

Plant Variety Rights Act 1987 review: Issues Paper – Submission template

Name	Karaitiana Taiuru
Email	
Organisation/iwi	Click here to enter text. If you are submitting on behalf of an organisation/iwi, please indicate which organisation/iwi you represent.
Interest	Ngāi Tahu, Ngāti Rāura, Ngāti Pahuwera, Tūwharetoa. Māori practitioner and advocate.

The *Privacy Act 1993* applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box.

Release of information

For more detail on how MBIE proposes to release submissions, please see page ii of the Issues Paper.

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons and grounds under the *Official Information Act 1982* that I believe apply, for consideration by MBIE.

Responses to Issues Paper questions

Your submission may respond to any or all of the questions from the Issues Paper. There is an additional box at the end for any other comments you may wish to make.

Text boxes will expand as you complete them.

Objectives of the PVR Act

1 Do you think the objectives correctly state what the purpose of the PVR regime should be? Why/why not?

Click here to enter text.

2 Do you think the PVR regime is meeting these objectives? Why/why not?

Click here to enter text.

3 What are the costs and benefits of New Zealand's PVR regime not being consistent with UPOV 91 (e.g. in terms of access to commercially valuable new varieties, incentives to develop new varieties)? What is the size of these costs/benefits? What are the flow on effects of these costs/benefits? Please provide supporting evidence where possible.

Click here to enter text.

4 Do you think there would be a material difference between implementing a sui generis regime that gives effect to UPOV 1991 (as permitted under the CPTPP) and actually becoming a party to UPOV 91? If so, what would the costs/benefits be?

Click here to enter text.

Farm-saved seed

5 Are there important features of the current situation regarding farm-saved seed that we have not mentioned?

[Click here to enter text.](#)

6 Can you provide any additional evidence/information that would assist us to understand this issue? For example, the nature and extent of royalties that are currently paid in different sectors, and the proportion of crops planted each year using farm-saved seed.

[Click here to enter text.](#)

7 Do you think there are problems with the current farm-saved seed arrangements? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

8 Do you think there are benefits of the farm-saved seed arrangements? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

9 Do PVR owners use mechanisms outside the PVR regime to control farmers' use or saving of the seeds of their protected varieties? What are these?

[Click here to enter text.](#)

10 Do you think farmers should have to get permission from the PVR owner before sowing the farm-saved seed of a protected variety? Why/why not?

[Click here to enter text.](#)

11 What do you think the costs and benefits of a mandatory royalty scheme would be? What could such a scheme look like (e.g. should it cover all, or only some, varieties)?

[Click here to enter text.](#)

Rights over harvested material

12 Are there important features of the current situation regarding rights over harvested material that we have not mentioned?

[Click here to enter text.](#)

13 Do you agree with our definition of 'harvested material'? Why/why not?

[Click here to enter text.](#)

14 Do you think there are problems with the current scope of PVR owners' rights over harvested material? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

15

Do you think there are benefits to the current scope of PVR owners' rights over harvested material? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

Rights over similar varieties

16

Are there other important features of the current situation regarding distinctness that we have not mentioned?

[Click here to enter text.](#)

17

Are there other important features of the concept of EDVs that we have not mentioned?

[Click here to enter text.](#)

18

Do you think there are problems with the current approach for assessing distinctness? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

19

Do you think there are benefits with the current approach for assessing distinctness? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

20

How might technological change affect the problems/benefits of the current approach for assessing distinctness that you have identified?

[Click here to enter text.](#)

21

Do you have any examples of a plant breeder 'free-riding' off a variety? How often does this happen? What commercial impact did this have? Please provide evidence where possible.

[Click here to enter text.](#)

22

Do you think there are problems with not having an EDV regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

23

Do you think there are benefits of not having an EDV regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

24

How might technological change affect the problems/benefits of not having an EDV regime that you have identified?

[Click here to enter text.](#)

Compulsory licences

25 Are there important features of the current situation regarding compulsory licences that we have not mentioned?

[Click here to enter text.](#)

26 Do you think there are problems with the current compulsory licence regime? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

27 Do you think there are benefits with the current compulsory licence regime? What are they? What is the size of these benefits? What are the consequences of these benefits? Please provide evidence where possible.

[Click here to enter text.](#)

Enforcement: infringements and offences

28 Are there important features of the current situation regarding infringements and offences that we have not mentioned?

[Click here to enter text.](#)

29 Have you been involved in a dispute relating to the infringement of a PVR? How was it resolved? How was it resolved (e.g. was alternative dispute resolution used)? How effective was the process?

[Click here to enter text.](#)

30 How prevalent are PVR infringements and offences?

[Click here to enter text.](#)

31 Do you think there are problems with the infringement provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

32 Do you think there are problems with the offence provisions in the PVR Act? What are they? What is the size of these problems? What are the consequences of these problems? Please provide evidence where possible.

[Click here to enter text.](#)

The kaitiaki relationship and the PVR Act

33 How does the current PVR regime assist, or fail to prevent, activity that is prejudicial to the kaitiaki relationship? What are the negative impacts of that activity on the kaitiaki relationship?

The current PVR regime fails to recognise a Kaitiaki relationship. There is no definition of Taonga Species which would recognise the need and identify the definition of a Kaitiaki. There is no Iwi/Māori buffer to check and approve applications.

There is also no definition of who is Kaitiaki?. For the purposes of the PVA I suggest the following:

Kaitiaki is the Iwi/hapū/whanau of a geographical location that a seed, seedling or cutting originally came from. If that plant has been relocated to a different geographical location, then the Iwi/Hapu/Whanau of the new area is the Kaitiaki.

34 What are the problems that arise from the PVR grant process, or the grant of PVR over taonga species-derived varieties more generally, for kaitiaki relationships? Please provide examples.

It is not possible to answer this question as there is no definition of Taonga Species nor Kaitiaki to be able to answer this question properly. I refer to question 33 which answers this question using the proposed definitions.

35 What role could a Māori advisory committee play in supporting the Commissioner of PVRs?

The Patents Maori Advisory group would be ideal as the body is already a legislated group that has been recommended in WAI 262. Any application that uses a Taonga Species (once a definition is agreed upon) should go to that group in the same manner as TradeMarks with a Māori word or pattern go to the Māori TradeMarks Advisory group. The group could then ensure that the customary, kaitiaki and iwi aspirations and protection have been considered.

36 How does industry currently work with kaitiaki in the development of plant varieties? Do you have any examples where the kaitiaki relationship was been considered in the development of a variety?

They do not and do not have any motivation to do so. Again, lack of definitions of Taonga Species and Kaitiaki removes any motivation for such relationships.

'Discovered' varieties

37 Are there examples of traditional varieties derived from taonga species that have been granted PVR protection? Do you consider there is a risk of this occurring?

I am not aware of any. Again, a Māori advisory group would advise on the customary, tikanga and other implications of mixing whakapapa of different species. Traditional varieties derived from a Taonga Species still has whakapapa, similar to a human of mixed race, therefore is still a taonga species.

Offensive names

38 What characteristics might make a variety name offensive to a significant section of the community, including Māori?

The proposed advisory group mentioned earlier should have the ability to decline an application if the name is offensive to a significant section of Māori and Iwi communities, in the same manner as the Māori TradeMarks Advisory group approve and decline applications now.

Transparency and participation in the PVR regime

39 What information do you think should/should not be accessible on the PVR register? Why?

Māori names and all of their various spellings including national, local, Iwi, regional should be added to the system. Complete origin(s) of the species should also be added to allow kaitiaki responsibilities to be actined.

40 As a plant breeder, do you gather information on the origin of genetic material used in plant breeding?

[Click here to enter text.](#)

Other Treaty of Waitangi considerations

41 What else should we be thinking about in considering the Crown's Treaty of Waitangi obligations to Māori in the PVR regime? Why?

The PVR regime currently ignores the Treaty of Waitangi.

There is no definition of Taonga Species in the Plant Varieties Act. Therefore how can the government offer Treaty Protection and recognition of Taonga – it can't. The only legal definition of a Taonga Species is in Schedule 97 of the Ngai Tahu Settlement Act 1993. Wai 262 has a recommendation that Iwi decide on a case by case basis. Neither option fulfills a government treaty partnership. A definition needs to be agreed to and published.

A suggested definition from my thesis:

a taonga species is a living or dead species that is:

1. Human body of Māori descent
2. Endemic native species that were born and raised in New Zealand
3. Indigenous native species.
4. Species that have been introduced by the migrating waka.
5. Hybrid species that use a species in 1-4.

Human body of Māori descent

The human body/ira tangata is tapu.

Endemic native species

Endemic native species means exclusively native to the biota of a specific place such as Kiwi. Their whakapapa is clearly directly to Ranginui and Papatuanuku.

Native species

A Native species originates in New Zealand but can be found in other countries. The difference between a native species of New Zealand and one from overseas, is that a New Zealand native species is tapu as it originated in Papatuanuku of Aotearoa. From a western perspective they may be scientifically the same, but from an Indigenous perspective, they are unique due to the species containing mauri of the area they originated from, the tangata whenua, Iwi, hapū and whanau.

Species that have been introduced by the migrating waka.

A species as listed in Appendix 3, that is a part of Māori culture and was brought to New Zealand by the three waves of migration waka.

The whakapapa of these species from the ancient homelands of Māori make these species tapu and therefore a taonga.

Hybrid species that use a species in 1-4.

In biology, a hybrid is the result of combining the qualities of two organisms of different breeds, varieties, species or genera through sexual reproduction. If a hybrid uses a taonga species as identified in points 1-4, then the hybrid will still contain whakapapa and as the species was not dead, also the mauri of the taonga species. Therefore must be treated as a taonga species. The same principles as inter racial relationships in a Māori view need to be considered for hybrid species. It is a colonial tool to describe blood quantum and deny whakapapa.

Taonga species is not any introduced species that is deemed to be a taonga to a Māori or Iwi. They are not as they have whakapapa and origins to other countries.

Kaitiaki Relationships need to recognise that the geographical location of a Taonga Species comes under the kaitiaki of the local Iwi/Hapu/Whanau.

Additional issues

42 Do you have any comments on these additional issues, or wish to raise any other issues not covered either in this section, or elsewhere in this paper?

[Click here to enter text.](#)

Other comments

43 Are there any additional comments you wish to make about the PVR Act review Issues Paper?

[Click here to enter text.](#)