

Submission template

Review of the Plant Variety Rights Act 1987: Exposure Draft of the Plant Variety Rights Regulations 2022

Instructions

This is the template for those wanting to submit by Word document a response to the release of the exposure draft of the PVR Regulations 2002 for consultation.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised by 5pm on Friday, 20 May 2022. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your comments on each section of the regulations in the comment box. You may comment on any or all of these sections. Where possible, please include evidence to support your views, for example relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission, please:
 - a. Delete this first page of instructions.
 - b. Include your e-mail address and telephone number in the e-mail accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please state this in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
 - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

5. Send your submission as a Microsoft Word document to PVRActReview@mbie.govt.nz

Please direct any questions that you have in relation to the submissions process to PVRActReview@mbie.govt.nz.

Submission template

Review of the Plant Variety Rights Act 1987: Exposure Draft of the Plant Variety Rights Regulations 2022

Your name and organisation

Name	Tony Hendrikse
Email	tony@eurogrow.co.nz
Organisation/Iwi	Eurogrow Potatoes

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because...
[Insert text]

The PVR Regulations have been divided up into a number of subsections as set out in the accompanying A3 poster and Guide. You are asked to comment below on each of these subsections. The final comment box is for you to provide comment on the proposed new seed quantities required with an application.

PVR Regulations 2022

Key matters that apply to all applications or grants	
1	<p>General provisions [Regulations 3 and 7-34 and Schedule 3]</p> <p>These regulations cover definitions, fees (listed in Schedule 3), forms and documents, addresses and agents. Please provide any comments you have on these regulations in the box below.</p> <hr/> <p><i>No comments in addition to comments made in my submission on Review of Plant Variety Rights Fees</i></p>
	<p>Provisions relating to PVR applications [Regulations 35-48 (excl. 45-47)]</p> <p>These regulations provide what must be supplied with, and in relation to, a PVR application (information, photos, denomination, propagating material), including prescribed times for provision of those things. They also cover provisions relating to growing trials and payment of trial and examination fees. Please provide any comments you have on these regulations in the box below.</p> <hr/> <p><i>[Quantities of propagating material to be provided- potatoes are missing from the table?]</i></p>
Key matters that only apply to applications or grants in certain circumstances	
3	<p>Non-indigenous species of significance [Regulation 6 and Schedule 2]</p> <p>This regulation provides that the non-indigenous plant species of significance defined in clause 54 of the Bill are listed in Schedule 2 of the regulations. Please provide any comments you have on these regulations in the box below.</p> <hr/> <p><i>No comment]</i></p>
	<p>Opposition to grant of a PVR [Regulations 45-47]</p> <p>These regulations set out the provisions for filing a notice of opposition to the grant of a PVR and prescribed timeframes. Please provide any comments you have on these regulations in the box below.</p> <hr/> <p><i>Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]</i></p>
4	

5

Cancellation, nullification and surrender of PVRs [Regulations 52-58]

These regulations set out the procedures relating to application for cancellation or nullification of a PVR and the procedures relating to notification of surrender of a PVR. Please provide any comments you have on these regulations in the box below.

Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]

6

Restoration of lapsed applications and cancelled PVRs [Regulations 59-70]

These regulations set out the procedures relating to restoration of lapsed PVR applications and restoration of a PVR cancelled because of non-payment of the renewal fee. Please provide any comments you have on these regulations in the box below.

Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]

7

Compulsory licences [Regulations 71-75]

These regulation set out the provisions relating to application for, opposition to, and amendment/revocation of, a compulsory licence. Please provide any comments you have on these regulations in the box below.

[Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]

8

Proceedings before the Commissioner (hearings) [Regulations 95-118]

These regulations set out the processes to which these proceedings apply and all other matters relating to the conduct of hearings. Please provide any comments you have on these regulations in the box below.

Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]

Other matters

9

Substitution and assignments [Regulations 49-51]

These regulations deal with substitution of applicants, registration of assignments and other interests, and vesting of PVRs or PVR applications. Please provide any comments you have on these regulations in the box below.

Agree with proposed regulations including the powers given to the Commissioner to apply discretion and extensions]

10

PVR Register [Regulations 76-88]

These regulations deal with matters relating to the PVR register (content, search and changes). Please provide any comments you have on these regulations in the box below.

Agree with what is proposed]

Other matters [Regulations 89-94]

These regulations cover a handful of other, mainly administrative matters. Please provide any comments you have on these regulations in the box below.

PVR Regulations: proposal to amend quantities of seed required with an application

12

Quantities of seed required

The accompanying document **PVR Regulations: proposal to amend quantities of seed required with an application** sets out a proposal for increasing the quantities of seed required to be provided with a PVR application. Please provide any comments you have on this proposal in the box below.

Potatoes are missing from the table?

If you have any other comments you wish to make on matters relevant to this consultation, please make them in the box below

Section 15 of the Proposed PVR Act reads as follows

“15 Exception to PVR: farm-saved seed (1) This section applies if a person engaged in farming activities (a farmer)— (a) lawfully obtains seed— (i) of a protected variety; or 10 (ii) of a plant variety that is essentially derived from, or is dependent on, a protected variety; and (b) in the course of their farming activities, grows plants from that seed; and (c) harvests seed from those plants. (2) 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.”

In the proposed regulations reference in 15 subsection (2) above refers to “...as specified in the regulations...” The regulations do not include any connection back to this.

In discussions with Aidan Burch and Chris Barnaby they have clarified that potatoes are excluded from farm saved seed, specifically in an email from Aidan on 22 November 2021 he states

*“Hi Tony,
Thanks for your email. I can confirm that potatoes won’t be caught by the farm-saved seed provisions as they are not a seed.
Cheers, Aidan”*

In no place in the PVR Act or Regulations does it state that potatoes are excluded from provisions for farm-saved seed. I think for the purpose of absolute clarity and connection back to the PVR Act that potatoes need to be named as being excluded from the provisions for farm-saved seed. Simply failing to list specifically will create ambiguity.