



Plant Variety Rights Act Review: Summary of Treaty of Waitangi Compliance Options

This summary paper outlines MBIE’s proposed approach to Treaty of Waitangi compliance in the PVR Act, as outlined in the Options Paper for the review of the Plant Variety Rights Act (**PVR Act**).

What did the Wai 262 report say about PVRs?

The PVR allows plant breeders to apply for limited control for a limited time over the propagating material (e.g. seeds) of new varieties they have developed.

The Waitangi Tribunal has considered the Crown’s obligations to Māori under the Treaty of Waitangi in the context of the PVR Act, in its report on the Wai 262 inquiry, *Ko Aotearoa Tēnei*. It recommended that the PVR regime (along with bioprospecting, genetic modification and other intellectual property law and policy) facilitate better protection for kaitiaki relationships with taonga species and mātauranga Māori. The Tribunal made specific recommendations to ensure kaitiaki relationships were considered effectively in PVR decision-making processes.

What is our approach to considering Treaty compliance in the PVR regime?

The PVR Act currently does not refer to the Treaty of Waitangi or provide explicit protection for kaitiaki interests.

We consider that the Treaty of Waitangi requires the Crown to consider kaitiaki interests – in a meaningful and mana-enhancing way that facilitates protection of those interests – in the PVR regime. This requires a genuine and balanced consideration of kaitiaki interests at all stages of the PVR process, from the start of the breeding programme to the decision on whether or not to grant a PVR.



We consider that early, meaningful and ongoing engagement with kaitiaki by plant breeders (where relevant) will be key to ensuring kaitiaki interests are recognised and protected in the PVR regime. We understand that engagement between breeders and kaitiaki happens sparingly currently. To facilitate effective engagement between breeders and kaitiaki, we propose a collaborative process involving the PVR Office, the proposed Māori advisory committee, breeders and kaitiaki to establish engagement protocols before the new regime comes into effect.

We have heard from Māori in this review that, in general, legislation relating to taonga plant species does not protect their interests. Below, we propose changes to the PVR regime that reflect and, to an extent, ameliorate issues with the current legislative context (which largely predates the release of the Wai 262 report). In particular, we do not consider that excluding varieties derived from taonga plant species from the PVR regime would facilitate protection of kaitiaki interests. This would result in little to no regulation of plant breeding with material from these species. This review provides an opportunity to ensure plant breeding in New Zealand (and perhaps, internationally) is inclusive of kaitiaki interests.

How do we propose to make the PVR regime Treaty compliant?

Our recommended package of proposals to achieve Treaty compliance in the PVR Act involves:

- › **New disclosure requirements:** introduce new information disclosure requirements for breeders, requiring them to provide information about the origin of the plant material used to develop their varieties and if applicable, who kaitiaki are, any engagement the breeder has had with kaitiaki, and the breeder's assessment of whether kaitiaki interests would be affected by the commercialisation of the new variety;
- › **New Māori advisory committee:** establish a PVR Māori advisory committee, to:
 - develop guidelines for breeders and kaitiaki on engagement;
 - provide advice to breeders and kaitiaki at the pre-application stage;
 - provide advice to the Commissioner of Plant Variety Rights and the Chair of the Māori advisory committee as to whether kaitiaki interests would be adversely affected by the grant of a PVR and, if so, whether the impact can be mitigated to a reasonable extent such as to allow the grant.
- › **New decision-making process:** empower the Commissioner of Plant Variety Rights, jointly with the Chair of the Māori advisory committee, to decide whether, on the basis of the Māori advisory committee's advice, the PVR should be granted.

This package of proposals incorporates the Wai 262 recommendations on PVRs.

We also explored an alternative option to the decision-making process proposed above that would permit restrictions to be imposed on the exercise of the breeder's right. However, because this only allows for consideration of kaitiaki interests after a PVR has been granted and would not allow for a grant to be refused, we concluded that this option falls short of what is necessary for Treaty compliance.

We seek your views on whether you agree with our analysis and proposed options for Treaty of Waitangi compliance, and whether there are alternatives or additional proposals that should be considered.

