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Sent: Monday, 9 September 2019 9:04 p.m.
To: Plant Variety Rights Act Review
Subject: Submissions on the review of the Plant Variety Rights Act 1987: Options Paper

Submissions on the review of the Plant Variety Rights Act 1987: Options Paper

These submissions are made for and on behalf of the Ngātiwai Trust Board, regarding the review of the Plant Variety Rights Act 1987. Ngātiwai Trust Board is the mandated iwi authority for Ngātiwai iwi. Ngātiwai claims manawhenua and manamoana from Rakaumangamanga to Mahurangi, across to Aotea, and returning to Rakaumangamanga by way of the many islands and waters of Te Moana Nui A Toi. As such Ngātiwai claims tino rangatiratanga and kaitiakitanga over taonga in their rohe. Ngātiwai were Claimants in the Wai 262 Inquiry before the Waitangi Tribunal, which considered issues relating to New Zealand's law and policy affecting Māori culture and identity.

These submissions consider the Plant Variety Rights (PVR) regime and relative legislation in relation to New Zealand's obligations under Te Tiriti o Waitangi, as well as their obligations under international instruments such as the Convention on Biological Diversity (CBD), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As Wai 262 Claimant's, these submissions will also consider the recommendations of the Waitangi Tribunal in the Wai 262 - Ko Aotearoa Tenei report (the Wai 262 Report).

The review of the PVR regime necessitates the analysis of the relationship between the Crown and their Treaty partners. This includes an analysis of Ngātiwai's kaitiaki relationship with their taonga. Article 2 of Te Tiriti o Waitangi guarantees a treaty partners tino rangatiratanga – authority and control – over their taonga. As outlined in the Wai 262 report, where kaitiaki obligations exist, they do so in relation to taonga, which the Waitangi Tribunal defined to include; “anything that is treasured such as tangible things such as land, waters, plants, wildlife and cultural works, and intangible things such as language, identity, and culture, including mātauranga Māori itself.” In regards to the PVR regime, this refers to taonga such as native plant species, and matauranga Maori or traditional knowledge of the native plant species.

In general it is submitted that the current PVR regime is not consistent with Te Tiriti o Waitangi and fails to effectively recognise the rights and role of te Tiriti partners as kaitiaki over native plant or taonga species. Changes to the PVR regime are necessary to avoid the misuse and misappropriation of taonga or native plant species, and the relative mātauranga Māori or traditional knowledge of Ngātiwai.

New disclosure requirements

As outlined in the Wai 262 report, kaitiaki must be enabled to formally notify their interest in relation to taonga such as native plant species, and matauranga Maori or traditional knowledge by way of a register. This would allow kaitiaki to outline and demonstrate the nature and importance of their kaitiaki relationship, while also giving patent applicants fair warning of the kaitiaki interest. Ngātiwai maintain a nga taonga register of all indigenous flora and fauna within the Ngātiwai rohe and request that this be referred to and included in any register relative to the PVR regime.

Ngātiwai supports the provision that necessitates disclosure by applicant's for PVR as to whether any taonga species or maturaanga Māori have contributed to the research or invention in any way. Ngātiwai further supports provisions that allow kaitiaki a right to object to a patent application, whether or not they have registered their interest.

New Māori advisory committee

The current PVR regime fails to devolve real decision making power in such a way as to allow kaitiaki any reasonable control or oversight over their taonga. The establishment of a Māori advisory committee will be helpful in advising a Commissioner of Plant Variety Rights *in general* as to whether taonga species have contributed in any way to an invention, whether the proposed use is consistent with or contrary to tikanga Māori, the requirements of patentability, and (even if the patentability criteria are satisfied) whether there are kaitiaki interests at risk.

However, we hold concerns that such a body will likely consist of a general, pan-tribal body of members which will be insufficient to consider the specific knowledge and needs of individual kaitiaki. Kaitiaki relationships are often held at iwi, hapu and whanau level, and therefore, any analysis or determination of the nature and importance of a kaitiaki relationship can only effectively occur at the relative level. When considering PVR applications regarding taonga species over which Ngati Wai exercise kaitiakitanga, Ngati Wai must be involved in the determination of the Plant Variety Rights of the application in ensuring they are consistent with their kaitiaki role. Decisions regarding Ngātiwai taonga must be made with Ngati-Wai, not for Ngati-Wai. This may require the Commissioner and Māori advisory committee to consult with individual kaitiaki in the determination of the nature and importance of a group's unique kaitiaki relationship with their taonga.

New decision-making process

As discussed above in the section regarding a Māori advisory committee, a 'general' Māori advisory committee will not be sufficient in determining the nature and importance of a group's unique kaitiaki relationship with their taonga. Furthermore, the advice or recommendations of the Māori advisory committee could be ignored by the Commissioner of Plant Variety Rights for any number of reasons, despite the importance of the kaitiaki relationship. Advice from any Māori advisory committee will be reliant upon the discretion of other parties, most notably the Commissioner. In determining PVR, the Commissioner must heed the advice of those interests outlined by the Māori advisory committee, as well as kaitiaki who have registered their interests in a particular taonga species, and any kaitiaki who may exercise their right to object to a patent application, whether or not they have registered their interest. If a PVR is granted despite advice and objections of these groups, the reasons must be outlined clearly. An appeal process will be necessary if the outlined reasons are deemed insufficient by the relevant groups.

Conclusion

We commend the Ministry's efforts in their review of the PVR regime, however issues remain in the current options paper, and further consultation and review is necessary.