

PLANT VARIETY RIGHTS REVIEW WITH RESPECT TO TE TIRITI O WAITANGI

Submission by: Scion

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Introduction

1. Scion is a Crown Research Institute (CRI), which is a government-owned company that carries out scientific research for the benefit of New Zealand. Each of seven CRIs is aligned with a productive sector of the economy or a grouping of natural resources. Scion specialises in research, science and technology development for the forestry (exotic plantation and indigenous forests), wood and wood-derived materials and other biomaterial sectors.
2. Given the role of Māori as kaitiaki for New Zealand, including its forest systems, as well as Māori being large forest asset holders in their own right, partnering and co-innovating with Māori is a key part of Scion's work, spearheaded by Scion's Māori Forestry Futures programme.
3. The submission below sets out Scion's views, drawing from its partnerships with Māori, on how the PVR being consulted on and Te Tiriti should interact. It answers, in a broad sense, most of the Te Tiriti questions asked in MBIE's discussion document.

Submission

4. The review seems to only refer to kaitiaki, when in our experience there is a wide range of roles that Māori play in taonga management, and not all kaitiaki have the authority to speak for forests and taonga. This makes the use of the word kaitiaki inappropriate and problematic. In the original text of the Treaty the word Rangatira (Chief) was used which would have been more appropriate. Nowadays such transactions would be facilitated by a modern Rangatira (Chief) with the right authority commonly referred to in English text as mana whenua authority. Further work needs to be done of who is engaged with when dealing with PVR in a Māori context.
5. Under the circumstances Māori interests must be at the centre of the review and make te ao Māori worldviews the starting place for any new or additive regime rather than retro fit Māori. For example, it should account for the potential impact of complexity and layers of cost and compliance and whether this should be a burden for Māori to bear (either subsidised or not); and the disturbance to a traditional way of life and intrusion on spiritual values.
6. Scion acknowledges that Māori, and where appropriate Moriori, have a connected history of over 800-years to native forests and taonga.
7. Under Te Tiriti, Māori have tino rangatiratanga (right to determination) over the knowledge and use of native forests and taonga species.
8. Worldwide conventions such as the Convention of Bio-Diversity, Nagoya Protocol, and the UN Declaration of Indigenous Rights, although not ratified by New Zealand, also support Māori rights in this regard and are generally observed.
9. The genetic and biological resources of taonga species are especially revered by Māori and of great interest to many. Waitangi Tribunal recommendations on Wai262 uphold that whakapapa connects Māori and Moriori to native forest and taonga, and demands co-

production of any new or associated knowledge relating to these with mana whenua. There is however a lack of protections for the Māori/Moriori relationship with these important plants as demonstrated through the proliferation of mānuka cultivars since mānuka honey and pharmaceuticals have been highly valued by the market.

10. Of equal importance to New Zealand, is the associated knowledge of a way of life (mātauranga Māori) that has been developed by Māori because of the close association to these native forests and taonga. Mātauranga Māori is a knowledge-base that is unique to New Zealand.
11. Plant variety rights last 20 years, however the viable seed producing ages of New Zealand's native trees can range from: Kauri 25–40 years (rarely at 15 years); Totara 10–20 years; Pohutukawa: 8-12 years; Manuka: 4–5 years.
12. Whatever system is developed under the PVR regime needs to be consistent with treatment of other forms of taonga under other regimes. How will we manage other forms of taonga under trade agreements – microbes, bacteria, endophytes, water borne organisms and so on?
13. Value for New Zealand can be derived from developing new varieties of native trees and taonga for many purposes (now and in the future) using science and mātauranga Māori bodies of knowledge, however as these existing bodies of knowledge were developed in different dimensions of time and space they operate inside separate worldviews and cultural paradigms where they are suitably protected, and can flourish accordingly. Bringing the two worldviews together to develop cultivars and new varieties from native forests and taonga requires interface, and this interface fits inside the role of science and mātauranga Māori institutes including Scion and its Māori partners.
14. We assert that existing and new native tree and taonga varieties and rights, should remain protected under Te Tiriti when classified as a form of “Mātauranga Māori”. However, risk exists in terms of co-produced (Vision Mātauranga) commercialised (PVR) knowledge. As far as commercialising through traditionally accepted intellectual property dynamics (IP, patents, PVR) co-produced cultivars change the protection offered under Te Tiriti. The temporary protection under PVR gives opportunity to commercial partners to derive returns but demands after a period (usually 20 years) the knowledge is opened to the public. Further work should be done to develop this “in-between” category to protect Māori/Moriori interests, including:
 - Scoping the expansion and protection of mātauranga Māori in respect to global IP dynamics (including PVR, IP, patents, trade secrets, resource control) for Māori/Moriori and their partners.
 - Classifying and ratifying the science-mātauranga Māori co-innovated, co-produced knowledge.
 - Exploring non-statutory IP rights that might be more aligned with the Māori worldview as a screen for choice of research partnership i.e. how is IP and benefit sharing achieved when choosing conscious avoidance of statutory options?
15. Mātauranga Māori provides a fast track to bioprospecting and attracts interest from bioprospectors. In the case of Māori co-innovation, the chain of custody should be protected under Te Tiriti for the benefit of Māori land owners. It is also worth noting that risk is high when undertaking R&D. Developing new and improved plant varieties for potential future bio economic purposes for private, typically small, but even big New Zealand companies is costly, takes time, and returns are uncertain. For these reasons R&D is a known barrier to commercialising native forests, taonga and Māori futures. Our co-innovation experience with mana whenua/hapu/Māori land owner communities is that improving native tree varieties is a desirable aspiration when it comes to conservation, preservation of endangered species,

resource for carving and other cultural purposes, and sustainable plantation and harvesting (for timber, rongoa, bioactive extracts) however R&D is a significant barrier to these goals. This increases the risk of rights going off-shore to foreign-controlled corporations, and with those rights goes New Zealand's natural capital. This demands more targeted R&D funding for new and improved plant varieties developed by Māori and their local R&D partners. By derisking native forest and taonga and the commercialisation process under a mātauranga Māori classification protected by Te Tiriti, we could enable the previously neglected parts of our society, unlock the potential of the material, social, cultural, and natural capital of a significant proportion of underdeveloped and undeveloped lands and forests but we will also protect the co-produced knowledge for future generations.

16. Scion supports the view that whilst Te Tiriti and mātauranga Māori provide a unique analogous layer of protection for the retention of our nation's "native tree and taonga" capital, indigenous stewardship, and access to taonga for all New Zealand, in current form that protection is inadequate, and relying on it to protect Māori/Moriori interests would be neglectful and even a breach of Te Tiriti, by a Government intending to enter into trade agreement negotiations with powerful nations with self interests in bioprospecting, cultivation of new plant varieties, and perhaps GMO. It is therefore our recommendation that protections of Te Tiriti and mātauranga Māori should endure inside any future New Zealand trade agreement but that further work be carried out to explore stronger protections for the interests of Māori/Moriori.

Conclusion

17. Scion supports the proposed approach of 'hybrid' approach that "gives effect to" UPOV91 with specific modifications for Te Tiriti. More work needs to be done in to how this will work practically as outlined above.
18. If you have any questions on this submission please contact Ramona Radford (ramona.radford@scionresearch.com) or Matt Paterson (matt.paterson@scionresearch.com).