

PROPOSED PVR REGULATIONS EXPOSURE DRAFT: SUMMARY OF SUBMISSIONS

1. MBIE received 17 submissions on the exposure draft of the regulations: eight from industry stakeholders, four from the legal sector (including the Māori Law Society), three from Māori organisations and iwi, and two from an academic.
2. The regulations are based on the Patents Regulations 2014. Submitters were generally supportive of having clear processes set out for how PVR applicants, PVR holders and others would interact with the Commissioner of PVRs through the PVR Office. Some found the significant increase in the number of regulations disconcerting. However, this increase is difficult to avoid as the current regulations do not cover many of the procedures necessary to administer the legislation.
3. Submitters made a number of drafting and clarification suggestions where either a cross-reference was incorrect or a simple wording change could clarify the regulation (without changing the meaning). These suggestions have been incorporated into the final regulations. In addition, some submissions identified omissions and inconsistencies in parts of the draft regulations, and amendments have been made to deal with the issues raised.

Māori concerns

4. Māori submitters continue to be concerned that the proposed list of 'non-indigenous species of significance (**NISOS**)' is too limited. The list is restricted by the Bill, which defines NISOS as species that arrived in New Zealand on the migrating waka. They comment that there may be other non-indigenous species which are taonga but not captured by this definition, such as the Māori potato. They argue that the risks from a Tiriti perspective are greater than the risks arising from uncertainty for plant breeders from a broader list. We do not recommend any changes to this list.
5. Having an open list with very broad criteria for species that may be added in the future creates uncertainty for breeders who need to be able to make long term investment decisions.
6. In assessing any Te Tiriti risks we have considered what is on the list, but also the likelihood that a PVR application will be made for a variety of the relevant species. We are not aware of any PVR applications for new varieties of potatoes that have been derived from the Māori potato. PVR applications for potatoes from domestic applicants are very low nowadays. We therefore consider the risk of a PVR impacting kaitiaki relationships with a Māori potato variety to be negligible.
7. We have acknowledged that the approach in the Bill may be imperfect and that this is a result of the restricted scope of the PVR regime. If the Te Pae Tawhiti work being led by Te Puni Kōkiri develops a more comprehensive definition of "taonga species", the PVR legislation can be revisited