Plant Variety Rights Review Submission
9 September 2019

Background
The following submission is made on behalf of Ngā Kaiawhina and Tahuri Whenua Inc. Representatives of the original Te Taitokerau claimants, the late Mrs Del Wihongi, Mrs Saana Murray, and Te Witi McMath, with the support of the Mira Szasy Research centre, called a national meeting at Te Puea marae in June 2012 to discuss the Wai 262 Report. Ngā Kaiawhina o Wai 262 was formed with support from NZ Māori Council, National Māori Design Professionals (Ngā Aho), International Society of Ethnobotany (ISE), Māori Women's Welfare League, MFAT, The Mira Szasy Research Centre, Te whānau o Waiparera, Tahuri Whenua (National Māori Growers Collective), Māori scientist, lawyers, academics and others who attended the Te Puea hui.

Tahuri Whenua is the National Māori horticultural collective (a registered charity) formed in 2003 and with a current membership over 400. The main activity of the collective is to support Māori growers and landowners with resources and information relative to crops and cropping. Since its inception, the collective has been instrumental in the revival of traditional crops such as taewa and also in developing a germplasm collection which members have the opportunity to access for planting materials as they become available.

International Instruments

1. The Crown has participated in the negotiation of international instruments without input from Māori and certainly without formal consultation.

2. There are other international treaties, conventions, agreements and declarations which variously impact the protection, preservation, control, use development, regulation and transmission of taonga works. The appropriateness of the Crown to adopt these instruments, remains to be seen and can only be ascertained after engagement with the Wai 262 claimants, Ngā Kaiawhina and Māori generally.

3. The patent and plant variety regimes do not, of themselves, provide for the recognition or protection of Māori interests particularly the biological and genetic resources in indigenous species. The failure to provide such recognition and protection is clearly a breach of the principles of the Treaty of Waitangi.

Third Parties

4. The granting of patents to third parties will have an adverse effect on the ability of iwi, to control, use transmit and/or preserve relevant biological and genetic resources. This could occur when iwi attempt to exercise their rights (for example as Kaitiaki) to utilise their resources and face a breach of patent claim.

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5. Without any protective mechanism for iwi, any significant increase in bioprospecting in New Zealand will negatively affect Māori and Māori opportunity.

Definitions

6. The definition of invention and requirements of patentable invention should be amended to include reference to biological and genetic resources of native and endemic and/or flora and fauna taonga species.

7. The definition of invention and requirements of patentable invention to be amended to have express exclusions of biological and genetic resources of native and endemic and/or flora and fauna taonga species.

Registration of plant varieties

8. The requirements of registrable plant varieties be amended to have express exclusions of the biological and genetic resources of native and endemic and/or flora and fauna taonga species.

Kaitiaki and cultural patents

9. The duration of patents be amended to make biological and genetic resources of indigenous and/or taonga species protectable where it otherwise excludes biological and genetic resources of native and endemic and/or flora and fauna taonga species.

10. The duration of plant variety rights be amended to make biological and genetic resources of native and endemic and/or flora and fauna taonga species protectable where it otherwise excludes biological and genetic resources of native and endemic and/or flora and fauna taonga species.

Treaty/Wai 262 compliant

11. The NZ patent and plant variety rights laws are in whole or in part, inconsistent with the Treaty of Waitangi can be made treaty compliant through a discrete (sui generis) form of protection (including mechanisms both legal and non-legal and customary law) for biological and genetic resources of native and endemic and/or flora and fauna taonga species.

12. The nature of the defects contained in the Crowns regime and intellectual property are such that amendments to any legislation in isolation will be insufficient to address the claimants' ongoing concerns of the Crowns lack of protection of taonga.

13. Any recognition and protection mechanism will need to recognise tikanga Māori and be addressed in a holistic and systematic way.

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14. Active participation of Māori in policy development is necessary, and policy development should be guided by aspirations and expectations expressed directly by traditional communities including Māori. There needs to be respect for the rights of traditional communities under national and international laws.

Noho ora mai

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