



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

Māori Engagement Plan

Review of the Plant Variety Rights Act 1987

Issues Stage

Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

Contents

- 1 Introduction 1**
- 2 PVR Act review process..... 2**
- 3 Objectives of engagement..... 4**
- 4 Issues stage: our plan..... 6**
- 5 Options stage: seeking your views..... 8**
- 6 Next steps: how can you have your say?..... 9**
- Annex 1: What has informed our engagement approach 11**
- Annex 2: Pre-consultation discussions..... 14**
- Annex 3: Draft regional hui agenda 15**

1 Introduction

Purpose and context

1. The Ministry of Business, Innovation and Employment (**MBIE**) is reviewing the *Plant Variety Rights Act 1987* (**PVR Act**). A ‘plant variety right’ (**PVR**) is an intellectual property right that plant breeders and developers may apply for over new plant varieties they have developed.
2. MBIE is considering how the PVR regime relates to the rights and interests of Māori (including iwi, hapū and whānau) under the Treaty of Waitangi.

What is this document for?

3. This Māori Engagement Plan outlines the high-level plan for MBIE’s engagement with Māori on the PVR Act review. The purpose of this document is to:
 - a. test our initial thinking on the Crown’s approach to engaging with Māori in the review;
 - b. facilitate a conversation with Māori who have an interest in the PVR Act review about how they would like to engage with MBIE; and
 - c. outline our high-level plan for the first stage of formal consultation in the PVR Act review (the **issues stage**).
4. This Māori Engagement Plan has been released concurrently with the PVR Act review Issues Paper (**Issues Paper**). The Issues Paper is available on the MBIE website [here](#). In the Issues Paper, we cover:
 - a. the background to the review (Chapter 2);
 - b. what PVRs are and how the PVR regime works (Chapters 3-5);
 - c. the constitutional and international frameworks that inform our substantive approach (Chapter 6);
 - d. our proposed objectives for the PVR regime and how they interrelate (Part 2);
 - e. potential issues raised by industry stakeholders in the PVR regime (Part 3); and
 - f. the Wai 262 findings and recommendations relating to the PVR Act (Part 4).
5. The Issues Paper provides useful context for the Māori Engagement Plan. In this document, we seek to facilitate MBIE’s discussion with Māori on the matters explored in the Issues Paper that are of relevance to them (and other issues that arise).
6. The Māori Engagement Plan is a living document that will be updated at the **options stage** (which is explained on the next page). We will incorporate your feedback, and what we have heard and learnt at the issues stage, to draft a *Māori Engagement Plan: Options Stage* for release at the beginning of the options stage. Information on how you can provide feedback to inform the *Māori Engagement Plan: Options Stage* is in **Section 6**.

2 PVR Act review process

7. The PVR Act review is a multi-year legislative review process that will culminate in the introduction to Parliament of a bill to amend the PVR. MBIE is responsible for running the review's policy development process, which includes organising the consultation process.
8. The review process comprises three key stages (also shown as a diagram on the next page):

Policy development process

- **Issues stage:** We are currently at the issues stage. We are trying to gain a better understanding of how the PVR regime operates in practice, the key issues and opportunities for change. Following consultation, MBIE will make recommendations to Cabinet on whether there are problems with the PVR regime that should be addressed. At the end of this stage, Cabinet will direct MBIE to develop options for addressing the issues that Ministers wish to address.
- **Options stage:** We will be developing policy options to address the issues with the PVR regime that were identified at the issues stage. We will test these potential solutions by releasing an Options Paper consultation document (**Options Paper**). Like the issues stage, we will analyse feedback, submissions and any other evidence following the Options Paper, and make recommendations to Cabinet on whether changes to the PVR regime should be made, and what they should be. This stage culminates in policy decisions by Cabinet on changes to the PVR Act.

Parliamentary process

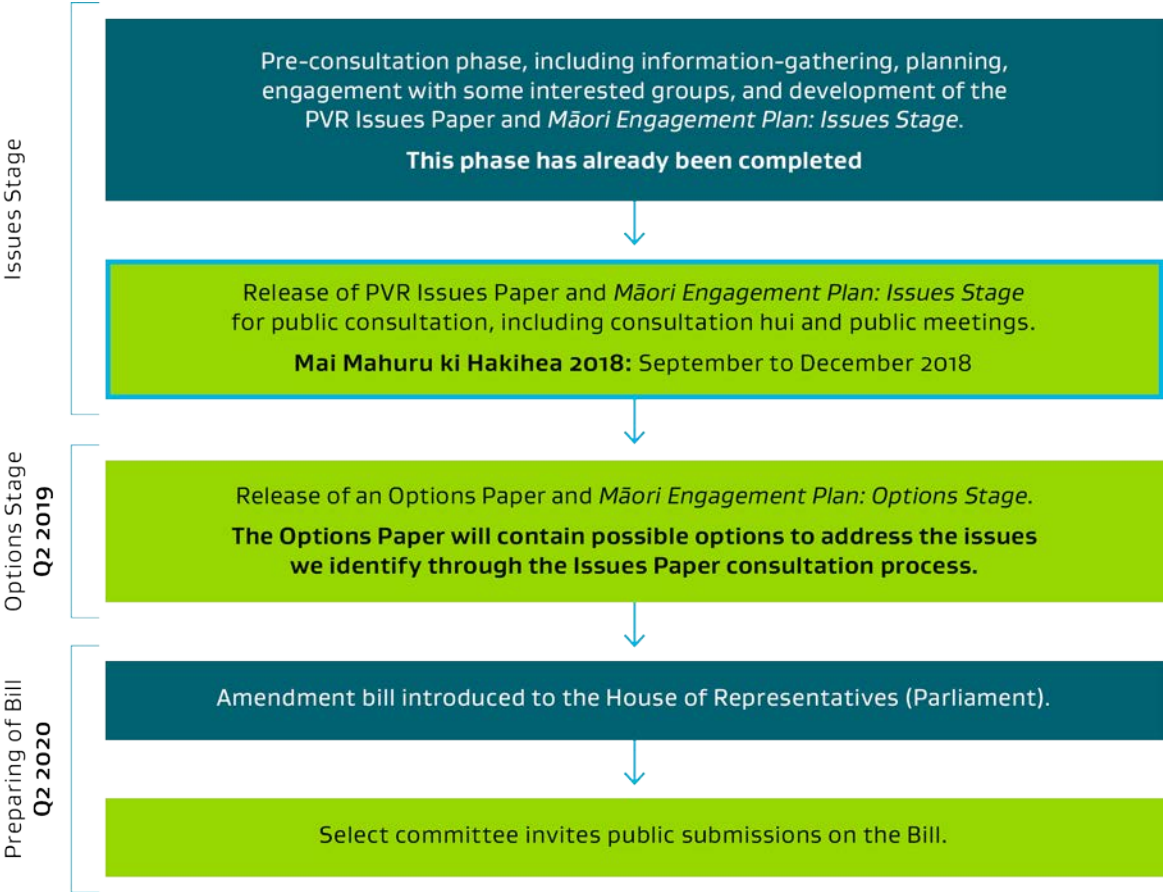
- **Preparation of a bill:** The Parliamentary Counsel Office drafts an amendment bill to implement the changes to the PVR Act that Cabinet has approved. Once the bill is drafted, Cabinet will approve the introduction of the bill to the House. This completes the policy development process led by MBIE. After the policy development process, the parliamentary process begins. (The Parliament website has a useful infographic on how a bill becomes law ([Māori¹](#)/[English²](#))).
9. There are opportunities for formal consultation between the Crown and Māori at both the issues stage and the options stage. We have had a number of conversations as part of our pre-consultation discussions which have contributed to the development of this Māori Engagement Plan and the Issues Paper. These are discussed in more detail at **Annex 2**.
 10. We welcome your feedback at all stages of the review process.

¹ See <https://www.parliament.nz/media/1967/how-a-bill-becomes-law-maori.pdf>

² See <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/how-laws-are-made/how-a-bill-becomes-law/>

PVR Act review process diagram

- 11. The bright green boxes represent opportunities for you to have your say through public consultation.
- 12. The timing is indicative. It aligns with our obligation to complete this review within three years of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entering into force for New Zealand. This is expected to occur in late 2018/early 2019, giving us until late 2021/early 2022 to bring our new domestic regime into force.



3 Objectives of engagement

13. A number of things have informed our engagement approach, including:
 - a. the draft engagement framework for the Crown/Māori relationship;
 - b. the United Nations Declaration on the Rights of Indigenous Peoples;
 - c. Waitangi Tribunal guidance; and
 - d. Key themes from pre-consultation discussions.
14. See **Annex 1** for further detail on what has informed our engagement approach and **Annex 2** for a summary of our pre-consultation discussions.
15. We propose the following objectives for our engagement with Māori on the PVR Act review to ensure that Māori understand and help shape both the process and outcomes of the review:
 - Support robust discussions about the issues that are important to Māori.
 - Provide Māori with meaningful opportunities to become informed of the various interests in the PVR Act review and to inform the Crown of the interests of Māori.
 - Ensure the Crown is well-informed before taking action that affects Māori.
16. We consider the content of these objectives below.

Support robust discussions about the issues that are important to Māori

17. Achieving this objective will involve:
 - making engagement accessible and inclusive, including prioritising kanohi ki te kanohi (face to face) conversations;
 - developing networks with Māori who have an interest in this review;
 - looking for opportunities to coordinate engagement with other agencies on related issues; and
 - being respectful of tikanga Māori and te reo Māori.

Provide Māori with opportunities to become informed of the various interests in the PVR Act review and to inform the Crown of the interests of Māori

18. Achieving this objective will involve:
 - providing assistance and space for Māori to become informed of the range of interests (including Māori-Māori conversations);
 - facilitating information flows; and
 - creating a process that is not burdensome for Māori.

Ensure the Crown is well-informed before taking action that affects Māori

19. Achieving this objective will involve:

- providing opportunities for the Crown to better understand the potential impacts of proposed Crown actions that affect Māori;
- building in sufficient time for the Crown to take account of Māori interests in its processes; and
- raising awareness of other issues or interests that Māori are concerned about, and that the Crown may be unaware of.

4 Issues stage: our plan

Regional hui

20. We will be holding regional hui in November-December 2018 to discuss the substantive issues for Māori in the PVR Act review and MBIE's plan for engagement with Māori.
21. The PVR Act review links to other work programmes and processes across government and we want to take a cross-government approach to our consultation process. Officials from other agencies will also be attending our hui. While we are keen to keep the focus on taonga species, mātauranga Māori and intellectual property in our kanohi ki te kanohi engagements, these other agencies can take your feedback and answer your questions on related issues.
22. We are currently planning seven regional hui to engage with Māori on the issues with the PVR regime in the following locations:
 - Te Tai Tokerau (Northland)
 - Waikato
 - Tauranga
 - Heretaunga (Hastings)
 - Tūranga-nui-a-Kiwa (Gisborne)
 - Taranaki
 - Ōtautahi (Christchurch)
23. We are also planning two public/industry meetings in Tauranga and Christchurch.
24. Venues and dates remain to be confirmed at this stage, but we will keep people informed both by updating the PVR Act review webpages on the MBIE website and by way of a regular pānui to all interested parties.
25. You can see our draft regional hui agenda at **Annex 3**.

Broadening the scope of engagement

26. In the area of intellectual property, we have considered where there is scope to broaden the plant variety rights conversation to other taonga species issues.
27. One relevant issue is whether New Zealand should implement a disclosure of origin requirement in its patents regime, and how New Zealand should approach international discussions on disclosure of origin requirements. These requirements generally require applicants to disclose the origin of any genetic resources and/or traditional knowledge used in their inventions. Disclosure of origin is a key proposal to protect indigenous rights and interests in genetic resources and traditional knowledge being discussed in several international forums. The Waitangi Tribunal also recommended that a disclosure of origin

requirement be incorporated into patents regime in its report on the Wai 262 inquiry, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*.

28. We have developed a discussion document to explore patent “disclosure of origin” requirements, and have released it concurrently with the Issues Paper and this Engagement Plan. It can be found [here](#). We look forward to hearing your views on disclosure of origin requirements at the regional hui and public meetings, and receiving your submissions.

Other engagements

29. We may present or facilitate discussion at other events throughout the consultation period. We will post updates on additional engagements as they arise on our website and keep people informed by way of the pānui.

Submissions

30. You can provide a written submission on the Issues Paper by emailing PVRActReview@mbie.govt.nz. Templates can be found on our website here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/plant-variety-rights/review/issues-paper>.
31. You can provide a written submission on the disclosure of origin discussion document by emailing IP.Policy@mbie.govt.nz. Templates can be found on our website here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/patents/disclosure-of-origin-requirements-in-the-patents-regime/consultation>.
32. If we’re not coming to a town or city near you, but you’d like to provide your submission verbally, we can organise Skype or teleconferencing calls with you. You can get in touch with us to arrange this at PVRActReview@mbie.govt.nz.

Building a knowledge base on our website

33. There is a lot of useful information about PVRs on the web. We have compiled a list of resources here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/plant-variety-rights/review/background>.
34. We have also developed our own resources, in collaboration with others:
- a. Information sheets on the PVR regime.
 - b. Videos explaining the PVR regime.
35. If you identify a need for additional informational material that would assist you or may assist others, please let us know. We may be able to work together to develop this.

Keeping people updated

36. We will be sending out a regular pānui to update you on the review. If you would like to receive pānui, please register: <https://confirmsubscription.com/h/r/FD607D5A002A19C8>.

5 Options stage: seeking your views

37. At the beginning of the options stage, we will release an updated *Māori Engagement Plan: Options Stage*. This will incorporate feedback received over the issues stage, new or emerging issues, and outline our proposed approach for engaging with Māori at the options stage.
38. We are interested in your views on how we should engage at the options stage. At this stage, we propose using the same approach we are using at the issues stage, but we are interested in hearing what we could do differently.

Keeping the current approach

39. Using the model we have developed for the issues stage would involve:
- a. releasing an Options Paper and seeking written submissions;
 - b. holding regional hui and public meetings to discuss the options in the review;
 - c. combining consultation processes on other issues where possible;
 - d. developing further relevant resources; and
 - e. continuing to keep people updated.

Suggesting a different approach

40. You may want to think about the following questions when you give feedback:
- What should we consider in thinking about our engagement with Māori at the options stage?
 - Do you agree that our format for engagement at the options stage should include the same elements as engagement at the issues stage? Why/why not?
 - Is there any other feedback that you would like to give for our engagement at the options stage?
 - Are there opportunities for us to support non-government lead processes?
41. Please see **Section 6** to find out how you can give feedback on the *Māori Engagement Plan: Options Stage*.

6 Next steps: how can you have your say?

If you want to give feedback to inform the *Māori Engagement Plan: Options Stage*

42. Following the issues stage, we will begin planning the options stage. You can have your say on how we engage at the options stage by sending your views to us at PVRActReview@mbie.govt.nz by **5pm, 21 December 2018**. If you attend one of the hui, you can also give us your feedback there.
43. We welcome your feedback in any format.
44. You may also have feedback that relates to the current issues stage. We will seek to incorporate any feedback received in the short time before we begin regional hui and public meetings. Please send any feedback on our engagement process at the issues stage to PVRActReview@mbie.govt.nz by **5pm, 12 October 2018**.

If you want to attend the regional hui or public meetings on the issues

45. If you are planning to attend any of the regional hui and/or public/industry meetings, please register your interest through our website here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/plant-variety-rights/review/issues-paper>. We will keep you informed as we confirm venues and dates both on our website and through the pānui. If you have not subscribed to our pānui, you can also do this here: <https://confirmsubscription.com/h/r/FD607D5A002A19C8>.

If you want to submit on our consultation documents

46. You can provide a written submission on the Issues Paper by emailing PVRActreview@mbie.govt.nz by **5pm, 21 December 2018**. There is a template for providing the written submission available here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/plant-variety-rights/review/issues-paper>.
47. You can provide a written submission on the disclosure of origin discussion document by emailing IP.Policy@mbie.govt.nz by **5pm, 21 December 2018**. There is a template for providing the written submission available here: <http://www.mbie.govt.nz/info-services/business/intellectual-property/patents/disclosure-of-origin-requirements-in-the-patents-regime/consultation>.
48. If we're not coming to a town or city near you, but you'd like to provide your submission verbally, we can organise a video chat (e.g. Skype) or voice call (e.g. teleconference) with

you. You can arrange this by emailing us at PVRActReview@mbie.govt.nz anytime during the consultation period up until **5pm, 30 November 2018**.

Use of information

49. The information provided in your feedback on our *Māori Engagement Plan: Issues Stage* or submissions on the Issues Paper will be used to inform MBIE's policy development process, and will inform advice to Ministers on the *Māori Engagement Plan: Options Stage* and Options Paper respectively.
50. We may contact you directly if we require clarification of any matters in feedback or submissions.
51. Except for material that may be defamatory, MBIE intends to upload PDF copies of feedback and submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by providing feedback or making a submission, unless you clearly specify otherwise.

Release of information

52. Feedback and submissions are also subject to the *Official Information Act 1982*. Please set out clearly with your feedback or submission if you have any objection to the release of any information you provide, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act 1982*.
53. If your feedback or submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide feedback or a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

54. The *Privacy Act 1993* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of providing feedback or making a submission will only be used for the purpose of assisting in the development of advice in relation to this review. Please clearly indicate in your feedback or submission if you do not wish your name to be included in any summary of feedback or submissions that MBIE may publish.

Annex 1: What has informed our engagement approach

Draft engagement framework for the Crown/Māori relationship

1. The Minister for Crown/Māori Relations recently consulted on a draft engagement framework for the Crown/Māori relationship, as part of a broader consultation process on the scope and priorities of the [Crown/Māori Relations portfolio](#)³.
2. In the meantime, Cabinet has agreed that the following draft framework be used to guide agencies' practice.

Draft engagement framework for the Crown/Māori relationship

Intent	To work with Māori to respond better to the range of needs, aspirations, rights and interests and provide for active partnership with Māori in the <i>design and implementation</i> of the process and outcomes sought.	
Values	a. Partnership;	The Crown and Māori will act reasonably, honourably and in good faith towards each other as Treaty partners.
	b. Participation;	The Crown will encourage, and make it easier for Māori to more actively participate in the relationship.
	c. Protection;	The Crown will take active, positive steps to ensure that Māori interests are protected.
	d. Recognition of cultural values; and	The Crown will recognise and provide for Māori perspectives and values.
	e. Use mana enhancing processes.	Recognising the process is as important as the end point; the Crown will commit to early engagement and ongoing attention to the relationship.
Key issues / priorities	To develop a shared vision of the future overarching Crown/Māori relationship; key issues; priorities; action plans and accountability processes for the Crown and Māori.	

Where the impact of the issue or proposal will be significant for Māori outcomes and/or Māori rights and interests – strong active partnership with Māori in the *design and implementation* of the process and outcomes is required.

Where there are issues of national significance, engagement will need to be broad and include discussions with relevant national Māori.

Where there are issues of regional or local significance, engagement will need to be undertaken through existing iwi regional fora or at a local level with affected iwi/hapū and/or regional/local based Māori organisations or local affected groups. This may include regional hui.

³ For more information, see <https://www.justice.govt.nz/maori-land-treaty/crown-maori-relations/>.

United Nations Declaration on the Rights of Indigenous Peoples

3. New Zealand supports the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**). UNDRIP is not a treaty and therefore not legally binding, but it provides useful guidance on engagement.

4. Article 19 discusses consent, consultation and cooperation:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Waitangi Tribunal guidance

5. The Waitangi Tribunal (the **Tribunal**) discussed the Treaty partnership in its report, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*. The Tribunal wrote that there should be an approach to the Treaty relationship:⁴

as a relationship of equals, each looking not to the grievances of the past but with optimism to a shared future.

6. In 2016, the Tribunal made three recommendations in *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993* on the Crown's process when engaging with Māori:⁵

- to take reasonable steps to ensure Māori are properly informed on the issue before engaging further nationally via hui and written submissions;
- to undertake further engagement with Māori on any final refinements and revisions, with an agreed process to allow Māori stakeholders and leadership groups to consult their constituencies; and
- to continue to take advice from "independent Māori experts, and to accord a leadership role to a representative advisory group in its engagement with Māori".

Key themes from pre-consultation discussions

7. Pre-consultation discussions with Māori have contributed to this engagement plan and our thinking on how we might engage formally on this review. This was done through informal discussions; technical, targeted workshops with experts; meet and greet hui with some Waitangi Tribunal claimant groups; and work with advisors (see **Annex 2**).

8. The following key themes emerged from our pre-consultation discussions that have influenced our thinking on engagement with Māori to date.

⁴ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuarua* (Wai 262, 2011) vol 2 at 715.

⁵ Waitangi Tribunal *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993* (Wai 2478, 2016) at 360.

The importance of recognising the nature of the relationship between Māori and taonga species in the context of te ao Māori

9. We have heard that in te ao Māori (the Māori worldview):
 - taonga species have mauri (life force) and mana, and Māori people whakapapa back to them (i.e. Māori share genealogy with taonga plant species); and
 - the whakapapa linkages between Māori and taonga species come with obligations, encompassed in the concept of kaitiakitanga, and the kaitiaki relationship between kaitiaki and taonga species.
10. We were told that these are important considerations both for our understanding of how potential changes to the PVR regime may affect or be perceived by Māori, and how we should think about engaging with Māori (and others who have an interest in this review).

The need for a cross-government approach to discussions on taonga species and Māori intellectual property

11. We have also heard about the holistic nature of the Māori worldview, in which everything is seen as interconnected and the Māori world is perceived as “one big whole”. This was contrasted with views of the Crown's historical approaches of considering issues in terms of relevant legislation, rather than as a whole. We heard that in te ao Māori it does not make sense to look at taonga plant species and the traditional knowledge associated with them in isolation of their broader context (e.g. animal species that interact with the plants or the environment, and biodiversity in general).
12. We were challenged to consider the issues more holistically – for example, how engagement with Māori on the PVR Act review could be linked in with other agencies' work and responsibilities that also impact taonga plant species or Māori intellectual property.

The need for the Crown to take an active role in knowledge-building

13. Plant variety rights is a technical, specialist area that most people do not engage with directly. We were told that it was important that we had some clarity about the relevance of the PVR Act review to Māori, and to express this in a way that could be easily understood and facilitate informed discussion. This would help us to engage with Māori, and others in the community, who may not otherwise consider the review relevant to them. We also heard that it was important to give people time to get to grips with our work and how it relates to them.

Annex 2: Pre-consultation discussions

1. Our pre-consultation discussions were focussed on information-gathering to help inform our approach to engaging with Māori at the issues stage, beginning with the release of the *Māori Engagement Plan: Issues Stage*.

Informal discussions

2. We had a number of informal, process-oriented discussions with some Māori with expertise and/or specific interest in Māori intellectual property or Māori economic development. These informal discussions were about how we could best facilitate effective engagement with Māori on the PVR Act review.

Technical, targeted workshops with experts

3. We held two technical workshops Māori who have expertise in plant variety rights and intellectual property and another two with industry experts. The workshops were a suggestion we heard during our informal discussions and helped build our knowledge and understanding of PVR issues from a Māori perspective. They also gave us the opportunity to have early discussions with Māori who have expertise in Māori intellectual property or Māori economic development about how we can best engage with Māori on PVRs at the issues stage.

Meet and greet hui with some Waitangi Tribunal claimant groups

4. We held two “meet and greet” hui in Northland with one claimant group (Wai 2523) and one interested party (Wai 1940) to the Wai 2522 claim (the Trans-Pacific Partnership Agreement Inquiry). We felt that it was important to meet with both groups after they made submissions to the Tribunal expressing concerns about our initial plan of engagement with Māori. We wanted to meet with both groups *kanohi ki te kanohi* to hear their concerns and open communication lines.

Work with advisors

5. We have worked with a number of Māori advisors who have helped us to develop a better understanding of effective engagement and, in particular, how to build a sound consultation process.

Annex 3: Draft regional hui agenda

1. **Pōwhiri or whakatau** (depending on venue).
2. **Whakawhanaungatanga** (introductions).
3. **MBIE presentation:** This will likely cover:
 - Purpose of the hui;
 - Overview of PVR regime; and
 - PVR Act review process.
4. **Hui outline:** outlining the schedule and protocol of the day.
5. **Presentation:** relevance of the PVR Act review.
 - This could be led by mana whenua or others, as appropriate.
6. **Feedback and views** (format will depend on the needs of participants; could be informal discussion, or formal oral submissions):
 - PVR Act review issues.
 - Patent disclosure of origin requirements.
 - Other issues.
7. **Recap of the day.**
8. **Closing comments.**