

Submission template

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

Your name and organisation

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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>Zespri agrees with the proposed definition of indigenous plant species referenced from the Climate Change Response Act 2002.]</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>Zespri supports ‘non-indigenous species of significance’ being identified in regulation. Articulating the list provides clarity to NZ breeders and businesses. Not defining this list in the legislation would introduce uncertainty into breeding and marketing programmes because breeders would not be sure what species might require consultation with the Maori Advisory Committee. A process should also be articulated for adding or removing species from the list, with a view to ensuring transparency in process and the flexibility for the Act to evolve over time as New Zealand agribusiness changes]</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>Nothing to add]</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>Zespri supports the proposed name change to Maori PVR Committee as this provides further clarity on the scope of the committee.]</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>
	<p><i>[Nothing to add]</i></p>
6	<p>Māori Advisory Committee - appointments</p> <p>Do you agree with our proposed amendments to the criteria for appointment? If not, why not? Do you have any alternative amendments to propose?</p>
	<p><i>Nothing to add]</i></p>

7	<p>Māori Advisory Committee – decision making processes</p> <p>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?</p>
	<p><i>Nothing to add</i></p>
8	<p>Māori Advisory Committee – decision making processes</p> <p>Are there any additional factors that should be added to the list of relevant considerations?</p>
	<p><i>[Nothing to add]</i></p>
9	<p>Māori Advisory Committee – decision making processes</p> <p>Do you agree that the Committee should take an investigative approach to decision-making (Option 1)? If not, why not?</p>
	<p><i>Nothing to add</i></p>
10	<p>Māori Advisory Committee – decision making processes</p> <p>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?</p>
	<p><i>Nothing to add</i></p>
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>Nothing to add]</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>[Nothing to add</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>[Nothing to add]</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>

	<i>Nothing to add</i>
15	Post-determination considerations 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?
	<i>Nothing to add</i>
16	Post-determination considerations 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?
	<i>Nothing to add]</i>

Operational issues

17	Information available to the public What are your views of the problem identified by MBIE?
	<i>[Zespri supports the principle of making breeding information available to the public in exchange for a period of exclusive enjoyment of rights.]</i>
18	Information available to the public 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>[Zespri supports Option Three, which provides for a temporary period of confidentiality. PVR applications may be filed several years ahead of commercialisation. Keeping the details of the application confidential before the grant is issued would allow breeders to continue investigating the commercial viability of a variety before the breeding information is made available to the public. If the PVR Office doesn't grant an application, the breeder can avoid disclosing commercially sensitive information. This may be of particular importance regarding disclosure of prior art when breeders are filing for a plant patent in other jurisdictions.]</i>
19	Information available to the public If you support Option 3 what timeframe would you suggest for the information to be made public and why?
	<i>[See response to Question 18 – we support keeping the breeding details of the application confidential until the PVR Office issues a grant.]</i>
20	Supply of plant material in relation to a specific application Do you consider that these provisions regarding the supply of plant material for a specific application are causing any problems? If so, why?

Zespri has no issue with the PVR Office's provisions for supply of plant material.]

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Provision of propagating material for comparison and reference purposes

What are your views of the problem identified by MBIE?

See response to Question 22]

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Provision of propagating material for comparison and reference purposes

Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?

Generally, Zespri supports Option 2 'Applicants and grantees be required to provide propagating material for comparison and reference purposes'.

However, further clarification would be required on how the plant material supplied for comparison purposes will be protected, particularly where these may be supplied to competitors. Our support of this option relies on the measures the PVR Office puts in place to ensure the supplied material is only used for the stated purpose and is adequately protected from unauthorised use.

Zespri also requests further clarification on the costs associated with preparing and supplying plant material for comparison purposes.]

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Provision of propagating material for comparison and reference purposes

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?

[Zespri agrees the PVR Office could enforce this requirement through lapse or cancellation.

However, the timeframe for complying must take into consideration the seasonal requirements for supplying propagating material – ie this material can only be provided at certain times of the year. We also note the optimal time for providing comparison propagating material may overlap with significant demand from the owner of the plant variety for licensed propagating material, thus limiting the amount of material available.

There are also procedural difficulties involved in moving, importing and storing plant material. Therefore lapse or cancellation should not be discretionary, not automatic, and should only be enforced where the PVR Office is satisfied that the applicant is not using best efforts to comply.]

Our support for this option is again contingent on the PVR Office implementing satisfactory measures to safeguard the plant material. Lapse or cancellation should not be an automatic action if rights holders cannot be assured of adequate security.

In addition to MBIE providing clarity on security provisions, Zespri is in favour of rights holders providing material only if an agreement can be entered into between the parties.

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Should growing trials be optional or compulsory?

What are your views of the problem identified by MBIE?

[See response to Question 25]

25	<p>Should growing trials be optional or compulsory?</p> <p>Do you support MBIE’s preferred option? If not, what other option(s) should be adopted, and why?</p>
	<p><i>Zespri is in support of Option Two, compulsory growing trials. This will lessen ambiguity and make the application process more robust.]</i></p>
26	<p>Who should conduct growing trials?</p> <p>What are your views of the problem identified by MBIE?</p>
	<p><i>See response to Question 27]</i></p>
27	<p>Who should conduct growing trials?</p> <p>Do you support MBIE’s preferred option? If not, what other option(s) should be adopted, and why?</p>
	<p><i>[Zespri supports Option Four, whereby the Commissioner directs the type of growing trials in all applications. This is in line with UPOV principles and Zespri is supportive of the range of trial options including foreign test reports.</i></p>
28	<p>Trial and examination fees</p> <p>What are your views of the problem identified by MBIE?</p>
	<p><i>[Zespri concurs there may be a delay of up to a year or more between application and growing trials getting underway to allow for appropriate growing conditions and preparation of plant material. If application fees are paid at the time of application, this could create accounting issues for MBIE and may present cashflow issues for some businesses.]</i></p>
29	<p>Trial and examination fees</p> <p>Do you support MBIE’s preferred option? If not, what other option(s) should be adopted, and why?</p>
	<p><i>[Zespri supports Option Three, where the trial and examination fees are paid within a prescribed period after the Commissioner’s request. This provides greater alignment between planning a growing trial and paying the PVR Office fees.]</i></p>
30	<p>Trial and examination fees</p> <p>What would be the appropriate timeframe for payment of trial and examination fees in options 2 and 3?</p>
	<p><i>[Zespri is in favour of paying the trial and examination fees after a growing trial has been planned and before the trial starts. This is consistent with a process whereby the Commissioner directs the type of growing trials in all applications.]</i></p>
31	<p>Hearings and appeals relating to decisions of the Commissioner of PVRs</p> <p>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?</p>

[In principle, Zespri is supportive of the hearings process for PVRs being brought into line with other Intellectual Property regimes. However, this will be dependent on the outcome of Question 18 and 19, and whether application information is made publicly available prior to grant.]

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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?

[Zespri is of the opinion that appeals to the decision of the Commissioner should be filed in the High Court rather than the District Court. The High Court has more familiarity and experience with complex Intellectual Property issues and this approach is also in line with patent and trade mark appeals which must be filed in the High Court.]

Other comments

[Insert response here]