

# Plant Variety Rights Act 1987 review

Plant Variety Rights Act review: options stage consultation hui

Monday August 5 and Tuesday August 6 2019

Workshop Report



---

## Plant Variety Rights Act review Options stage hui

---

5/6 August 2019  
MBIE, 15 Stout Street  
Wellington



## Table of Contents

---

<b><i>Plant Variety Rights Act 1987 review</i></b> .....	<b>1</b>
<b><i>Plant Variety Rights Act review: options stage consultation hui</i></b> .....	<b>1</b>
<b><i>Monday August 5 and Tuesday August 6 2019</i></b> .....	<b>1</b>
<b><i>Workshop Report</i></b> .....	<b>1</b>
<b><i>Table of Contents</i></b> .....	<b>2</b>
<b><i>A Day 1: Introductory Comments</i></b> .....	<b>7</b>
<b><i>B PVRA: Preferred option for Treaty of Waitangi compliance</i></b> .....	<b>10</b>
<b><i>C Day 2: Introductory Comments</i></b> .....	<b>17</b>
<b><i>D PVRA: Preferred options for UPOV compliance</i></b> .....	<b>19</b>
<b>1. Farm Saved Seed</b> .....	<b>19</b>
<b>2. Compulsory Licences</b> .....	<b>21</b>
<b>3. Essentially Derived Varieties</b> .....	<b>23</b>
<b>4. Other Matters</b> .....	<b>24</b>
4(a) Treaty clause and preamble.....	24
4(b) Rights over Harvested material.....	25
4(c) Scope / Definition / Understanding of “protect the Kaitiaki relationship with taonga species” and beyond	26
<b><i>E Next Steps</i></b> .....	<b>26</b>
<b><i>F Appendix: Flipchart Photos</i></b> .....	<b>27</b>

---

## Summary

These are the workshop notes from a hui held as part of the options stage consultation of the MBIE Plant Variety Rights Act 1987 review.

The workshop was held on Monday 5 August and Tuesday 6 August 2019 at the conference rooms of the Ministry of Business, Innovation and Employment Building, 15 Stout Street, Wellington.

---

## Stakeholders and staff

### Invitee list:

Name	Organisation
Andrea Crawford	Summerfruit NZ
Andrew Mackenzie	Plant & Food Research
Andy Warren/ Louisa van den Berg	BLOOMZ New Zealand Ltd
Angeline Greensill	Tainui o Tainui, Wai 2522 claimant
Bruce Hickman	The New Zealand Institute for Plant and Food Research Limited
Cath Snelling	Plant & Food Research
David Birkett	Federated Farmers
Dr Clare Allen	AJ Park
Emma Brown	Plant & Food Research
Eva Rose TOIA	
Genevieve Davidson	Morrison Kent
Graham Strong	Otago Innovation Limited
Helen Bellchambers	AJ Park
Hema Wihongi	Nga Kaiawhina o Wai 262
Isabel Moller	Plant & Food Research
Ivy Harper	Te Putahitanga o Te Waipounamu , Christchurch
Jacqui Caine	Te Rūnanga o Ngāi Tahu
Jane Ruka	Grandmother Executive Council of the Waitaha Nation
John Tiatoa	Wai 2523
John van der Zanden	
Karaitiana Taiuru	
Kathryn Lawrence	VUW
Leanne Stewart	Horticulture New Zealand
Lynell Tuffery Huria	AJ Park
Manu Caddie	Hikurangi Cannabis company Limited
Marc Lubbers	Plant & Food Research
Melanie Witana	Tiaki taonga trust

Morgan Rogers	T&G Global Limited
Neb Svrzikapa	VUW
Nick Roskruge	Tahuri whenua
Rachel Lynch	Zespri
Rachel Witana	Council
Janet Mason	Phoenix Law
Rebekah Fuller	
Rio Greening	Wai 2523 te tiriti o waitangi, Nga Puhi, UPOV '91 and others
Robert McGowan	
Sally Wyatt	Sapere
Stacey Whitiora	Plant & Food Research
Sydney Clarke	Tairawhiti Pharmaceuticals Ltd Group of Companies
Tipene Merritt	VUW
Tom Robertson	PIPERS Melbourne
Wendy Cashmere	Plant & Food Research

**MBIE:**

Aidan Burch, Ema Hao'uli, Warren Hassett, John-David Chaker, Liam Robins, Jahnavi Manubolu and Charlotte Adam.

**Independent Facilitators:**

Rauru Kirikiri, RK Associates Ltd

Michelle Rush, Participatory Techniques Ltd

**Workshop Purposes**

**Overall Purposes**

1. To provide opportunities to understand, test and discuss the preferred options for the review of the Plant Variety Rights (PVR) Act
2. To use the feedback to inform MBIE's advice to Ministers about changes to the PVR Act

**Day 1 Purpose: Plant Variety Rights Act and Treaty of Waitangi compliance**

**Objectives:**

- To understand the changes proposed to the PVR regime to make it Treaty of Waitangi (TOW) compliant
- To test MBIE's preferred option for Treaty compliance against case studies
- To provide feedback to MBIE on the preferred option, with reasons why

**Day 2 Purpose: Plant Variety Rights Act and UPOV '91 alignment**

**Objectives:**

- To understand the changes proposed to align the PVR regime

with UPOV '91 (required by the CPTPP), including but not limited to:

- Farm saved seed
- Essentially derived varieties
- Compulsory licences
- To provide feedback to MBIE on the preferred options for each, with reasons why

The table below sets out the workshop agenda for day one.

### Day 1 Agenda

<b>Time</b>	<b>Task</b>	<b>Who</b>
9:30	Morning Tea and Registration	All
10:00	Karakia, Mihimihi, Purpose, Introductions and Expectations	Rauru Kirikiri, Michelle Rush
11:00	Proposals to achieve a Treaty of Waitangi compliant PVR regime	Aidan Burch, MBIE Tamati Olsen, TPK
11:30	Workshop – testing the preferred option against case studies	
12:30	Lunch	All
1:15	Workshop – testing the preferred option	All
1:45	Workshop – plenary report back, check for consensus	All
2:00	Expectations Check - Other matters discussion	All
2:30	Afternoon Tea	
2:45	Other matters discussion continues	All
3:30	Report back and conclusions	All
3:45	Details for Day 2	Aidan Burch
4:00	Close	

The table below sets out the workshop agenda for day two.

### Day 2 Agenda

<b>Time</b>	<b>Task</b>	<b>Who</b>
9:30	Morning Tea and Registration	All
10:00	Welcome, introductions and 'day 1' catch up for new attendees Purpose and Agenda	Rauru Kirikiri, Michelle Rush
10:30	Proposals to align PVR Act with UPOV ' 91	Aidan Burch, MBIE
11:00	Workshop – discussion of preferred options for: <ul style="list-style-type: none"> <li>○ Farm saved seed</li> <li>○ Essentially derived varieties</li> </ul>	All

<b>Time</b>	<b>Task</b>	<b>Who</b>
	<ul style="list-style-type: none"> <li>○ Compulsory licences</li> <li>○ Other matters (if sought by participants)</li> </ul>	
12:30	Lunch	All
1:15	Workshop – plenary report back, check for consensus	All
1:45	Workshop – other matters	All
2:30	Afternoon Tea	All
2:45	Workshop – other matters continues	All
3:15	Report back and conclusions	All
3:45	Workshop evaluation	Michelle Rush
4:00	Karakia and Close	Aidan Burch Rauru Kirikiri

---

## A Day 1: Introductory Comments

---

**Expectations for the day** Participants were asked to share one expectation they had of the day:

*Upholding duties to Māori under the Treaty of Waitangi and facilitating a collaborative process*

- Getting protection for us as Māori - recognising the Treaty of Waitangi (TOW).
- To find out how these ideas will be translated into law – will they reflect what is discussed at the Hui?
- Māori must be involved after today as partners.
- What do TOW obligations actually look like?
- Seeing how breeders can work with kaitiaki?
- To see others views.
- Māori being able to describe what success looks like – in the future – and not making the same mistakes as fisheries.
- How will TOW expectation of Māori be met?
- To understand issues and different perspectives.
- Remember the Nga Puhi court finding that sovereignty was not ceded to the Crown remembering He Whakaputanga

*Focussing on Wai 262*

- Not forgetting the Mauri/essence of WAI 262.
- To find out how Wai 262 will fit into our region – and heart of UPOV decision too.
- Where do we sit with MBIE in terms of 3 kete Nanaia Mahuta talks about?
- How does this fit in the wider context for plants – Māori have a holistic understanding of how different life forms are tied together.
- Want to get things right – also want it to be a safe investment for people.
- Implementing change in I.P. rules as result of this review.
- To hear about protection of taonga species.

*Improving and understanding the PVR Regime as a whole*

- To progress the conversation and strike the right balance for the benefit of us all.
- To see real improvement in PVR regime.
- What's important to each of us and do the proposals deliver that?
- To gain an understanding of PVRA and where it is going.
- To hear what people have to say and get a more informed view.
- To get clarification on what the Issues and Options paper are and to hear from breeders. [Māori are breeders too...]. We're seed savers. We want to protect what is free for this country.

### *International Leadership*

- To keep ‘our place in the sun’ – upholding NZ’s reputation for international leadership.
- To see international regulations reflected in domestic policy through an exception clause. Include Convention on Biological Diversity international declaration - opportunity to caucus.
- To understand options better –to see a robust framework developed – to have a system that provides certainty for investment and competitiveness in global markets.

### *Gain an understanding of option implementation and practicality of options*

- To gain a deeper understanding of perspectives and how options might be implemented.
- To gain a better understanding of practical aspects and how these will work.
- Looking to see the endpoint.

---

### **Other Matters**

During the sharing of expectations, a number of queries and matters related both to scope and implementation were raised.

These were:

- Will there eventually be a new Act?
- What is the scope of the plants classed as taonga species:
  - endemic (only here) vs native species and non-native species of significance to kaitiaki (eg Puha).
  - Clear facts needed.
- Have politicians been involved?
- How/when will we implement Government’s earlier decisions w.r.t international treaties of relevance?
  - 2001 MFAT Cabinet paper?
    - Engagement strategy.
    - Taumata already established for that – how can we use this wording.
- Education is needed about trademarks/PVR’s in general.
- A vision for the long term – Māori need to be involved in the plant breeding business
  - engaging with kaitiaki easily
  - overseas applicants? Don’t want to mean NZ misses out if too tricky.
- Need to identify precedents – case book of examples to inform next stages
- Government officials need to engage on Māori terms – don’t take off, work together.



---

**Overview of  
Patents /  
Trademark  
committee and  
how it works**

Participants asked for an explanation of how similar Māori Advisory committees worked, and the example of the patents/trade mark committee was shared by Karaitiana Taiuru:

- The Committee can make decisions (Commissioner can override us but never has)
- it reports to the IPONZ commissioner
- it has well defined guidelines – Māori trademark/ “offensiveness” test,
- it considers designs that may be based on tapu and noa principles
  - Get given anything with a Māori word
  - Members independently go through on their own to assess
  - Check boxes
  - Vote 3/5
- We do check that Māori has been consulted
- There are at times disputes – Patent Attorney’s do sometimes write letters and challenge a decision
  - We re-evaluate and decide/ don’t decide
- it has a mix of Crown appointments and Iwi leaders appointments

Participants then commented on the differences and additions that any PVR advisory committee would need to have compared to the patents/trade marks committee.

PVRs are a lot less prescribed than role of patent trademark.

Therefore:

- there would also need to be definitions of
  - Kaitiaki
  - Taonga species
- We need to consider if members should be national or regional.

It should be modelled off the patents office as more expertise is needed – this may vary between applications

- Need specialist’s knowledge
  - Need accountability systems
  - Needs to be nimble
  - Need’s to be iterative – look back/look forward – and continue to do this.
-

## B PVRA: Preferred option for Treaty of Waitangi compliance

---

### Overview

Aidan Burch introduced the preferred option for Treaty compliance and explained how the option was developed, building on input from the first and second rounds of industry consultation, along with the other matters that Government must also take into account.

A workshop session followed, using two different case studies, in which people worked through a PVR application process, looking at what the proposals for Treaty compliance would mean in relation to the roles of:

- Kaitiaki, in considering and providing feedback on the application;
- PVR applicants, and what was needed at each stage; and
- the PVR office staff advising on, and processing the application.

Each group then reported back on the following questions:

- What aspects of the preferred option do you support? Why?
- What aspects would you like to amend? Why
  - If there is disagreement within the group, note the difference in views and why.

The results from these discussions are below.

The plenary discussion (the summary of the report backs by individual groups and the areas of consensus that emerged) are given first. The detailed notes from each group are given second.

---

### PVR Treaty Compliance

The plenary report back on the proposed PVR provisions for Treaty compliance identified areas of agreement and some areas of difference. Areas of agreement are where there are multiple ticks:

#### What's supported

- Power for the PVR office to decline an application ✓ but breeder ✓ has the option to go away and come back with additional information.
  - ✓✓✓ Engage right from the start (framework to do this) – PVR office directs breeders to find kaitiaki. However there is a need to balance secrecy and info-sharing.
    - Confidentiality of breeders' commercial activities needs to be respected.
    - Face to face engagement with kaitiaki would

- be good. However there is no one way to engage.
- Provide all necessary info from breeder to help kaitiaki.
- Needs good record keeping.

## Amendments

- ✓✓ Māori Advisory Committee – need to clarify how it will be constituted/ appointed?
  - What expertise will it have – plants? Tikanga?
  - ✓ It must be representative of the whole community (need regional representation).
  - Could also have “go-to” people to help breeders – build up a template and facilitate kaitiaki-breeder relationships.
  - Go there first and provide clear direction.
  - Who is Kaitiaki? Perhaps “dial -a-kaitiaki?” Who to talk to?
  - Ensure the committee has good information, also real authority.
  - Committee needs to have decision making power
    - Need to be capable or have access to this capability
  - Kaitiaki need to be accountable:
    - To avoid corrupt or unethical role - if advisory there is less risk, but if Committee has decision making power over what plants can receive a PVR then controls are needed.
  - Define taonga:
    - Have a database of taonga species (✓ keep it updated) to help the breeder. The committee should be resourced with a registry database so breeders can go there, and be referred on to Kaitiaki.
  - Question – Should breeders self-disclose whether there is kaitiaki interest and that they have engaged?
  - Either don’t define kaitiaki, or do define but not too tightly
  - Use whakapapa of a species where arguments arises that a species is no longer “native.”  
What does ‘reasonable extent’ mean? e.g. where important benefits exist beyond kaitiaki interest, e.g. addressing kauri dieback.
  - How to protect mātauranga Māori in the PVR regime, not just the kaitiaki relationship.
  - If species are from offshore, a conversation is needed with indigenous people of that country:
    - This point was brought up in the context of other international treaties, as this was relevant to case study 2.
  - Consider how science is undertaken e.g. impact on environment/ Māori with changing species.
  - Reciprocal relationship – part of engagement to share knowledge around that plant – possibly also co-development.
  - What happens if there is disagreement as to who is the

- kaitiaki? How can risks to breeder here be managed?
  - We need a disputes process with an outcome.
- While early engagement, kaitiaki need to know it can be a long time – so protecting commercial information over a long time is important.
  - Concern that information related to pedigree could be commercially sensitive – don't want it publicly discoverable.
  - Possible disclosure only on request from Committee, or provision so that it doesn't release it.

**Notes from table discussions**

The notes from each table's discussion in respect of the PVR applications process and Treaty of Waitangi compliance are given here.

**PVR Applications process and TOW compliance Table 1 Case study 2**

**Key = black all group agreed; red = comments raised**

Question: Is it Mana motuhake and tino rangatiranga

- Enhancing?
- Enabling?

**What do you support and why?**

We agree breeders should engage with kaitiaki when using plant material from indigenous plant species: - can just be a kanohi ki te kanohi korero (breeder pays) – organic process - every whanau hapu, iwi is different – breeders to provide all information to make informed decisions.

- **Data: current PVRs over varieties with kaitiaki interests. Māori Advisory Committee (MAC) would look at this to inform their advice etc. ("recidivism").**
- **Taonga species register.**
- **Breeders need to understand / provide information on environment impact, tikanga.**
- **Grant only lasts certain number of years – how do we ensure ongoing kaitiaki interest protection?**
- **What has been granted via Treaty settlements?**
- **Risk: maintaining competitive advantage (managing expectations between parties) Privilege to access.**
- **Benefit sharing.**
- **Enabling is about capacity on both sides e.g Māori interests and in competitive advantage reciprocation.**
- Needs to be a body at the bright level, with the right mandate – Committee. This means:
  - Accountability.
- Engagement with other indigenous peoples?
- **Committee needs regional expertise.**
- Committee should write engagement guidelines.
- **Te Tai Tokerau and Kahungunu submissions: Kanohi ora**

- process to mandate Committee.
  - Compromising genetic integrity if we don't do the science and map the genetics.
  - Agree not option 1 for decision-making process (post-grant restrictions).
  - What does 'reasonable extent' mean?
  - Kaitiaki could agree to actions that may be contrary to Kaitiaki relationships to for certain reasons e.g. techniques for Kauri dieback, diabetes treatment).
  - Role of Kaitiaki is to ensure breeders and business proceed with caution (e.g. Manuka – kaitiaki know what bees like!)
  - What's the value of taonga?
  - Who owns data?
  - Starting point is looking after the whenua.
  - How are we protecting matauranga? Not just species.
- 

**PVR  
Applications  
process and  
TOW  
compliance  
Table 2 Case  
Study 2**

### **What do you support and why?**

- Given the narrow brief option 2 appears workable.
- Committee – supported but needs to be well resourced, make up of committee also important – scientific, cultural, legal, business, /commercial
- But need holistic approach to protection of taonga species
- Process of developing guidelines could be part of this process

### **Breeders need:**

- A clear pathway.
- Confidentiality.

### **What needs amending and why?**

- (Query: what happens if other kaitiaki assert an interest and seek to block application?).
  - Identification of kaitiaki, especially when many kaitiaki are involved may be hard. Can be significant genetic variation within a species.
  - Need to build capability of Māori to engage with the Committee.
  - Early engagement has to be in confidence to protect commercial interests.
- 

**PVR  
application  
process and  
TOW  
compliance  
Table 3 Case  
Study 2**

### **What do you support and why?**

All agree that:

- We may need definitions (kaitiaki, taonga) but this can't be too prescriptive – needs flexibility for diversity of opinions.
- Good process needed – iterative, adjustments can be made.
- Independent knowledgeable impartial advisors will be needed.

## What needs amending and why?

- There is an opportunity to have a better conversation (common goals) if we consider international treaty context eg. Nagoya.
  - Unintended consequences:
    - Obligations under PVR legislation may be at odds with kaitiakitanga (eg. Propagation requirements).
    - More clarity needed on process for disclosure. Concerns that disclosure of commercial sensitive information is discoverable publicly – disadvantage to owner and kaitiaki:
      - Disclosure on requests by committee?
      - Committee holds information confidentially?
- 

### PVR application process and TOW compliance Table 4 Case Study 1

## What do you support and why?

- Adopting Section 4 of Tiriti o Waitangi clause contained in the Conservation Act would provide certainty for all parties. Is essential.
- Breeders should have chance to amend and revise application if declined – respect both kaitiaki and breeder rights

## General questions:

- How does the refusal of a PVR application work? (early engagement should reduce this).
- How are people appointed to the Committee? Who decides? Should not be Crown-appointed
- Committee should represent all NZ and be clearly recognised by all as a competent (Māori in particular) authority – what are the Committee’s Terms of Reference?
- If PVR commissioner and the chair of the Committee disagree how is a decision ‘reached’? – is there an appeal process?
- How are prior rights of plant varieties recognised? (EDV’s)
- How will kaitiaki be resourced?
  - Crown should provide.
  - This avoids risk of corruption/legal uncertainty.
- How do we prevent “shopping around” of kaitiaki representatives and “buying off?”
- How do we decide who the relevant kaitiaki representative is?
- Can we re-use the existing patents Committee?
- What do you do with overseas breeder using NZ species? E.g. when requesting NZ PVR or importing products to NZ?
- There is a commercial risk in revealing information about breeding activities as part of kaitiaki engagement.

## What needs amending and why?

Stage 1 – Early engagement between kaitiaki and plant breeder

during the breeding process (pre-application).

- Guidelines for breeders on kaitiaki engagement would be useful.
  - Who is kaitiaki? Can the PVR office direct the breeder to the correct kaitiaki (possible public notice).
  - PVR office should encourage and facilitate this early engagement to avoid the Māori Advisory Committee being a late stage ambulatory body – need a disputes/appeal process.
  - Balance between commercial secrecy/protection and engaging with the relevant kaitiaki.

Stage 2 – Te Tiriti He Whakaputanga 1835 = need to be recognised Te tino Rangatiratanga and resourcing:

- What and who constitutes the Māori Advisory Board?
- Who has the mandate to be on this committee?
- Kaitiaki not to be used loosely.
- Disputes Resolution Process or Appeal Process.
- Early engagement would give certainty.

**PVR  
application  
process and  
TOW  
compliance  
Table 5 Case  
Study 1**

---

#### **What do you support and why?**

- Early engagement, useful for both sides
- Good record keeping (both for kaitiaki interests and human intervention).
- Opportunity for advisory committee to facilitate engagement.
- Builds knowledge and costs will reduce over time
- Creates certainty.
- The creation of a separate Māori Advisory Committee that focuses on PVR.

#### **What needs amending and why?**

- Onus shouldn't be on Māori, need a notification system.
- What happen when the breeder doesn't know the kaitiaki?
- After sales and exports – need something to address restriction on grant for rights holders.
- Overarching consistency with Treaty Of Waitangi (TOW).

**PVR  
application  
process and  
TOW  
compliance  
Table 6 Case  
Study 1**

---

#### **What do you support and why?**

- Supporting early engagement between breeders and Committee– and information sharing.
- Support clear guidelines, Committee not just general advice – need to go to Committee first thing for guidance.
- Support for kaitiaki role! Need clear – up to date info form committee and real authority.

- Supporting breeding process as a whakapapa process.

### **What needs amending and why?**

- Questions around “breeders assessment” of whether or not they’ve fulfilled kaitiaki interests.
- Are they in a position to do this?
- Kaitiaki need to this.
- Need a clear database with taonga species listed.
- PVR office need to ensure MAC have mandate (iwi/hapu of taonga) taonga species database to make decision
  - Q – when do kaitiaki interests stop – from variety to variety?
  - Q - support of kaitiaki’s role in the whakapapa of PVR.
- Committee – full-time role?
- Don’t want to disincentivise plant breeders to go offshore through lengthy difficult process.
- Not acceding to UPOV ‘91 undermines international reputation.

### **Other**

- Signing up to Nagoya protocol? Otherwise can’t challenge people using materials for commercial gain.

The following topics were identified as needing further discussion:

### **Additional Topics for Discussion**

#### **Definitions**

- Scope of taonga species – species, works, Kawanata.
- Characteristics of taonga perhaps in place of a definition?
- Registry owned by Māori? Nationwide? Site specific? Will provide data the breeder needs
- Makes clear what’s in and what’s out

#### **How to make the advisory committee work**

- Power.
- People.
- Authentic in Māori context.
- Who provides advice.
- Is there a presumption that it is a partnership?
- Kaitiaki – committee connections and how/who interprets Māori interests.

### **Te Tiriti o Waitangi, He Whakaputunga/ Tino rangatiratanga**

#### **Angeline’s questions**



## C Day 2: Introductory Comments

---

### Overview of Industry Issues Session

MBIE identified three areas, for which there was a degree of domestic policy discretion in relation to being in accordance with UPOV'91 around which they wished to seek feedback from stakeholders on their preferred options. These were:

- Farm Saved Seed.
- Compulsory licences.
- Essentially Derived Varieties.

Participants were split randomly into groups, each starting on a different topic. After 30 minutes, they rotated to another table, adding to what that previous table had discussed about the topic.

They were then asked to identify:

- What they liked about the preferred option for that topic and why;
- What they wanted amended and why.

The results from these discussions are below.

The plenary discussion (the sum of all the report backs and the areas of consensus that emerged) are given first. The detailed notes from each group are given second.

---

### Expectations

Early in the workshop, those that hadn't attended the previous day had the opportunity to share their expectations for the hui:

- Farm saved seed.
  - Enforcement.
  - Clarity over compulsory licensing.
  - Harvested material.
  - Clear steer on what it is we need to add to the PVR act. What is it around TOW we want to see in it?
  - Hear any comments on economic analysis paper.
  - Rights over harvested material.
  - Connections with planned amendments to Commerce Act.
  - Accede vs give effect UPOV '91.
- 

### Reflections from yesterday

To help bring new participants up to speed, and to recall the themes from the previous day, there was an opportunity for participants to share reflections.

Māori Advisory Committee

- Naming of Māori advisory committee? Perhaps a kaitiaki

- commission?
  - Māori advisory committee needs to have real teeth and real decision-making power.
  - With clarity on what – **definition** and **understanding** critical – can't support something I don't understand.
  - Looking forward to how yesterday's TOW discussion informs UPOV '91 discussion – how can we marry TOW compliance and UPOV – don't see them as exclusive.
  - Is a partnership so everything not limited to taonga species.
  - Don't overlook resource to support kaitiaki on the ground.
  - Taumata group? Is it a possible vehicle?
  - If we get this right, the Committee could provide a blueprint e.g. for a Māori biological property rights commission
  - Te Tiriti He Whakaputanga 1835 and TOW 1840 version need to be what is recognised. Respect for tino rangatiratanga.
  - Need to treat Wai262 as 'pan-national'
  - Ngā Puhī perspective i tenei ahiahi
- 

**What is this all for?**

Some participants wanted to better understand why there was a plant variety rights law – its purpose, and what it is all for. Responses to these queries were that the regime:

- Allows benefit from I.P. by protecting it.
  - Is an intellectual property rights system.
  - provides fair recognition for research and development effort.
  - Gives an entity confidence to invest in new breeds/varieties.
  - Is used by Zespri/ PGG Wrightson, also others such as berry growers, small scale nursery operators.
  - Can be used by a big overseas company or small NZ businesses e.g nursery market.
  - Serves both NZ domestic market and export markets overseas.
  - is used by the service industry (IP lawyers), breeders (in-house, or sole operators), CRI's (Plant and Food etc) and growers (seeds, fruit, veges, ornamentals, trees and tree crops).
  - Gives them better goods and therefore better income.
  - Braeburn apples – an example of what happens when there is no protection, and the crop becomes commoditised more quickly as a result.
-

## D PVRA: Preferred options for UPOV compliance

---

<b>Overview</b>	<p>A variety of topics were discussed in relation to the proposed PVRA UPOV compliance provisions. These were:</p> <ul style="list-style-type: none"><li>• Farm Saved Seed</li><li>• Compulsory Licences</li><li>• Essentially Derived Varieties</li><li>• Other Matters<ul style="list-style-type: none"><li>○ Treaty clause and preamble</li><li>○ Rights over Harvested material</li><li>○ Scope / Definition / Understanding of “protect the kaitiaki relationship with taonga” and beyond</li></ul></li></ul>
-----------------	--

---

### 1. Farm Saved Seed

---

<b>Summary of overall feedback on Farm Saved Seed</b>	<p>The plenary report back summarised the feedback on farm saved seed thus:</p> <p><b>What do you support and why? Option 2</b></p> <p>Deal with breeder’s right to harvested material.</p> <ul style="list-style-type: none"><li>• Right cannot be exhausted at first use of seed.</li><li>• Ensure <u>exception</u> criteria are clear, e.g. ‘subsistence’ farming needs to be defined.</li></ul> <p>At the moment it’s a gentleman’s agreement to collect royalties. There is no leverage for breeders to negotiate up and no solution. Preference to have a strong contractual chain of command right through, but don’t limit the end use. Allow freedom for commercial realities to drive negotiation.</p>
---	--

---

<b>Table Topic Farm saved seed</b>	<p><b>What do you support and why?</b></p> <ul style="list-style-type: none"><li>• ✓ Defining “seed” as traditional seed, not all propagating material.</li><li>• ✓ Allowing farm saved seed.</li><li>• ✓ Royalties but don’t mandate a collection point i.e allow freedom to set contract terms.</li></ul> <p><b>What needs amending and why?</b></p> <ul style="list-style-type: none"><li>• Regulations probably most appropriate, but not Australian request model.</li></ul> <p><b>Other options:</b></p>
------------------------------------	--

- Farmers are not exempt from paying royalties on subsequent crops, but should have a provision which allows the farmer(s) and breeders to negotiate terms themselves. If this does not occur satisfactorily, a provision to say limitations will be set out in regulations.
  - ✓ if there is no agreement, the issues in dispute may be referred to a dispute resolution process/entity.
- 

**Table Topic:  
Farm Saved  
Seed**

**What do you support and why?**

- Team 1:
  - In specific cases you could opt to take a royalty 100% (ROI for breeder) ✓
  - Option 2 to in/out ✓
  - Supported by regulation ✓
  - No imposing contractual terms ✓
- Team 2:
  - Agree 2(ii) – Regulations easier to change.
  - i.e not excessive limits on how parties reach agreements.

**What needs amending and why?**

- Team 1:
    - Case-by-case /application.
      - Not gross ruling by species.
    - Criteria re variety exceptions should be clear.
  - Team 2
    - Need to recognise/protect kaitiaki interests in any exception/ right granting.
    - Exceptions should be for non-commercial entity or subsistence farming.
    - Discussed extension of right to harvested material for royalty collection.
    - Education on types of commercial arrangements.
    - Ensure appropriate penalties can be applied (contractual or other).
    - Ensure right to use growing material for research/testing.
-

## 2. Compulsory Licences

---

### Summary of overall feedback on Compulsory licences

Some participants wanted to understand why there were provisions for compulsory licences in the first place. The key points were:

- Compulsory licences stop people “locking up” a variety, e.g. in the past there was a case when a government bred variety saw rights to grow only granted to some people.

The plenary report back summarised the feedback on farm saved seed thus:

- No options were supported
  - ‘Grace period’ doesn’t work – doesn’t work for woody plants – would prefer 25 years minimum.
  - If can prove “public benefit” then such a provision could work, but don’t have it badly defined
  - Undermines business model of matching supply with demand – the “controlled production model”
  - No ‘public interest’ test.
- 

### Table Topic: Compulsory Licences

#### What do you support and why?

- Compulsory licences ✓
  - scale of problem is small, only few cases
- Export exclusion ✓✓
- Support for different grace periods for different (categories) (species) (variety) but recognition this could be difficult ✓
- Support for MBIE proposal that a compulsory licence must not be granted unless applicant can show:
  - They have made reasonable efforts to obtain a licence over variety from PVR owner on reasonable terms and conditions and.
  - Has not been able to obtain in reasonable time.
- Agree with s 21(3) of the PVR Act 1987 to prevent market manipulation (monopoly).
- Public interest – provision is there to prevent market manipulation.

#### What needs amending and why?

- Grace period
- Follow the European approach
- Bargaining for PV should be at end of right (20 years)
- 3 years too short ✓✓✓
  - Using the example of potato varieties and scale up time/ woody PVs before propagating the material
  - People will consider the PVA 3 year term

- Needs to be more clarity around what “exploiting the variety” means – i.e producing enough reproductive material
  - S21 (3) is a closed-up loop system that can protect industry + product
  - Issues with use of “reasonable” - needs to be very clear i.e could be based on the size of the business
  - Relationship between s 21(3) is a closed loop system – this relationship becomes meaningless (in terms of propagation) in relation to 3 year grace period – because sales can be ignored (production is happening)
  - Nothing about “harvesting material.” If nothing on harvested material, people will use contracts to make an agreement – then there is the S21 (3) issue.
  - Want harvested material provisions to build brand etc.
- 

**Table topic:  
Compulsory  
Licences**

**What do you support and why?**

- NOT MUCH!

**What needs amending and why?**

- Public interest test.
- Reflect harvestable material not nursery propagation.
- Recognise licenced goods already in production.
- No reliance on commercial buyer.

**Option 1: Retain a three-year grace period (status quo).**

- Too short, do not adopt.
- Too short.

**Option 2: Provide a grace period of more than three years**

- 10 years minimum due to hard wood and fruit production

**Conditions for deciding if propagating material has been made available at a reasonable price:**

- All of this is inconsistent with other IP Law in NZ.
- Not a tool for commercial operators to disrupt.
- Really highly defined terms required. Should only apply in highly specialised circumstances. Very strict terms for exercise.
- Best intention to commercialise is the first test.

---

### 3. Essentially Derived Varieties

---

#### Summary of overall feedback on Essentially Derived Varieties

Participants wanted clarity on what was meant by an EDV. Key points were:

It is a mechanism through which you can share value e.g. Small change through gene editing, or a minor bred change (recognise the innovation)

The plenary report back summarised the feedback on Essentially Derived Varieties thus:

#### What do you support and why?

- Option 1 ✓ – clarify that this includes anything derived from a single parent.
- Possibly Option 3 with concepts talked about in UPOV definition.
- Option 2 – too narrow and difficult to define.
- UPOV definition difficult – but could evolve and maybe that is OK.
- Manage through a disclosure regime – mechanics of disclosure – what’s made public? What is PVRO role?
- Could this be done with tāonga aspect?

---

#### Table Topic: Essentially Derived Varieties

#### What do you support and why?

- Concern with ambiguity of option 1 – but maybe this ambiguity / flexibility is good!
- But option 2 creates the same issues
- Option 1 gives flexibility for definition to develop in line with UPOV ‘91
- Group 4 supports UPOV 91 [Discussions on recognised prior rights of Māori]

#### What needs amending and why?

- Original innovation still needs to be recognised (Similar to Patents act) (not a fan of Option 2)
- Suggestion: EDV can be anything derived from a single parent
- Doesn’t necessarily agree that option 3 will discourage innovation
- Be cautious using Australian regime as a model

---

#### Table Topic: Essentially Derived

#### What do you support and why?

- Team 1
  - EDV concept and inclusion

## Varieties

- Option 3 – broader definition of EDV
- Team 2
  - Option 2 is out

### What needs amending and why?

- Team 1
  - Clearer new definition of EDV and future proof act for ‘new breeding techniques’
  - EDV concept should include single parent deviations of the original parent
  - Who makes the final call?
- Team 2
  - Require notification of original breeder of deviation being made
  - Not option 2: Options 3, 4 need more work
  - For tāonga species, DNA test may be required to identify if source material is from NZ native plant/other significant plants.
  - Require signing positive declaration that application doesn’t infringe a 3rd party right.

---

## 4. Other Matters

---

### Topics for further discussion

The following topics were identified for further discussion:

Key: **red** = topic discussed at workshop.

- **Treaty clause and preamble**
- **Rights over harvested material**
- PVR act review – link with Commerce Act Review (contractual law under review)
- “Accede” vs “give effect” to UPOU’91
- **Scope/ Definition/ Understanding of “protect the Kaitiaki relationship with taonga species” and beyond**
  - Aligning provision to Māori committee
  - Eg. Nagoya agreement provisions
- Tikanga process for all stages of PVR processes
- Role, function, form of entity

---

### 4(a) Treaty clause and preamble

---



## Treaty clause and preamble

### Treaty clause/ preamble versus PVA1987 Preamble

- Whakatauki for preamble:
  - “Toitu he whenua, toitu he moana whatu  
ngarongaro he tangata  
[The land is permanent, the ocean is permanent,  
man disappears].”
- Need to incorporate both these Acts into purpose of the Act
  - He Whakaputanga 1835 /TOW 1840
- Explicitly incorporate **Tino Rangatiratanga**:
  - sovereignty over tāonga
- Clause ensuring Treaty is implemented
  - Conservation Act – Section 4, Principles of Section 7 - Intent, spirit.
  - Te Ture Whenua Act.
- Biological property rights in native rights and animals? Like Wai 262. Haven’t signed up to Nagoya.

### Decision making

- Where Māori only issues, Māori only solutions
- Where mixed: Māori and Crown
- Kaitiaki decision-making, not consulting only.
- Hapu, iwi, whanau
- Commission to be Māori and non-Māori (secretariat), Māori appointment, Māori communications.
- Two separate commissions (kaitiaki)

---

## 4(b) Rights over Harvested material

---

### Rights over Harvested material

#### Comments:

Want a provision to ensure that compulsory licences don’t have the right to sell harvested material.

- Clarity on exclusive rights of PVR owners to harvested material resulting from unauthorised propagation (option 2, pg 73)  
second option:
  - If harvested material can’t be covered under option 3, need to be confident in the ability of contract law to support channelling of harvested material.
  - Is it possible to apply for an exemption to the Commerce Commission.
  - Concern if Patents being taken out of a section – of Commerce Act. Contracts may not be able to cover it.
- Option 3 extends exclusive rights of PVR owners to include the harvested material of their protected varieties as a preferred option.

- Definition of harvested material to be upgraded to include pollen – anything that comes from a plant.
- 

#### **4(c) Scope / Definition / Understanding of “protect the Kaitiaki relationship with taonga species” and beyond**

---

**Scope / Definition / Understanding of “protect the Kaitiaki relationship with taonga sp” and beyond**

**Comments:**

- Formal recognition of indigenous property rights.
  - Role of advisory group to enact.
  - Adopt thinking and acting models that give effect to the intentions of the Waitangi Tribunal with respect to tāonga (all definitions).
    - Flow/ operation of those thinking and acting models through a well-articulated framework e.g. Nagoya Protocol embed in the PVRA.
    - Monitor and guide by the Kaitiaki Commission.
    - Key components of the NP include proper process for informed consent, access and benefit sharing.
- 

#### **E Next Steps**

---

**Next Steps**

Aidan Burch outlined the next steps in the process.

*Process from here*

- The deadline for written submissions is 09 September 2019 at 5pm.
  - Workshop proceedings will be treated as a form of submission.
  - All those who provided contact details will be emailed regular updates on the next steps for the review.
  - A copy of the workshop notes will be circulated.
- 

ENDS

# F Appendix: Flipchart Photos

## Day 1 Photos

Expect that Moon be involved after today  
 What do the law obligations actually look like?  
 How can our breeders work with Kaitiaki?  
 Real improvement in PVR regime  
 Deep understanding of perspectives and options might be implemented  
 Better understanding of practical aspects  
 Looking to see the endpoint  
 Understand issues and different perspectives  
 Work to get things right - also want it to be a safe investment for people  
 Understand options - and hope a robust framework developed - want system with certainty for investment  
 Competitiveness in global markets  
 Nothing objection on what's in the 1-10 scale  
 Not to show from breeders [we breed to] use real courts - protect what's best for the country.

low the ideal will be translated into law - and will reflect what we discuss today  
 Expect that Moon be involved after today of projects  
 What do the law obligations actually look like?  
 How can our breeders work with Kaitiaki?  
 Look on an overview of other's views  
 Moon being able to describe what success looks like - in the future - and not making some mistakes as fisheries  
 Expectation  
 Understanding of PVR Act and where it's going  
 How does this fit wider context for plants - Māori holistic understanding implementing change in IP rules as result of this view  
 To hear what people have to say - get a more informed view  
 Hear about protection of taonga sp.

characteristics of taonga perhaps - tech of definition  
 scope of taonga sp - work  
 registry - will provide data on the breeder know owned by Moon  
 - makes clear what in and what out

Definitions

How to make the 'advisory committee' work  
 ~ powers  
 ~ people  
 ~ authentic in Māori context  
 ~ powers  
 ~ who provides advice

Is presumption that it is a partnership?

kaitiaki - committee connections and how who interprets Māori interests

Te tiriti ke Whaka putunga / Tino rangatiratanga

Angelines questions

Example Patents/Committee  
 - make decisions [Commissioner has] report to the IPNZ commissioner

Will there eventually be a new Act?  
 Scope - native sp and non-native sp of significance to kaitiaki, e.g. pūha  
 clear facts needed

How/when will we implement Govt's earlier decisions w.r.t international treaties of relevance?  
 - 2001 paper  
 - engagement strategy  
 - Tāwhiri established for this

Other Matters  
 Have politicians been involved?

education needed about trademarks/PVR's in general  
 vision for long term - Māori to be involved in the business  
 - also engaging w/ kaitiaki easily  
 - what about overseas applicants? Don't want to mean NZ misses out if too tricky...  
 identify precedents - case book of examples to inform next stages  
 government officials need to engage on Māori terms - don't take off - work together

Te tiriti ke Whaka putunga / Tino rangatiratanga

Angelines questions

Example Patents/Committee  
 - make decisions [Commissioner has] report to the IPNZ commissioner  
 - well defined guidelines - Māori trademark/ "offensiveness" test design - based on taupū take  
 - get given anything is a Māori word  
 - indep go through on our own  
 - check boxes  
 - vote 3/5  
 - are disputes - P.A's write letter and challenge  
 - do check that Moon has been consulted - we re-evaluate and decide / don't decide

PVR would also need a lot less presence than role of patents/trademarks  
 OR not / vs reg?

def'n kaitiaki taonga sp

mix of Crown appts  
 Iwi leaders appts

model of talents often as more expertise needed - may vary between applications  
 need specialist knowledge  
 need accountability system  
 needs to be iterative - take back/forward... and continue to do this.



What does 'reasonable extent' mean?  
 e.g. where impact benefit beyond kaitiaki interest  
 e.g. addressing kauri dieback

How to protect mātauranga in regime not just kaitiaki relationship.

If sp from offshore - conversation back to indig people of that country - bring in context of other treaties at this was relevant to case study 2

Science is done eg impact on whānau / Māori from changing sp

reciprocal relationship - part of engagement to share know around that plant - poss also co-developed.

what happens if disagreement as to who is kaitiaki? how can risk to breeder here be managed? Need a disputes process with an outcome.

while early engagement, how it can be a long time - so protecting commercial info over a long time is important  
 concern that info related to pedigree could be commercially sensitive - don't want to publicly disclose  
 - on disclosure only on request from Ctee or it doesn't release it.

What's supported in general ✓  
 Power to say 'no' ✓ but breeder has option to go away & come back.

and needs good record keeping  
 Engage right at start - PVZ office direct breeder to find kaitiaki but balance with need for secrecy. & info-sharing  
 - face to face would be good. Not lone way to engage. clearly respects confidentiality needs to be  
 - provide all info from breeder to help kaitiaki.

Māori committee - how constituted / appointed  
 - expertise - plant, foliage, etc.  
 must be rep of whole community - build up a rapport and facilitate kaitiaki - breeder relationship  
 - could also have 'go to' people to help breeders  
 Who is kaitiaki? Perhaps 'dial-a-kaitiaki' - kaitiaki need to be accessible - need to be capable - or have access to this. but if role of advisory or decision making they need clear line who to talk to  
 Incl overarching Treaty clause  
 go there first and provide clear direction  
 ensure have good info, also real authority  
 Have a database of taonga species to help the breeder - no Ctee required in a registry database so breeder can go there & refer on to kaitiaki  
 Q - is it breeder to say there is kaitiaki interest or say they have engaged?  
 Use 'whakapapa' of a sp - in case argument that a sp no longer 'native' - do define but not too tightly

Table #: 1 Case Study: 2

PVR Application process and TOW compliance  
 mana motuhake + tino rangatiratanga

What do you support and why? - enabling? - enhancing?

- data: current PVRs over varieties w/ kaitiaki interests. MAC would look at this to inform their advice etc. ("recidivism")  
 - breeders need to understand / provide info on environment impact tikanga, grant only lasts certain # of years - how do we ensure ongoing kaitiaki interest protection? what has been granted via Treaty settlements?  
 - We agree breeders should engage w/ kaitiaki when using plant material from indigenous species: - can just be a kaitiaki (breeder pays) organic process. - need whānau hapū, iwi's different  
 - Risk: maintaining competitive advantage (manāho) - enabling is about capacity on both sides eg Māori interest + competitive advantage  
 - reciprocal  
 - Needs to be a body MAC The bright level, w/ the right

MAC needs regional expertise  
 MAC should write engagement guidelines  
 Raitokerau + Kahurangi subs: Kanohi ora  
 process to mandate MAC  
 Compromising genetic integrity if we don't do the science + map the genetics.  
 - Agree not option of decision-making process (grant right and restrict it)  
 What does 'reasonable extent' mean?  
 Kaitiaki could agree to actions that may be contrary to kaitiaki v'ships for certain reasons eg for kauri dieback, diabetes treatment?  
 - Role of kaitiaki is to ensure breeders + business proceed w/ caution Ceg mānuka - kaitiaki know what bees like.  
 - what's the value of taonga?  
 - (starting point is looking after the whānau.  
 - who owns data?  
 - how are we protecting mātauranga? Not just species.



Table #: 2 Case Study name: 2

PVR Application process & TOW compliance

What do you support and why?

Given the narrow brief Option 2 appears workable  
 MAC - supported but needs to be well resourced, make up of Committee also important  
 → Scientific  
 → Cultural  
 → Legal  
 → Business/Commercial  
 Process of developing guidelines could be part of this

Breeder's need: 1) A clear pathway 2) Confidential

What needs amending and why?

- BUT need holistic approach to protection of taonga species
- Identification of kaitiaki, especially when many kaitiaki are involved may be hard. Can be significant genetic variation within a species
- Need to build capability of Māori to engage with the MAC
- Early engagement has to be in confidence to protect commercial interests

What happens if other kaitiaki assert an interest & seek the same application?

Table #: 3 Case Study name: No. 2

PVR application and TOW compliance

What do you support and why?

- We may need definitions (kaitiaki, Taonga) - but this can't be too prescriptive → Needs flexibility for diversity of opinions
- Good process needed → iterative - adjustments can be made
- All agree that
- Independent, impartial, knowledgeable advisors will be needed.

What needs amending and why?

- Unintended consequences: There is an opportunity to have a better conversation if we consider international treaty links with kaitiakitanga (eg. propagation requirements)
- More clarity needed in process for disclosure  
 Concerns that disclosure of commercially sensitive info. is discoverable publicly. → Disadvantage to owner + kaitiaki  
 Disclosure on request by committee?  
 → Committee holds information confidentially?

Common goals eg. Taonga

Table #: 4 Case Study: 1

PVR Application process and treaty of Waitangi compliance

What do you support and why?

- Adopting Te Tiriti clause contained in the Conservation Act certainty for all parties is essential
- Breeders should have choice to amend and revise application if declined → request both kaitiaki + breeder
- **Practical Questions** - How do the roles of the PVR unit (early engagement + breeders) - How are people appointed to MAC? why decider?  
 - How do we ensure the existing PVR process is compatible with Te Tiriti? - What are the MAC's Terms of Reference?  
 - If PVR unit and role of MAC change, how is a decision reached? - Is there an appeal process?  
 - How are prior rights of plant varieties (PVRs) - How will patents be reviewed? - How do we ensure the existing PVR process is compatible with Te Tiriti?  
 - How do we handle who the relevant kaitiaki representative is?  
 - Can we re-use the existing PVR MAC?  
 - What do you do with overseas breeders using NZ species? eg. who requesting NZ PVR, or applying patents to NZ?

What needs amending and why?

- Stage 1 - Early Engagement between Kaitiaki & Plant Breeder during the breeding process (Pre-Application)  
 - Guidelines for breeders on PVRs required  
 - Who is the Kaitiaki? Can the PVR office direct the Breeder to the correct Kaitiaki (Possible Public Notice)  
 - PVR office should encourage & facilitate this early engagement  
 - Balance between Commercial / Protection & engaging with the relevant Kaitiaki
- Stage 2 - Te Tiriti He Whakaputanga 1835 = Need to be Recognised  
 - Te Tiriti Rongotitanga = Resourcing  
 - What and who constitute the Māori Advisory Board who has the mandate to be on this Committee  
 - Kaitiaki not to be used loosely  
 - Disputes Resolution Process or Appeal Process  
 - Early engagement would give certainty

Table #: 5 Case Study name: 1

PVR application process and TOW compliance

What do you support and why?

- Early engagement, useful for both side
- Good record keeping (both for kaitiaki interests and human intervention)
- Opportunity for Advisory committee to facilitate engagement
- Builds knowledge and costs will reduce over time
- Creates certainty
- The creation of a separate Māori Advisory Committee that focuses on PVR

What needs amending and why?

- Onus shouldn't be on Māori; need a notification system
- What happens when the breeder doesn't know the kaitiaki?
- Agree sales and exports - need something to address restrictions on grant for rights holders
- Overseeing consistency with TOW

Table #: 6

Case Study: 1

PVR application process and Treaty of Waitangi compliance

### What do you support and why?

- Supporting early engagement between breeders + MAC  
↳ + info @ hearing
- Support clear guidelines, MAC not just general advice — need to go to MAC first thing for guidance.
- Support for kaitiaki role! Need clear-up-to-date info for committee and real authority.
- Supporting breeding process as a whakapapa process.

### What needs to be amended and why?

- Questions around breeders assessment of Kaitiaki Interest.  
are they in a position to do this? - kaitiaki need to do this? whether or not they're qualified
- Need a clear database w taonga species listed  
↳ iwi/hapu at taonga
- PVR office need to ensure MAC have mandate / taonga species database to make decision \*  
↳ when do kaitiaki interests stop from variety to variety.
- Support of kaitiaki's role in the whakapapa of PVR \*  
↳ MAC - full time role? possibly
- Don't want disincentivise plant breeders through lengthy / difficult process — to go offshore.
- Not according to UPOV 91 undermines intl reputation.
- Other  
• signing up to Nagaya? Otherwise can't challenge people using material for common gain.



Day 2 Photos

Farm saved seed  
 Expectations  
 Influenced  
 Clarity over compulsory licensing harvested material  
 Hear any comments on economic analysis paper  
 Clear steer on what it is we need to add to the MR Act. What is it around T.o.W we want to see in it? And how?  
 rights over harvested material  
 connections to amendments to Commerce Act.  
 accede vs give effect UPOV '91

Reflections from Yesterday.  
 → naming "Kaitiaki commission"?  
 Māori advisory ctee needs to have real teeth and real decision-making  
 With clarity on what - definition and understanding critical - can't support something I don't understand.  
 Looking forward to how yesterday's ToW discussion inform UPOV '91 discussion - how can we marry T.o.W compliance AND UPOV - don't see them as exclusive.  
 Is a partnership so everything not limited to taonga sp.  
 Don't overlook resource to support kaitiaki on the ground.  
 Taumata group? is it a possible vehicle?  
 If we get this right could provide a blueprint e.g. Māori biological property rights commission...  
 Whaka... 1835 and ToW 1840 version need to be what is recognized: respect for tino rangatira  
 Need to treat Wai 262 as "pan-national" Nga Puhi perspective | tenet ahiāhi

↓ Treaty clause + preamble  
 ↓ rights over harvested material  
 ↓ "accede" vs "give effect" to UPOV '91  
 PVR Act Review → contractual law under  
 ↓ link with Commerce Act review  
 Definition  
 Scope / Understanding of "protect the Kaitiaki relationship to taonga sp" → and beyond. Māori ctee - aligning provision to Māori ctee - eg Rangiora agreement positions  
 ↓ Tikanga processes for all stages of PVR process  
 ↓ Role, function, form of entity

Allow benefit from I-P by protecting it.  
 Fair recognition  
 For Zespri / PGG Wrightson  
 berry growers  
 small scale nurseries  
 An intellectual property right system  
 What is this all for?  
 Give an entity confidence to invest in new breeds / varieties  
 can be a big overseas company OR small NZ business e.g. nursery market - serving both NZ domestic market AND export markets overseas.  
 Service industry if taonga  
 breeders in base own  
 CRI's Plant-feed etc  
 Growers trees  
 seeds fruit  
 veges  
 Give them better goods  
 ⇒ \$\$

Compulsory licences <sup>→ stop people 'locking up' a variety</sup>  
<sup>→ when you breed but only if you save people get the rights.</sup>  
 No options supported  
 'grace period' doesn't work - doesn't work for woody plants  
 + prefer 25 yrs min...  
 If can prove 'of public benefit' then could work... but don't have it badly defined  
 Undermines business model of matching supply in demand.  
 "controlled production model"  
 - no 'public interest' test.

## Compulsory Licenses

### Grace Period

**Option 1:** Retain a three-year grace period (status quo).  
 Too Short, Do NOT ADOPT  
 TOO SHORT,

**Option 2:** Provide for a grace period of more than three years.  
 - 10 years minimum due to hard wood & Fruit production

**Option 3:** Provide for different grace periods for different varieties.

ALL OF THIS IS INCONSISTENT WITH EITHER IP LAW OR NZ COMPULSORY LICENSES

### Compulsory Licenses

**Conditions for deciding if propagating material has been made available at a reasonable price**

**Section 21(3):** "... the Commissioner shall not take into account any reproductive material that is available only subject to the condition that any or all of the produce from that material must be offered or sold to a particular person, or to a specified group of persons, or to a member of a specified class or description of person"

**Option 1:** Retain section 21(3).

**Option 2:** Repeal section 21(3).

NOT A TOOL FOR COMMERCIAL OPERATORS TO REPEAL  
 REALLY HIGHLY DEFINED TERMS REQUIRED  
 ↳ SHOULD ONLY APPLY IN HIGHLY SPECIALISED  
 VERY STRICT TERMS FOR EXERCISE GRANTING  
 ↳ BEST INTENTION TO COMMERCIALISE IS THE 1ST TEST

Table #: Topic:  
 PVR application process and UPOV '91

What do you support and why?  
 NOT MUCH!

What needs amending and why?

- Public interest test
- Reflect harvestable material NOT nursery propagation
- recognise licenced goods already in production
- no reliance on commercial flow.



Table #: Topic: Compulsory Licenses

PUR application process and UPOV '91

**What do you support and why?** (categories)

- Compulsory licenses / scale of problem (species)
- Export exclusion // small - only low caps. (species)
- support for different grace periods for different varieties - but recognition this could be difficult.
- support for MBIE proposal that a compulsory licence must not be granted unless applicant can show:
  - they have made reasonable efforts to obtain a licence over variety from PUR owner on reasonable terms + conditions, and
  - has not been able to obtain in reasonable time.
- Agree w s21(3) to prevent market manipulation (monopoly)
- Public interest - provision to prevent market manipulation.

**What needs amending and why?**

Grace period - follow European approach.

- 3 years is too short
- ↳ using the example of potatoes + scale up time / woody PV
- ↳ before propagating the material. • People will consider the PV a 3 year term.
- Needs to be more clearly around what "exploiting the variety" means - ie producing enough reproductive material
- s21(3) a closed loop system can protect industry + product
- Issues w use of "reasonable" - needs to be very clear - ie could be cut on the side of the business
- Relationship between s21(3) closed loop system - this relationship becomes ~~very~~ meaningless (in terms of propagation) in relation to 3 year grace period - because sales can be ignored (production is happening).
- Nothing about "harvested material" - if ≠ harvest material - people will use contracts - then there is the s21(3) issue. • Harvested material to build brand etc.

Farm Saved Seed

2(2) ✓ [preferred]

rights

- Deal with breeder's right to harvested material
- Right cannot be exhausted at first use of seed
- Ensure exception criteria is clear. eg 'subsistence' needs to be defined.

At no... government's agreement to collect royalties... no leverage for breeders to negotiate up... no solution... preference to have a strong contractual change of command right through. Allow for commercial <sup>breeder</sup> flexibility to negotiate.

But don't limit the end use.

**EDV's** Show value, eg small change though generality } recognise the innovation

Option 1 - anything derived from a single parent - "clarity" - minor bred change

Option 2 - too narrow & difficult to define.

Option 3 - UPOV def difficult - but could evolve and maybe that is OK

with concepts talked about in UPOV def - manage through disclosure regime. - mechanism of disclosure - could this be done with topo - unless really possible? PUR/rot

Table #: 5 Topic: Farm Saved Seed

PUR application process and UPOV '91

**What do you support and why?**

Defining "seed" to traditional seed, not all propagating material.

Allowing farm saved seed.

Royalties - but don't mandate a collection point, ie work freedom to set contract terms.

Flexibility to allow farmers and breeders to negotiate with the rules will be different cap by cap.

**What needs to be amended and why?**

Regulations probably most appropriate, but not Australian request model.

Other Options: farmers are not exempt from pur regulations or a provision which allows the farmer(s) and breeder to negotiate terms themselves. If they do not occur satisfactorily, a provision to any limitations will be set out in regulation.

If there is no agreement, the issues in dispute may be referred to a dispute resolution process/procedure.

Table #: 3 1/2 Topic: FSS

PUR application process and UPOV '91

**What do you support and why?** (iii) out

In specific cases you could opt to take a Royalty 100% (ROI for Breeder).

- Supported by ~~topo~~ regulation.
- no imposing contractual terms.
- Agree 2(ii) - Regs easier to change. (ie not excessive limits on how parties reach agreements)

**What needs amending and why?** - need to recognise/protect kaiiaki interests in any exception/ right granting.

- case by case / application
- ↳ not gross ruling by species
- criteria re exceptions clear
- Exception should be for non-commercial activity or subsistence farming
- Discussed extension of right to harvested material for royalty collection
- education on types of commercial arrangements
- ensure appropriate penalties can be applied (contractual or other)
- ensure right to use growing material for research / testing.

Table #: Topic: **EDVs**

PVR application process and UPOV '91

**What do you support and why?**

Concern with ambiguity of Option 1? But, maybe this assigns flexibility is good!

Option 2 creates same issues

Option 1 gives flexibility for def'n to develop in line w/ UPOV

Support UPOV 91 option } Group 4

Discussions on acquired prior rights of Maori

**What needs amending + why?**

Original innovation still needs to be recognized (Not a fan of Option 2)

Suggestion: EDV = anything derived from a single parent

Don't necessarily agree that Option 3 will discourage innovation

Be cautious using this regime as a model.

Similar to patents Act

Table #: Topic:

PUR application process and UPOV '91

O Group 1  
O Group 2

**What do you support and why?**

- EDV concept & inclusion
- Option 3 - broader definition of EDV for #
- OPTION 2 IS OUT...

**What needs amending and why?**

Clearer

New definition of EDV and future proof act ~~and~~ for 'new breeding techniques'

- EDV concept <sup>should</sup> include single parent derivatives of the original parent
- Who makes the final call?
- require notification of original breeder of derivation being made
- not opt 2 ; 3/4 need more work
- for taonga species, DNA test may be required to identify if source material is from NZ native plant / other significant plants
- require signing positive declaration that application doesn't infringe a 3rd party rights.

Treaty clause / preamble VS

PVA1987 Preamble

- He Whakaputanga / Te Tiriti o Waitangi

- Need to incorporate both - into purpose of Act.

- Explicitly incorporate Tino Rangatiratanga

- Clause ensuring Treaty is implemented.

- Conservation Act - st / Te Ture Whenua Act

"principles of T."

inherent spirit

Biological property right in native rights and animals? Like Wair 262. Haven't signed up to Nagoya.

**Decision Making**

- where maori only issues, maori only solutions.
- where mixed - maori + crown.
- Kaitiaki decision-making ≠ consulting only.
- Commission be maori + non-maori.
- two separate commissions.

Secretary } maori appoint  
Kaitiaki } maori commis.



## Harvested Material

- ① - Want <sup>provision</sup> ~~clarity in wording~~ to ensure that compulsory licences don't have the right to sell harvested material.
- ② - Clarity on exclusive rights of PVR owners to harvested material resulting from unauthorised propagation. OPTION 2  
pg 73 → second option
- Option 3 Extend exclusive rights of PVR owners to include the harvested material of their protected varieties.  
AS PREFERRED OPTION
- ③ - Definition of harvested material to be upgraded to include pollen → anything that comes from a plant.

1) If harvested material can't be covered under Option 3, need to be confident in the ability of contract law to support the channelling of harvested material.

2) Is it possible to apply for an exemption to the Commerce Commission?

↳ Patents being taken out of a section of Commc Act - others may not be able to use it

## Scope & understanding of taonga / 'protect the kaitiaki relationship ...', etc

- ✓ formal recognition of Indigenous Peoples' rights, & role of Advisory group to enact.

ADOPT THINKING & ACTING MODELS THAT GIVE EFFECT TO THE INTENTIONS OF THE WAITANGI TRIBUNAL WRT TAONGA (ALL DEFINITIONS)

OPERATION OF THESE THINKING & ACTING MODELS THROUGH A WELL-ARTICULATED FRAMEWORK EG NAIHOYA PROTOCOL EMBED IN THE PURA

GUIDE BY THE KAITIAKI COMMISSION

KEY COMPONENTS OF THE NP INCLUDE ~~PROPER~~ PROCESSES FOR INFORMED CONSENT ACCESS & BENEFIT SHARING