

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 MBE's proposal that the new PVR regulations be adapted, as far as possible, from corresponding provisions in the Patents Regulations 2014?</p> <p><i>Zespri agrees that the general non-PVR related provisions in the Patents Act are a useful basis from which to draft the PVR regulations.</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>Fees – <i>Zespri disagrees with the proposed fee payment method because the proposed invoicing delay when filing on PRISMA can result in a loss of priority. The fees must be able to be paid online at the time of application.</i></p> <p>Application for a PVR – <i>the proposed requirements regarding provision of propagating material must be drafted after the Bill has been amended to define the propagating material as 'material of the applicant's variety' to ensure that the definition of propagating material does not inadvertently include material of comparison varieties.</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> <p><i>Zespri supports Option 1 – the denomination should be submitted within a set period. Zespri supports the three month limit proposed.</i></p>
4.2	Denominations
	<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>The time limit should only be extendible in exceptional circumstances, for example where a breeder has discovered that there may be Trade Mark implications with the proposed denomination. In such cases, an extension of three months is sufficient time to complete freedom to operate checks and submit an alternative denomination.</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>The wording must align with the Bill once it is amended to clarify that this only relates to propagating material of the applicant’s variety.</i></p> <p><i>Zespri supports MBIE’s proposal for time limits, extendable on 12-month intervals, to supply propagating material. This balances the need for the Commissioner to be kept appraised of progress arranging propagating material, with the need for extensions due to quarantine, access to propagating material and the vagaries of climate and pests.</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>N/A</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>Zespri supports the proposal that the fees be paid within two months of the Commissioner requesting payment.</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>Zespri supports the proposal that the prescribed period be extended only in exceptional circumstances. Such circumstances could be where an applicant is aware that previously unforeseen circumstances mean that the growing trial will not be able to be carried out that season.</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>Zespri supports the proposal that the Commissioner may set the conditions of the growing trial.</i></p>
4.8	<p>Examination</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>Zespri supports the proposal that the Commissioner can determine which jurisdictions' DUS report they rely upon. However, the applicant should be given the opportunity to provide additional information to the Commissioner in regards to the physical conditions of the overseas growing trials. This may help clarify which report is most suited to the optimal growing conditions of the variety.</i></p>
	<p>Compulsory licenses</p> <p>Do you agree with the proposed procedure for dealing with compulsory license applications? If not please explain why.</p>
4.9	<p><i>Zespri does not agree with the proposed procedure for dealing with compulsory licences.</i></p> <p><i>The proposed two months' limit for the PVR owner to send a counter statement to the Commissioner is too short. Where a protected variety is licensed to multiple licensees, extensive consultation may be required to understand the full impact of a compulsory licence on both the PVR owner and all of the licensees. Zespri has a large number of licensed growers who would all need to be consulted. In addition, an impact assessment on export markets would need to be conducted before a detailed response to the Commissioner could be made.</i></p> <p><i>Zespri proposes that four months is a more reasonable time limit to allow the PVR holder to provide a counterstatement to the Commissioner.</i></p> <p><i>Additionally, as proposed by several submitters, the Bill and accompanying regulations should provide for licensees of the variety subject to compulsory licence application, to also file a counter statement in their own name.</i></p> <p><i>Once all parties have been heard and the Commissioner has decided on the compulsory licence, there should be an appeal process.</i></p>
4.10	<p>Compulsory licenses</p> <p>If you disagree with the proposed procedure, what other procedure could be used?</p>
	<p><i>In addition to the suggestion above, Zespri proposes that a split hearing be considered, whereby a hearing to determine the conditions of a compulsory licence would be conducted separately to, and following a hearing on the decision of a compulsory licence application.</i></p>

Other Issues

5.1	<p>Objections before grant</p> <p>Do you agree with the procedure proposed for objections before grant? If not please explain why.</p>
	<p><i>Zespri supports the proposed procedure for objections before grant.</i></p>
5.2	<p>Objections before grant</p> <p>If you disagree with the proposed procedure, what alternative procedure do you suggest be adopted?</p>
	<p>N/A</p>

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>Zespri disagrees with the proposed time periods for providing propagating material relating to a granted PVR. The timing needs to be consistent with the time periods for providing propagating material for examination.</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?
	<i>Zespri disagrees with this proposal. Extensions should be available, taking into account the growing seasons and availability of propagating material.</i>
5.5	Non-indigenous species of significance
	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>Zespri submits that it is preferable for the regulations listing non-indigenous species of significance to enter into force with the Bill's non-treaty provisions. This provides certainty for breeders as to which non-indigenous species will be subject to Treaty provisions.</i>
5.6	Non-indigenous species of significance
	Do you have any other comments on the list and the entries in it?
	<i>The proposal for the list to be amended or adapted as time goes by, introduces uncertainty to a level which disincentivizes plant breeding innovation. If the list is subject to amendment, Zespri proposes that the criteria for amending the list is established in the regulations.</i>

Other comments

N/A