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# Review of the *Plant Variety Rights Act*: Wai 262 recommendations

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## What is the Wai 262 report?

**Wai 262** refers to the report of the Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*. It was published in 2011 after several years of hearings on a wide range of issues.

In Chapter 2 of the report, the Tribunal examined law and policy relating to the genetic and biological resources of **taonga species** and **mātauranga Māori** (broadly speaking, Māori traditional knowledge). This involved a close look at New Zealand's bioprospecting, genetic modification and intellectual property regimes, including the PVR regime.

## How is it relevant to the PVR Act review?

The Crown's obligations to Māori in the PVR regime under the Treaty of Waitangi are a key component of our review of the PVR Act.

The Wai 262 report made four recommendations in relation to the PVR Act. We are using the Tribunal's analysis and recommendations on PVRs as our framework for considering how the Crown meets its Treaty of Waitangi obligations in this review.

The review is limited to intellectual property only, and will not be looking at the Tribunal's Chapter 2 recommendations relating to bioprospecting and genetic modification.

## What did the Tribunal find in relation to taonga species and mātauranga Māori?

The Tribunal's key finding in Chapter 2 of the Wai 262 report was that, while the Treaty does not guarantee ownership of taonga species (or mātauranga Māori in relation to taonga species), it does guarantee **tino rangatiratanga**. This requires recognition and protection of the **kaitiaki relationship** with taonga species and mātauranga Māori.



## What recommendations did the Wai 262 report make in relation to PVRs?

The recommendations made by the Tribunal are:

- › that the Commissioner of Plant Variety Rights be empowered to refuse a PVR that would affect the kaitiaki relationship;
- › that the Commissioner be supported by a Māori Advisory Committee in his/her consideration of the kaitiaki interest;
- › that the level of human input into the development of a plant variety required for PVR protection be clarified (to address concerns that varieties may be 'discovered' in the wild); and
- › that the Commissioner be empowered to refuse a proposed name for a plant variety if its use would be likely to offend a significant section of the community, including Māori.

The review is also an opportunity to consider other issues of importance to Māori in the PVR regime that are not covered in the Wai 262 report. For example, we have heard about concerns relating to:

- › the transparency and accessibility of information about taonga species in the PVR register;
- › the disclosure of origin of genetic resources and/or traditional knowledge used in the development of plant varieties.

### Consultation on patent disclosure of origin

Separately to the PVR Act review, MBIE is also consulting on options for implementing a disclosure of origin requirement in the patents regime. This is another recommendation in the Wai 262 report. The Tribunal recommended that patent applicants be required to disclose the origin of any genetic resources and/or traditional knowledge used in their inventions. A discussion document detailing options for such a requirement can be found on the MBIE website [here](#).

