

Plant Variety Rights Act 1987 review: Options Paper

Your name and organisation

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Organisation/Iwi	Waitaha Iwi and three hapu being Ngati Kurawaka, Ngati Rakaiwaka and Ngati Pakauwaka

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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?

This review of the PVR Act is a good opportunity to expand the objectives of the PVR Act to be reflective of the New Zealand Government's unique Te Tiriti o Waitangi partnership with Maori and duties to Maori under te Tiriti.

To this end, the submitter makes the following comment:

A new PVR Act should contain an objective section which goes further than 'consistency' and 'compliance' with te Tiriti obligations and duties. Rather the objective section should be worded in the strongest most mandatory way to give proper and effective mechanisms for Tiriti duty compliance, such as: THIS ACT SHALL BE SO INTERPRETED AND ADMINISTERED AS TO GIVE EFFECT TO THE PRINCIPLES OF THE TREATY OF WAITANGI.

This is in line with other legislation such as s4 of the Conservation Act 1987.

The submitter, also comments that explicit protection of Maori rights and responsibilities as set out in international agreements the Crown is a party to, e.g the UN Declaration on the Rights of Indigenous Peoples, should be stated within the PVR Act.

The submitter is uncomfortable with a ministry defining integral Maori concepts within legislation such as 'tino rangatiratanga over taonga species', 'matauranga Maori' and 'kaitiakitanga'. The preference rather, is to empower hapu to define these concepts according to their tikanga within their rohe and how their hapu will apply these terms to PVR. This creates a tailored service to hapu and marae, builds relationships between hapu and breeders within their rohe, manages expectations of hapu and lessens the probability of miscommunication.

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?

The submitter has the following concerns with the Treaty compliance consideration:

For (a, facilitates meaningful and mana enhancing consideration of kaitiaki interests in PVR decision making) - 'meaningful' and 'consideration' are discretionary terms with nonmandatory force. These terms will have a different meaning for different people. The submitter prefers wording which is to 'give effect to' and 'implement' the kaitiaki interests. In acknowledging this places a kaitiaki interest more predominately in front of a breeder's interests and rights, this firmly recognises the equal footing partnership afforded to Maori as between the government under te Tiriti.

For (b, provides clarity for plant breeders for whom kaitiaki interests will be relevant consideration in the PVR grant process) - the submitter notes that this clarity is important and would agree with this criteria, however there is need for more information on the mechanism used in identifying where the kaitiaki interest lies. Will there be a nationwide database or will plant breeders contact the runanga of a rohe? Both ways would pose problems, many kaitiaki would be uncomfortable publicising their kaitiakitanga in a national database and on the other hand some runanga operate exclusively, sharing little information with hapu or iwi who have not settled.

For (c, minimises additional compliance costs) - the submitter acknowledges that keeping the cost low for all parties when it comes to PVR is important. However this should not detract from proper implementation of the principles of Te Tiriti. Therefore the submitter proposes a 4th te Tiriti criteria which is all about sharing the benefit of innovation with Maori. The submitter notes Ministries, when creating new legislation, must keep at the forefront of their minds that Maori have suffered generations of economic inequality as the product of colonisation. Therefore rather than close Maori out for ever from the development of new technologies and the revenue that comes from this (such as plant variety rights), the 4th criteria would allow for Maori to benefit from the development. There are many ways this could be done, a few ideas are, a simple royalty revenue to the hapu who holds the kaitiaki interest or when there is no kaitiaki interest then to the local hapu. Or breeders give a part of their revenue to Maori research or hapu breeding initiatives, or a stake in the actual ownership of a plant variety right.

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?

The submitter agrees that terms such as kaitiaki should not be defined, as it has numerous and nuanced shades of meaning depending on which part of Aotearoa you are in. The submitter acknowledges the logic and simplicity of the ministerial identified at paragraph 102 (a to d) of the Options Paper and agrees that further examination and explanation of this would be needed - a Maori advisory committee may be best placed to do this.

Treaty compliance – options analysis

5

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?

In relation to the new information disclosure requirements, the submitter agrees the breeder should be required to disclose who the kaitiaki are, a record of engagement with kaitiaki and the outcome of that engagement and make an assessment of whether kaitiaki interests would be affected by the commercialisation of the relevant variety and if so, how the impacts will be mitigated.

The submitter adds that the record of engagement and outcome of engagement documents must also be shown to the kaitiaki group and verified by the kaitiaki before the breeder submits it with his/her application.

Likewise, the commercial assessment should be a co-authored document with the breeder and kaitiaki group, verified by both groups before submitted with an application for a plant variety right. It would also be preferable if the kaitiaki group were funded to undertake a kaitiakitanga risk assessment report in relation to the proposed plant development.

By having kaitiaki verify the application documents submitted by breeders this will build relationships, avoid mistakes/miscommunications, create a more streamlined efficient process with a higher rate of successful breeder applications being approved and rights granted.

The submitter prefers Option 2, being: introduce a new power to allow the refusal of a PVR by the Commissioner of PVRs and the Chair of the proposed PVR Maori advisory committee if kaitiaki interests would be negatively affected and the impact could not be mitigated to a reasonable extent such as to allow the grant. - the submitter would add there should be a 'recommendation' that the breeder go back and correctly complete the engagement step with kaitiaki and then resubmit his/her application.

The submitter agrees with paragraph 118 on developing some sort of PVR Te Ao Maori specialised committee (Maori advisory committee). The submitter notes the members of this group should be reflective of the many hapu and be mandated by the people, not picked by ministers or ministry officials.

UPOV 91 alignment – criteria for analysis

6

Do you have any comment to make about our approach to, and criteria for, the preliminary options analysis in this paper?

Definitions – breed

7

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	<p>Definitions – general</p> <p>Do you have any comments on the definitional issues discussed in this Part?</p>
9	<p>Scope of the breeder’s right</p> <p>Do you have any comments about these new rights required by UPOV 91?</p> <p><i>[Insert response here]</i></p>
10	<p>Exceptions to the breeder’s right</p> <p>Do you have any comments about the exceptions required by UPOV 91?</p> <p><i>[Insert response here]</i></p>
11	<p>Term of the right</p> <p>Do you agree with the proposed options? Are there alternatives we have missed?</p> <p>Do you agree with our analysis and conclusions? If not, why not?</p> <p><i>[Insert response here]</i></p>
12	<p>Essentially derived varieties</p> <p>Do you agree with the proposed options? Are there alternatives we have missed?</p> <p>Do you agree with our analysis and conclusions? If not, why not?</p> <p><i>[Insert response here]</i></p>
13	<p>Rights over harvested material</p> <p>Do you agree with the proposed options? Are there alternatives we have missed?</p> <p>Do you agree with our analysis and conclusions? If not, why not?</p> <p><i>[Insert response here]</i></p>
14	<p>Farm saved seed</p> <p>Do you agree with the proposed options? Are there alternatives we have missed?</p> <p>Do you agree with our analysis and conclusions? If not, why not?</p> <p><i>[Insert response here]</i></p>
15	<p>Compulsory licences – general issues</p> <p>Do you agree with the discussion and the proposals in relation to the five issues discussed above? If not, why not?</p> <p>Other than the two substantive issues below, are there other issues we have missed?</p> <p><i>[Insert response here]</i></p>

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]

Exhaustion of the breeder’s right

20 Do you have any comments about the exhaustion provision required by UPOV 91?

[Insert response here]

Cancellation and nullification of the breeder’s right

21 Do you have any comments about the cancellation and nullification provisions required
by UPOV 91, and MBIE’s additional proposals discussed in this section?

[Insert response here]

Extending coverage to algae

22 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?

[Insert response here]

Provisional protection

23 Do you agree with our preferred option for dealing with provisional protection? If not,
why not?

[Insert response here]

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?

[Insert response here]

Other comments