

By email: PVRActReview@mbie.govt.nz

Submission to the Ministry of Business, Innovation and Employment

Re: Plant Variety Rights Act Review

1. This submission on behalf of is made on behalf of Wai 1312 a claim by Karanga Pourewa, Tarzan Hori, Hinemoa Pourewa and William Hori for themselves and the descendants of Whakaki and Te Hapu o Ngati Kawau (“The Claimants”).
2. The Plant Variety Rights Act Review is an important conversation domestically and also has international consequences, the starting point for the claimants is that UPOV 91 cannot provide Te Tiriti compliant standards of active protection and partnership as guaranteed to Māori.
3. The Claimants support a pathway which amends the current domestic Plant Variety Rights Act 1987 (which is 31 years out of date) to be compliant with UPOV 91 base requirements AND to also take into account Aotearoa’s unique situation where the Māori interest in Plant Variety Rights must be actively and mandatorily implemented and protected. The following reasons are given in support of this approach:
 - a. There has been significant technological developments in Plant Variety science and breeding since 1987 which has caused New Zealand’s current domestic legislation on Plant Variety Rights to become hopelessly redundant.
 - b. Since 1987 there has also been crucial developments in Te Tiriti o Waitangi Jurisprudence. New Zealand now has a very advanced and matured understanding of the rights and interests that stem from Te Tiriti o Waitangi and this understanding is not reflected in the 1987 legislation. New Zealand’s domestic law must be brought up to speed with this now sophisticated and unique aspect of New Zealand law and policy.
 - c. The Claimants stress that Aotearoa’s domestic law needs to be amended and in line with current policy and legislative developments. Only then can New Zealand confidently and legitimately enter into international trade agreements which effect Māori interest.
 - d. The Claimants also prefer internal amendment to domestic legislation rather than signing UPOV 91 as this is a universal document, which is general to all countries. UPOV 91 is unable to take into account different indigenous perspectives and situations. A sui generis regime could reflect particular local nuances such as legislating to make it impossible for breeders to give new plant varieties names that are offensive or tino tapu

such as naming species after special legends for example the muhau and Takaretō, the two birds of knowledge recognized by the descendants of Te Whiti.

4. In the Ministry of Business, Innovation and Employment *Issues Paper* (September 2018) at page 64, a Māori advisory committee is discussed which would advise the Commissioner on the kaitiaki interest in a Plant Variety Right application. The Waitangi Tribunal recommended for the creation of this entity in its Wai 262 recommendations and that it would have a similar role to the Patents Māori Advisory Committee which can advise the Commissioner of Patents on:
 - a. Whether the claimed invention is derived from mātauranga Māori or indigenous plants or animals; and
 - b. If so, whether the commercial exploitation of that invention is likely to be contrary to Māori values.
5. It is the Claimants submission that, rather than having a Māori Advisory Board which can only 'advise' the Plant Variety Commissioner once a Plant Variety Right Application has already been submitted, that instead there should be mandatory requirements right at the start of the application process. Under this approach, when making an application for a Plant Variety Right a breeder must provide information on whether the new species created was in part derived from mātauranga Māori or indigenous plants or animals, and if so, whether the commercial exploitation of that invention is likely to be contrary to Māori values. The Claimants advocate for these two requirements to be part of the mandatory steps that must be completed when making an application for a Plant Variety Right. By having these requirements at the forefront gives more force to Māori interests, displays the Maori interest in a transparent and positive light right at the beginning of the process rather than as a negative veto type power at the end of the process. The Claimants also submit that having these requirements at the forefront and part of the application process will be of benefit to breeders as the application process will be far more efficient and streamlined.
6. To expand on this point, a Plant Variety Right must be granted under UPOV 91 if it meets the DUS, newness, and denomination requirements. The Claimants support the additional requirements as outlined above in paragraph 7 to be added to the necessary requirements for a Plant Variety Right. Under UPOV 91 additional requirements cannot be added, therefore the only way to recognise and implement a Māori interest is to amend the Plant Variety Rights Act 1987.
7. The Claimants hold the position that Maori have in reality been short-changed when it comes to intellectual property rights under New Zealand law. A Plant Variety Right

essentially is an intellectual property right. Intellectual property rights enable an individual to gain financially from sharing unique and useful knowledge. Plant breeders gain financially from having an exclusive right. Compensating Māori for sharing their knowledge of biological resources as the steward/kaitiaki of those resources which enabled a breeder to invent a new species is an equitable outcome. Therefore, a sui generis Plant Variety Right Act should also legislate to provide payment which validates the sharing of unique and useful knowledge, only known to Māori.

8. In conclusion, the Claimants submit that becoming a party to UPOV 91 is inconsistent with the kaitiaki relationship recommendations of the Waitangi Tribunal and is also inconsistent with the principles of active protection of taonga and partnership between Māori and the Crown under Te Tiriti o Waitangi. The claimants affirmatively answer question 4 on page 78 of MBIE Issues Paper:

Do you think there would be a material difference between implementing a sui generis regime that gives effect to UPOV 1991 (as permitted under CPTPP) and actually becoming a party to UPOV 91?

If required, the Wai 1312 Claimants are willing to speak to their submission.

Please send any correspondence regarding this submission to:

Bill Hori

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