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# Review of the *Plant Variety Rights Act*: What does the Issues Paper cover?

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## **The Government is reviewing the Plant Variety Rights regime**

MBIE has released an Issues Paper as part of the Government's review of the Plant Variety Rights (PVR) regime.

The paper tests with you our understanding of the key issues with the PVR regime, and invites you to bring any other issues to our attention. Some of the issues covered in the paper were raised during pre-consultation workshops we held with Māori and industry stakeholders. Others relate to our obligations under the Treaty of Waitangi and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

When we have received all the feedback on the Issues Paper, we will develop a range of options for addressing issues with the PVR regime. We aim to begin consultation on these options in the first half of 2019.

## **The Issues Paper is divided into six parts**

In Part 1, we explain the purpose and context of the review – including an introduction to our obligations under the Treaty of Waitangi and the CPTPP – and provide an overview of the PVR regime.

In Part 2, we outline our proposed objectives for the PVR Act. PVRs are intended to incentivise the development of new plant varieties that can benefit New Zealand by giving rights holders an opportunity to get a return on the investment they make in that development. Rights that are too weak can reduce the incentive for investment and potentially discourage overseas breeders bringing their varieties to New Zealand. Rights that are too strong can result in increased costs for growers and consumers, and potentially inhibit breeding activities. Getting the objectives right is important for getting the right balance and will help us to assess potential changes to the regime at the options stage.

In Part 3, we cover the key issues raised by industry stakeholders, including PVR owners and farmers/growers. These include, for example, whether and how breeders should be recompensed when farmers use the seed from one crop to plant the next one (as opposed to buying seed again off the breeder). Another issue is how far the rights of the original PVR owner should extend over new varieties that are very similar to the original variety.

In Part 4, we cover issues relating to the Waitangi Tribunal's recommendations on the PVR regime resulting from the Wai 262 inquiry, and feedback received from Māori in our pre-consultation engagement. The Wai 262 inquiry considered the broad question of the place of Māori identity and culture in New Zealand's laws and policies. The Tribunal made four recommendations for change to the PVR regime to better protect Māori interests in the process of granting intellectual property rights over new plant varieties.

In Part 5, we provide a high-level outline of additional issues with the PVR regime that we are aware of and may warrant further consideration.

Part 6 is a recap of the questions we have asked in this Issues Paper.

## **A key issue for us to understand is how we meet both our Treaty of Waitangi and CPTPP obligations**

New Zealand is a member of **UPOV 78**, the 1978 version of the international agreement relating to plant variety rights protection. The most recent version of this agreement is the 1991 version (**UPOV 91**), which strengthens plant breeders' rights in a number of areas. Under the CPTPP (which the government has signalled its intention to ratify) we will have three years from when the agreement comes into force for New Zealand to either (a) accede to UPOV 91, or (b) create a standalone regime that gives effect to UPOV 91. Under either option, New Zealand can adopt measures it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi.

## **Making a submission**

There are a number of questions throughout the Issues Paper that we are seeking your responses to. We welcome feedback on any or all of these, or on any other issues not covered in the paper. We will also be holding a series of hui around the country as part of the consultation process.

