

Submission template

Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues

Your name and organisation

██████████	████████████████████
██████████	██
Organisation/Iwi	

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[Insert text]

Responses to questions in the discussion document

Treaty of Waitangi issues

1	<p>Definitions</p> <p>Do you agree with our proposed definition of ‘indigenous plant species’? If not, do you have an alternative to propose?</p>
	<p><i>Note: Conflict of interest as the proposed definition is sourced from my thesis. I agree with the definition. But I disagree with the “Indigenous Plant Species” title. By introducing a new term to a concept that has existed for multiple generations prior to colonisation, you are perpetuating a colonial construct first introduced by early missionaries to devalue Māori cultural and Māori religious beliefs. A phenomenon described in more detail by Professor Ann Salmond in her 2017 publication</i></p>
2	<p>Definitions</p> <p>Do you agree that ‘non-indigenous species of significance’ be listed in regulations and that the list reflect the table above? If not, why not? Are there species that should be on that list that are not?</p>
	<p><i>[Yes I agree that the list should be included. Unlike other proposed species lists, this list is not ambiguous and has withstood the test of time with both mātauranga Māori and western sciences.</i></p>
3	<p>Disclosure obligations and confidentiality</p> <p>Are there any confidentiality considerations in relation to the additional information required under the new disclosure obligations? If so, how should this information be treated?</p>
	<p><i>[To ensure proper Te Tiriti/Treaty obligations and commitments, the status quo of all information being public should remain. If there is an issue of commercial sensitivity, I would prefer that it is discussed a case by case basis with both the proposed Māori PVR Committee and the Commissioner. Some details which may seem irrelevant to a plant breeder may actually be of significant cultural value to whānau, hapū and or Iwi.</i></p>
4	<p>Māori Advisory Committee - appointments</p> <p>Do you agree with the proposal to change the name of the Committee to the ‘Māori PVR Committee’? If not, do you have any other recommendations?</p>
	<p><i>Ideally, the committee would have a meaningful Māori name that reflects the mana of the committee and its membership. As the department that the proposed committee sits within has a Māori name, it seems offensive not to afford the proposed committee the same recognition and Te Tiriti consideration.]</i></p> <p><i>Section 43 is very important. I support this section.</i></p>
5	<p>Māori Advisory Committee - appointments</p> <p>Do you agree with our proposed amendments to the appointment process? If not, why not? Do you have any alternative amendments to propose?</p>

I believe this is a thorough approach. My concerns would be that there are now a significant amount of national Māori organisations that should be consulted with as opposed to only a few.]

I have a number of concerns about section 44 and how the initial appointment process would take place.

Māori Advisory Committee - appointments

6

Do you agree with our proposed amendments to the criteria for appointment? If not, why not? Do you have any alternative amendments to propose?

Section 46 is a good base and I support the addition of the suggestion of section 49. I also support section 50.

I do not support section 51. The committee should be resourced to seek legal advice from within MBIE or externally as a part of the decision process. Limiting a skill set to one area would likely limit the potential for a potential member who has all of the other cultural skills that cannot be learnt at an education institute.]

Māori Advisory Committee – decision making processes

7

Do you agree with the proposed list of considerations the Committee is required to take into consideration when determining whether an application? If not, why not?

[In principle, yes]

Māori Advisory Committee – decision making processes

8

Are there any additional factors that should be added to the list of relevant considerations?

No comment.]

Māori Advisory Committee – decision making processes

9

Do you agree that the Committee should take an investigative approach to decision-making (Option 1)? If not, why not?

Option 1 is the only option proposed that meets tikanga and Te Tiriti obligations. I support option 1.]

Māori Advisory Committee – decision making processes

10

Do you agree that the Committee should be required to reach a unanimous decision and only in the event that, despite all efforts, a decision cannot be reached can the Chair of the Committee allow a decision to be made by either a consensus or a vote (Option 3)? If not, why not?

[Option 1 is my preference. If dealing with tikanga Māori issues and with suitable members on the committee there should always be a unanimous decision. But there needs to be an alternative if there is a dispute. I support option 3 if this issue is well detailed in the Terms of Reference. It may be that the minority person does not have the skill set to be on such a committee.]

11	<p>Māori Advisory Committee – decision making processes</p> <p>Do you agree the Committee should only facilitate discussions between kaitiaki and breeders on the issue of mitigations (Option 2)? If not, why not? Is there an alternative you wish to propose?</p> <p><i>[I support Option 2 but would also encourage further discussion on the topic at a workshop.]</i></p>
12	<p>Post-determination considerations</p> <p>Do you agree with our preferred option for a first stage review of determinations of the Committee (Option 3)? If not, why not? Is there an alternative you wish to propose?</p> <p><i>I support Option 3 with the sub option described in section 83 with an independent person with a legal background along with relevant expertise in intellectual property and traditional knowledge issues. I do not support the option of the Chair of the Patents Māori Advisory Committee as an independent person.]</i></p>
13	<p>Post-determination considerations</p> <p>Do you have any thoughts about either the timeframe for initiating this first stage review or the proposal of adding a person to the Committee when they are reviewing a determination, and who might be appropriate?</p> <p><i>[Insert response here]</i></p>
14	<p>Post-determination considerations</p> <p>Do you agree with our proposal for imposing a time limit in relation to a review of a determination of the Committee? If not, why not?</p> <p><i>I believe this should be discussed with Māori stakeholders and with breeders.]</i></p>
15	<p>Post-determination considerations</p> <p>What do you think is an appropriate timeframe for an aggrieved party to notify Commissioner and the Committee of their intention to seek judicial review?</p> <p><i>I believe this should be discussed with Māori stakeholders and with breeders.]</i></p>
16	<p>Post-determination considerations</p> <p>Do you agree with our preferred option and process for objections after grant in relation to the kaitiaki condition (Option 2)? If not, why not? Is there an alternative you wish to propose?</p> <p><i>I support Option 2</i></p>

Operational issues

17	<p>Information available to the public</p> <p>What are your views of the problem identified by MBIE?</p>
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	<i>No comment</i>
	Information available to the public
18	What do you think about the options outlined by MBIE? What would be your preferred option and why? Are there other options that could be adopted?
	<i>No comment]</i>
	Information available to the public
19	If you support Option 3 what timeframe would you suggest for the information to be made public and why?
	<i>No comment</i>
	Supply of plant material in relation to a specific application
20	Do you consider that these provisions regarding the supply of plant material for a specific application are causing any problems? If so, why?
	<i>No comment]</i>
	Provision of propagating material for comparison and reference purposes
21	What are your views of the problem identified by MBIE?
	<i>No comment]</i>
	Provision of propagating material for comparison and reference purposes
22	Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	<i>[No comment</i>
	Provision of propagating material for comparison and reference purposes
23	Do you agree that if material is not provided lapse or cancellation could occur? Can you think of other ways to enforce this requirement? What is the appropriate timeframe?
	<i>No comment</i>
	Should growing trials be optional or compulsory?
24	What are your views of the problem identified by MBIE?
	<i>No comment</i>
	Should growing trials be optional or compulsory?
25	Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	<i>No comment</i>

26	Who should conduct growing trials? What are your views of the problem identified by MBIE?
	<i>No comment</i>
27	Who should conduct growing trials? Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	<i>[No comment]</i>
28	Trial and examination fees What are your views of the problem identified by MBIE?
	<i>[No comment]</i>
29	Trial and examination fees Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	<i>No comment]</i>
30	Trial and examination fees What would be the appropriate timeframe for payment of trial and examination fees in options 2 and 3?
	<i>[No comment]</i>
31	Hearings and appeals relating to decisions of the Commissioner of PVRs Do you agree that the Act should include provision for a right to be heard along the lines of that in section 208 of the <i>Patents Act 2013</i> . If not, why?
	<i>[No comment]</i>
32	Hearings and appeals relating to decisions of the Commissioner of PVRs What is your view on where appeals to decisions of the Commissioner should be considered (i.e. District Court or High Court)? Why?
	<i>[No comment]</i>

Other comments

[No comment]