

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	PVR regulations - general
	<p>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?</p> <p><i>If "as far as possible" means that only provisions that fit PVRs and do not introduce new requirements compared to the current situation, we generally agree.</i></p>

Regulations adapted from the Patents Regulations

3.1	Regulations adapted from the Patents Regulations
	<p>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?</p> <p><i>We generally agree with due observance of pt. 2.1 and with the exception of the following points:</i></p> <p><i>Agents, clause 40(2) of the Patents Regulations 2014: it seems that the Commissioner may decide whether he requires a written authority; we think that in case of an agent, a principal should always show the written authority.</i></p> <p><i>Application for a PVR: we propose that not only the species for which propagating material should be submitted, will be mentioned, but also the required quantities per species. Further we are of the opinion that colour photographs should not be required for all applications. Only for traits that are difficult to describe in words, e.g. patterns in colour.</i></p> <p><i>Grant and publication of PVR: in relation to documents that become open for inspection, we propose that the applicant should be able to indicate that the information on origin of the variety should be kept confidential, as also indicated by UPOV. Such information may consist of trade secrets and disclosure could harm the interests of the applicant.</i></p> <p><i>Nullification/Cancellation of a PVR: time limits for counter statements of the PVR holder should be sufficiently long. If for example the application for nullification of a PVR is based on lack of distinctness, extra morphological trials may be required before being able to finalise the counter statement.</i></p> <p><i>Proceedings before the Commissioner: it is not clear whether the Commissioner will verify whether all formal requirements have been fulfilled, for example if an application for nullification contains all necessary elements, before entering the next stage in proceedings.</i></p>

PVR specific regulations

4.1	Denominations
	<p>Which of the two options for the time limit for submitting a replacement denomination do you support? Please explain why.</p>

	<i>We support option ii. no set time period for submitting the denomination</i>
4.2	<p>Denominations</p> <p>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?</p> <p><i>[Insert response here]</i></p>
4.3	<p>Examination</p> <p>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> <p><i>We agree of extensions of time of up to 12 months with no limit on the number of extensions</i></p>
4.4	<p>Examination</p> <p>If you disagree with MBIE's proposal, what alternative time limit regime should be adopted?</p> <p><i>[Insert response here]</i></p>
4.5	<p>Examination</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>Yes, we agree</i></p>
4.6	<p>Examination</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 agree</i></p>
4.7	<p>Examination</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>[In case there is a growing trial conducted by an overseas authority, we think that as a matter of principle, the Commissioner should rely on the results of this growing trial, provided that this growing trial is conducted following the relevant UPOV guideline. For this it would be good for the Commissioner to have agreements with the relevant UPOV member performing the growing trial]</i></p>

4.8	Examination
	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.
	<i>We agree that robustness of the PVR should be the most important factor to determine which report to rely on. We also agree that this should not be a report of a report.</i>
4.9	Compulsory licenses
	Do you agree with the proposed procedure for dealing with compulsory license applications? If not please explain why.
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4.10	Compulsory licenses
	If you disagree with the proposed procedure, what other procedure could be used?
	<i>[Insert response here]</i>

Other Issues

5.1	Objections before grant
	Do you agree with the procedure proposed for objections before grant? If not please explain why.
	<i>We do not completely agree, see our answer to 5.2.]</i>
5.2	Objections before grant
	If you disagree with the proposed procedure, what alternative procedure do you suggest be adopted?
	<i>[We think that the first step after receiving an objection before grant is for the Commissioner to establish if the requirements for an objection are met. Only when these requirements are met, the proposed procedure can be started.</i>
5.3	Requests for propagating material or information from PVR owners
	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>[Yes, we agree]</i>
5.4	Requests for propagating material or information from PVR owners
	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?

	<p><i>We do not agree. In some cases extensions are needed. In case of vegetable seed propagated varieties, it could well be that there is sufficient commercial seed in stock, however, commercial seed is usually treated and as such does not comply with the requirements of plant material having to be untreated. We then have to start a new seed production and this takes time. We can anticipate on providing propagating material as part of the application procedure, but we cannot anticipate on requests for verification on maintenance. It would be burdensome for PVR owners if they have to defend in each case that they have “a reasonable excuse”, which would also increase uncertainty for breeders.</i></p>
5.5	<p>Non-indigenous species of significance</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>No opinion</i></p>
5.6	<p>Non-indigenous species of significance</p> <p>Do you have any other comments on the list and the entries in it?</p>
	<p><i>[No</i></p>

Other comments

[Insert response here]