



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

# Guide to the proposed new PVR Regulations

APRIL 2022



**Te Kāwanatanga o Aotearoa**  
New Zealand Government



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INNOVATION & EMPLOYMENT**  
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# Introductory comments

This guide accompanies the A3 poster guide to the proposed new regulations. It provides further information on the new regulations. It follows the same 'groupings' of regulations used on the poster. The submissions template is also structured according to these same groups.

The current regulations are the Plant Variety Rights Regulations<sup>1</sup> 1988. Between the PVR Act 1987 and the 1988 regulations, there are considerable gaps in procedural details for many of the processes in the Act. For example, the Act refers to parties 'being heard' but there are no prescribed processes for how hearings should be conducted. This is not satisfactory from a regulatory point of view as it makes it hard to ensure that due process is followed when matters relating to an individual's rights are under consideration.

The most up to date examples of regulations in intellectual property legislation are the Patents Regulations 2014. Many of the processes in the PVR regime are similar to processes for patents (eg opposition, cancellation, nullification, restoration and hearings). Following the public consultation in 2021, Cabinet agreed that the new PVR regulations be based on the Patents Regulations where it made sense to do so.

**PLEASE NOTE:** We are also consulting on changes to the quantities of propagating material (seed) required to be provided with a PVR application (under clause 36(2)(c) of the PVR Bill). The current amounts are those set out in Schedule 1 of the 1988 Regulations. Please refer to the separate document **PVR Regulations: Proposal to amend quantities of seed required with an application**. This document sets out the proposed new amounts and the rationale for the changes. Seed quantities will be set out Schedule 4 of the new PVR regulations. You can provide comment on these changes in the same submissions template provided for your comments on the exposure draft of the regulations.

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<sup>1</sup> These can be found at: [legislation.govt.nz/regulation/public/1988/0101/latest/DLM124608.html?search=ts\\_regulation%40deemedreg\\_plant\\_rese1\\_25\\_a&p=1](https://legislation.govt.nz/regulation/public/1988/0101/latest/DLM124608.html?search=ts_regulation%40deemedreg_plant_rese1_25_a&p=1)

# Key matters that apply to all applications and grants

The matters in this section are relevant to all PVR applications and grants (as opposed to those in the next section that will not necessarily be needed in relation to every application or grant). They cover general provisions and provisions relating to applications and growing trials.

## General Provisions (Regulations 3 and 7-34)

**Regulation 3** sets out the definitions used in the regulations.

**Regulations 7-12** prescribe matters relating to the payment of fees. The fees are set out in Schedule 3 of the regulations. Schedule 3 reflects current fees but will be amended following the outcome of the fees review.

**Regulations 13-23** prescribe matters relating to forms and documents. They prescribe the use of the IPONZ case management unless the Commissioner is satisfied that a person cannot access this because of “exceptional reasons beyond the person’s control”.

**Regulations 24-27** prescribe matters relating to addresses provided by those dealing with the Commissioner.

**Regulations 28-34** prescribe matters relating to the use of agents by applicants and others who deal with the Commissioner.

**COMMENT:** These regulations bring together various matters scattered throughout the current Act and regulations. Note in particular:

- › the change to when renewal fees are due from one month either side of the anniversary date to within the three months ending with the anniversary date
- › the requirement to provide a communication address in addition to an address for service.

## Provisions relating to PVR application (Regulations 35-44 and 48)

**Regulations 35-41** prescribe what (in addition to the requirements of clauses 36, 38 and 46 of the Bill) must be provided in relation to a PVR application, and associated timeframes. This includes provisions relating to information, denominations, colour photographs and propagating material.

**Regulations 42-44** prescribe matters relating to growing trials and should be read alongside clauses 47 and 48 of the Bill. They set out the conditions the Commissioner can set for growing trials and prescribed that trial and examination fees must be paid within two months of a request, with extensions only being granted in exceptional circumstances.

**Regulation 48** sets out the prescribed times for supply of propagating material or information by third parties (either other PVR applicants or PVR holders) under clause 69 in the Bill.

**COMMENT:** The select committee changed the requirement in the introduction version of the Bill that a denomination must be provided with the application. Instead, it must now be provided within the prescribed time after the application. **Regulation 38** sets this time as 3 months after the date of the application. The quantities of propagating material required to be provided with the application will be set out in Schedule 4. As noted at the start of this guide, we are also consulting on amendments to the current requirements relating to seed quantities.

## Key matters that only apply to applications or grants in certain circumstances

The matters in this section will not necessarily apply for every PVR application or grant. For example, only a small fraction of PVR applications will be subject to an opposition procedure under clause 49 of the PVR Bill.

### Non-indigenous species of significance (Regulation 6)

**Regulation 6** provides that the list of non-indigenous plant species of significance (defined under clause 54 of the Bill) is set out in Schedule 2 of the regulations.

**COMMENT:** The PVR Bill provides that all PVR applications involving plant species that are indigenous to New Zealand and a small number of non-indigenous species of significance (and where the material was obtained in New Zealand) will first be considered by the Māori Plant Varieties Committee. The Bill defines the non-indigenous species of significance as those that have been identified as coming to New Zealand on the migrating waka.

Following the consultation on the regulations, Cabinet agreed to keep the list of non-indigenous species of significance as set out in the discussion document. The list can be amended in the future (by making change to the regulations) but only if subsequent species were shown to meet the definition in the Bill. This could happen, for example, if subsequent research identifies other taonga species that came on the migrating waka.

Some submitters sought a broader definition of 'non-indigenous species of significance' that would permit potentially a wide range of other species to be added in the future. Others stressed the importance of providing certainty to plant breeders.

We acknowledge that it has been a challenge for this review to address the issue of defining 'taonga species'. The scope of the PVR regime is too narrow for this question to be comprehensively addressed, and it is better considered as part of Te Pae Tawhiti, the response to the Wai 262 report. If subsequent work settles on a more comprehensive definition of taonga species, the approach taken in the Bill and these regulations can be revisited.

## **Opposition to grant of a PVR (Regulations 45-47)**

**Regulations 45-47** prescribe what a notice of opposition to the grant of a PVR (made under clauses 49 and 50 of the Bill) must contain, how it must be filed and when a counter-statement to the notice must be filed. They also set out that opposition to denomination must be made within 3 months of publication of the denomination. Opposition on any other matters can be made any time until the PVR is granted. A counter-statement must be filed within 2 months of receiving a notice of opposition.

## **Cancellation, nullification and surrender of PVRs (Regulations 52-58)**

**Regulations 52-54** set out the procedures relating to an application (made under clause 80 of the Bill) for cancellation or nullification of a PVR (on grounds set out in clause 76 of the Bill). They include what is required to be included in an application and time frames for the filing of a counter-statement by the PVR holder.

**Regulations 55-58** set out the procedures relating to notification of surrender of a PVR (under clause 85 of the Bill) and the filing of a notice of opposition to this surrender.

## **Restoration of lapsed applications and cancelled PVRs (Regulations 59-70)**

**Regulations 59-64** set out the procedures for an application (under clause 88 of the Bill) to restore a lapsed PVR application. A PVR application lapses either because of a failure to comply with a request for propagating material or information (under clause 46 of the Bill) or because of a failure to pay a prescribed fee (under clause 48 of the Bill). They set out the timeframes for filing applications and notices of opposition. They also address the issue of what happens if the variety is exploited during the period between lapsing of an application and its restoration.

**Regulations 65-70** set out the procedures for an application (under clause 95 of the Bill) to restore a PVR that has been cancelled because of non-payment of the renewal fee. They set out the timeframes for filing applications and notices of opposition. They also address the issue of what happens if the variety is exploited during the period between cancellation of the PVR and its restoration.

## **Compulsory licences (Regulations 71-75)**

**Regulations 71-75** set out procedures (including timeframes) relating to compulsory licences, including applications (under clause 102 of the Bill), filing a counter statement, provisions of further information and evidence, and applications (under clause 111 of the Bill) for amendment or revocation of a compulsory licence.

## **Proceedings before the Commissioner (hearings) (Regulations 95-118)**

**Regulation 95** sets out the proceedings to which the hearings regulations apply.

**Regulations 96-118** set out all the remaining matters relating to the conduct of hearings. These include regulations relating to:

- › Case management conferences (should the Commissioner decide to call one) (**Regulations 98-101**)
- › The Commissioner's power to extend prescribed time limits (**Regulation 104**)
- › Procedural and evidential requirements (**Regulations 105-111**)
- › How hearings may be conducted and costs (**Regulations 112-118**).

**COMMENT:** The hearings regulations bring the PVR regime into line with the Trade Marks and Patents regimes. They are now the same across all these IP statutes. It has been a significant gap in the current regulations that there have not been prescribed processes for dealing with disputes over PVR applications and granted PVRs.

Hearings are carried out by a separate team within IPONZ to ensure independence from the original decision makers. Hearings can be (i) by appearance in person, (ii) by submissions, or (iii) on the papers.

A hearing may be required whenever a formal notice or application is filed in relation to:

- › Opposition to a PVR grant
- › Cancellation, nullification or surrender of a PVR grant
- › Restoration of lapsed PVR application or PVR grant cancelled for non-payment of renewal fee
- › A compulsory license application.

A hearing may also be required under clause 118 of the Bill which refers to situations in which the Commissioner exercises any of their discretionary powers under the legislation adversely against any person.

## Other matters

The matters in this section are largely a collection of administrative provisions.

### **Substitution and assignments (Regulations 49-51)**

**Regulation 49** prescribes what must be included when a direction is sought (under clause 70 of the Bill) that an application should proceed in the name of another person to whom the PVR application has been assigned.

**Regulation 50** prescribes what must be included when an application is made (under clause 72 of the Bill) to register an interest in a PVR.

**Regulation 51** prescribes what must be included when an application is made (under clause 74 of the Bill) to transfer ownership of a PVR or a PVR application to another person in the event of the death of an applicant or PVR owner.

### **PVR register (Regulations 76-88)**

**Regulations 76-88** prescribe matters relating to the PVR register (clauses 128-137 in the Bill). These include additional information required to be published in the register, searches of the register and the process to be followed when correcting the register.

**Other matters (Regulations 89-94)**

**Regulation 89** covers matters required to be published in the PVR Journal (under clause 145 of the Bill).

**Regulation 90** requires that where the regulations require evidence to be filed, evidence must be filed by statutory declaration or affidavit.

**Regulation 91** provides that the Commissioner may permit any documents filed in proceedings to be amended.

**Regulation 92-93** provide that the Commissioner may waive requirements in certain circumstances, including in relation to PVR applications.

**Regulation 94** requires the Commissioner to maintain electronic copies of all documents and information.





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