Technical guidance

Use of Foreign Test Reports for DUS Testing in New Zealand

Introduction

The [Plant Variety Rights Act 1987](https://www.nzlegis.govt.nz/laws/en_STATS/K3/html/act_1987-208.htm) requires that protection can be applied for a variety in any plant genera, excluding bacteria and algae and that all DUS decisions are made using plant to plant comparisons in growing trials. The consequence of this requirement means that PVRO requires testing expertise and resources or access to expertise and resources for a large range of genera, which has practical limitations. In some cases, the variety belongs to a genus or species which is new to New Zealand or for which there is very little growing, production or research experience nationally and overall knowledge is low. In other cases there may be significant production but no breeding or research activity in that genus. For varieties in these sorts of genera and species it may be better to use overseas knowledge and expertise for the NZ decision. The UPOV system provides for the possibility for member states to utilise each other’s test reports and exchange genera expertise.

Purchasing DUS test reports from other UPOV member states

The agreed practice is for the report to be requested by the national authority to the corresponding authority. The protocol when obtaining test reports is to obtain from the first authority which tested the variety. This is to avoid obtaining a test report of a test report. It is considered desirable to obtain a report from the authority which first carried out the DUS testing for that variety. Where a test report is used for a DUS decision in New Zealand, any cost incurred by PVRO is included in the standard trial fee paid by the applicant.

Criteria for the use of overseas test report

There are no specific rules or firm guidelines that automatically dictate whether or not an overseas test report for a variety is acceptable. It is not possible to publish a list of genera where PVRO will use overseas test reports or a list which PVRO will not. Each application is assessed variety by variety, using a range of factors. The following is a list of criteria which is applied to a variety and depending on the conclusion for each, may lead to the decision to use an overseas test report.
Decisions based upon the test report

For most varieties the test report will fully replace a NZ DUS growing trial. When the test report is received the examination of the variety is carried out using that report. The examiner may wish to check plant material of the variety in order to confirm that the variety description is consistent with the expression of plant characters as seen in New Zealand. In some cases, a complete NZ DUS growing trial may be required in addition to the use of the test report. This could be caused by possible deficiency with the test report identified during examination such as new variety of common knowledge information arising after the test report is received.

1. Where there has been one or more prior applications overseas, determine whether or not a report could be available from the authority receiving the first or only application.

2. Determine the level of genus or species knowledge, production or DUS testing experience nationally. Also consider the requirements for growing the variety e.g. greenhouse, shade house, open field.

3. Determine whether or not there is a UPOV test guideline and consider the experience of the testing authority from which the report may be requested.

4. Check whether or not that there are possible similar varieties in NZ. If there are similar varieties in NZ, have these been considered by the overseas testing authority?

5. Consider the importance, with respect to a NZ DUS decision, of any plant character which may change expression due to NZ’s climate and environment, resulting in the test report variety description having significant difference when compared to the variety as observed in NZ.