National Council of
Women of New Zealand
Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

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Submission to the Education and Science Select Committee on the Plant Variety Rights Amendment Bill

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 40 nationally organised societies. It has 32 branches throughout the country attended by representatives of those societies and some 150 other societies. It also has individual members. The work of the council is to serve women, families and the community through research, study, discussion and action, at local and national levels. This submission has been prepared using comments made by members of the Council's Environment Standing Committee.

General Comments

The National Council of Women is pleased to see this proposed amendment to the Plants Variety Rights Act 1987. New Zealand is a country which relies quite considerably on agricultural and horticultural products for its income, and it is in the interests of us all that the ownership of plant varieties should be quite precisely established, in order to prevent pirating that could lead to competitive production of 'our' plants overseas. There is a long history of research and development by New Zealand scientists of plant varieties that are particularly adapted to growing conditions in New Zealand. Unfortunately these conditions apply in some other southern hemisphere countries. To have incomplete protection on New Zealand developed plant varieties could lead to unfair exploitation in another country of what by rights belongs to the New Zealander who carried out the research work. This has already happened with some apple varieties and with kiwifruit. While it may be true that in some cases the developer has sold the reproductive material overseas, exercising his or her right as owner to do so, in the long term this kind of action disadvantages the indigenous horticultural industry. We must also recognise that no amount of legislation will prevent a determined smuggler from taking reproductive plant material out of the country or bringing it in either.

Specific Comments

Part I, clause 3, Interpretation.

With regard to the addition of the definition of "**breed**", and the omission of "or discovered" in the interpretation:-

At first we thought this was a rather arbitrary decision, believing that a discoverer should have the right to claim ownership of a plant variety, until we realised that the measure is designed to prevent, for example, drug manufacturing companies 'discovering' and claiming ownership of plants that have for generations been part of the pharmacopeia of indigenous peoples, and thus denying those peoples the right to develop the medicinal potential of those plants themselves. We agree with a measure that will protect the right of traditional usage to be commercialised before being prevented from so doing by a claim from a purely commercial interest for exclusive right to use.

Part I, clause 4, Making of Grants, subsection (3A).
NCWNZ members are completely in agreement with this amendment, recognising that sometimes in the past those who have given names to plant varieties have not been especially sensitive as to whether the name might be offensive to certain members of the community. However, if after consultation with a potentially affected group someone finds that his or her proposed denomination is acceptable to that group, even if it could potentially be offensive, then the Commissioner should take this into account when considering approval.

Part I, section 7, new clause 18B, Farm-saved seed exception.
Respondents approve of this amendment. Farmers have traditionally saved seed from crops for replanting the following year; it reduces their expenses and helps keep farming a viably profitable enterprise. We would not like to see the situation of farmers being forced to buy new seed every year from a seed producing company, but are they by these amendments prevented from giving surplus saved seed to their neighbours? If they were to sell surplus seed to their neighbours, which would be a commercial activity, would this constitute a serious infringement? We wonder what systems for policing the sale by farmers of saved seed might be, and what penalties are proposed if they are found to be abusing the exception.

Part 2, Transitional Provisions.
There is a little concern about transitional provisions, as there is a temptation to beat the gun if the new law places greater restrictions upon activities than the old law. In this instance, what concerns us is the possibility of drug companies hurrying to 'discover' plants with medicinal properties and laying claim to ownership, denying ownership to traditional users. We suggest that a moratorium be placed upon such claims, to last until the new law is fully operative.

Conclusion
The National Council of Women believes that the proposed amendments to the principle Act deal well with the inadequacies that have developed over time as conditions change and the commercial imperative becomes more threatening to the rights of traditional users of medicinal plants. NCWNZ applauds the intention to provide incentives to New Zealand plant breeders, as ownership of intellectual property is becoming increasingly important in a global economy, and having New Zealand developed and owned plant varieties is a tangible way of increasing the nation's wealth.

Christine Low
National President

Elizabeth Lee
Convener, Environment Standing Committee