section 3.9 |

appendix 3

Outcomes of Consultation: Submissions from the Public

Section contents

3.9 Intellectual property

Background

The Warrant, under item (f) called for information on:

> the intellectual property issues involved, or likely to be involved, now or in the future, in relation to the use in New Zealand of genetic modification, genetically modified organisms and products

Outline of this section

This section of the report presents 649 public submitters' views about intellectual property. The topics covered by these submitters included:

- definition and characteristics
- the application of patenting
- the advantages and disadvantages of its application.

Definition and characteristics

Few public submitters addressed the topic of intellectual property, and those who did tended to make more general ethical statements against the concept of "ownership of life". Many perceived the idea of patenting as a threat and a control mechanism by which multinationals would dominate the world and control the global food supply.

The application of patenting

Of those commenting on intellectual property matters, 189 discussed the potential for patenting the outputs of genetic modification activities. Although most were opposed to patenting altogether, some suggested that processes may be patented but that the outcomes, such as the "code of life" itself could not be. Others identified specific groups of genetically modified products that should not be even considered for patenting for ethical, moral, cultural (particularly from a Maori perspective) or environmental reasons. Indigenous flora and fauna, including genetic material held off shore, received the most attention. Eighty-six submitters

raised this issue, some suggesting the issue was of particular concern to Maori because they are the owners or guardians of indigenous flora and fauna (and traditional knowledge and folklore). Others identified all New Zealanders as the owners.

The list of other materials that should not be considered for patenting included:

- all human material
- human material in general, with the acceptance of some specific applications using genetic information
- naturally occurring organisms
- any living organisms and genes (so that only processes could be patentable).

Advantages and disadvantages of patenting

Few public submitters considered patents to be valuable as an incentive mechanism. They were, at a general level, against the patenting of any genetically modified organisms. The most commonly identified disadvantage (raised by 70% of those commenting on intellectual property) related to the consequences of monopoly control by patent holders. The following quote, from a group of submitters, is typical of public submitters' concerns about the economic consequences of allowing patenting of any form of life:

> Of serious concern to us, is the fact that the very basis of life — 'the seed' — will be owned and controlled by commercial interests. Corporate controlled vested interests are developing gene altered seeds and utilising the patent regime, claiming exclusive ownership of seeds to gain control over agriculture. Please ensure that this does not happen.

Other submitters focused on the moral dimension of owning life and profiting from the "genetic commons". A few wrote about how patenting could exclude them from certain activities or benefits. Some submitters from a New Zealand university mentioned that they had to cancel research because they could not afford to access material from its patent holder. Another researcher explained how researchers could be excluded entirely from participating in valuable research areas, given access costs created through patenting.

The legislative context and its adequacy

As Table 3.16 shows, only a handful of public submitters referred to the legislative context for protecting intellectual property. Some of the related legislation includes the international Trade Related International Property Rights Agreement

Table 3.16 Intellectual property and genetic modification (n = 649)

Major issues	Number	%
Monopoly control by GM patent holders	454	70.0
Potential for patenting of genetic material	189	29.1
Patentability of indigenous flora and fauna	86	13.3
Patentability of human genome	73	11.2
Biopiracy	38	5.9
Inadequate protection of GM information for patent purposes and protection of intellectual property	29	4.5
NZ needs to capture its own IP	14	2.2
Loss of intellectual property and/or patentability because of disclosure of confidential information during review process	1	0.2
Other	9	1.4

The "Other" category included the following issues related to Intellectual Property:

- Agreement between Crown and WHO in relation to indigenous plants and patenting and the Treaty of Waitangi
- immoral to own genes
- threat to biodiversity
- prohibit patenting of life forms under New Zealand's patent regime
- difficulty in establishing liability when genes jump
- patents invalid as they imply biological organism are unchanging when they are not

Multiple response

(TRIPS) and, in New Zealand, the Trade Marks, Patents, Design, Fair Trading and Copyright Acts. However, in their consideration of strategic options for genetic modification use in New Zealand, discussed in detail previously (see "Strategic outcomes, issues and options"), a small percentage of the submitters indicated that they would like to see an explicit ban on any patenting of genetically modified organisms or products (see Table 3.3).