Submission template

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

Your name and organisation

[redacted]	[redacted]
[redacted]	[redacted]
Organisation/Iwi	Otago Innovation

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Responses to questions in the discussion document

Treaty of Waitangi issues

1	**Definitions** Do you agree with our proposed definition of 'indigenous plant species'? If not, do you have an alternative to propose?
	This definition is perhaps arguably one of the most important considerations in this process in my view. The nature of the definition will determine what is "in" and what is "out" as far as the Maori Committee is concerned. I would suggest a minor alteration to this definition – *- plant species that* ***occurred and/or*** *occurs naturally in New Zealand prior* ***to human occupation*** *or has arrived in New Zealand without human assistance –* *It seems the intention here with this definition is to capture spp that were present in NZ prior to human occupation or those that might have arrived after human occupation, but did so through natural processes as opposed to human intervention. If that is indeed the purpose, then the opportunity to remove ambiguity might be satisfied with the above insertion. I include "occurred" to refer to those species that might have occurred naturally in NZ prior to human occupation, were present when human arrived but may not be present today due to human intervention (i.e. extinct). Herbaria house many of these spp. I suspect, gene technology in the future might make them relevant.* *A key consideration in this definition is defining what "occur naturally", may mean. Many exotic plants arguably now occur naturally in NZ.* *An additional challenge here - does the definition extend to new varieties derived from indigenous plant spp.? Say…an indigenous plant species is used to create a new variety (V1) , then V1 is used to create another new variety (V2). V1 clearly has indigenous plant spp DNA but can it be defined as a plant that occurs naturally in NZ (as per the proposed definition of an indigenous spp)? It is a new variety after all and by definition arguably not occurred naturally in NZ (in its own right) despite a parent having done so. Then is it the case that V1 and V2 are required to go before the Maori Committee? It seems both fall outside of the scope of that definition.* *Is there value in the legislation to somehow capture this? My feeling is that if taogna spp are associated with a new variety in some way, even one where the taonga spp was a generation or two back, Maori would want to know. Arguably, any new variety whose parentage is derived from an indigenous plant spp, irrespective of generation, should go before the Maori Committee*
2	**Definitions** 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?

	[I applaud the reasoning here and agree with that non-indigenous spp. of significance be listed in regulations. A proviso however, would be concern on whether the list provided is indeed an exhaustive list of such spp. If there were an opportunity from time to time to add new spp that might be valuable]
3	**Disclosure obligations and confidentiality** 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?
	No comment]
4	**Māori Advisory Committee - appointments** 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?
	[I suspect the naming of this committee is politically charged. Attendance at the Hui testified to that. As the committee has more authority than the advisory roles of the committees for Patents and TM's, it seems appropriate that its name should reflect that authority, yet I'd suggest it should also align with the other IP legislation where possible. Perhaps something like the Maori Kaitiaki Committee might be appropriate. That seems to align with other terms used during the PVR process such as "Kaitiaki condition" for example. I understand the desire by some to include the word "Authority" in this title, but irrespective of its' name the responsibility the committee remains the same.]
5	**Māori Advisory Committee - appointments** Do you agree with our proposed amendments to the appointment process? If not, why not? Do you have any alternative amendments to propose?
	Agree, the appointments process should be neutral]
6	**Māori Advisory Committee - appointments** Do you agree with our proposed amendments to the criteria for appointment? If not, why not? Do you have any alternative amendments to propose?
	[No comment]
7	**Māori Advisory Committee – decision making processes** 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?
	For the most part, may I suggest that one criteria be an agreement has been reached between parties or at least underway]
8	**Māori Advisory Committee – decision making processes** Are there any additional factors that should be added to the list of relevant considerations?
	No comment]

9	**Māori Advisory Committee – decision making processes** Do you agree that the Committee should take an investigative approach to decision-making (Option 1)? If not, why not?
	Yes, that's sensible, applicants should be given fair and reasonable opportunity to outline their position.]
10	**Māori Advisory Committee – decision making processes** 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?
	[Agreed, with such a small committee a unanimous decisions should be the goal.]
11	**Māori Advisory Committee – decision making processes** 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?
	[Yes – for neutrality-sake, the committee should divorce itself from being involved in engaging in the agreement between parties. The value of the agreement both in terms of non-financial and financial terms should be left up to the parties. However, I think some guidance on what is meant by the "Kaitiaki Condition" might be useful for applicants. "Kaitiaki Condition" has a "feel" of a legal test. It is clearly important, but seem to lack clarity on exactly what it is. I can imagine much debate over this.
12	**Post-determination considerations** 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?
	This is sensible, but perhaps a cap on the number of times a candidate might do this. It could be used to keep the process in play indefinitely to the detriment of all parties.]
13	**Post-determination considerations** 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?
	Applicants should have ample time to seek a review and then time to work on their submission. Ideally it should align with other legislation e.g. 20 working days in the first instance after receipt of initial decision. Adding a person to the Committee with the appropriate skills aligned to the issue at hand makes sense.
14	**Post-determination considerations** 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?
	Absolutely, to keep costs to a minimum]

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?
	[20 working days]
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?
	[Agreed]

Operational issues

17	**Information available to the public** What are your views of the problem identified by MBIE?
	No Comment]
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?
	Options 3 is preferred. If there is concern regarding accuracy of breeding and origin information have it assessed by a qualified 3rd-party under confidentiality. That maintains confidentiality for the breeder and confidence for the commissioner that the evidence is accurate.]
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?
	[At least one breeding season – 12 months. It gives the breeder time to grow material commercially (similar to provisional patent timeframes)]
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?
	No Comment]
21	**Provision of propagating material for comparison and reference purposes** What are your views of the problem identified by MBIE?
	[No Comment]

22	**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?
	That's fair and reasonable]
23	**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?
	Yes, if material is not provided how can you possibly assess the material against the requirements for a PVR. Potentially 12 months.]
24	**Should growing trials be optional or compulsory?** What are your views of the problem identified by MBIE?
	Compulsory[]
25	**Should growing trials be optional or compulsory?** Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	[Yes – growing trials should be compulsory to meet the requirement of a PVR. It's no different to provision of data for a patent application for a new drug for example]
26	**Who should conduct growing trials?** What are your views of the problem identified by MBIE?
	[No Comment]
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 think that's OK, as long as the cost is not too onerous on applicants, especially if it is compulsory to do a trial. The danger here is that cost is so prohibitive it's uneconomic to progress
28	**Trial and examination fees** What are your views of the problem identified by MBIE?
	[No Comment
29	**Trial and examination fees** Do you support MBIE's preferred option? If not, what other option(s) should be adopted, and why?
	[No Comment

30	**Trial and examination fees** What would be the appropriate timeframe for payment of trial and examination fees in options 2 and 3?
	20 working days after agreement on the trial details are reached, if an applicant doesn't have the funds available, why do it in the first place]
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 *Patents Act 2013*. If not, why?
	No Comment
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?
	[No Comment]

Other comments