

**Te Hunga Rōia Māori o Aotearoa, the Māori Law Society**  
**Submissions on the**  
**Options Paper - Review of the Plant Variety Rights Act 1987**

9 September 2019

**Introduction**

This submission is made for and on behalf of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society (THRMOA) and addresses Māori interests regarding the review of the Plant Variety Rights Act 1987.

THRMOA was formally established in 1988. Since then, the Society has grown to include a significant membership of legal practitioners, judges, parliamentarians, legal academics, policy analysts, researchers, and Māori law students. Our vision is *Ma te Ture, Mo te Iwi – By Law, for the People*.

THRMOA encourages the effective networking of members, makes submissions on a range of proposed legislation, facilitates representation of its membership on selected committees, and organises regular national hui which provide opportunities for Māori to discuss and debate legal issues relevant to Māori.

When making submissions on law reform, THRMOA does not attempt to provide a unified voice for its members, or to usurp the authorities and responsibilities of whānau, hapū, and iwi, but rather, seeks to highlight areas of concern, and suggest further reform options where appropriate.

THRMOA welcome the opportunity to respond to the request for submissions from the Ministry of Business, Innovation, and Employment (MBIE) on the document entitled *Issues Paper, Review of the Plant Variety Rights Act 1987*.

The legislation has not been reviewed in 30 years and therefore, it is in need of a review. In particular, there is a need to review this legislation considering the recommendations in the Waitangi Tribunal's report, *Ko Aotearoa Tēnei* (WAI 262).<sup>1</sup>

There is also a need to review the impact this legislation has had on Māori, Māori relationships, including kaitiaki relationships, with native plant species, and traditional knowledge and mātauranga Māori associated with native plant species.

Further, there is a need to ensure the Plant Variety Rights (PVR) regime is consistent with New Zealand's obligations under Te Tiriti o Waitangi/Treaty of Waitangi (TOW), the Convention on Biological Diversity (CBD), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

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<sup>1</sup> Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (WAI 262, 2011). The WAI 262 report can be accessed here: <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>.

Finally, there is a need to review, develop, and establish a bioprospecting regime and access and benefit sharing (ABS) protocols for Aotearoa/New Zealand that are TOW compliant.

## **General Overview**

It is THRMOA's view the intellectual property system, and in particular, the Plant Variety Rights Act 1987 has not and does not fully recognise or protect traditional knowledge, mātauranga Māori, Māori relationships with native plant species, and is not consistent with New Zealand's obligations under TOW, CBD, and UNDRIP.

THRMOA notes this review does not include any consideration of New Zealand's accession to the Nagoya Protocol, which regulates the discovery and subsequent use of genetic resources and protects traditional knowledge in genetic resources.

THRMOA considers this review should include an examination of New Zealand's position in relation to the Nagoya Protocol, including how New Zealand regulates the discovery and subsequent use of genetic resources, and protects traditional knowledge and mātauranga Māori in genetic resources.

Finally, THRMOA notes the review does not include the development of a bioprospecting regime or any ABS protocols.

THRMOA considers this review should include consideration of a bioprospecting regime and ABS protocols that are TOW compliant.

The above types of reforms were envisaged as part of the response to the WAI 262 report.<sup>2</sup>

THRMOA encourages the government to continue work in this area towards a fully inclusive intellectual property system including a fully inclusive PVR regime, that recognises and protects traditional knowledge and mātauranga Māori, recognises and protects Māori relationships, including kaitiaki relationships, with native species, is based on the principles of TOW including an ongoing partnership with Māori, gives effect to New Zealand's obligations under CBD and UNDRIP, considers a review of New Zealand's accession to the Nagoya Protocol, and works with Māori to develop a bioprospecting regime and ABS protocols that are TOW compliant.

## **Objectives**

The objectives of this review are to develop a modern, fit-for-purpose PVR regime that:

- a. promotes innovation and economic growth by incentivising the development and dissemination of new plant varieties while providing an appropriate balance between the interests of plant breeders, growers and society as a whole;
- b. complies with New Zealand's international obligations; and
- c. is consistent with the Treaty of Waitangi.

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<sup>2</sup> At 96.

THRMOA agrees that if we have a PVR regime, then it must be consistent with TOW. However, we consider that being consistent with TOW encompasses many associated obligations that would benefit from explicit reference. Being consistent with TOW includes:

- recognising and protecting traditional knowledge and mātauranga Māori
- recognising and protecting Māori relationships, including kaitiaki relationships, with native species
- giving effect to TOW principles, and in particular, the principles of partnership, active protection, and tino rangatiratanga over taonga
- giving effect to New Zealand's obligations under CBD and UNDRIP
- considering a review of New Zealand's accession to the Nagoya Protocol
- establishing a bioprospecting regime and ABS protocols that are TOW compliant.

Every reference to consistency with the TOW in this submission should be read as encompassing the above associated obligations.

### **Treaty compliance**

We support the introduction of the following proposals:

- a. a new information disclosure requirement for breeders
- b. introduce a new power to limit the exercise of a PVR over a variety if the Commissioner of PVRS and the Chair of the proposed PVR Māori advisory committee consider that kaitiaki interests are affected by the grant of a PVR
- c. a new power to allow the refusal of a PVR if kaitiaki interests are negatively affected or the impact could not be mitigated to allow the grant
- d. a new PVR Māori Advisory Committee that has facilitative and adjudicative functions including additional powers for the Chair of the PVR Māori Advisory Committee
- d. a new definition for breed to exclude plants found in the wild.

These proposals implement the recommendations in the WAI 262 report that relate to the Plant Variety Rights regime and are supported by THRMOA.

### **Lack of definitions for 'taonga species', 'kaitiaki', or 'kaitiaki interests'**

We recommend the legislative amendments carefully consider how terms such as 'taonga species', 'kaitiaki', or 'kaitiaki interests' are defined, and seek appropriate input from Māori.

### **Mātauranga Māori**

THRMOA acknowledges that the proposals in this review do not include any recommendations in relation to the recognition or protection for mātauranga Māori, mātauranga Māori in taonga species, or kaitiaki relationships with mātauranga Māori.

To respond in a meaningful and mana-enhancing way that facilitates protection of kaitiaki interests, it will become more and more important for the government to clarify its role in the recognition and protection of mātauranga Māori, mātauranga Māori in taonga species, and kaitiaki relationships with mātauranga Māori.

### **UPOV 91**

The proposals in this review are being made to amend the Plant Variety Rights Act to meet New Zealand's obligations under the CPTPP in relation to UPOV 91.

We are aware that the CPTPP is currently subject to its own independent inquiry before the Waitangi Tribunal.

We suggest that MBIE be open to any changes that are included as recommendations as a consequence of this claim.

### **WAI 262 response**

The government has recently released its planned response to the WAI 262 decision, and some of the points raised above may be addressed as part of those workstreams. Consideration of this legislation outside of the broader reviews will only require the government to review this legislation twice, burdening the government and Māori.

THRMOA would like to see the government continue to support Māori to engage in the consultation process.

### **In Closing**

Te Hunga Rōia Māori o Aotearoa are grateful for the opportunity to comment on this kaupapa and we hope our submissions assist with the important mahi the Ministry is tasked with undertaking. Should you have any pātai or wish to discuss any aspect of our submissions, please feel free to contact Lynell Tuffery Huria on [lynell.tufferyhuria@ajpark.com](mailto:lynell.tufferyhuria@ajpark.com) or Toni Love on [toni.love@chapmantripp.com](mailto:toni.love@chapmantripp.com).

Ngā mihi nui ki a koutou



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