significance**

Do you have any other comments on the list and the entries in it?

5.6

We consider the potato orchid species *Gastrodia cunninghamii* should be listed as an indigenous species (albeit of significance to Maori). It is unlikely to have been introduced to New Zealand on migrating waka as it requires a complex-symbiotic association with a fungal pathogen, parasitic on the roots of a wide range of forest trees. It is found throughout New Zealand in forest and shrubland.

A couple of typos:

- *Colocasia esculenta*
- *Cordyline fruticosa*

## **Other comments**

*[Insert response here]*