

Plant Variety Rights Act 1987 review: Options Paper

Your name and organisation

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Responses to questions in the Options Paper

1

Objectives of the PVR Act

Do you have any further comment to make on the objectives of the PVR Act?

The Options Paper as drafted takes the Waitangi Tribunal's Wai 262 report from 2011 as its starting point, but to the best of my knowledge this has never been debated in Parliament or in the general media. When that report was first released, there was widespread dismay, and disagreement with the notion that Maori New Zealanders had some kind of ownership interest in the plant material existing in New Zealand at the time European settlement began.

There is, of course, no specific reference to plant material in the Treaty of Waitangi. Article II "guarantees to the chiefs and tribes and to all the people of New Zealand the possession of their lands, dwellings and all their property". There is not even any mention of forests or fisheries in the official (Maori language) version of the Treaty. And most reasonable people would assume that, when land was sold (or in some cases confiscated), the grass, trees and other plants on that land was simultaneously sold also.

So when the Options Paper confidently asserts that "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", I say I disagree. I see nothing in the Treaty which requires New Zealanders who chance to have a Maori ancestor - always with ancestors of other ethnicities too of course - to have any special or preferential rights over plant material.

The definitions also imply that regard must be had for the "mauri" of the plant material, but this concept, defined as "the life principle or living essence contained in all things, animate and inanimate", surely has no place in scientific decision-making about whether to grant a PVR.

And the regime proposed not only proposes to impose substantial compliance costs on anybody wishing to acquire a PVR - finding which particular iwi claims some kind of proprietary right to the material (and this could well be fiercely contested), or proving that the material was sourced overseas (in the case of indigenous but not endemic plant material) for example - but also envisages giving the chairman of the proposed Maori Advisory Committee an effective veto over any PVR (clause 51(c)).

So in short, I fundamentally disagree with what is proposed.

2

Meeting our CPTPP obligations

Do you agree with our analysis and conclusion of the CPTPP options? If not, why not?

[Insert response here]

3

Treaty compliance – criteria for analysis

Do you agree with the criteria that we have identified? Do you agree with the weighting we have given the criteria? If not, why not?

[Insert response here]

4

Treaty compliance – key terms

Do you agree with our proposed approach to these key terms?

Do you have any comments on the principles listed above and how they might apply in practice? For example, would it be useful to specifically list non-indigenous species of significance?

[Insert response here]

5 **Treaty compliance – options analysis**
Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

6 **UPOV 91 alignment – criteria for analysis**
Do you have any comment to make about our approach to, and criteria for, the preliminary options analysis in this paper?

[Insert response here]

7 **Definitions – breed**
Our preferred option is to incorporate the definition of “breed” that was considered in the previous review to address concerns around discovery of varieties in the wild.
Do you agree? If not, why not?

[Insert response here]

8 **Definitions – general**
Do you have any comments on the definitional issues discussed in this Part?

[Insert response here]

9 **Scope of the breeder’s right**
Do you have any comments about these new rights required by UPOV 91?

[Insert response here]

10 **Exceptions to the breeder’s right**
Do you have any comments about the exceptions required by UPOV 91?

[Insert response here]

11 **Term of the right**
Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

12 **Essentially derived varieties**
Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Rights over harvested material

- 13 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Farm saved seed

- 14 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Compulsory licences – general issues

- 15 Do you agree with the discussion and the proposals in relation to the five issues
discussed above? If not, why not?
Other than the two substantive issues below, are there other issues we have missed?

[Insert response here]

Compulsory licences – grace period

- 16 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Compulsory licences – section 21(3)

- 17 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

Enforcement – infringements

- 18 Do you agree with the discussion and the proposals in relation to the four issues
discussed above? If not, why not?
Should the PVR Act provide that infringement disputes be heard in the District Court?
Are there others issues relating to infringements that we have missed?

[Insert response here]

Enforcement – offences

- 19 Do you agree with the proposed options? Are there alternatives we have missed?
Do you agree with our analysis and conclusions? If not, why not?

[Insert response here]

20	Exhaustion of the breeder's right Do you have any comments about the exhaustion provision required by UPOV 91? <i>[Insert response here]</i>
21	Cancellation and nullification of the breeder's right Do you have any comments about the cancellation and nullification provisions required by UPOV 91, and MBIE's additional proposals discussed in this section? <i>[Insert response here]</i>
22	Extending coverage to algae Do you have any comments to make about whether or not algae should be included within the definition of "plant" for the purposes of the PVR regime? <i>[Insert response here]</i>
23	Provisional protection Do you agree with our preferred option for dealing with provisional protection? If not, why not? <i>[Insert response here]</i>
24	Transitional provisions What is your view on the options presented here in relation to this issue? Are there alternatives we have missed? How should transitional provisions apply to EDVs? <i>[Insert response here]</i>

Other comments

[Insert response here]