

Plant Variety Rights Bill

Government Bill

Explanatory note

General policy statement

This Bill replaces the Plant Variety Rights Act 1987 (the **PVR Act 1987**). The PVR Act 1987 is now over 30 years old and has not kept up with changes in the plant breeding industry. The Bill modernises the regime and implements—

- the Crown’s obligations under the Treaty of Waitangi in relation to the plant variety rights (**PVR**) regime:
- New Zealand’s obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the **CPTPP**) in relation to the 1991 version of the International Convention for the Protection of New Varieties of Plants (**UPOV 91**).

Treaty of Waitangi and PVR regime

The Waitangi Tribunal report *Ko Aotearoa Tēnei* (the **Wai 262 report**) framed the Crown’s Treaty obligations in the PVR regime as a requirement to provide a reasonable degree of protection for kaitiaki relationships with taonga species. Guided by the recommendations made in the Wai 262 report, the Bill implements this protection by—

- incentivising plant breeders to engage early with kaitiaki if the new variety they wish to seek a plant variety right (a **PVR**) for may involve a taonga species:
- establishing a Māori Plant Varieties Committee (the **committee**) to assess the effect of the grant of a PVR on kaitiaki relationships and make decisions on whether the PVR application should proceed:
- requiring the committee to consider all applications for a new variety, where that variety is wholly or partly derived from either an indigenous plant species or a non-indigenous plant species of significance (a short list to be set in regu-

lations covering taonga species that came on the migrating waka), and where the material from which that variety was derived was sourced in New Zealand.

“Giving effect” to UPOV 91

The Plant Variety Rights Act 1987 is aligned with the previous version of the UPOV Convention, UPOV 78. Under UPOV 78, the focus of a PVR was on the commercialisation of the propagating material of new varieties. UPOV 91 significantly expands the scope of a PVR to cover a broad spectrum of acts in relation to the propagating material. It also introduces the concept of an essentially derived variety (an **EDV**) which is a variety predominantly derived from an initial variety that retains the essential characteristics of that initial variety. The intent of this is to recognise the intellectual property in the initial variety.

Under the CPTPP, New Zealand is required to either accede to UPOV 91 or “give effect” to UPOV 91. The intent was to give New Zealand sufficient domestic policy space to implement its Treaty of Waitangi obligations. The ability to refuse a PVR on the basis of its impact on kaitiaki relationships effectively adds a new condition for the grant of a PVR, and this is inconsistent with UPOV 91. This Bill, therefore, “gives effect” to UPOV 91 by aligning the regime with UPOV 91 to the fullest extent possible while also meeting the Crown’s Treaty of Waitangi obligations.

UPOV 91 has some flexibility in how its provisions are implemented in domestic legislation. The Bill implements these provisions by—

- extending the term of protection for woody plants to 25 years (the minimum required by UPOV 91) while retaining the term of 20 years for other species:
- extending the rights to harvested material only when the rights holder has not had a reasonable opportunity to assert their rights in relation to the propagating material from which it is derived:
- exempting farm-saved seed (the seed that farmers save from one season’s crop to plant the next season’s crop) from coverage of a PVR (while providing that regulations may limit this exemption in the future):
- defining an EDV as a variety that does not exhibit any important (as opposed to cosmetic) features that differentiate it from the initial variety it was derived from. There is still significant debate within the international plant breeding community as to how to define an EDV, and the intent of this approach is to provide greater clarity on this question.

Other matters

The Bill provides for certain other matters not directly related to UPOV 91, modernising the PVR regime to include—

- introducing a public interest test for compulsory licences:
- repealing the offence provisions in the PVR Act 1987, as these are adequately covered by other legislation:

- clarifying the infringement provisions and providing remedies consistent with other intellectual property regimes:
- clarifying that all applications for a PVR require a growing trial and empowering the Commissioner of PVRs (the **Commissioner**) to direct the type of growing trial:
- introducing a general right to be heard whenever the Commissioner exercises a discretionary power under this Bill that might adversely affect a person:
- providing that, consistent with other intellectual property policy regimes, appeals against a decision of the Commissioner are to be heard by the High Court:
- clarifying procedural issues relating to the PVR regime, including aligning these with the processes in the Patents Act 2013 where appropriate.

It is intended that provision of the Act will commence in 3 stages—

- the Māori Plant Varieties Committee will be established following Royal assent so that its terms of reference can be finalised and work can commence on guidelines for breeders and kaitiaki:
- the bulk of the provisions will then commence by Order in Council once the new regulations are made:
- the provisions relating to consideration of applications by the committee will commence by Order in Council no less than 1 year (and no more than 2 years) after Royal assent to give breeders sufficient time to understand their new obligations to engage with kaitiaki (where relevant) prior to making their applications.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=35>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced 2 regulatory impact assessments on 6 November 2019 and 3 March 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact assessments can be found at—

- <https://www.mbie.govt.nz/dmsdocument/7453-regulatory-impact-statement-review-of-the-plant-variety-rights-act-1987>

- <https://www.mbie.govt.nz/dmsdocument/13850-regulatory-impact-statement-review-plant-variety-rights-act-1987-outstanding-policy-issues>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 relates to commencement. The provisions of the Bill relating to the Title and commencement, the preliminary provisions, the provisions providing for the establishment of a Māori Plant Varieties Committee, the appointment, functions, and powers of the Commissioner and Assistant Commissioners of Plant Variety Rights and various regulation-making powers come into force on the day after the date of Royal assent. The rest of the Bill comes into force on different dates appointed by Order in Council with a backstop provision that provisions not yet in force come into force automatically on the second anniversary of the date on which the Bill receives the Royal assent. The provisions enabling the Māori Plant Varieties Committee to make decisions on applications will not be brought into force for at least 1 year after the date of Royal assent.

Part 1

Preliminary provisions

Subpart 1—Purpose and overview

Clause 3 sets out the purpose of the Bill, which is twofold. First, the Bill consolidates the law and updates it to take account of changes made by the 1991 revision of the UPOV Convention. Second, the Bill gives effect to obligations of the Crown under the principles of the Treaty of Waitangi to recognise in New Zealand law kaitiaki relationships with taonga species and mātauranga Māori.

Clause 4 provides a brief outline of the regulatory scheme.

Subpart 2—Interpretation

Clause 5 defines terms used in the Bill. Key terms include essential characteristics, exclusive licensee, harvested material, Māori Plant Varieties Committee, overseas breeder's right, protected variety, PVR, PVR application, PVR holder, restricted act, UPOV Convention, and UPOV party.

Clause 6 defines the terms plant and plant variety.

Clause 7 defines the term essentially derived.

Clause 8 defines the term dependent.

Clause 9 defines the term breed.

Clause 10 specifies who the breeder is.

Clause 11 defines the terms propagate and propagating material.

Subpart 3—Other preliminary matters

Clause 12 provides for transitional, savings, and related provisions as set out in *Schedule 1*.

Clause 13 provides that the Bill, once enacted, binds the Crown.

Part 2 Plant variety rights

Subpart 1—Nature and scope of PVR (UPOV 91)

Clause 14 states that a PVR for a plant variety gives the holder of the right the exclusive right to exploit the protected variety. To exploit a plant variety means to undertake 1 or more restricted acts in the circumstances described in *clause 14(2)*. *Clause 14(3)* provides that the following acts are restricted acts:

- production or reproduction:
- conditioning for the purposes of propagation:
- selling or offering for sale or other marketing:
- importing or exporting:
- stocking for the purpose of undertaking any other restricted activity.

Clause 15 sets out an exception to the rights in *clause 14* in the case of farm-saved seed.

Clause 16 sets out an exception to the rights in *clause 14* for private, experimental, and breeding purposes.

Clause 17 describes circumstances where the rights in *clause 14* are exhausted (once the relevant protected material has been sold or marketed in New Zealand with the authority of the PVR holder).

Clause 18 sets out the duration of a PVR. The expiry date for a PVR granted under the Bill is—

- if the plant variety is a tree or vine, 25 years after it was granted; or
- in other cases, 20 years after it was granted.

Clause 19 provides that a PVR is personal property.

Subpart 2—Nature and scope of PVR (UPOV 78)

Clause 20 deals with the status of plant variety rights granted under the Plant Variety Rights 1987 (the **1987 Act**). It provides that a plant variety right granted under that Act is the right conferred by that Act and does not include additional rights granted to the holder of PVRs under this Bill.

Part 3

Infringement and enforcement

Subpart 1—Infringement of PVR

Clause 21 sets out the circumstances in which a person (other than the relevant PVR holder or exclusive licensee) infringes a PVR.

Clause 22 provides a guide to the exceptions to the rules in *clause 21*.

Clause 23 excludes the possible award of damages against a defendant who did not know of their infringement and did not have reasonable grounds for supposing that their action was an infringement. The only remedy in those circumstances is an account of profits.

Clause 24 empowers the PVR holder for a protected variety to authorise any other person to exploit the variety, subject to any condition or limitation imposed by the PVR holder. *Clause 24* also describes the rights of exclusive licensees.

Clause 25 requires breeders to take all reasonable steps to notify purchasers of a plant variety or propagating material from that variety of the PVR.

Subpart 2—Infringement proceedings

Clause 26 provides that commencement proceedings must be commenced in the High Court and cannot be commenced until a PVR is granted.

Clause 27 provides that the types of relief available for infringement include an injunction and, at the option of the plaintiff, damages or an account of profits.

Part 4

Grant of plant variety rights

Subpart 1—Grant of PVR and criteria

Clause 28 enables a breeder of a plant variety to apply to the Commissioner of Plant Variety Rights for a PVR in relation to that plant variety. The Commissioner must consider the application in accordance with *subparts 3 and 4* of *Part 4* (and, if applicable, *Part 5*). The Commissioner must, if satisfied that the criteria for granting a PVR in *clause 30* are satisfied (and, in a case where *Part 5* applies, the Māori Plant Varieties Committee has informed the Commissioner under *clause 65* that the application should proceed) grant the PVR to the proposed holder. Otherwise the Commissioner must refuse to grant the PVR.

Clause 29 provides for joint applications for a PVR where there are 2 or more breeders.

Clause 30 provides that the criteria to be met to grant a PVR for a plant variety are that the plant variety is novel, distinct, uniform, and stable, and the denomination for the plant variety meets the denomination criteria in *clause 35*.

Clause 31 specifies when a plant variety is novel.

Clause 32 specifies when a plant variety is distinct.

Clause 33 specifies when a plant variety is uniform.

Clause 34 specifies when a plant variety is stable.

Clause 35 sets out 7 criteria to be satisfied for the proposed denomination of a plant variety to be acceptable.

Clause 35(3) provides that if the Commissioner is of the opinion that the use or approval of a denomination would be likely to offend a significant section of the community, including Māori, the Commissioner must not approve the denomination.

Subpart 2—PVR applications

Clause 36 provides that a PVR application may be made by a breeder or by 2 or more breeders jointly. *Clause 36(2)* specifies the information that must accompany an application and requires the prescribed application fee to be included. If the prescribed fee is not paid, the application will not be processed until the fee is paid.

Clause 37 sets out additional requirements that apply for applications in situations where a breeder knows that a person, hapū, iwi, or group has asserted that they have a kaitiaki relationship with an indigenous plant species or a non-indigenous plant species of significance. If *clause 37* applies, the breeder must include in the application the name of the kaitiaki, a summary of the engagement the person has conducted with the kaitiaki, and certain other information.

Clause 38 allows an applicant to apply to vary their PVR application by altering the name of the denomination sought. The Commissioner must publicly notify the application for variation and make it publicly available.

Clause 39 allows an applicant to withdraw a PVR application at any time before the Commissioner decides the application. The Commissioner must, in general, publicly notify the withdrawal notice.

Subpart 3—Dates and priority

Clause 40 specifies what the application date for a PVR is. That date is the date on which it is received or, if the application does not comply with *clause 36(2)*, the date on which that non-compliance is remedied, whichever is the later.

Clause 41 provides that the priority date for a PVR application is its application date or, if *clause 42* applies, the overseas application date under that clause, whichever is earlier.

Clause 42 sets out the rules about priority arising from an overseas application.

Clause 43 requires, in a situation where there are 2 or more applications for a PVR, that those applications be considered and determined in accordance with their priority dates, starting with the earliest priority date.

Clause 44 provides for the cancellation of a PVR because of an earlier overseas application.

Subpart 4—Consideration of PVR application

Clause 45 requires the Commissioner to publicly notify a PVR application and to make it publicly available.

Clause 46 empowers the Commissioner to require an applicant to supply propagating material and other information necessary for the Commissioner to properly consider a PVR application. *Clause 46* specifies how propagating material may be dealt with by the Commissioner and provides that an application may be deferred until it is complied with and lapses if the request is not complied with, within the required time.

Clause 47 enables the Commissioner to conduct growing trials and to obtain information from either the PVR applicant or a PVR holder for the purpose of considering a PVR application.

Clause 48 requires a growing trial to be conducted before a PVR is granted. It also describes who may undertake the growing trial.

Clause 49 enables a person to oppose the grant of a PVR, on the grounds that 1 or more of the criteria in *clause 30(a) and (b)* are not met.

Clause 50 sets out the procedure that the Commissioner must follow after the closing of the period for objections to an application. Copies of notices of opposition must be given to the applicant and made publicly available. The applicants and the opponents (if any) must be given an opportunity to be heard, the Commissioner must take the objections and any submissions into account in considering the application, and the Commissioner must then decide and deal with the case in the prescribed manner.

Clause 51 provides the applicant with an opportunity to nominate an alternative denomination if the denomination proposed in the application does not meet the criteria set out in *clause 35*.

Part 5

Additional provisions that apply to indigenous plant species and non-indigenous plant species of significance

Subpart 1—Preliminary provisions

Clause 52 specifies various things that *Part 5* does in order to recognise and respect the Crown's responsibility to apply the principles of the Treaty of Waitangi through the recognition and protection of kaitiaki relationships with taonga species and mātauranga Māori.

Clause 53 provides that *Part 5* applies to a PVR application for a plant variety that is derived wholly or partly from an indigenous plant species or a non-indigenous plant species of significance, in circumstances where the material from which the plant variety was derived was sourced from New Zealand.

Clause 54 defines terms used in *Part 5*. Key terms include indigenous plant species, kaitiaki relationship, non-indigenous plant species of significance, and party.

Subpart 2—Māori Plant Varieties Committee

Clause 55 requires the Commissioner to appoint a Māori Plant Varieties Committee (the **committee**), confers a power on the Commissioner to remove and replace committee members, sets out the qualifications for membership, and contains other machinery provisions dealing with membership.

Clause 56 sets out the functions of the committee. Those functions are to—

- consider PVR applications referred to it by the Commissioner and make decisions under *Part 5* that must be implemented by the Commissioner.
- advise the Commissioner whether the use or approval of a proposed denomination for a plant variety is likely to be offensive to Māori:
- provide advice to the Commissioner on information that may be relevant to the application of the criteria listed in *clause 30* for granting a PVR.

Clause 57 provides that advice provided by the committee on whether a proposed denomination is likely to be offensive to Māori or on the application of the criteria listed in *clause 30* is not binding on the Commissioner.

Clause 58 provides for the remuneration of members of the committee.

Subpart 3—Additional procedures for applications to which this Part applies

Clause 59 requires the Commissioner to refer all applications for a PVR to which Part 5 applies to the committee.

Clause 60(1) provides that the role of the committee in relation to any application that is referred to it is to assess and determine whether that application, if granted, will or could have adverse effects on 1 or more kaitiaki relationships. *Clause 60(2) and (3)* lists factors that the committee must or may take into account in undertaking that role.

Clause 61 deals with the situation where any person, iwi, hapū, or group asserts that they have a kaitiaki relationship with the plant species that is the subject of the application. In that case, the committee must also consider whether the person, iwi, hapū, or other group has demonstrated their kaitiaki relationship with the relevant plant species and associated mātauranga Māori. If a kaitiaki relationship has been demonstrated, the committee must consider—

- the kaitiaki's assessment of the effect of a grant of PVR on their relationship:
- any agreement to mitigate adverse effects on that relationship reached between the breeder and the kaitiaki:
- whether there is any evidence that the parties have not acted in good faith during their engagement (if any).

Clause 62 sets out rules about the process to be followed by the committee in carrying out its functions.

Clause 63 requires members of the committee to strive to reach consensus when making decisions under *Part 5*. However, if the chairperson of the committee is satisfied

that this is not possible, they may authorise the committee to make decisions by a simple majority.

Clause 64 sets out factors to be considered by the committee when deciding that any grant of PVR must be subject to a condition designed to mitigate adverse effects on a kaitiaki relationship.

Clause 65 requires the committee to decide that the application be allowed to proceed to further consideration by the Commissioner (with or without a condition of grant intended to mitigate any adverse effect of the grant on a kaitiaki relationship) or that the application be refused. These decisions must be implemented by the Commissioner.

Clause 66 sets out a process enabling an applicant to seek reconsideration of the Māori Plant Varieties Committee's decision that an application be refused, on the basis of further information that was not available to the committee when it made its decision. Likewise a person (other than the applicant) may ask the committee to reconsider its decision that the application be allowed to proceed for further consideration, on the basis of further information that was not available to the committee when it made its decision.

Other provisions

Clause 67 enables a person at any time to apply to the Commissioner for an order nullifying or cancelling a PVR. Unless the Commissioner dismisses the application under *clause 68* (which relates to frivolous, vexatious, or repetitious applications), the Commissioner must refer the application to the committee. If the committee determines that there was an adverse effect on a kaitiaki relationship when a PVR was granted, the committee may inform the Commissioner that the PVR must be nullified. If the holder of a PVR has breached any condition of grant of PVR or any agreement made or undertaking given designed to mitigate an adverse effect on kaitiaki relationships, the committee may inform the Commissioner that the PVR must be cancelled. However, if, the PVR holder makes a further undertaking designed to mitigate the adverse effects on kaitiaki relationships, that is acceptable to the committee, the committee may, instead of informing the Commissioner that the PVR must be nullified or cancelled, dismiss the application and inform the Commissioner that an existing condition be continued or a new condition must be imposed as a formal condition for continuing the PVR. Otherwise the committee must dismiss the application. The Commissioner must give effect to any decisions of the committee made under *clause 67*.

Part 6

Plant variety rights: other matters

Subpart 1—General matters

Requests for information or propagating material

Clause 69 empowers the Commissioner to request a PVR holder to provide information necessary to verify the maintenance of that variety. The Commissioner may also request a PVR holder to give propagating material to the Commissioner, if the Commissioner considers that this is necessary or desirable for the purpose of exercising or performing the Commissioner's powers, functions, or duties under the Act.

Substitution of applicants

Clause 70 sets out rules that apply where, before a PVR is granted, a person claims that they are entitled to it under an assignment or agreement or by operation of law.

Clause 71 sets out the rules that apply if an applicant for a PVR dies before the PVR is granted.

Registration of assignments, licences, and other interests in PVR's

Clause 72 sets out rules governing applications for registration of assignments, licences, and other interests in PVRs, and *clause 73* provides for the registration of those interests.

Vesting of PVR and PVR application without probate or letters of administration

Clause 74 empowers the Commissioner to vest a PVR or PVR application without the need for probate or letters of administration.

Cessation of PVR before expiry date

Clause 75 describes the situations where a PVR may be nullified, cancelled, or surrendered before its expiry date.

Subpart 2—Cancellation, nullification, surrender, and renewal fees

Cancellation and nullification

Clause 76 sets out detailed grounds for the cancellation or nullification of a PVR.

Clause 77 describes the legal effect of cancellation.

Clause 78 describes the legal effect of nullification.

Cancellation or nullification by Commissioner

Clause 79 describes the process that must be adopted if the Commissioner wishes to cancel or nullify a PVR, acting on their own initiative.

Clause 80 describes the process that must be adopted if a person applies to the Commissioner for the cancellation or nullification of a PVR.

Clause 81 sets out the requirements for an application under *clause 80* to cancel or nullify a PVR.

Clause 82 empowers the Commissioner to dismiss an application made under *clause 80* if the Commissioner is satisfied that the application is frivolous or vexatious or all of the issues raised by it are previously considered issues.

Clause 83 sets out the process to be followed by the Commissioner in considering an application under *clause 80*.

Cancellation or nullification by court

Clause 84 empowers the High Court to cancel or nullify a PVR if satisfied that there are grounds to do so under *clause 76*.

Surrender

Clause 85 empowers the holder of a PVR to surrender that right to the Commissioner.

Renewal fees

Clause 86 requires the holder of a PVR to pay a renewal fee. If the renewal fee is not paid, the PVR is deemed to be cancelled. The right can be restored in certain circumstances under *clause 94*.

Subpart 3—Restoration of lapsed PVR applications

Clause 87 sets out a process for restoring lapsed applications for a PVR in circumstances where the right has lapsed because of a failure to comply with a request to supply information or propagating material, or to pay a prescribed fee, within a prescribed period.

Clause 88 sets out the process to be followed by an applicant who wishes to have their lapsed PVR application restored.

Clause 89 allows the Commissioner to strike out an application under *clause 87* if the Commissioner is not satisfied that the application discloses a prima facie case for restoring the PVR application.

Clause 90 requires the Commissioner to publicly notify and make publicly available an application under *clause 87* unless it is struck out by the Commissioner under *clause 89*.

Clause 91 enables a person to oppose an application for restoration of a lapsed PVR application on the basis that the application does not meet the statutory requirements for restoration.

Clause 92 sets out the process to be followed by the Commissioner in considering an application for restoration of a lapsed PVR application and any notices of opposition to that application.

Clause 93 enables the Commissioner to require an applicant to satisfy certain conditions before restoring a lapsed PVR application.

Subpart 4—Restoration of cancelled PVRs

Clauses 94 to 100 contain provisions that are very similar to the regime for restoring lapsed PVR applications but that apply, instead, in relation to the restoration of a cancelled PVR.

Part 7 Compulsory licences

Subpart 1—Grant of compulsory licence and criteria

Clause 101 describes the legal effect of a compulsory licence.

Clause 102 sets out the procedures for applying, and granting, a compulsory licence.

Clause 103 sets out the criteria to be applied by the Commissioner when deciding whether to grant a compulsory licence.

Clause 104 requires a licensee granted a compulsory licence to pay a royalty to the holder of a PVR for the right to exploit the protected variety. The compulsory licence must set out the amount of, or method of, calculating the royalty, when it must be paid, and any other matters relating to the payment of the royalty that the Commissioner considers appropriate.

Subpart 2—Applications for compulsory licences

Clause 105 sets out the requirements for applications for a compulsory licence.

Clause 106 requires the Commissioner to publicly notify an application for a compulsory licence and make it publicly available.

Clause 107 empowers the Commissioner to request the applicant for a compulsory licence to give the Commissioner any other information reasonably needed to properly consider the application for a compulsory licence.

Clause 108 sets out the required content of a compulsory licence.

Subpart 3—Amendment or revocation of compulsory licences

Clause 109 enables the Commissioner to revoke or amend a compulsory licence in 3 different circumstances.

Clause 110 sets out the grounds for the amendment or revocation of a compulsory licence on application under *clause 111*. Those grounds are that—

- it is no longer in the public interest for the compulsory licence to remain in force;
- the licensee has breached a condition of the licence.

Clause 111 allows the Commissioner to amend or revoke a compulsory licence, on application made in accordance with *clause 112*, if the Commissioner is satisfied that there are grounds to do so under *clause 110*.

Clause 112 sets out the requirements for an application made to the Commissioner under *clause 111* to amend or revoke a compulsory licence.

Clause 113 sets out the way in which the Commissioner must consider an application under *clause 111*.

Part 8

Administration, secondary legislation, and other matters

Subpart 1—Commissioner and Assistant Commissioners

Clauses 114 to 117 provide for the appointment of a Commissioner of Plant Variety Rights and 1 or more Assistant Commissioners of Plant Variety Rights, set out their functions, and provide for delegation of functions, duties, or powers by the Commissioner and the liability of the Commissioner and others for acts done or omitted in good faith.

Clause 118 provides that before exercising a discretion under the Bill or regulations made under the Bill adversely to any applicant or other person, the Commissioner must give the person a reasonable opportunity to be heard.

Evidence

Clauses 119 to 124 deal with topics relating to evidence, including the ability to give, and the manner of giving, evidence in proceedings before the Commissioner, the issuing of, and requirements for, summons, entitlements to witnesses' fees and expenses, and an offence of failing to comply with a summons. These provisions are based on comparable provisions in the Patents Acts 1953 and 2013.

Clauses 125 to 127 create rights of appeal to the High Court against decisions of the Commissioner listed as appealable decisions in *Schedule 2*.

Subpart 2—Other administrative matters

Plant Variety Rights (PVR) register

Clause 128 requires the Commissioner to keep a register of plant variety rights.

Clause 129 provides that the register may be electronic or kept in any other form that the Commissioner thinks fit.

Clause 130 sets out the required contents of the register.

Searches of PVR register and obtaining PVR information

Clauses 131 and 132 provide for the searching of the register and obtaining information from it, as well as the provision by the Commissioner of certified copies of the content of the register.

Changes to PVR register and other official documents

Clauses 133 to 137 authorise changes to be made to the register by the Commissioner, including the correction of their or other peoples mistakes, the alteration of inconsistent information, and the correction of the register by order of the High Court.

Evidence

Clauses 138 and 139 deal with the evidential status of entries from the register, documents on the register, and certificates given by the Commissioner as to things they have done.

Confidentiality

Clause 140 imposes an obligation of confidence in relation to information shared during pre-application engagement between a breeder and a person, iwi, hapū, or group representing Māori.

Clause 141 allows proceedings to be brought in the High Court for breach of confidentiality

Clause 142 provides that the relief that may be granted by the High Court includes an injunction or, at the option of the plaintiff, damages or an account of profits.

Fees and other money

Clauses 143 and 144 deal with payment of fees and other money to the Commissioner and how this money is to be held and dealt with.

Journal and other publications

Clause 145 requires the Commissioner to publish a journal containing prescribed details about PVRs, PVR applications, other prescribed matters, and anything else the Commissioner thinks useful.

Electronic filing and service, etc

Clause 146 provides for electronic filing of information and documents required under the Bill to be served on or given to the Commissioner or served on or given to others by the Commissioner.

Clause 147 sets out rules about the method of serving documents and when they are to be treated as having been served.

Meaning of certain terms

Clause 148 describes the meaning of the term publicly notify.

Clause 149 describes the meaning of the term make publicly available.

Subpart 3—Secondary legislation

Clause 150 empowers the making of regulations.

Clause 151 empowers the making of Orders in Council declaring a State, an international organisation, or any other international entity to be a UPOV party.

Subpart 4—Repeals and revocations

Clause 152 repeals the Plant Varieties Act 1987, the Plant Varieties Regulations 1988, and 2 Orders in Council.

Subpart 5—Amendments

Clause 153 consequentially amends other Acts and secondary legislation in the manner set out in *Schedule 3*.

Schedule 1 sets out savings and transitional provisions.

Schedule 2 lists appealable decisions.

Schedule 3 sets out consequential amendments to other Acts and secondary legislation.

Hon Dr David Clark

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Plant Variety Rights Act **2021**.

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5
- (a) **sections 1 and 2:**
 - (b) **Part 1** (preliminary provisions and interpretation), except for **section 12:**
 - (c) **subparts 1 and 2 of Part 5:** 10
 - (d) **sections 150 and 151:**
 - (e) **clause 6 of Schedule 1.**
- (2) The rest of this Act, including any provisions in the schedules which are not referred to in **subsection (1)**, comes into force—

- (a) on 1 or more dates appointed by the Governor-General by Order in Council:
 - (b) to the extent not brought into force earlier, on the second anniversary of the date on which this Act receives the Royal assent.
- (3) However, an Order in Council may not bring **subpart 3 of Part 5** into force—
- (a) earlier than the first anniversary of the date on which this Act receives the Royal assent; or
 - (b) until a date later than the date on which **Part 4** is brought into force.
- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1 Preliminary provisions

Subpart 1—Purpose and overview

- 3 Purpose** 15
- The purpose of this Act is—
- (a) to revise and consolidate the law on plant variety rights in light of changes made to the UPOV Convention in 1991:
 - (b) to give effect to the obligations of the Crown under the principles of the Treaty of Waitangi to recognise in New Zealand law kaitiaki relationships with taonga species and mātauranga Māori. 20
- 4 Outline of regulatory scheme**
- (1) This Act provides a framework for protecting intellectual property rights in plant varieties.
 - (2) This Act (with the exception of **Part 5**) applies to all plant genera and species. 25
 - (3) **Part 5** applies only to indigenous plant species and non-indigenous plant species of significance.
 - (4) This Act provides for—
 - (a) plant variety rights (**PVRs**) granted under this Act; and
 - (b) existing plant variety rights that were granted under the Plant Variety Rights Act 1987 and are continued by **section 20**. 30

Subpart 2—Interpretation

5 Interpretation

In this Act, unless the context otherwise requires,—

application date , in relation to a PVR application, has the meaning set out in section 40	
breed has the meaning set out in section 9	
breeder has the meaning set out in section 10	
chief executive means the chief executive of the Ministry	5
Commissioner means the person appointed as Commissioner of Plant Variety Rights under section 114	
compulsory licence means a licence granted by the Commissioner under section 102	
court means the High Court	10
denomination , in the case of a protected variety, means the name recorded in the register for that variety	
dependent , in relation to a plant variety, has the meaning set out in section 8	
essential characteristics , in relation to a plant variety, means the heritable traits that are determined by the expression of 1 or more genes, or other heritable determinants, that contribute to the principal features, performance, or value of the plant variety	15
essentially derived , in relation to a plant variety, has the meaning set out in section 7	
exclusive licensee means the licensee referred to in section 24(3)	20
exploit has the meaning set out in section 14	
harvested material means a plant or any part of a plant that—	
(a) cannot be used for propagation; or	
(b) can be used for propagation but can also be used for another purpose	
journal means the journal required to be published under section 145	25
make publicly available , in relation to the Commissioner, has the meaning set out in section 149	
Māori Plant Varieties Committee or committee means the Māori Plant Varieties Committee appointed under section 55	
Ministry means the department of State, that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act	30
non-UPOV country means a country that is not a UPOV party	
overseas application means an application for an overseas breeder's right	
overseas breeder's right means a breeder's right (as defined in the UPOV Convention) for a plant variety that is in force under the law of a UPOV party (other than New Zealand)	35
plant has the meaning set out in section 6	
plant variety has the meaning set out in section 6	

- priority date** has the meaning set out in **section 41**
- propagate** has the meaning set out in **section 11**
- propagating material** has the meaning set out in **section 11**
- protected variety** means a plant variety for which a PVR is in force
- publicly notify**, in relation to the Commissioner, has the meaning set out in **section 148** 5
- PVR** means a plant variety right granted under **section 28(3)(a)**
- PVR application** means an application made under **section 28(1)** for a PVR for a plant variety
- PVR holder**, in relation to a protected variety, means the person recorded in the register as the holder of the PVR for that variety 10
- register** means the register of plant variety rights kept under **section 128**
- regulations** means regulations made under **section 150**
- restricted act** has the meaning set out in **section 14(3)**
- territory**, in relation to a UPOV party, means,— 15
- (a) for a State, the territory of that State; or
 - (b) for an intergovernmental organisation, the territory in which the constituting treaty of the organisation applies
- UPOV Convention** means the International Convention for the Protection of New Varieties of Plants done at Paris on 2 December 1961, as revised at Geneva on 10 November 1972, 23 October 1978, and 19 March 1991 20
- UPOV party** means—
- (a) a State or an intergovernmental organisation that is a party to the UPOV Convention (whether or not it is also party to some or all of the revisions to that convention); or 25
 - (b) a State, an international organisation, or another international entity that is declared to be a UPOV party under **section 151**.
- 6 Meaning of plant and plant varieties**
- (1) A **plant** means a member of any plant genus and species,— 30
 - (a) including a fungus or an alga; but
 - (b) not including a bacterium.
 - (2) A **plant variety** means a plant grouping that—
 - (a) is contained within a single botanical taxon of the lowest known rank; and
 - (b) can be defined by the expression of the characteristics resulting from a particular genotype or combination of genotypes; and 35

-
- (c) can be distinguished from any other plant grouping by the expression of at least 1 of those characteristics; and
- (d) can be considered as a unit because of its suitability for being propagated unchanged.
- 7 Essentially derived varieties** 5
- A plant variety (**variety B**) is **essentially derived** from another plant variety (**variety A**) if—
- (a) variety B is predominantly derived from variety A (or from another variety that is essentially derived from variety A); and
- (b) variety B retains the essential characteristics that result from the genotype or combination of genotypes of variety A; and 10
- (c) variety B is clearly distinguishable from variety A; but
- (d) variety B does not exhibit any important (as distinct from cosmetic) features that differentiate it from variety A.
- 8 Dependent varieties** 15
- A plant variety (**variety C**) is **dependent** on another plant variety (**variety A**) if—
- (a) variety C—
- (i) is not clearly distinguishable from variety A; but
- (ii) is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge when a PVR is granted for variety A; or 20
- (b) variety C cannot be reproduced except by the repeated use of variety A or of another dependent variety of variety A.
- 9 Breeding a plant variety** 25
- To **breed** a plant variety includes the process of selection within the natural variation of a plant or plant population, together with the process of propagation and evaluation so as to enable the development of the variety.
- 10 Who is the breeder**
- (1) If a plant variety is bred by only 1 person, that person is the **breeder**. 30
- (2) If a plant variety is bred by 2 or more persons (whether jointly or independently and whether at the same time or different times), each of them is a **breeder**.
- (3) A breeder includes a successor in title to a person who is a breeder under **subsection (1) or (2)**. 35

11 Propagation and propagating material

- (1) To **propagate** a plant variety means to grow, culture, or multiply the plant variety (whether by sexual or asexual means).
- (2) **Propagating material**, in relation to a plant variety, means any part or product from which (whether alone or in combination with other parts or products of that plant) another plant with the same essential characteristics can be propagated. 5

Subpart 3—Other preliminary matters

12 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10

13 Act binds the Crown

This Act binds the Crown.

Part 2**Plant variety rights** 15

Subpart 1—Nature and scope of PVR: UPOV 91

14 PVR is exclusive right to exploit protected variety

- (1) A PVR for a plant variety gives the PVR holder the exclusive right to exploit the protected variety.
- (2) To **exploit** a protected variety (**variety A**) means to undertake, or to authorise another person to undertake, 1 or more restricted acts with any of the following: 20
- (a) propagating material of—
- (i) variety A; or
- (ii) a plant variety that is essentially derived from variety A; or 25
- (iii) a plant variety that is dependent on variety A:
- (b) unless the PVR holder has had a reasonable opportunity to exercise their exclusive rights in relation to the propagating material described in **paragraph (a)**, harvested material obtained through the use of that propagating material. 30
- (3) Each of the following is a **restricted act**:
- (a) production or reproduction:
- (b) conditioning for the purpose of propagation:
- (c) selling or offering for sale or other marketing:

- (d) importing or exporting;
- (e) stocking for the purpose of undertaking any other restricted activity.
- (4) However, the PVR holder's right is subject to—
 - (a) the exceptions in **sections 15 to 17**; and
 - (b) the Commissioner's power to grant compulsory licences under **section 102**. 5

15 Exception to PVR: farm-saved seed

- (1) This section applies if a person engaged in farming activities (a **farmer**)—
 - (a) lawfully obtains seed—
 - (i) of a protected variety; or 10
 - (ii) of a plant variety that is essentially derived from, or is dependent on, a protected variety; and
 - (b) in the course of their farming activities, grows plants from that seed; and
 - (c) harvests seed from those plants.
- (2) However, this section does not apply in relation to a plant variety of a kind specified in the regulations as one to which this section does not apply. 15
- (3) The farmer may—
 - (a) condition for the purpose of propagation of that seed the amount that they require for their future farming activities; and
 - (b) in the course of those farming activities, reproduce further seed; and 20
 - (c) store the seed for the purpose of the things described in **paragraphs (a) and (b)**.
- (4) However, the farmer may do the things authorised by **subsection (3)** only if they comply with any requirements specified in the regulations.
- (5) In carrying out an activity permitted by this section, the farmer— 25
 - (a) does not require authorisation from the PVR holder; and
 - (b) does not infringe the PVR.
- (6) For the purposes of this section, seed is **lawfully obtained** if it is obtained by the operation of this section on a previous occasion.

16 Exception to PVR: private, experimental, and breeding purposes 30

- (1) A person may exploit a protected variety if they do so solely for 1 or more of the following purposes:
 - (a) private or non-commercial purposes:
 - (b) experimental purposes:
 - (c) breeding other plant varieties. 35
- (2) In doing the things authorised by **subsection (1)**, the person—

- (a) does not require authorisation from the PVR holder; and
- (b) does not infringe the PVR.

17 Exhaustion of PVR: material lawfully sold or marketed

- (1) If any protected material is sold or otherwise marketed in New Zealand with the authority of the PVR holder, another person may undertake a restricted act in relation to that protected material without the authority of the PVR holder unless that restricted act involves— 5
- (a) further propagation of the variety; or
 - (b) the export of the propagating material for a purpose other than final consumption, to a non-protected place. 10
- (2) In this section,—
- non-protected place**, in relation to a plant variety, means—
- (a) a non-UPOV country that provides no protection in relation to the plant variety; or
 - (b) a non-UPOV country that provides some protection in relation to the plant variety; or 15
 - (c) the territory of a UPOV party where there is no protection for that plant variety
- protected material** means—
- (a) propagating material of— 20
 - (i) a protected variety; or
 - (ii) a plant variety that is essentially derived from a protected variety; or
 - (iii) a plant variety that is dependent on a protected variety; or
 - (b) harvested material; or 25
 - (c) any product made directly from harvested material.

18 Duration of PVR

- (1) A PVR for a plant variety—
- (a) takes effect when it is granted under **section 28(3)(a)**; and
 - (b) remains in effect until the close of the expiry date. 30
- (2) However, the PVR ceases to be in effect before the expiry date if—
- (a) it is cancelled or nullified under **section 79, 80, or 84**; or
 - (b) it is surrendered under **section 85**; or
 - (c) it is deemed to be cancelled for non-payment of a PVR renewal fee under **section 86** (subject to **section 94**). 35
- (3) The **expiry date** for a PVR is the date that is,—

- (a) if the plant variety is a tree or vine, 25 years after the PVR was granted; or
- (b) otherwise, 20 years after the PVR was granted.

19 PVR is personal property

A PVR is personal property. 5

Subpart 2—Nature and scope of PVR: UPOV 78

20 Status of plant variety rights granted under 1987 Act

A plant variety right granted under the Plant Variety Rights Act 1987 (the **1987 Act**)—

- (a) is the right conferred by the 1987 Act; and 10
- (b) does not include additional rights granted to the holders of plant variety rights under this Act.

Part 3

Infringement and enforcement

Subpart 1—Infringement of PVR 15

21 Infringement of PVR

- (1) In this Act, a person **infringes** the PVR for a protected variety if—
 - (a) the person exploits the protected variety; and
 - (b) the exploitation is not excluded from the operation of this section under **section 22**; and 20
 - (c) the exploitation occurs—
 - (i) on or after the priority date for the application that results in the PVR being granted but before the PVR is granted; or
 - (ii) while the PVR is in force.
- (2) A person (**person A**) also infringes the PVR for a protected variety (**variety 1**) with a specified denomination if person A— 25
 - (a) exploits another variety (**variety 2**) by referring to it as that specified denomination; and
 - (b) does not own the PVR for variety 1 and is not authorised to exploit it under a licence issued by the owner of the PVR for variety 1. 30
- (3) **Subsection (2)** does not apply if the groups of plants to which variety 1 and variety 2 belong are recognised as being distinct for the purposes of denomination.
- (4) **Subsections (1) and (2)** do not apply to—

- (a) a PVR holder, unless the holder has conferred the exclusive right to exploit the protected variety on another person (the **exclusive licensee**); or
- (b) an exclusive licensee of the PVR holder.
- 22 What does not constitute infringement** 5
- A person does not infringe a PVR for a protected variety by doing something that—
- (a) they are authorised to do by the PVR holder; or
- (b) they are permitted to do under **sections 15 to 17**; or
- (c) they are authorised to do by a compulsory licence. 10
- 23 Limitation of damages**
- (1) If, in any proceedings for the infringement under **section 21** of the rights of the holder of a PVR, it is proved or admitted that an infringement was committed but the defendant proves that, at the time of that infringement, the defendant was not aware, and had no reasonable grounds for supposing, that it was an infringement, the plaintiff— 15
- (a) is not entitled under **section 27** to any damages against the defendant in respect of that infringement; but
- (b) is entitled instead to an account of profits in respect of that infringement.
- (2) **Subsection (1)** does not affect any entitlement of the holder of a PVR to any relief in respect of the infringement of that holder's rights under **section 21**, other than damages. 20
- 24 PVR holder's authorisation**
- (1) The PVR holder for a protected variety may authorise any other person (the **licensee**) to exploit the protected variety. 25
- (2) The authorisation may be given subject to any conditions or limitation the PVR holder thinks fit.
- (3) If the authorisation gives the licensee exclusive rights to exploit the protected variety in New Zealand (an **exclusive licence**), the licensee (the **exclusive licensee**) has the same rights as the PVR holder to take proceedings in respect of any infringement of the PVR that— 30
- (a) affects the rights of the licensee; and
- (b) occurs after the authorisation is granted.
- (4) If an exclusive licensee brings an infringement proceeding, the PVR holder must be joined as a defendant (unless joined as a plaintiff). 35
- (5) A PVR holder who is joined as a defendant is not liable for costs unless that holder defends the proceedings.

25 Notice of protection

- (1) This section applies to a breeder who—
 - (a) has acquired a PVR in respect of a plant variety; and
 - (b) sells or markets any propagating material of that variety.
- (2) The breeder must take all reasonable steps, by means of suitable labelling or other identification of that material, to inform the purchaser concerned of that right. 5
- (3) In determining, for the purposes of **section 23**, whether any person had reasonable grounds for supposing that any action was an infringement of the rights of a PVR holder, the court may take into account the extent (if any) to which that PVR holder or, as the case requires, the defendant concerned, complied with **subsection (2)** in respect of any propagating material in respect of which that infringement occurred. 10

Subpart 2—Infringement proceedings

26 Commencement of infringement proceedings 15

- (1) The holder of a PVR may bring an infringement proceeding in respect of that PVR in the court.
- (2) An infringement proceeding in relation to a plant variety cannot be commenced until after the PVR has been granted (even if the infringement occurred during the period referred to in **section 21(1)(c)(i)**). 20

27 Types of relief available for infringement

The relief that the court may grant for an infringement of a PVR includes—

- (a) an injunction; and
- (b) at the option of the plaintiff, damages or an account of profits.

Part 4 25**Grant of plant variety rights**

Subpart 1—Grant of PVR and criteria

28 Grant of PVR

- (1) A breeder may apply to the Commissioner for a PVR for a plant variety in accordance with **section 36** and (if applicable) **section 37**. 30
- (2) The Commissioner must consider the application in accordance with **subparts 3 and 4** of this Part, and (if applicable) **Part 5**, and any procedures specified in the regulations.
- (3) After considering the application, the Commissioner must—
 - (a) grant the PVR to the applicant— 35

- (i) if satisfied that the criteria for granting a PVR in **section 30** are met; and
 - (ii) in a case where **Part 5** applies, if the Māori Plant Varieties Committee has informed the Commissioner under **section 65** that the application should proceed; but 5
 - (b) otherwise, refuse to grant the PVR.
 - (4) If the Commissioner grants a PVR, they must—
 - (a) notify the applicant and anyone who opposed the application under **section 49** (other than a person who withdrew their notice of opposition before the Commissioner decided to grant the PVR); and 10
 - (b) enter the PVR in the register.
 - (5) If the Māori Plant Varieties Committee decides, under **section 65(1)(c)**, that an agreed or a proposed condition must be a condition of grant of a PVR, the Commissioner must impose that condition when granting the plant variety right. 15
 - (6) If the Commissioner refuses to grant a PVR, they must notify the applicant and anyone who opposed the application under **section 49** of the decision and the reasons for it.
 - (7) The Commissioner must not grant a PVR until the applicant has complied with all requirements imposed on the applicant by this Act or the regulations that are prescribed as relevant requirements for the purposes of this subsection. 20
- 29 Grant of PVR where there are 2 or more breeders**
- (1) If 2 or more persons breed a plant variety jointly, those persons, or some of them, may make a joint application for the PVR for that variety.
 - (2) If 2 or more persons breed a plant variety jointly, one of those persons may not apply for a PVR for that variety otherwise than jointly with, or except with the consent in writing of, each other of those persons. 25
- 30 Criteria for granting PVR**
- The criteria that must be met to grant a PVR for a plant variety to an eligible applicant are that— 30
- (a) the plant variety is all of the following:
 - (i) novel (*see section 31*):
 - (ii) distinct (*see section 32*):
 - (iii) uniform (*see section 33*):
 - (iv) stable (*see section 34*): 35
 - (b) the name for the plant variety meets the denomination criteria in **section 35**.

31 Meaning of novel

- (1) A plant variety is **novel** if propagating material or harvested material for the plant variety has not been distributed—
- (a) in New Zealand within the 12 months before the priority date; or
 - (b) in any other territory within the following period before the priority date: 5
 - (i) if the plant variety is a tree or vine, 6 years:
 - (ii) otherwise, 4 years.
- (2) In this section, **distributed**, in relation to a variety, means sold or otherwise disposed of to another person for the purposes of exploiting the variety by, or with the consent of, the breeder. 10

32 Meaning of distinct

- (1) A plant variety is **distinct** if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the application date.
- (2) Without limiting what is common knowledge, the existence of a plant variety (**variety K**) is taken to be **common knowledge** if— 15
- (a) there is or has been an overseas breeder's right for variety K; or
 - (b) an application of either of the following kinds has been made in relation to variety K:
 - (i) a PVR application made under this Act or under the laws of any other country, resulting in the grant of PVR for variety K; or 20
 - (ii) an application under this Act or the laws of any other country to enter variety K onto an official register, resulting in the entry of the variety on the official register in the relevant country.

33 Meaning of uniform 25

A plant variety is **uniform** if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its essential characteristics.

34 Meaning of stable

A plant variety is **stable** if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle. 30

35 Criteria for plant variety denomination

- (1) The criteria for the denomination of a plant variety are that the denomination— 35
- (a) enables the plant variety to be identified; and
 - (b) does not consist solely of figures (unless that is an established practice for designating varieties); and

- (c) is not liable to mislead or cause confusion concerning—
 - (i) the characteristics, value, or identity of the plant variety; or
 - (ii) the name of the breeder applying for the PVR (or, if there is more than 1 applicant, the name of each breeder); and
 - (d) is different from any denomination that designates an existing plant variety of the same or a similar species in New Zealand or the territory of any other UPOV party; and 5
 - (e) is the same as the denomination—
 - (i) in any overseas breeder’s right for the plant variety; or
 - (ii) in any overseas application in relation to the plant variety that has been made and has not yet been finally determined; and 10
 - (f) is not one in respect of which another person has a prior right that would prevent a person from using the denomination when they are required to do so in order to avoid infringing the PVR under **section 21(2)**; and
 - (g) meets any other prescribed criteria. 15
- (2) However, **subsection (1)(e)** does not apply if the denomination used overseas does not meet the criteria in **subsection (1)(a) to (d) and (f)**.
- (3) Despite **subsections (1) and (2)**, if in the opinion of the Commissioner, the use or approval of a denomination would be likely to offend a significant section of the community, including Māori, the Commissioner must not approve the denomination. 20

Subpart 2—PVR applications

36 Application for PVR

- (1) A PVR application in relation to a plant variety may be made by 1 breeder or by 2 or more breeders jointly. 25
- (2) The application must—
 - (a) be made in the way specified in the regulations; and
 - (b) include the following information:
 - (i) a description of the plant variety;
 - (ii) the name of the breeder applying for the PVR (or each of them if there is more than 1): 30
 - (iii) the proposed denomination of the plant variety;
 - (iv) any other information specified in the regulations; and
 - (c) be accompanied by any propagating material specified in the regulations; and 35
 - (d) be accompanied by any fee specified in the regulations.

- (3) If an application is not accompanied by the prescribed fee (if any), the Commissioner may not process the application until the prescribed fee is paid.

37 Additional requirements for applications where kaitiaki relationship asserted

- (1) This section applies if— 5
- (a) **subpart 3 of Part 5** has come into force and a PVR application is made on or after the date on which **subpart 3 of Part 5** comes into force; and
 - (b) the breeder knows that a person, hapū, iwi, or group has asserted that they have a kaitiaki relationship with an indigenous plant species or a non-indigenous plant species of significance (*see* **subpart 3 of Part 5**). 10
- (2) If the breeder makes a PVR application under **section 36** in relation to a plant species in respect of which a kaitiaki relationship is asserted, that application must include—
- (a) the name of the kaitiaki referred to in **subsection (1)**: 15
 - (b) a summary of the engagement the breeder has conducted with the kaitiaki:
 - (c) if available,—
 - (i) a copy of any assessment by the kaitiaki of the potential effects on the kaitiaki relationship if the PVR is granted: 20
 - (ii) a summary of—
 - (A) any consideration given by the breeder or kaitiaki, or both, to how those effects could be mitigated; and
 - (B) any agreement reached between the breeder and the kaitiaki about how those effects can be mitigated. 25
- (3) For the purposes of this section, **kaitiaki** includes a person, hapū, iwi, or group that has asserted that they have a kaitiaki relationship with a plant species.

38 Variation of PVR application

- (1) An applicant may vary their PVR application to alter the denomination sought, by giving a variation notice to the Commissioner. 30
- (2) The applicant may do so at any time before the Commissioner decides the PVR application under **section 28(3)**.
- (3) A variation notice must—
- (a) be made in the way specified in the regulations; and
 - (b) if the PVR application was made by 2 or more persons jointly, be made by both or all of those persons jointly; and 35
 - (c) include any information specified in the regulations; and
 - (d) be accompanied by any fee specified in the regulations.

- (4) The Commissioner must publicly notify the variation notice and make it publicly available.

39 Withdrawal of PVR application

- (1) An applicant may withdraw their PVR application by giving a withdrawal notice to the Commissioner at any time before the Commissioner decides the PVR application under **section 28(3)(a)**. 5
- (2) The Commissioner must publicly notify the withdrawal notice (unless it is received before the application is publicly notified).

Subpart 3—Dates and priority

40 Application date 10

The **application date** for a PVR application is the later of the following:

- (a) the date on which the PVR application is received by the Commissioner;
- (b) if, when the PVR application is received, it does not comply with **section 36(2)**, the date on which that non-compliance is remedied.

41 Priority date 15

The **priority date** for a PVR application is the earlier of—

- (a) its application date; and
- (b) if **section 42** applies, the overseas application date under that section.

42 Priority arising from overseas application

- (1) This section applies if— 20
- (a) a person makes a PVR application in relation to a plant variety in New Zealand (the **New Zealand application**); and
- (b) the person has previously made 1 or more overseas applications in relation to that plant variety in another country that is a UPOV party; and
- (c) the application date for the New Zealand application (as determined under **section 40**) is within 12 months after the date on which the first overseas application was made; and 25
- (d) the New Zealand application includes a claim for priority based on the overseas application.
- (2) The **overseas application date**, in relation to the New Zealand application, is the date on which the first overseas application referred to in **subsection (1)(b)** was made. 30
- (3) However, this section does not apply if evidence of the overseas application—
- (a) is not included in the New Zealand application; and
- (b) is not given to the Commissioner within 3 months after the New Zealand application is made. 35

- (4) In this section, **evidence of the overseas application** means a copy of the documents that constitute the overseas application (or the first overseas application if there was more than 1) certified to be a true copy by the authority with which that application was filed.
- 43 Priority of PVR applications** 5
- If 2 or more PVR applications are made in relation to the same plant variety, the PVR applications must be considered and determined in order of their priority dates, starting with the PVR application with the earliest priority date.
- 44 Cancellation of PVR because of earlier overseas applications**
- (1) This section applies if,— 10
- (a) after a PVR is granted to any person in respect of a variety, another person makes an application in respect of that variety; and
- (b) the Commissioner is satisfied that, if that PVR had not already been granted, that other person would, because of **section 42**, be entitled to a PVR in respect of that application. 15
- (2) If this section applies, the Commissioner must—
- (a) cancel that PVR; and
- (b) grant a new PVR to the person who would be entitled to it if the cancelled PVR had never been granted.
- Subpart 4—Consideration of PVR application 20
- 45 PVR application to be notified and made publicly available**
- The Commissioner must publicly notify a PVR application, and make it publicly available,—
- (a) as soon as practicable after the Commissioner receives the application; or 25
- (b) if, when the application is received, it does not comply with **section 36(2)**, as soon as practicable after that non-compliance is remedied.
- 46 Propagating material and information**
- (1) The Commissioner may request the applicant to give the Commissioner— 30
- (a) propagating material reasonably needed by the Commissioner to properly consider a PVR application:
- (b) any other information reasonably needed by the Commissioner to properly consider a PVR application.
- (2) The Commissioner’s request must be made in writing and allow the applicant— 35
- (a) a reasonable time (specified in the request) to comply with it; or

- (b) if the time for responding to the request is prescribed, the prescribed time (which must be specified in the request) to comply with it.
- (3) The Commissioner—
- (a) may, subject to **subsection (4)**, defer consideration of the PVR application until the request is complied with; and 5
- (b) must make any information given in response to the request publicly available.
- (4) If the applicant does not comply with the request within the specified time,—
- (a) the PVR application lapses; and
- (b) the Commissioner must publicly notify that fact. 10
- (5) The Commissioner may give propagating material to a person if the Commissioner considers it necessary or desirable to do so for the purposes of performing or exercising the Commissioner’s functions, powers, or duties under this Act.
- (6) If propagating material supplied by a PVR holder is given to an applicant, but the applicant uses that material in a way that contravenes the directions of the Commissioner, the Commission may decline the application. 15

47 Growing trials

- (1) A PVR must not be granted for a plant variety unless a growing trial has been undertaken for that variety. 20
- (2) The Commissioner must decide whether a growing trial is to be undertaken—
- (a) by or on behalf of the Commissioner; or
- (b) by or on behalf of the applicant; or
- (c) by an overseas testing body approved by the Commissioner; or
- (d) by or on behalf of an authority of a State that is a member of UPOV and grants plant variety rights. 25
- (3) The Commissioner must inform the applicant of their decision under **subsection (2)**.
- (4) The Commissioner may give directions about the way the growing trial is to be conducted and impose conditions about the trial (for example a timetable for conducting the trial). 30
- (5) A growing trial must be conducted in accordance with any prescribed requirements.

48 Fees

- (1) A PVR applicant must pay the prescribed fee for conducting growing trials if the growing trial is to be conducted by or on behalf of the Commissioner. 35

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- (2) A PVR applicant must pay the prescribed examination fee if the Commissioner decides that a growing trial is to be conducted in the manner described in **section 47(2)(b), (c), or (d)**.
- (3) The fees payable under **subsections (1) and (2)** must be paid within the prescribed time after the Commissioner has requested payment. 5
- (4) The request must be in writing and specify the prescribed time.
- (5) If the applicant does not pay the prescribed growing trial or examination fees within the prescribed time—
- (a) the PVR application lapses; and
 - (b) the Commissioner must publicly notify that fact. 10
- 49 Opposition to grant of PVR**
- (1) A person may oppose the grant of a PVR for a plant variety on the ground that 1 or more of the criteria in **section 30(a) and (b)** are not met, by giving a notice of opposition.
- (2) A notice of opposition must be given— 15
- (a) in the way specified in the regulations; and
 - (b) within the following times:
 - (i) if the opposition relates to a proposed denomination, within 3 months after the application is notified in accordance with **section 45:** 20
 - (ii) in any other case, at any time before the PVR is granted.
- 50 Consideration of application and notices of opposition**
- (1) This section applies after the close of the period for giving notice of opposition in relation to a PVR application.
- (2) As soon as practicable after the close of that period, the Commissioner must— 25
- (a) give the applicant a copy of any notices of opposition received; and
 - (b) give public notice of any notices of opposition and make them publicly available.
- (3) The Commissioner must—
- (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and 30
 - (b) take the notices of opposition and any submissions into account in considering the PVR application; and
 - (c) otherwise decide and deal with the application in the prescribed manner.

- 51 Alternative denomination if criteria for denominations not met**
- (1) The Commissioner must not reject a PVR application on the grounds that the proposed denomination does not meet the criteria in **section 35** unless the Commissioner has—
- (a) notified the applicant of the Commissioner’s intention to do so and the reasons for it; and 5
 - (b) given the applicant the prescribed time (specified in the notice) to submit 1 or more alternative denominations.
- (2) If the applicant submits an alternative denomination, the Commissioner must publicly notify it. 10
- (3) If the applicant fails to submit an alternative denomination within the prescribed time, the application lapses.
- (4) The Commissioner is not required to give the applicant more than 1 opportunity to submit alternative denominations.

Part 5 15

Additional provisions that apply to indigenous plant species and non-indigenous plant species of significance

Subpart 1—Preliminary provisions

- 52 Treaty of Waitangi (Te Tiriti o Waitangi)** 20
- In order to recognise and respect the Crown’s responsibility to apply the principles of the Treaty of Waitangi through the recognition and protection of kaitiaki relationships with taonga species and mātauranga Māori, this Part—
- (a) provides additional procedures that will recognise and protect kaitiaki relationships; and
 - (b) provides for a Māori Plant Varieties Committee to administer those procedures, to make determinations about kaitiaki relationships, and to have advisory functions; and 25
 - (c) enables the nullification or cancellation of PVRs that have adverse effects on kaitiaki relationships.
- 53 Application of this Part** 30
- This Part applies to a PVR application that relates to a plant variety—
- (a) that is derived wholly or partly from—
 - (i) an indigenous plant species; or
 - (ii) a non-indigenous plant species of significance; and
 - (b) in circumstances where the material from which the plant variety was derived was sourced from New Zealand. 35

54 Interpretation of this Part

In this Part, unless the context otherwise requires,—

indigenous plant species means a native plant species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance

kaitiaki relationship, in relation to a plant species, means the relationship that any particular person, iwi, hapū, or group has, or Māori in general have, as guardian, trustee, or caretaker of— 5

- (a) an indigenous plant species; or
- (b) a non-indigenous plant species of significance

non-indigenous plant species of significance means a plant species— 10

- (a) believed to have been brought to New Zealand before 1769 on waka migrating from other parts of the Pacific region; and
- (b) listed in the regulations as a non-indigenous plant species of significance

party, in relation to a PVR application, means the breeder and any person, hapū, iwi, or group that asserts they have a kaitiaki relationship with a plant variety that is the subject of the application. 15

Subpart 2—Māori Plant Varieties Committee

55 Appointment and membership of Māori Plant Varieties Committee

- (1) The Commissioner must establish a committee called the Māori Plant Varieties Committee. 20
- (2) The Commissioner may, at any time,—
 - (a) appoint a person as a member of the committee:
 - (b) remove a member from the committee and, if the Commissioner thinks fit, appoint another member in that member's place.
- (3) A person must not be appointed as a member of the committee unless, in the opinion of the Commissioner, the person is qualified for appointment, having regard to that person's knowledge of mātauranga Māori (Māori traditional knowledge), tikanga Māori (Māori protocol and culture), te ao Māori (the Māori world view), and taonga species. 25
- (4) In making an appointment, the Commissioner must also consider— 30
 - (a) whether the proposed member has the mana, standing in the community, skills, knowledge, or experience to participate effectively in the committee and to contribute to carrying out the functions of the committee; and
 - (b) the committee's overall knowledge and experience as a whole.
- (5) The members must appoint one of their number to be the chairperson of the committee. 35

- (6) A member of the committee may at any time resign office by notice in writing to the Commissioner.
- (7) The Commissioner may not delegate the power of establishment or appointment in this section.
- Compare: 2013 No 68 s 225 5

56 Functions of Māori Plant Varieties Committee

The functions of the Māori Plant Varieties Committee are to—

- (a) issue engagement guidelines and provide advice to applicants for a PVR and kaitiaki:
- (b) consider PVR applications referred to it by the Commissioner and make decisions under this Part: 10
- (c) advise the Commissioner whether the use or approval of a proposed denomination is likely to be offensive to Māori:
- (d) provide advice to the Commissioner on any information that may be relevant to application of the criteria listed in **section 30** for granting a PVR. 15

57 Commissioner not bound by advice

The Commissioner must consider, but is not bound by, the advice given by the Māori committee under **section 56(c) and (d)**.

Compare: 2013 No 68 ss 226, 227 20

58 Remuneration of Māori Plant Varieties Committee

- (1) The members of the Māori Plant Varieties Committee are entitled, in accordance with the fees framework, to—
- (a) remuneration for services as a member at a rate and of a kind determined by the Commissioner; and 25
- (b) be reimbursed for actual and reasonable expenses incurred by them in undertaking the functions and duties of the committee.
- (2) In **subsection (1), fees framework** means the framework determined by the Government from time to time for the classification and remuneration of other bodies in which the Crown has an interest. 30

Subpart 3—Additional procedures for applications to which this Part applies

59 Commissioner must refer applications to Māori Plant Varieties Committee

The Commissioner must refer to the Māori Plant Varieties Committee all PVR applications to which this Part applies. 35

60 Māori Plant Varieties Committee's role

- (1) The role of the Māori Plant Varieties Committee in relation to any PVR application that is referred to it is to assess and determine whether that application, if granted, will or could have adverse effects on 1 or more kaitiaki relationships with the plant variety that is the subject of the PVR application. 5
- (2) In carrying out its role under **subsection (1)**, the committee must,—
- (a) if a person, iwi, hapū, or group asserts that they have a kaitiaki relationship with the plant variety that is the subject of the PVR application, assess that relationship (if any) and the effect of granting a PVR on that relationship, in the manner described in **section 61**: 10
- (b) if **paragraph (a)** does not apply, consider the nature of kaitiaki relationships as understood by Māori generally and the effect on those relationships of granting a PVR for the plant variety in question.
- (3) The matters that the committee may take into account in carrying out its role under **subsection (1)** also include— 15
- (a) the effects of any PVR already granted in relation to the plant species that is the subject of the application:
- (b) the purpose of this Act (explained in **section 3**):
- (c) whether any adverse effects on a kaitiaki relationship with the plant species that is the subject of the application can be mitigated by an agreement or undertaking. 20
- (4) It is also the committee's role to publicly notify the committee's rules about hearing and timing requirements for the making and hearing of submissions, responding to information requests from the committee and others, and convening hui. 25

61 Assessment where kaitiaki relationship asserted

In a case where any person, iwi, hapū, or group asserts that they have a kaitiaki relationship with the plant species that is the subject of a PVR application, the Māori Plant Varieties Committee must also consider—

- (a) whether that person, iwi, hapū, or other group have demonstrated their kaitiaki relationship with the relevant plant variety and associated mātauranga Māori: 30
- (b) if a kaitiaki relationship has been demonstrated,—
- (i) the kaitiaki's assessment of the effect of a grant of the PVR on their relationship; and 35
- (ii) any agreement to mitigate adverse effects reached between the breeder and the kaitiaki; and
- (iii) whether there is any evidence that the parties have not acted in good faith during their engagement (if any).

62 Process to be adopted by Māori Plant Varieties Committee

The Māori Plant Varieties Committee, in carrying out its functions under this subpart,—

- (a) must, where practicable, consider any submissions made, in accordance with the times and procedures set out in the committee's publicly notified rules, by the applicant, or a particular person, iwi, hapū, or group that asserts they have a kaitiaki relationship with a plant variety, and any organisation that the committee considers represents Māori generally or significant Māori interests (and any evidence given by an expert on behalf of any of those persons, iwi, hapū, groups, or organisations): 5
- (b) may conduct any investigations the committee considers appropriate to carry out its functions (including requesting further information from any party or convening hui): 10
- (c) must comply with the requirements of natural justice:
- (d) must act as quickly as is practicable in the circumstances: 15
- (e) must provide written reasons to the parties for every determination that it makes:
- (f) may, except as provided in this Act or any other enactment, regulate its own procedure as it thinks fit.

63 Decision-making by Māori Plant Varieties Committee 20

- (1) In making decisions under this Part, members of the Māori Plant Varieties Committee must strive to reach consensus.
- (2) However, if the chairperson of the committee is satisfied that a consensus is not possible, the chairperson may authorise the members to make a decision by a simple majority. 25

64 Factors to be considered when deciding condition to mitigate adverse effects on kaitiaki relationship

In deciding whether a condition to mitigate adverse effects or possible adverse effects on a kaitiaki relationship should be imposed as a formal condition of the grant of a PVR, the Māori Plant Varieties Committee must consider whether an adverse or possible adverse effect of the PVR application, if granted, on the relevant kaitiaki relationship can be adequately mitigated by,— 30

- (a) in the case of a kaitiaki relationship between a plant variety and Māori in general, a proposed condition of grant set out in an undertaking by the breeder following discussion between the breeder and the committee; or 35
- (b) a proposed condition of grant agreed by the applicant and the relevant person, iwi, hapū, or group or proposed by a breeder or another party.

- 65 Decision by Māori Plant Varieties Committee that PVR application should proceed or be declined**
- (1) The Māori Plant Varieties Committee must inform the Commissioner that the PVR application should proceed to be further considered by the Commissioner if the committee is satisfied that— 5
- (a) there is no kaitiaki relationship between—
- (i) Māori in general and the plant variety that has been the subject of the application; or
- (ii) a particular person, iwi, hapū, or group, and the plant variety that is the subject of the application; or 10
- (b) there is such a kaitiaki relationship but it is unlikely to be affected by the grant of the application; or
- (c) any adverse effect or likely adverse effects on the kaitiaki relationship will be adequately mitigated by a condition of the grant agreed between the parties or set out in an undertaking given by a breeder following discussion between the breeder and the committee. 15
- (2) If **subsection (1)(c)** applies, the committee must inform the Commissioner that the proposed condition must be imposed by the Commissioner as a condition of the grant of the PVR.
- (3) If **subsection (1)** does not apply, the committee must inform the Commissioner that the PVR application must be declined. 20
- (4) The committee must notify the Commissioner and the parties in writing, as soon as practicable after making a decision under this section.
- 66 Request for reconsideration of Māori Plant Varieties Committee's decisions** 25
- (1) An applicant may request the Commissioner to ask the Māori Plant Varieties Committee to reconsider its decision to inform the Commissioner that a PVR application must be declined, on the basis of further information that was not available to the committee when it made its decision.
- (2) Any person (other than the applicant) may request the Commissioner to ask the committee to reconsider its decision that the application should proceed for further consideration by the Commissioner, on the basis of further information that was not available to the committee when it made its decision. 30
- (3) A request under **subsection (1) or (2)** must be made within 10 working days after the date on which the applicant or person, iwi, hapū, or group, as the case requires, is notified in writing of the committee's decision. 35
- (4) On receiving a request under **subsection (1) or (2)** for reconsideration the committee—

- (a) must consider whether the new information, had it been available at the time it made its decision, would be likely to have altered the committee's decision; and
- (b) if so, must reconsider its decision in accordance with **sections 59 to 65**, but may rely on information previously obtained, and need not repeat any process previously undertaken before the original decision, unless the committee is satisfied that the information or that process is likely to be affected by the new information. 5

Other provisions

67 Powers to require nullification or cancellation of PVR 10

- (1) Any person may apply at any time to the Commissioner for the nullification or cancellation of a PVR.
- (2) On receiving an application under **subsection (1)** the Commissioner must, unless they dismiss the application under **section 68**, refer the application to the Māori Plant Varieties Committee. 15
- (3) The committee may,—
 - (a) if it determines that there was an adverse effect on a kaitiaki relationship with a plant species at the time a PVR was granted for that plant species, inform the Commissioner that the PVR must be nullified:
 - (b) if the PVR holder has breached any condition of the grant of the PVR or any undertaking made by the PVR holder before or at or after the time of the grant, being a condition or an undertaking designed to mitigate an adverse effect on kaitiaki relationships with the plant species, inform the Commissioner that the PVR must be cancelled: 20
 - (c) if neither **paragraph (a) nor paragraph (b)** applies, dismiss the application. 25
- (4) The committee may, if **subsection (3)(a) or (b)** applies, but the PVR holder makes a further undertaking that is acceptable to the committee—
 - (a) dismiss the application instead of making a decision under **subsection (3)(a) or (b)**; and 30
 - (b) inform the Commissioner that an existing or new condition must be imposed as a formal condition of the PVR holder continuing to hold the PVR.
- (5) The Commissioner must give effect to any decision made under **subsection (3)(a) or (b) or subsection (4)(b)**. 35

68 Frivolous, vexatious, or repetitious applications

- (1) The Commissioner may dismiss an application made under **section 67(1)** (without considering its merits) if satisfied that—

- (a) it is frivolous or vexatious; or
 - (b) all of the issues raised by it are previously considered issues.
- (2) In this section, **previously considered issue** means an issue that is the same, or substantially the same, as an issue previously considered under this Part.

Part 6

5

Plant variety rights: other matters

Subpart 1—General matters

Requests for information or propagating material

- 69 Commissioner may request propagating material or information about maintenance of variety** 10
- (1) The Commissioner may request a PVR holder to give to the Commissioner any information reasonably needed by the Commissioner to verify the maintenance of the variety to which the PVR relates or for any other purpose in relation to that variety.
 - (2) The Commissioner may request a PVR holder to give propagating material to the Commissioner, if the Commissioner considers that this is necessary or desirable for the purposes of exercising or performing the Commissioner's functions, duties, or powers under this Act. 15
 - (3) The Commissioner's request must be made in writing and specify the prescribed time within which it must be complied with. 20
 - (4) If a PVR holder fails, without reasonable excuse, to comply with a request under **subsection (1) or (2)**, the Commissioner may cancel the holder's PVR.

Substitution of applicants

- 70 Persons claiming under assignment or agreement or by operation of law**
- (1) This section applies if, before a PVR is granted, a person would, if the PVR were then to be granted, be entitled under an assignment or agreement, or by operation of law, to— 25
 - (a) the PVR; or
 - (b) an interest in the PVR; or
 - (c) an undivided share in the PVR or in an interest in the PVR. 30
 - (2) The Commissioner may, on a request made by the person in the prescribed manner, direct that the PVR application proceed in the name of the person, or in the names of the person and the applicant or the other joint applicant or applicants (as the case may require).

- (3) If the Commissioner gives a direction, the person must be taken to be the applicant, or a joint applicant, as the case may require.

Compare: 2013 No 68 s 129

71 Death of applicant

- (1) If an applicant dies before a PVR is granted, their personal representative may proceed with the PVR application. 5

- (2) However, the Commissioner may also, under **section 74**, dispense with probate and letters of administration and allow a person to proceed with a deceased applicant's application.

Compare: 2013 No 68 s 130

10

Registration of assignments, licences, and other interests in PVRs

72 Application for registration of assignments, licences, and other interests in PVRs

- (1) A person (A) who acquires a PVR or a share in a PVR or an interest in a PVR must apply to the Commissioner for registration of A's title or interest. 15

- (2) However, the person who disposes of the PVR or share in a PVR or who confers the interest may instead apply to register A's title or interest (in which case **subsection (1)** does not apply).

- (3) In either case, the application must be made in the prescribed manner.

- (4) This section applies to acquisitions and disposals by assignment, transmission, operation of law, mortgage, licence, or any other means (other than a compulsory licence granted under **section 102**). 20

Compare: 2013 No 68 s 165

73 Registration of assignments, licences, and other interests in PVRs

If an application is made under **section 72**, the Commissioner, on proof satisfactory to the Commissioner of the acquisition by the applicant (A) of a PVR or an interest or a share in a PVR,— 25

- (a) must register A's title or interest; and
 (b) may issue a replacement PVR in the name of the new holder of the PVR; and
 (c) must retain any documents provided with the application under **section 72** or copies of those documents. 30

Compare: 2013 No 68 s 166

Vesting of PVR and PVR application without probate or letters of administration

74 Commissioner may vest PVR or PVR application without probate or letters of administration

- (1) If a holder of a PVR or an applicant for a PVR (**A**) dies, the Commissioner may (without requiring probate or letters of administration) register or substitute a person (**B**) as the PVR holder or applicant in place of A if— 5
- (a) B proves, to the Commissioner’s satisfaction, that—
- (i) B is entitled to obtain probate of A’s will or letters of administration of A’s estate, or is A’s personal representative, in the place where A was living at the time of A’s death; and 10
- (ii) probate or letters of administration have not been made or resealed in New Zealand; and
- (iii) the interests of A’s creditors, and of all persons beneficially interested under A’s will or on A’s intestacy, will be adequately safeguarded if this action is taken; and 15
- (b) B applies in the prescribed manner.
- (2) If B becomes the holder of a PVR or an applicant under this section, B holds the PVR or is responsible for the application, subject to all existing interests and equities affecting it. 20
- (3) This section applies even if A dies before the commencement of this section.
- (4) Nothing in section 70 or 73 of the Administration Act 1969 restricts the operation of this section.

Compare: 2013 No 68 s 167

Cessation of PVR before expiry date 25

75 How PVR may cease to be in force before expiry date

- (1) A PVR may be cancelled or nullified, if there are grounds for doing so under **section 76**,—
- (a) by the Commissioner on their own initiative under **section 79**; or
- (b) by the Commissioner on application under **section 80**; or 30
- (c) by the court under **section 84**.
- (2) A PVR may be surrendered under **section 85**.
- (3) A PVR is deemed to be cancelled for non-payment of a PVR renewal fee under **section 86(2)**.

Subpart 2—Cancellation, nullification, surrender, and renewal fees

76 Grounds for cancellation or nullification

- (1) There are **grounds to cancel a PVR** if—
- (a) the criteria in **section 30(a)(iii) and (iv)** are no longer met; or
 - (b) the PVR holder fails, without reasonable excuse,— 5
 - (i) to comply with a requirement to supply information under **section 69**; or
 - (ii) to comply with a request to supply propagating material under **section 69**; or
 - (iii) to comply with any conditions decided under **section 65(2)** and imposed by the Commissioner; or 10
 - (c) the Commissioner is required to cancel a PVR under **section 44(2)(a)**, or under **section 67(5)** (as a result of a decision under **section 67(3)(b)**).
- (2) There are **grounds to nullify a PVR** if, at the time the PVR was granted,— 15
- (a) any information supplied in or in relation to the application for the PVR was incorrect and, if the correct information had been known, the PVR application would have been declined; or
 - (b) the criteria in **section 30(a)(i) and (ii)** were not met; or
 - (c) both— 20
 - (i) the criteria in **section 30(a)(iii) and (iv)** were not met; and
 - (ii) the Commissioner’s decision that those criteria were met was essentially based on information given to them by the applicant; or
 - (d) the PVR holder is not the breeder of the variety. 25
- (3) However, **subsection (2)(d)** does not apply if the PVR has subsequently been transferred and the criteria in **section 35** are now met.
- (4) There are also grounds to **nullify a PVR** if the Commissioner is required to do so under **section 67(5)** (as a result of being required to do so under **section 67(3)(a)**). 30

77 Effect of cancellation

- (1) If a PVR is cancelled under **section 67(5), 79, 80, 84, 85, or 86**, it ceases to be in force at the time of the cancellation.
- (2) The Commissioner must,—
- (a) if a PVR is cancelled by the Commissioner, notify the PVR holder of the cancellation and the reasons for it; and 35
 - (b) record the cancellation in the register.

78 Effect of nullification

- (1) If a PVR is nullified under **section 67(5), 79, 80, or 84**, the PVR is taken never to have been granted.
- (2) The Commissioner must,—
 - (a) if the PVR is nullified by the Commissioner, notify the PVR holder of the nullification and the reasons for it; and 5
 - (b) record the nullification in the register.

*Cancellation or nullification by Commissioner***79 Cancellation or nullification by Commissioner on own initiative**

- (1) The Commissioner may cancel or nullify a PVR on their own initiative if satisfied that there are grounds to do so under **section 76(1)(a) or (b)** or, as the case requires, **section 76(2)**. 10
- (2) However, before doing so the Commissioner must—
 - (a) notify the PVR holder of the Commissioner’s intention to cancel or nullify the PVR and the reasons for doing so; and 15
 - (b) give the PVR holder a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in deciding whether to cancel or nullify the PVR.

80 Cancellation or nullification by Commissioner on application 20

- (1) Any person may apply to the Commissioner to have a PVR cancelled or nullified.
- (2) The application must be made in accordance with **section 81**.
- (3) The Commissioner must consider the application in accordance with **sections 82 and 83** and any procedures specified in the regulations. 25
- (4) If the Commissioner cancels or nullifies the PVR, **section 77** or, as the case requires, **section 78** applies.
- (5) If the Commissioner dismisses the application, they must notify the applicant and PVR holder of the decision and the reasons for it.

81 Application to Commissioner to cancel or nullify PVR 30

- (1) An application under **section 80** must—
 - (a) be made in the way specified in the regulations; and
 - (b) include the following information:
 - (i) the grounds on which cancellation or nullification is sought;
 - (ii) any other information specified in the regulations; and 35
 - (c) be accompanied by any fee specified in the regulations.

- (2) If a relevant proceeding relating to the PVR is pending in the court, the application may be made only with the leave of the court.
- (3) In this section, **relevant proceeding**, in relation to a PVR, means a court proceeding—
- (a) for infringement of the PVR; or 5
 - (b) for the PVR to be cancelled or nullified.
- 82 Frivolous, vexatious, or repetitious applications**
- (1) The Commissioner may dismiss an application made under **section 80** (without considering its merits) if satisfied that—
- (a) it is frivolous or vexatious; or 10
 - (b) all of the issues raised by it are previously considered issues.
- (2) In this section and **section 83**, **previously considered issue** means an issue that is the same, or substantially the same, as an issue previously raised in any of the following:
- (a) a notice of opposition given under **section 49**: 15
 - (b) a previous application made under **section 80**:
 - (c) a previous proceeding before the Commissioner or the court.
- 83 Consideration of application**
- (1) This section applies if an application is made under **section 80** and is not dismissed under **section 82**. 20
- (2) The Commissioner must—
- (a) give a copy of it to the PVR holder; and
 - (b) give the applicant and PVR holder a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in deciding whether to nullify or cancel the PVR. 25
- (3) The Commissioner need not consider any issues raised by the application that are previously considered issues.

Cancellation or nullification by court

- 84 Cancellation or nullification by court** 30
- (1) The court may, on application, cancel or nullify a PVR if satisfied that there are grounds to do so under **section 76**.
- (2) The application must be made and dealt with in accordance with the rules of court.

*Surrender***85 Surrender of PVR**

- (1) The holder of a PVR may, by notice given to the Commissioner in the prescribed manner (if any), offer to surrender the PVR.
- (2) The Commissioner must publish the offer in the journal. 5
- (3) A person may, within the prescribed period after the publication of the offer, give notice to the Commissioner of opposition to the surrender.
- (4) The Commissioner must notify the holder of the PVR if a notice of opposition is given.
- (5) The Commissioner may accept the offer and by order cancel the PVR if— 10
 - (a) the Commissioner has given the holder of the PVR and any opponents a reasonable opportunity to be heard; and
 - (b) the Commissioner has taken any submissions into account in deciding whether to dismiss the offer of surrender; and
 - (c) the Commissioner is satisfied that the PVR may properly be surrendered. 15

Compare: 2013 No 68 s 116

*Renewal fee***86 PVR holder must pay PVR renewal fee**

- (1) If the regulations specify a PVR renewal fee, a PVR holder must pay the fee within the period specified in the regulations. 20
- (2) If the fee is not paid within that period, the PVR is deemed to be cancelled.
- (3) The Commissioner must—
 - (a) notify the PVR holder that the PVR is deemed to have been cancelled because of non-payment of the renewal fee for that PVR; and
 - (b) record the cancellation in the register. 25
- (4) A PVR that is deemed to have been cancelled under this section may be restored under **section 94**.

Subpart 3—Restoration of lapsed PVR applications

87 Restoration of lapsed PVR application

- (1) This section applies if a PVR application has lapsed— 30
 - (a) under **section 46(4)(a)** because of a failure to comply with a request for propagating material or information within the specified period; or
 - (b) under **section 48(5)(a)** because of a failure to pay a prescribed fee.
- (2) The Commissioner may, on application, restore the PVR application if—
 - (a) the Commissioner is satisfied that the failure was unintentional; and 35

- (b) the applicant for restoration has complied with **section 93(1)(b)(i) and (ii)**.
- (3) The application must be made in accordance with **section 88**.
- (4) The Commissioner must consider the application in accordance with **sections 89 to 93** and any procedures specified in the regulations. 5
- (5) The Commissioner must—
 - (a) notify the applicant of the Commissioner’s decision and the reasons for it; and
 - (b) if the PVR application is restored, publicly notify that fact.
- (6) If the PVR application is restored, the lapse referred to in **subsection (1)** is taken to have never occurred. 10

88 Application for restoration of lapsed PVR application

- (1) An application to restore a lapsed PVR application must—
 - (a) be made—
 - (i) by the applicant for the PVR; and 15
 - (ii) within the period specified in the regulations (but *see* **subsection (2)**); and
 - (iii) in the way specified in the regulations; and
 - (b) include the following information:
 - (i) a full explanation of the circumstances that led to the failure referred to in **section 87(1)(a) or (b)**: 20
 - (ii) if the application is made after the period referred to in **subsection (1)(a)(ii)**,—
 - (A) a full explanation of the circumstances that caused the delay; and 25
 - (B) the reasons why it was not an undue delay:
 - (iii) any other information specified in the regulations; and
 - (c) be accompanied by any fee specified in the regulations for making the application.
- (2) The Commissioner may accept an application made after the period referred to in **subsection (1)(a)(ii)** if satisfied that the application was made without undue delay. 30

89 No prima facie case made out

- (1) The Commissioner may dismiss an application made under **section 87** if they are not satisfied that the application discloses a prima facie case for restoring the PVR application. 35
- (2) However, before doing so, the Commissioner must—

- (a) notify the applicant for restoration of the Commissioner's intention to dismiss the application and the reasons for it; and
- (b) give the applicant a reasonable opportunity to be heard; and
- (c) take any submissions into account in deciding whether to dismiss the application for restoration.

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90 Consideration of application

- (1) This section applies if an application is made under **section 87** and is not dismissed under **section 89**.
- (2) The Commissioner must publicly notify the application and make it publicly available.

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91 Opposition

- (1) A person may, by giving a notice of opposition, oppose the restoration of a PVR application on 1 or both of the following grounds:
 - (a) that the failure to comply with the request made under **section 46(1)(a)** or to pay trial and examination fees under **section 48** was intentional:
 - (b) if the application was accepted under **section 88(2)**, that there was an undue delay in making the application.
- (2) A notice of opposition must be given—
 - (a) in the way specified in the regulations; and
 - (b) within the period specified in the regulations.

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92 Consideration of application and notices of opposition

- (1) This section applies after the close of the period for opposing an application to restore a lapsed PVR application.
- (2) As soon as practicable after the close of that period, the Commissioner must—
 - (a) give the applicant a copy of any notices of opposition received; and
 - (b) publicly notify the notices of opposition and make them publicly available.
- (3) The Commissioner must—
 - (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and
 - (b) take the notices of opposition and any submissions into account in considering the application.

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93 Conditions of restoration

- (1) If the Commissioner is satisfied that the failure to comply with **section 46(1)(a)** or pay the prescribed fee under **section 48** was unintentional and that the PVR application should be restored, they must—

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- (a) notify the applicant for restoration that the Commissioner is satisfied that the PVR application may be restored (subject to the applicant complying with **paragraph (b)(i) and (ii)**); and
- (b) give the applicant for restoration a reasonable time (specified in the notice) to— 5
 - (i) pay all unpaid PVR application fees and trial and examination fees; and
 - (ii) comply with any conditions specified in the regulations referred to in **subsection (2)**.
- (2) The regulations may specify conditions for the protection or compensation of persons who exploited the plant variety, or took definite steps to do so, between the date on which the PVR application lapsed and the date on which the application for restoration was publicly notified. 10

Subpart 4—Restoration of cancelled PVRs

- 94 Restoration of cancelled PVR** 15
- (1) This section applies if a PVR is deemed to be cancelled under **section 86(2)** because of a failure to pay a renewal fee.
 - (2) The Commissioner may, on application, restore the PVR if—
 - (a) the Commissioner is satisfied that the failure to comply with **section 86(1)** was unintentional; and 20
 - (b) the applicant has complied with **section 100(1)(b)(i) and (ii)**.
 - (3) The application must be made in accordance with **section 95**.
 - (4) The Commissioner must consider the application in accordance with **sections 97 to 100** and any procedures specified in the regulations.
 - (5) The Commissioner must— 25
 - (a) notify the PVR holder of the Commissioner’s decision and the reasons for it; and
 - (b) if the PVR is restored, record the restoration in the register.
 - (6) If the PVR is restored, the cancellation referred to in **subsection (1)** is taken never to have occurred. 30
- 95 Application for restoration of cancelled PVR**
- (1) An application to restore a cancelled PVR may be made—
 - (a) by the person who was the PVR holder immediately before it was cancelled; or
 - (b) if, immediately before it was cancelled, the PVR was held by 2 or more persons, by 1 or some (but not all) of those persons, but only with the consent of the Commissioner. 35

-
- (2) The application must—
- (a) be made—
 - (i) within the period specified in the regulations (but *see* **subsection (3)**); and
 - (ii) in the way specified in the regulations; and 5
 - (b) include—
 - (i) a full explanation of the circumstances that led to the failure to pay a renewal fee; and
 - (ii) if the application is made after the end of the period referred to in **subsection (2)(a)(i)**,— 10
 - (A) a full explanation of the circumstances that caused the delay; and
 - (B) the reasons why it was not an undue delay; and
 - (iii) any other information specified in the regulations; and
 - (c) be accompanied by any fee specified in the regulations for making the application. 15
- (3) The Commissioner may accept an application for restoration made after the end of the period referred to in **subsection (2)(a)(i)** if satisfied that the application was made without undue delay.
- 96 No prima facie case made out** 20
- (1) The Commissioner may dismiss an application made under **section 94** if they are not satisfied that the application for restoration discloses a prima facie case for restoring the PVR.
- (2) However, before doing so, the Commissioner must—
- (a) notify the applicant of the Commissioner’s intention to dismiss the application and the reasons for it; and 25
 - (b) give the applicant a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in considering the application.
- (3) For the purposes of this section, the Commissioner may require the applicant for restoration to provide any further evidence that the Commissioner thinks fit. 30
- 97 Consideration of application**
- (1) This section applies if an application is made under **section 94** and is not dismissed under **section 96**.
- (2) The Commissioner must publicly notify the application and make it publicly available. 35

98 Opposition

- (1) A person may, by giving a notice of opposition, oppose the restoration of a PVR on 1 or both of the following grounds:
- (a) that the failure to comply with **section 86(1)** was intentional;
 - (b) if the application to restore the PVR was accepted under **section 95(3)**, that there was an undue delay in making the application. 5
- (2) A notice of opposition must be given—
- (a) in the way specified in the regulations; and
 - (b) within the period specified in the regulations.

99 Consideration of application and notices of opposition 10

- (1) This section applies after the close of the period for giving a notice of opposition to an application to restore a cancelled PVR.
- (2) As soon as practicable after the close of that period, the Commissioner must—
- (a) give the applicant a copy of any notices of opposition received; and
 - (b) publicly notify all notices of opposition and make them publicly available. 15
- (3) The Commissioner must—
- (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and
 - (b) take the notices of opposition and any submissions into account in considering the application to restore the PVR; and 20
 - (c) if the applicant or an opponent has requested a hearing, give the applicant and all opponents a reasonable opportunity to be heard before the Commissioner decides the application.

100 Conditions of restoration 25

- (1) If the Commissioner is satisfied that the failure to comply with **section 86(1)** was unintentional and that the PVR should be restored, they must—
- (a) notify the applicant that the Commissioner is satisfied that the PVR may be restored (subject to the applicant complying with **paragraph (b)(i) and (ii)**); and 30
 - (b) give the applicant a reasonable time (specified in the notice) to—
 - (i) pay all unpaid PVR renewal fees; and
 - (ii) comply with any conditions specified in the regulations referred to in **subsection (2)**.
- (2) The regulations may specify conditions for the protection or compensation of persons who exploited the protected variety, or took definite steps to do so, 35

between the date on which the PVR was cancelled and the date on which the application for restoration was publicly notified.

Part 7

Compulsory licences

Subpart 1—Grant of compulsory licences and criteria 5

101 Effect of compulsory licence

- (1) A compulsory licence for a protected variety (**variety A**) may authorise the licensee to undertake 1 or more restricted acts in New Zealand in relation to propagating material of 1 or more of the following:
 - (a) variety A: 10
 - (b) a plant variety that is essentially derived from variety A:
 - (c) a plant variety that is dependent on variety A.
- (2) A compulsory licence may also require the PVR holder to supply propagating material to the licensee on terms (including as to price) set out in the licence.
- (3) A compulsory licence— 15
 - (a) is not exclusive; and
 - (b) is limited to New Zealand; and
 - (c) may be limited geographically within New Zealand or limited, temporarily or otherwise, as the Commissioner considers appropriate.
- (4) A compulsory licence has effect as if it were a licence entered into by agreement between the PVR holder (as licensor) and the licensee. 20
- (5) A PVR holder and a licensee may, by agreement,—
 - (a) with the approval of the Commissioner, amend the licence; or
 - (b) with the approval of the Commissioner, revoke the licence; or
 - (c) with the approval of the Commissioner, transfer the licence to another licensee; or 25
 - (d) do any other thing that the parties to a licence could do.

102 Grant of compulsory licence

- (1) A person may apply to the Commissioner for a compulsory licence for a protected variety in the prescribed manner. 30
- (2) Before deciding the application, the Commissioner must—
 - (a) give the applicant and the PVR holder a reasonable opportunity to be heard; and
 - (b) take any submissions into account in deciding whether to grant or dismiss the application for a compulsory licence. 35

- (3) The Commissioner must deal with the application in accordance with this sub-part and any procedures specified in the regulations.
- (4) After considering the application, the Commissioner must,—
- (a) if satisfied that the criteria for granting a compulsory licence in **section 103** are met, grant the licence; or 5
 - (b) otherwise, refuse to grant the licence.
- (5) If the Commissioner grants a compulsory licence, the Commissioner must—
- (a) notify the PVR holder, the licensee; and
 - (b) publicly notify the licence in the journal and record it in the register.
- (6) If the Commissioner refuses to grant a compulsory licence, they must notify 10 the applicant and the PVR holder of the decision and the reasons for it.

103 Criteria for granting compulsory licence

- (1) The criteria for granting a compulsory licence for a protected variety are that—
- (a) 3 years have elapsed from the date on which the PVR was granted; and
 - (b) the applicant has been unable, after making reasonable efforts, to obtain 15 authorisation from the PVR holder to undertake the restricted acts in respect of which the compulsory licence is sought; and
 - (c) it is in the public interest that the compulsory licence be granted.
- (2) For the purposes of **subsection (1)(c)**, the Commissioner must have regard 20 to—
- (a) whether the protected variety (and, if applicable, any essentially derived or dependent varieties) are reasonably available to the public or any sector of the public (for example, growers), and in doing so consider whether—
 - (i) the kinds of propagating material from the protected variety 25 (including material for consumption) that are available; and
 - (ii) who the material is available to; and
 - (iii) the quantity and quality of material that is available; and
 - (iv) the price at which the material is available; and
 - (b) whether the PVR holder has had a reasonable opportunity to make the 30 relevant plant varieties available; and
 - (c) the desirability of encouraging innovation in plant breeding; and
 - (d) the need to protect the life and health of humans, animals, and plants; and
 - (e) any other matters the Commissioner considers relevant. 35

104 Royalty payable by licensee

- (1) A compulsory licence for a protected variety is subject to the condition that the licensee must pay a royalty to the PVR holder for exploiting the protected variety.
- (2) The compulsory licence— 5
- (a) must set out—
- (i) the amount of, or method of calculating, the royalty; and
- (ii) when the royalty must be paid; and
- (b) may set out any other matters relating to payment of the royalty that the Commissioner considers appropriate. 10

Subpart 2—Applications for compulsory licences**105 Application for compulsory licence**

An application for a compulsory licence for a protected variety must—

- (a) be made in the way specified in the regulations; and
- (b) include the following information: 15
- (i) the protected variety;
- (ii) any essentially derived or dependent varieties to which the licence will also apply;
- (iii) the restricted acts to be authorised;
- (iv) details of the efforts made by the applicant to obtain authorisation from the PVR holder (*see section 103(1)(b)*): 20
- (v) any other information specified in the regulations; and
- (c) be accompanied by any fee specified in the regulations.

106 Application to be notified and made publicly available

The Commissioner must publicly notify an application for a compulsory licence, and make it publicly available, as soon as practicable after they receive it. 25

107 Commissioner's powers to obtain information

- (1) The Commissioner may request the applicant to give the Commissioner any other information reasonably needed by the Commissioner to properly consider the application for a compulsory licence. 30
- (2) The Commissioner's request must be made in writing and allow the applicant the prescribed time (specified in the notice) to comply with it.
- (3) The Commissioner—
- (a) may, subject to **subsection (4)**, defer consideration of the application until the request is complied with; and 35

- (b) must make any information given in response to the request publicly available unless the Commissioner has reasonable grounds to believe that the information should not be made publicly available.
- (4) If the applicant does not comply with the request within the specified time,—
 - (a) the application for a compulsory licence lapses; and 5
 - (b) the Commissioner must publicly notify that fact.
- (5) For the purpose of considering the application, the Commissioner may obtain any other information the Commissioner considers appropriate.

108 Content of compulsory licence

A compulsory licence for a plant variety must set out the following: 10

- (a) the plant variety, and any essentially derived or dependent varieties, to which it relates:
- (b) the restricted acts that it authorises the licensee to undertake:
- (c) the material in relation to which the licensee is authorised to undertake those activities: 15
- (d) the dates on which it comes into force and expires:
- (e) the matters relating to the royalty referred to in **section 104(2)**:
- (f) if the PVR holder is required to supply propagating material (*see section 101(2)*), what must be supplied and the terms (including as to price) on which it must be supplied: 20
- (g) any other terms and conditions that the Commissioner considers appropriate.

Subpart 3—Amendment or revocation of compulsory licences

109 Amendment or revocation of compulsory licence

- (1) A compulsory licence may be amended or revoked by the Commissioner,— 25
 - (a) on application by the PVR holder or licensee, if the PVR holder and licensee as parties to the licence agree to the amendment or revocation and the Commissioner approves their agreement; or
 - (b) on application by the PVR holder or licensee, if the compulsory licence includes provisions allowing the PVR holder or licensee to revoke the licence without the agreement of the other party (for example, as a result of a breach of the licence), in accordance with those provisions; or 30
 - (c) on application under **section 111**.
- (2) This section does not limit **section 101(5)**.

110 Grounds for Commissioner to amend or revoke

There are grounds for the Commissioner to amend or revoke a compulsory licence on application under **section 111** if—

- (a) it is no longer in the public interest for the compulsory licence to remain in force; or 5
- (b) the licensee has breached a condition of the licence.

111 Amendment or revocation by Commissioner on application

- (1) The Commissioner may, on application by any person, amend or revoke a compulsory licence if satisfied that there are grounds to do so under **section 110**.
- (2) The application must be made in accordance with **section 112**. 10
- (3) The Commissioner must consider the application in accordance with **section 113** and any procedures specified in the regulations.
- (4) If the Commissioner amends or revokes the licence, they must—
 - (a) notify the applicant, the licensee, and the PVR holder of the amendment or revocation and the reasons for it; and 15
 - (b) publicly notify the amendment or revocation.
- (5) If the Commissioner dismisses the application, they must notify the applicant, the licensee, and the PVR holder of the decision and the reasons for it.

112 Application to Commissioner to amend or revoke compulsory licence

The application under **section 111** must— 20

- (a) be made in the prescribed manner; and
- (b) include the following information:
 - (i) the grounds on which the amendment or revocation is sought;
 - (ii) any other information specified in the regulations; and
- (c) be accompanied by any fee specified in the regulations. 25

113 Consideration of application

- (1) This section applies if an application is made under **section 111**.
- (2) The Commissioner must—
 - (a) give a copy of the application to the licensee and PVR holder (if they are not the applicant); and 30
 - (b) give the applicant, licensee, and PVR holder a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in deciding whether to amend or revoke the licence.

Part 8

Administration, secondary legislation, and other matters

Subpart 1—Commissioner and Assistant Commissioners

114 Commissioner and Assistant Commissioners

- (1) The chief executive must appoint a person as the Commissioner of Plant Variety Rights. 5
- (2) The chief executive may appoint 1 or more Assistant Commissioners of Plant Variety Rights.
- (3) The appointments must be made in accordance with the Public Service Act 2020. 10
- (4) An appointment may be held in conjunction with any other office in the Ministry.

115 Functions

- (1) The Commissioner—
 - (a) has the functions conferred on them by this or any other enactment; and 15
 - (b) has the powers necessary to perform their functions.
- (2) An Assistant Commissioner—
 - (a) may perform the functions and exercise the powers of the Commissioner (other than the power to delegate under **section 116**); and
 - (b) is subject to the control of the Commissioner. 20

116 Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate any of their functions and powers, except this power of delegation, to any person.
- (2) A delegation may be made—
 - (a) generally or particularly; and 25
 - (b) subject to any limitations the Commissioner thinks appropriate.
- (3) A delegate may perform a delegated function or exercise a delegated power in the same manner, and subject to the same restrictions, and with the same effect as if it had been conferred on them directly by this Act.
- (4) A delegate is presumed to be acting within the terms of the delegation in the absence of proof to the contrary. 30
- (5) The delegation of a function or power does not prevent the Commissioner from performing the function or exercising the power.

117 Liability of Commissioner and others

The Commissioner, an Assistant Commissioner, or any other person acting on their behalf is not personally liable for any act or omission done in good faith in the performance or intended performance or exercise of the Commissioner's functions, duties, or powers.

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118 Hearing before exercise of Commissioner's discretion

The Commissioner must not exercise any of the Commissioner's discretionary powers under this Act or the regulations adversely to any applicant or other party to a proceeding before the Commissioner without first giving the person a reasonable opportunity of being heard in the prescribed manner.

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Compare: 2013 No 68 s 208

*Evidence***119 How to give evidence to Commissioner in proceedings**

(1) Evidence must be given by affidavit or statutory declaration in proceedings before the Commissioner under this Act.

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(2) However, the Commissioner may—

(a) take oral evidence instead of, or as well as, an affidavit or a declaration; and

(b) allow a witness to be cross-examined on the witness's affidavit, declaration, or oral evidence.

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(3) A statutory declaration may be used before the court in any appeal instead of evidence by affidavit and, if used in this way, has all the same incidents and consequences as evidence by affidavit.

(4) Section 111 of the Crimes Act 1961 (which relates to false statements or declarations) applies to every affidavit and statutory declaration made for the purposes of this Act.

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Compare: 1953 No 64 s 96(1), (4)

120 Commissioner may receive evidence on oath

(1) The Commissioner may also administer oaths to any witness in proceedings before them.

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(2) Evidence given on oath before the Commissioner is given in judicial proceedings for the purposes of sections 108 and 109 of the Crimes Act 1961 (which relate to perjury).

Compare: 1953 No 64 s 96(2), (3)

121 Issuing of summons by Commissioner

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(1) The Commissioner may issue a summons to a person requiring that person to attend a hearing before the Commissioner and to do all or any of the following:

- (a) give evidence:
- (b) give evidence under oath:
- (c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person that are relevant to the hearing. 5
- (2) The Commissioner may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.
- 122 Requirements for summons**
- (1) A summons issued by the Commissioner under **section 121** must be in writing, be signed by the Commissioner, and specify— 10
- (a) the date and time when, and the place where, the person must attend; and
- (b) the documents, things, or information that the person is required to bring and produce to the Commissioner; and
- (c) the entitlement to be paid or tendered a sum in respect of witnesses' fees, allowances, and expenses; and 15
- (d) the penalty for failing to attend.
- (2) A summons may be served by—
- (a) delivering it personally to the person summoned; or
- (b) posting it to the person summoned at that person's usual place of residence or address for service; or 20
- (c) sending it by electronic communication to the person's electronic address for service if the person has provided an electronic address for service.
- (3) A summons must,—
- (a) if it is to be served by personal delivery, be served at least 48 hours before the attendance of the witness is required: 25
- (b) if it is to be served by post, be served at least 10 days before the attendance of the witness is required:
- (c) if it is to be served by electronic communication, be served at least 48 hours before the attendance of the witness is required. 30
- (4) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.
- (5) A summons that is sent by electronic communication is treated as having been served not later than 2 days after the date on which it is sent.
- 123 Witnesses' fees, allowances, and expenses** 35
- (1) A witness appearing before the Commissioner under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.

- (2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the requirement to attend is served or at some other reasonable time before the hearing.

124 Offence of failing to comply with summons

- (1) A person summoned to attend before the Commissioner commits an offence if the person, without sufficient cause,— 5
- (a) fails to attend in accordance with the summons; or
 - (b) does not give evidence when required to do so; or
 - (c) does not give evidence under oath when required to do so; or
 - (d) does not answer any question that is lawfully asked by the Commissioner; or 10
 - (e) does not provide any documents, things, or information that the summons requires the person to provide.
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000. 15
- (3) A person must not be convicted of an offence against this section if witnesses' fees, allowances, and expenses to which the person is entitled under **section 123** have not been paid or tendered to them.

Appeals against Commissioner's decisions

125 Appeal to High Court 20

- (1) A person may appeal to the court against a decision of the Commissioner if—
- (a) the decision is a kind of decision listed in **Schedule 2** as an appealable decision; and
 - (b) the person is a kind of person listed in **Schedule 2** as a person who may appeal against that decision. 25
- (2) An appeal must be made—
- (a) in accordance with the rules of court; and
 - (b) within the appeal period specified in **Schedule 2** for the appeal; and
 - (c) in any other case, within—
 - (i) 20 working days of the date of the decision; or 30
 - (ii) any further time the court allows on an application made before or after that period expires.

Compare: 2013 No 68 s 214

126 Decision stayed pending determination of appeal

If an appeal against a decision is made under **section 125**, the operation of that decision is stayed until the appeal is finally disposed of, unless the court orders otherwise.

127 Appeals against decisions of High Court on appeal

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(1) A decision of the court on an appeal against a decision of the Commissioner may be appealed to the Court of Appeal if—

- (a) the decision was made under **section 28** (which relates to the grant of a PVR); or
- (b) the decision was made under **section 80** (which relates to the cancellation or nullification of a PVR by the Commissioner); or
- (c) the decision was to issue a compulsory licence under **section 102**; or
- (d) the court or the Court of Appeal gives leave.

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(2) All other decisions of the court on an appeal against a decision of the Commissioner are final.

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(3) However, this section does not limit the rights of appeal under sections 68 and 69 of the Senior Courts Act 2016.

Compare: 2013 No 68 s 215

Subpart 2—Other administrative matters*Plant variety rights register*

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128 Register

(1) The Commissioner must keep a register of plant variety rights in New Zealand in accordance with this Act and the regulations.

(2) **Sections 138 and 139** provide for evidence relating to the PVR register.

(3) The purpose of the PVR register is to—

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- (a) enable members of the public to—
 - (i) know what PVRs are in force and the key dates for those PVRs (for example, the date of filing of the PVR application); and
 - (ii) know who the PVR holder is and who has other interests in the PVR (for example, under a mortgage or licence) and the addresses for service of those persons; and
 - (iii) find out about the scope of a PVR; and
 - (iv) find out about other matters affecting the validity and ownership of the PVR or any licensees of the PVR; and

30

(b) facilitate the carrying out of the Commissioner's functions under this Act.

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129 Form of register

The register may—

- (a) be an electronic register; or
- (b) be kept in any other manner that the Commissioner thinks fit.

Compare: 2013 No 68 s 196

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130 Contents of PVR register

- (1) The PVR register must contain the following information for each PVR in force in New Zealand:

- (a) the name, address, and address for service of each PVR holder:
- (b) the date of filing of each PVR application, the priority date or dates, the date on which the PVR is granted, and the date on which the next renewal fee is due: 10
- (c) the genus or species to which the PVR relates:
- (d) the denomination of the plant variety that is the subject of a PVR:
- (e) details of assignments and transmissions of PVRs: 15
- (f) the name, address, and address for service of licensees and other persons with interests in a PVR:
- (g) any other matters required by or under this Act to be entered in the PVR register.

- (2) The PVR register may also contain any other information that the Commissioner considers necessary or desirable. 20

- (3) If the Commissioner is satisfied, on the application of any person, that the disclosure of that person's address (as entered in the register) would be prejudicial to the safety of that person or their family, the Commissioner may direct that that information not be available for inspection or otherwise disclosed. 25

- (4) No notice of any trust may be entered in the PVR register, and the Commissioner is not affected by any notice of that kind.

Compare: 2013 No 68 s 197

Searches of PVR register and obtaining PVR information

131 Search of PVR register

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A person may search the PVR register in accordance with this Act or the regulations.

Compare: 2013 No 68, s 198

132 Requests for PVR information and certified copies

The Commissioner must, if a person requests it in the prescribed manner, give the person— 35

- (a) a copy of, or an extract from, a PVR or any registered document that is certified by the Commissioner as a true copy of, or extract from, the original for the purposes of **section 138**.
 - (b) a certificate as to any of the matters stated in **section 139**:
 - (c) any prescribed information concerning a PVR or PVR application. 5
- Compare: 2013 No 68 s 199

Changes to PVR register and other official documents

133 Changes to PVR register

The Commissioner may make changes to the PVR register in accordance with this Act or the regulations. 10

Compare: 2013 No 68 s 200

134 Commissioner may correct own mistakes in PVR register, etc

- (1) The Commissioner may correct an error or omission that the Commissioner is satisfied has been made by the Commissioner in—
 - (a) the PVR register; or 15
 - (b) any PVR; or
 - (c) any other document issued under this Act.
- (2) The Commissioner must, before making the correction,—
 - (a) give notice that the Commissioner proposes to make the correction to persons that the Commissioner thinks have an interest in it; and 20
 - (b) give those persons a reasonable opportunity to be heard.
- (3) The Commissioner may require production of the PVR or other document to make the correction.

Compare: 2013 No 68 s 201

135 Commissioner may correct other persons' mistakes in PVR register, etc 25

- (1) The Commissioner may (on application by any person or on the Commissioner's own initiative) correct an error or omission that the Commissioner is satisfied has been made by any person (other than the Commissioner) in—
 - (a) the PVR register; or
 - (b) any PVR; or 30
 - (c) any PVR application; or
 - (d) any documents filed in connection with a PVR application or filed in proceedings before the Commissioner in connection with a PVR or PVR application.
- (2) Any person (whether or not that person made the error or omission) may apply 35 for a correction under this section in the prescribed manner.

- (3) In the case of an application made in reliance on **subsection (1)(c) or (d)**, the application must be accompanied by the prescribed fee (if any).
- (4) The Commissioner must, before making the correction, publicly notify the nature of the proposed correction if the Commissioner thinks that—
- (a) the correction would materially alter the meaning or scope of the document to be corrected; and
 - (b) it ought not be made without notice to persons who have an interest in it.
- (5) If a person gives notice to the Commissioner of opposition to the application for the proposed correction within the prescribed time, the Commissioner must, before deciding the matter,—
- (a) give notice of the opposition to the applicant (if any); and
 - (b) give the applicant (if any) and opponent a reasonable opportunity to be heard.
- Compare: 2013 No 68 s 202
- 136 Commissioner may alter certain inconsistent information** 15
- (1) This section applies if information in the PVR register relating to a person is inconsistent with the primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Commissioner may, in the prescribed manner (if any), alter the information in the PVR register so that it is consistent with the primary business data in the New Zealand Business Number Register. 20
- (3) In this section, **primary business data** has the same meaning as in section 20(2) of the New Zealand Business Number Act 2016.
- Compare: 2013 No 68 s 202A
- 137 Court may correct PVR register** 25
- (1) The court may, on application of any person aggrieved, order the PVR register to be corrected by making an entry, or varying or deleting an entry, in it.
- (2) In a proceeding under this section, the court may determine any question that it is necessary or expedient to decide in connection with the correction of the PVR register. 30
- (3) The applicant for correction must give notice of the application in the prescribed manner to the Commissioner.
- (4) The Commissioner is entitled to appear and be heard on the application, and must appear if so directed by the court.
- (5) Any order by the court under this section must direct that notice of the order must be served on the Commissioner in the prescribed manner. 35

- (6) The Commissioner must, on receipt of notice of an order, correct the PVR register accordingly.

Compare: 2013 No 64 s 203

Evidence

138 Evidence: PVR register and PVRs 5

- (1) The PVR register is prima facie evidence of any matters required or authorised by or under this Act to be entered in it.
- (2) A copy of, or an extract from, a PVR or registered document that purports to be certified as a true copy or extract by the Commissioner is admissible in evidence in legal proceedings as if it were the original. 10

Compare: 2013 No 68 s 204

139 Evidence: anything done by Commissioner

- (1) A certificate purporting to be signed by the Commissioner in relation to the matters referred to in **subsection (2)** is for all purposes prima facie evidence of those matters specified in the certificate. 15
- (2) The matters are—
- (a) that anything that the Commissioner is authorised to do by or under this Act or any other enactment in relation to PVRs or PVR applications (including entries in the PVR register) has or has not been done; or
- (b) that anything that the Commissioner is authorised or required to do by or under this Act or any other enactment in relation to PVRs or PVR applications has been lawfully done; or 20
- (c) that any entry in the PVR register is as stated in the certificate.

Compare: 2013 No 68 s 205

Confidentiality 25

140 Obligation of confidentiality on applicant, iwi, and hapū, etc

- (1) This section applies in relation to any engagement between a breeder and a person, iwi, hapū, or group representing Māori before the breeder lodges a PVR application (the **parties**).
- (2) The parties— 30
- (a) must keep confidential all information that comes into their knowledge as a result of engagement before an application is made; and
- (b) must not disclose any of that information except—
- (i) with the consent of the person to whom the information relates or to whom the information is confidential; or 35
- (ii) to the extent that the information is already in the public domain:

- (iii) to the extent required by an order of any court.
- (3) The obligation imposed by **subsection (2)(a)** operates subject to **section 45**, which provides that information submitted with an application must be made publicly available.
- 141 Breach of confidentiality proceedings** 5
- Any party who alleges that another party has acted in breach of **section 140** may bring proceedings for breach of confidentiality in the court.
- 142 Types of relief available for breach of confidentiality**
- The relief that the court may grant for a breach of confidentiality includes—
- (a) an injunction; and 10
- (b) at the option of the plaintiff, damages or an account of profits.
- Fees and other money*
- 143 Fees and other money**
- (1) A fee specified in, or other money required to be paid under, this Act or the regulations must be paid to the Commissioner in accordance with this Act and the regulations. 15
- (2) If an application is required to be accompanied by a fee, the application is taken not to have been made until the fee is received by the Commissioner.
- (3) If any other fee is payable in relation to a thing to be done by the Commissioner, the Commissioner may defer doing the thing until the fee is paid. 20
- (4) Regulations made under **section 150(1)(o)** (relating to fees) may—
- (a) specify a fee or the manner in which it is to be calculated;
- (b) specify when, or the time within which, the fee must be paid (if that is not specified in this Act):
- (c) specify how the fee may or must be paid: 25
- (d) authorise the Commissioner to waive or refund a fee payable by 1 or more named persons.
- 144 Payment and application of fees and other money paid under this Act**
- (1) The Commissioner must pay all the fees or other money paid to them under this Act into a Departmental Bank Account. 30
- (2) The Commissioner may refund any sum paid to the Commissioner by mistake, or any sum the payment of which is not required by the regulations, and the money refunded may be paid out of public money without further appropriation than this Act.
- (3) Any amount of a fee or other money required to be paid by this Act or the regulations that is not paid is recoverable in a court of competent jurisdiction as 35

a debt due to the Crown or, if the Act or regulations require it to be paid to a person other than the Commissioner, as a debt to that person.

- (4) To avoid doubt, this section applies in relation to fines and costs orders imposed under this Act other than fines for offences.

Compare: 2013 No 68, s 238(2)–(5)

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Journal and other publications

145 Commissioner must publish journal

- (1) The Commissioner must periodically publish a journal containing—
- (a) prescribed details concerning PVRs and PVR applications (for example, the names of PVR holders and brief descriptions of the PVRs); and 10
 - (b) any other information required by this Act, the regulations, or any other law to be published in it; and
 - (c) other information concerning PVRs or PVR applications that the Commissioner thinks is useful or desirable for PVR holders, PVR applicants, licensees, or the public to know. 15
- (2) The journal may be published electronically or in any other manner that the Commissioner thinks fit.

Compare: 2013 No 68 s 206

Electronic filing and service, etc

146 Electronic filing and service, etc 20

- (1) This section applies to a requirement under this Act or the regulations for—
- (a) a person to file information or a document with, or serve or give information or a document to, the Commissioner; and
 - (b) the Commissioner to serve or give information or a document to any person. 25
- (2) A requirement referred to in **subsection (1)(a)** must be met by using a prescribed electronic delivery method (or another delivery method permitted by the regulations) in the prescribed manner.
- (3) A requirement referred to in **subsection (1)(b)** must be met—
- (a) by using a prescribed electronic delivery method (or another delivery method permitted by the regulations) in the prescribed manner; or 30
 - (b) by other means that are reasonable in the circumstances.
- (4) Anything that is filed, served, or given by a prescribed electronic or other delivery method must be treated as received for the purposes of that requirement when specified by the regulations. 35
- (5) However, this section does not apply to a requirement—

- (a) to file, serve, or give information or documents in any proceeding in a court; or
 - (b) for which a particular or different method is specified in this Act or the regulations.
- (6) In this section, **information or a document** includes any notice, application, request, certificate, correspondence, or other type of information or document referred to in or under this Act. 5

Compare: 2013 No 68 s 229

Serving of notices and other documents

- 147 Service of notices (other than those given to or by Commissioner)** 10
- (1) Any notice or any other document required to be served on, or given to, any person under this Act or the regulations (other than a notice or other document given to or by the Commissioner) is sufficiently served or given if the notice or document is—
- (a) delivered personally or posted to the person at the person’s address for service or last known place of residence or business; or 15
 - (b) sent by fax or electronic communication to the person’s last known fax number or electronic address; or
 - (c) made available to the person in accordance with a prescribed electronic delivery method (if permitted under the regulations). 20
- (2) A notice or document that is sent to a person at a fax number or an electronic address must be treated as received by that person on the second working day after the date on which it is sent.
- (3) A notice or document that is posted to a person must be treated as received by that person not later than 7 days after the date on which it is posted. 25
- (4) However, a notice or document must not be treated as received if the person to whom it is posted or sent proves that it was not received, otherwise than through fault on the person’s part.
- (5) A notice or document that is made available to a person by the prescribed electronic delivery method must be treated as received by that person when specified by the regulations. 30
- (6) This section does not—
- (a) apply to any requirement to which **section 146(5)(a)** applies:
 - (b) apply to notices or other documents served, given, or filed in any proceeding in any court or to the extent that a different or particular delivery method is specified by this Act or the regulations. 35

Compare: 2013 No 68 s 233

*Meanings of certain terms***148 Meaning of publicly notify**

- (1) If the Commissioner is required to **publicly notify** a document or information, they must publish a notice about it in the journal.
- (2) The Commissioner must do so as soon as practicable after they receive the document or information, unless this Act provides otherwise. 5
- (3) The notice must—
 - (a) set out, or give a summary of, the document or information; and
 - (b) if the document or information is required to be made publicly available, state where it is available; and 10
 - (c) if the document or information relates to a matter about which a notice of opposition may be given,—
 - (i) state that anyone wishing to do so may give a notice of opposition to the Commissioner; and
 - (ii) set out how and by what date notices of opposition must be given. 15

149 Meaning of make publicly available

- (1) If the Commissioner is required to **make publicly available** a document or other information, they must—
 - (a) publish it on an Internet site maintained by or on behalf of the Commissioner; and 20
 - (b) ensure that it can be viewed by members of the public on that site at all reasonable times free of charge; and
 - (c) comply with any other notification requirements specified in the regulations.
- (2) The Commissioner must do so as soon as practicable after the document or information is given to the Commissioner, unless this Act provides otherwise. 25
- (3) **Subsection (1)** does not apply to any document or other information—
 - (a) that is subject to legal professional privilege; or
 - (b) that is subject to an order of a court or tribunal prohibiting disclosure of the document or information in the document; or 30
 - (c) that the Commissioner has reasonable grounds to believe should not be open to public inspection.

Subpart 3—Secondary legislation

150 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following: 35

- Treaty-related matters*
- (a) listing which plant species are non-indigenous plant species of significance:
 - (b) prescribing matters relating to the Māori Plant Varieties Committee:
Applications, requests, notices, and proceedings 5
 - (c) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of PVR applications and the granting of PVRs under this Act, including—
 - (i) requiring PVR applications, specifications, and any other documents relating to PVR applications or to be filed, made, or otherwise provided to the Commissioner in a prescribed manner: 10
 - (ii) requiring those PVR applications and documents to be dealt with or proceeded with in a prescribed manner:
 - (iii) providing for further information or documents to be filed with or otherwise provided to the Commissioner in a prescribed manner: 15
 - (iv) specifying requirements relating to farm-saved seed:
 - (v) specifying requirements about the conduct of growing trials:
 - (d) providing for the procedure for applications or grants to which **Part 4 or 5** applies:
 - (e) requiring any applications, requests, or notices under this Act to be made or given in a prescribed manner: 20
 - (f) providing for the procedure to be followed in connection with any application, request, or notice under this Act, or in connection with any opposition, re-examination, revocation, or other proceeding before the Commissioner; and 25
 - (g) authorising the correction of irregularities of procedure:
 - (h) regulating the making of applications or requests or the giving of notices under this Act by agents, and prescribing classes of persons whom the Commissioner may refuse to recognise as agents:
 - (i) providing for all matters placed under the direction or control of the Commissioner by this Act or the regulations, including— 30
 - (i) providing for the Commissioner to extend time limits under the regulations or waive requirements of the regulations:
 - (ii) regulating applications for, oppositions to, and the granting of extensions of time limits by the Commissioner under this Act, including providing for the protection of persons who have in good faith begun to exploit a PVR for which an application for an extension is made: 35

- (iii) providing for the manner in which a reasonable opportunity to be heard must be given to persons (which may include the making of submissions in writing, the opportunity for an oral hearing, or both):
- (iv) providing for how statutory declarations for proceedings before the Commissioner must be made and given: 5
- (v) providing for the Commissioner to destroy documents and information provided to them in connection with any application, request, or notice that is abandoned, void, or otherwise inactive for the prescribed period: 10
- UPOV Convention*
- (j) the UPOV Convention:
- (k) setting out the English text of UPOV regulations as in force for New Zealand: 15
- Register*
- (l) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters relating to—
- (i) the operation of the register:
- (ii) access to and search of the register:
- (iii) the location of, and hours of access to, the register: 20
- (m) regulating the manner in which the Commissioner may alter information in the register, including prescribing procedures, requirements, and other matters in respect of an alteration:
- Journal*
- (n) prescribing the manner in which something must be published in the journal: 25
- Fees and penalties*
- (o) prescribing fees and penalties to be paid, or the means by which those fees and penalties may be calculated or ascertained, for any matter under this Act or the regulations: 30
- (p) prescribing the period for the payment of a renewal fee:
- (q) exempting, or providing for the Commissioner to exempt from, waive, or refund, fees, or penalties:
- General*
- (r) providing for— 35
- (i) the filing, serving, or giving of notices or other documents, or classes of notices or other documents, by an electronic method or any other method (including by making those notices or documents available to a person on an Internet site and for the person

- to be directly alerted to them by means of a notice to the person's last known electronic address or any other specified means); and
- (ii) when notices or documents are treated as received under that method; and
 - (iii) any other related matters: 5
 - (s) any other matters contemplated by this Act, necessary for its administration, or necessary for giving effect to this Act.
- (2) The structure of the fee system under this Act prescribed by regulations under **subsection (1)** may be such that the renewal fees—
- (a) recover a share of the costs incurred by the Commissioner in performing their functions under this Act or the Plant Variety Rights Act 1987; and 10
 - (b) recover those costs at a level that provides an appropriate incentive (having regard to the purpose of this Act set out in **section 3(a)**) for applicants or PVR holders to let those PVRs expire if they do not receive, or will not receive, sufficient benefit from having the PVRs. 15
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

151 Declaration of entity to be UPOV party

- (1) For the purpose of meeting New Zealand's international obligations, the Governor-General may, by Order in Council, declare a State, an international organisation, or any other international entity to be a UPOV party for the purposes of this Act. 20
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 4—Repeals and revocations 25

152 Repeals and revocations

- (1) The Plant Variety Rights Act 1987 (1987 No 5) is repealed.
- (2) The following are revoked:
 - (a) the Plant Variety Rights Regulations 1988 (SR 1988/101):
 - (b) the Plant Variety Rights (Grantees' Rights) Order 1997 (SR 1997/358): 30
 - (c) the Plant Variety Rights (Fees) Order 1999 (SR 1999/159).

Subpart 5—Amendments

153 Consequential amendments to other Acts

Amend the enactments specified in **Schedule 3** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 12

1 Grants applied for or made before commencement of this clause

- (1) This clause is for the purpose of determining the rights, interests, entitlements, immunities, or duties of any person in relation to a plant variety to which this clause applies. 5
- (2) This clause applies to a plant variety if—
- (a) a plant variety right was granted for that variety before the commencement of **Part 4** of this Act; or 10
- (b) an application for the grant of a plant variety right for that variety was made before the commencement of **Part 4** of this Act.
- (3) If this clause applies,—
- (a) any right, interest, entitlement, immunity, or duty of any person in relation to the variety must be determined under the old law; and 15
- (b) without limiting **paragraph (a)**, the applicable definition of owner is the definition that was in force under the old law.
- (4) In this clause and in clauses 2 and 3, **old law** means the law as in force immediately before the commencement of **Part 4** of this Act.

Example 20

Person A obtained a grant before the commencement of this clause. Person B obtained a grant after the commencement of this clause but applied for that grant before the commencement of this clause. Person A and person B have both obtained grants in respect of wheat varieties (which are not vegetatively propagated). Their rights are determined under the old law. Their rights include the exclusive right to sell reproductive material of the protected variety. 25

Person A's rights and person B's rights are not infringed if another person propagates the relevant protected variety for non-commercial use, or uses it to breed a new variety (as long as this does not involve repeated use of the protected variety). This is because under the old law exceptions apply that allow this to happen. 30

Person A and person B do not have rights in respect of varieties that are essentially derived from the protected variety for which they hold a grant, and they do not have any of the other rights set out in this Act other than those that existed under the old law.

-
- (5) This clause is subject to clause 8 and does not prevent any applications made under that clause. 35
- (6) This clause is also subject to clause 9.

- 2 Continuation of applications, proceedings, actions, and matters made or commenced before commencement of this clause**
- (1) This clause applies to an application, proceeding, action, or other matter that—
- (a) was made or commenced before the commencement of **Part 4** of this Act; or 5
 - (b) otherwise relates to an application, proceeding, action, or other matter that was made or commenced before the commencement of **Part 4** of this Act.
- (2) If this clause applies, the application, proceeding, action, or other matter must be continued, considered, completed, and determined under the old law. 10
- (3) Without limiting **subclause (2)**, the applications, proceedings, actions, and other matters referred to in **subclause (1)** include the following:
- (a) applications under section 5 of the Plant Variety Rights Act 1987 that were made before the commencement of **Part 4** of this Act, including a proposal for a denomination to be approved by the Commissioner: 15
 - (b) objections under section 6 of the Plant Variety Rights Act 1987 that were made in respect of an application made before the commencement of **Part 4** of this Act:
 - (c) objections under section 15 of Plant Variety Rights Act 1987 that were made before the commencement of **Part 4** of this Act: 20
 - (d) requests under section 21 of the Plant Variety Rights Act 1987 that were made before the commencement of **Part 4** of this Act:
 - (e) proceedings for the infringement of any right, interest, or entitlement in relation to a variety that were commenced before the commencement of **Part 4** of this Act: 25
 - (f) any appeal under section 23 of the Plant Variety Rights Act 1987 that was commenced before the commencement of **Part 4** of this Act:
 - (g) proceedings for an offence under section 37 of the Plant Variety Rights Act 1987 that were commenced before the commencement of **Part 4** of this Act. 30
- (4) Without limiting **subclause (2)**, if this clause applies, the applicable definition of owner is the definition that was in force under the old law.

Example 1

A person makes an application for a plant variety grant before the commencement of **Part 4** of this Act. There is no statutory requirement for the Commissioner to consider whether a proposed denomination is likely to offend a significant section of the community, including Māori. 35

Example 2

Person A makes an objection under section 6 of the Plant Variety Rights Act 1987 in relation to an application for a grant made by person B before the commence- 40

ment of **Part 4** of this Act. The Commissioner must determine this question in accordance with the definition of owner in force under the old law. Under that definition, a person can be an owner if the person either bred or discovered the variety (subject to other requirements, such as that the variety must be new and distinct). If the variety was discovered it would mean that there is no requirement that there must have been a process of selection, propagation, and evaluation in the development of the variety.

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Example 3

Person A makes an objection under section 15(2) of the Plant Variety Rights Act 1987 before the commencement of **Part 4** of this Act that a grantee (**Person B**) was not the owner of the variety at the time the grant was made (the grant being made before the commencement of **Part 4** of this Act). As in example 2, the Commissioner must determine this according to the definition of owner in force under the old law.

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(5) This clause is subject to clause 8.

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3 Transitional provision relating to Plant Variety Rights (Grantees' Rights) Order 1997

Despite the repeal of section 17 of the Plant Variety Rights Act 1987 by **section 152** of this Act, the Plant Variety Rights (Grantees' Rights) Order 1997, as in force immediately before the commencement of this clause, continues in force for the purposes of—

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- (a) determining any rights, interests, entitlements, immunities, or duties of any person to whom **clause 1** applies; and
- (b) any application, proceeding, action, or other matter to which **clause 2** applies.

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Example

Person A obtained a grant before the commencement of this clause, and person B obtained a grant after the commencement of this clause but applied for that grant before the commencement of this clause. Person A's rights exist in vegetatively propagated begonias, and person B's rights exist in vegetatively propagated fruit trees.

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Person A's and person B's rights are determined under the old law. The exclusive rights include, in this case, both the right to sell reproductive material and propagate the relevant variety for the commercial production of fruit, flowers, and other products (as in both cases the plants fall into the category of vegetatively propagated fruit-producing plants, vegetatively propagated ornamental plants, or vegetatively propagated vegetable-producing plants).

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Person A and person B do not have rights in respect of varieties that are essentially derived from the protected variety and they do not have any of the other rights set out in this Act other than those that existed under the old law.

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- 4 Essentially derived varieties**
- A PVR granted under this Act in respect of a plant variety (**A**) does not confer any rights on the holder of the right in respect of an essentially derived variety (**A1**) if A1 was in existence before the commencement of this clause.
- 5 Plant variety rights register** 5
- (1) The register kept under section 14(3) of the Plant Variety Rights Act 1987 continues to be kept as the register under **section 128** of this Act.
- (2) The Commissioner must continue to record in the register, kept under **section 128** of this Act, all the matters required to be kept under section 14(3) of the Plant Varieties Act 1987 and the Plant Variety Rights Regulations 1988. 10
- (3) Any additional information requested by the Commissioner may be recorded on the Register kept under **section 128** of this Act.
- 6 Existing appointments preserved**
- (1) The person holding the position of Commissioner of Plant Variety Rights immediately before the commencement of this clause continues to hold office on and after the commencement of this clause as the Commissioner appointed under **section 114(1)** of this Act. 15
- (2) Any person holding the position of Assistant Commissioner of Plant Variety Rights immediately before the commencement of this clause continues to hold office on and after the commencement of this clause as an Assistant Commissioner appointed under **section 114(2)** of this Act. 20
- 7 Plant Variety Rights Office abolished**
- (1) The Plant Variety Rights Office is abolished.
- (2) **Subclause (1)** does not affect—
- (a) the employment or rights of any person: 25
- (b) fees payable under the Plant Variety Rights Regulations 1987, the Plant Variety Rights Regulations 1988, or this Act.
- 8 Compulsory licences**
- (1) An application for a compulsory licence under **Part 7** of this Act must be dealt with under this Act. 30
- (2) An application for a compulsory licence under the Plant Variety Rights Act 1987 made before the commencement of **Part 7** of this Act must be dealt with under the Plant Variety Rights Act 1987.
- (3) An application for a compulsory licence for a plant variety for which a plant variety right was granted under the Plant Variety Rights Act 1987 (being an application that is made on or after the commencement of **Part 7** of this Act) must be dealt with under this Act. 35

9 Renewal fees

Any renewal fee payable in respect of a PVR granted under this Act must also be paid in respect of a plant variety right granted under the Plant Variety Rights Act 1987.

10 Part 5 of this Act does not apply to a plant variety right granted under Plant Variety Rights Act 1987 5

Subpart 3 of Part 5 of this Act (which among other matters allows the Māori Plant Varieties Committee to consider and determine applications for cancellation or nullification of PVRs) does not apply in respect of—

- (a) a plant variety right granted under the Plant Variety Rights Act 1987; or 10
- (b) a PVR application made under **Part 4** before **subpart 3 of Part 5** comes into force.

Schedule 2

Appeals

s 125

	Section	Appealable decision	Who may appeal	Appeal period
1	s 28(3)(a)	Grant of a PVR	Any person aggrieved by the decision	28 days after notice given under s 28(4)
2	s 28(3)(b)	Refusal to grant a PVR	Applicant	28 days after notice given under s 28(6)
3	s 44(2)(a)	Cancellation of a PVR	Any person aggrieved by the decision	28 days after notification of the decision
4	ss 79 and 80	Nullification of a PVR	Any person aggrieved by the decision	28 days after notification of the nullification
5	ss 79 and 80	Cancellation of a PVR	Any person aggrieved by the decision	28 days after notification of the decision
6	s 87	Decision not to restore a lapsed PVR application	Any person aggrieved by the decision	28 days after notification of the decision
7	s 89	Decision that no prima facie case exists for restoration	Any person aggrieved by the decision	28 days after notification of the decision
8	s 94	Decision not to restore a cancelled PVR application	Any person aggrieved by the decision	28 days after notification of the decision
9	s 96	Decision that no prima facie case exists for restoration	Any person aggrieved by the decision	28 days after notification of the decision
10	s 102(4)(a)	Decision to grant a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
11	s 102(4)(b)	Decision not to grant a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
12	s 111	Decision not to amend or revoke a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
13	s 111	Decision to amend or revoke a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision

Schedule 3 Amendments to other enactments

s 153

Part 1 Amendments to Acts

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Commerce Act 1986 (1986 No 5)

In section 45(2)(e), replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”.

Disputes Tribunal Act 1988 (1988 No 110)

In section 2, definition of **intellectual property**, replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”. 10

Income Tax Act 2007 (2007 No 97)

In Schedule 14, item 12, replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”.

Patents Act 2013 (2013 No 68)

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In section 16(5), replace “that given to the term **variety** in section 2 of the Plant Variety Rights Act 1987” with “in **section 6** of the Plant Variety Rights Act **2021**”.

Public Works Act 1981 (1981 No 35)

In section 2, definition of **intellectual property**, replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”. 20

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

In Schedule 1, under the heading “**Category 2**”, replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”.

Part 2 Amendments to secondary legislation

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Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2020 (LI 2020/142)

In clause 3, definition of **uncertified seed**, paragraph (b), replace “Plant Variety Rights Act 1987” with “Plant Variety Rights Act **2021**”.