



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI

Plant Variety Rights Act review – Issues paper



Agenda for the day

- 10.45-11.00** Arrive, morning tea
- 11.00-11.30 Welcome and introduction
- 11.30-11.50 Presentation on the PVR regime and the review
- 11.50-12.00 Opportunity for Q&A
- 12.00-12.30** Lunch
- 12.30-1.30 Workshop Session 1: Plant breeding and getting a PVR – what are the issues for Māori?
- 1.30-2.30 Workshop Session 2: The Wai 262 Report and its recommendations on PVRs
- 2.00** Afternoon tea (during workshop)
- Workshop Session 2 (cont)
- 2.30-3.00** Wrap up (next steps, how we engage from here)

Objectives for the day

- Provide you with an overview of:
 - Why we're reviewing the PVR Act
 - What we're covering in the review
 - What the review process will look like
 - What the plant variety rights regime is for
- Facilitate a discussion about:
 - how the current plant variety rights regime raises issues for you, and
 - ways of addressing these issues (e.g. the Wai 262 recommendations)
- Facilitate a discussion about how you would like to engage with us at the next stage of the review

Understanding the PVR regime

- When we're talking about plant varieties in the context of plant variety rights, we're actually talking about **cultivars**.
 - Don't exist in the wild; must be developed by people.
 - Not botanical varieties.
- Developing a new cultivar is a time-consuming, resource-intensive process
- The regime incentivises this process by providing certain rights relating to the commercialisation of the new cultivar so that they can recoup the investment they have made in developing it
- Overall, the purpose of the regime is to increase the availability of new varieties in the market *for the public good*

What does the Act do?

- A new cultivar must meet five criteria to be granted a PVR:
 - New
 - Distinct – distinguishable from other known varieties
 - Uniform – consistent within each generation
 - Stable – consistent across successive generations
 - Have an acceptable variety denomination
- A PVR gives control over the sale of what we call the *propagating material* – seeds, cuttings, spores etc
 - So if someone wants to grow that variety commercially, they need to pay a royalty to the PVR holder

What does the Act do? (cont)

- There are exceptions – for example, you don't need to ask the breeder's permission to grow the variety for your own private use.
- Not a right to do something, but to prevent others from doing something
 - Other legislation may prevent you from ever growing your variety
- It is a temporary property right, lasting 20 or 23 years



Why are we reviewing the PVR Act?

- It's overdue; the *Plant Variety Rights Act* hasn't been substantially amended since it was passed in 1987
 - We need to ensure the regime is consistent with the Treaty of Waitangi
 - We need to ensure the regime finds the right balance between the interests of breeders, growers, consumers and other interested parties so that there is a net benefit to NZ
- We have to make changes under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
 - We need to bring our regime into line with the latest version of the International Convention for the Protection of New Varieties of Plants (UPOV 91).

UPOV 91

Under the **CPTPP**:

- UPOV 91 is the most recent version of the International Convention for the Protection of New Varieties of Plants
- NZ has three years from 30 December 2018 to bring its regime into line with UPOV 91.
- We can do this by:
 - Signing up to UPOV 91, or
 - Making our regime consistent with UPOV 91.
- If we find in the review that we're not able to protect Māori rights and interests in taonga species under UPOV 91, the Government can choose not to sign up.



Issues Stage

Pre-consultation phase, including information-gathering, planning, engagement with some interested groups, and development of the PVR Issues Paper and *Māori Engagement Plan: Issues Stage*.

This phase has already been completed



Release of PVR Issues Paper and *Māori Engagement Plan: Issues Stage* for public consultation, including consultation hui and public meetings.

Mai Mahuru ki Hakihea 2018: September to December 2018



Options Stage
Q2 2019

Release of an Options Paper and *Māori Engagement Plan: Options Stage*.
The Options Paper will contain possible options to address the issues we identify through the Issues Paper consultation process.



Preparing of Bill
Q2 2020

Amendment bill introduced to the House of Representatives (Parliament).



Select committee invites public submissions on the Bill.



Questions

- Understanding the PVR regime
- What the Act does
- Why we are reviewing the Act
- The review process



Workshop Session 1

Plant breeding and getting a
PVR – what are the issues for Māori?



Developing a new cultivar

- Plant breeders source material either from existing varieties or from plant material found in the wild.
- Plant breeding generally involves selective propagation to strengthen desirable genetic traits.
- Other new techniques involve directly changing the genetic make-up of plants. GMOs are regulated by the *Hazardous Substances and New Organisms Act*



Getting a PVR

- Getting a PVR on the new variety gives the breeder the opportunity to get a return on their investment by getting a temporary monopoly over the commercialisation.
- To get a PVR, the breeder submits an application to the PVR Office.
- The cultivar is then tested to see if it meets the required criteria. If it does, the PVR Office will recommend to the PVR Commissioner that a PVR be granted. IPONZ has a register of all PVRs.

Once a PVR is granted

- Once a PVR is granted, the permission of the rights holder is then required for any of the activities covered by the grant.
- Growers will pay the rights holder a royalty, for example when the seed is sold, or for each fruit tree planted.
- The rights holder does not have any rights over the harvested material, though this is often agreed in contract (for example it might be agreed that all the wheat is sold to a particular mill).

PVRs and native species

We estimate that around 20 indigenous species have had protected varieties derived from them, and these PVRs constitute around 7% of the total number of current grants.

PVRs granted over cultivated varieties

As at 7 June 2018

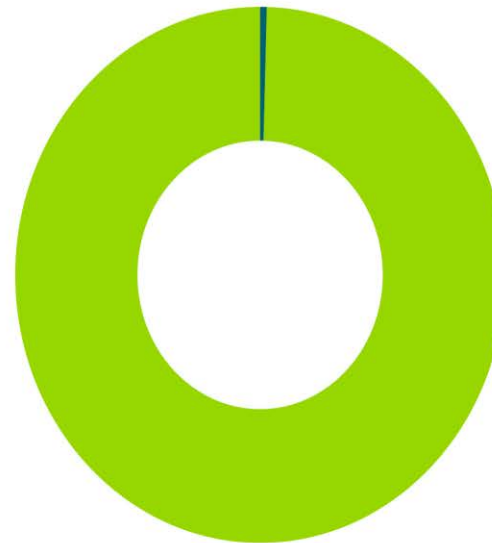


Derived from native species

Not derived from native species

Indigenous species in New Zealand

As at 7 June 2018



Have had protected varieties derived from them



Questions to consider

- What aspects of the current process work well and would be good to keep?
- What's not working well? What is the impact of this?
- How does the current PVR regime assist, or fail to prevent, activity that is prejudicial to the kaitiaki relationship?
- What considerations does MBIE need to keep front of mind when we move into the next stage of options development?

Workshop Session 2

The Wai 262 report and its recommendations on PVRs



Key findings in Chapter 2

- The Treaty of Waitangi guarantees tino rangatiratanga over taonga species.
- Tino rangatiratanga requires the Crown to recognise and protect the **kaitiaki relationships** that Māori hold with taonga species and mātauranga Māori.
 - For taonga species, this is a level of control sufficient for kaitiaki to protect their relationships with those species to a reasonable degree.
 - For mātauranga Māori, kaitiaki have three rights over mātauranga Māori:
 - Right to acknowledgement;
 - Right to a reasonable degree of control over its use;
 - Right to proper recognition of the interests of kaitiaki for any commercial use.

Four recommendations on the PVR regime

- The kaitiaki relationship recommendations:
 - Allow the Commissioner of PVRs to **refuse** to grant PVRs if **kaitiaki relationships with taonga species** would be affected.
 - Allow the **Patents Māori Advisory Committee to advise** the Commissioner of PVRs on whether kaitiaki relationships with taonga species would be affected.
- Other recommendations:
 - Prohibit approval of plant variety names **that would likely offend** a significant section of the community, including Māori.
 - Clarify that plant varieties must be **specifically bred** to qualify for a PVR.



Other issues

- Lack of information on PVR register, eg
 - Māori names for plants
 - Whether a variety derived from a taonga species was developed using indigenous plant material
 - Whether a breeder of such a variety identifies as a kaitiaki
- Disclosure of origin requirements in the PVR regime
 - Could collect information about use of taonga species and mātauranga Māori used to develop new cultivars
 - Could assist referral to a Māori Advisory Committee



Questions to consider

- Do the Wai 262 recommendations sufficiently cover the issues you have with the current PVR regime?
- If not, what issues are not addressed?
- What might a disclosure of origin requirement look like in the PVR regime?



How do we engage in the future?

The next stage involves developing options for change, then consulting on these in the form of an options paper.

- What has worked well with our engagement at this issues stage?
- What could be better?
- What ideas do you have for how we should engage with Māori at the options stage?