



## ANALYSIS

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1973, No. 37

**An Act to provide for the granting of proprietary rights to persons who breed or select plant varieties**

[21 November 1973]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Plant Varieties Act 1973.

(2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Appeal Authority” means the Appeal Authority constituted under section 25 of this Act:

“Breeder” means the breeder or discoverer of a new plant variety, his duly authorised agent, or his successor in title:

“*Gazette*” means the *New Zealand Gazette*; and includes the Plant Varieties Journal:

“Grant of plant selectors’ rights” or “grant” means a grant of plant selectors’ rights made under this Act:

“Minister” means the Minister of Agriculture and Fisheries:

“Plant Varieties Office” means the Plant Varieties Office established under section 5 of this Act:

“Plant variety” or “variety” means any cultivar, clone, line, stock, or hybrid which is capable of cultivation:

“Registrar” means the Registrar of Plant Varieties appointed in accordance with paragraph (a) of subsection (1) of section 7 of this Act; and, to the extent specified in subsection (3) of that section, includes an Assistant Registrar of Plant Varieties appointed in accordance with that section:

“Reproductive material” means reproductive material of plant varieties; and includes seeds for sowing, vegetative propagating material, and whole plants, and parts of plants where such parts may be used as propagating material:

“Sale” includes any disposition for valuable consideration and any offer for sale; and “sell” and “sold” have corresponding meanings.

**3. Act to bind the Crown**—This Act shall bind the Crown.

**4. Application of Act**—This Act shall apply to all plant varieties, groups of plant varieties, and species of plants to which the Governor-General, by Order in Council that is for the time being in force, declares that this Act shall apply.

**5. Plant Varieties Office—**(1) The Minister may from time to time, by notice in the *Gazette*, appoint a place to be the Plant Varieties Office.

(2) The Minister, from time to time by notice in the *Gazette*, may fix the hours during which the Plant Varieties Office shall be open for the transaction of public business under this Act, and may authorise the closing of the Plant Varieties Office for the transaction of public business on any day.

(3) Where the time prescribed for doing any act or taking any proceeding expires on a day on which the Plant Varieties Office is not open and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall be deemed to be in time, if it is done or taken on the next day on which the Plant Varieties Office is open.

**6. Seal of Plant Varieties Office—**(1) There shall be a seal of the Plant Varieties Office which shall be authenticated by the signature of the Registrar.

(2) Notice shall be taken judicially without further proof of—

- (a) The seal of the Plant Varieties Office; and
- (b) The appointment and signature of the Registrar.

**7. Registrar and other officers—**(1) There may from time to time be appointed under the State Services Act 1962—

- (a) A Registrar of Plant Varieties;
- (b) Such other officers and employees as may be necessary for carrying out the provisions of this Act.

(2) All such appointees shall be officers or employees of the Plant Varieties Office and as such shall be officers or employees of the Ministry of Agriculture and Fisheries. Any such appointment may be held either separately or in conjunction with any other office in that Ministry.

(3) In the event of any person being appointed in accordance with paragraph (b) of subsection (1) of this section to be an Assistant Registrar of Plant Varieties, that person, while he retains that office, shall have and may exercise, subject to the control and direction of the Registrar, all the powers, duties, and functions of the Registrar; and all references in this Act to the Registrar shall, so far as may be necessary for

the purpose of giving effect to the provisions of this section, be deemed to include a reference to every Assistant Registrar of Plant Varieties.

**8. Committees—**(1) The Minister may from time to time, by notice in the *Gazette*, appoint advisory committees to assist the Registrar for such purposes and during such periods as the Minister considers desirable.

(2) It shall be the duty of a member of an advisory committee who is in any way, whether directly or indirectly, interested in any application being considered by the committee to declare to the Registrar the nature of his interest.

**9. Officers and employees of Plant Varieties Office not to acquire interest in grant of plant variety rights—**(1) Every officer and employee of the Plant Varieties Office shall be incapable, during the period for which he holds his appointment and for one year thereafter, of applying under this Act for a grant of plant variety rights or of acquiring directly or indirectly, except under a will or on an intestacy, any right or interest in any such grant.

(2) Every person who acts in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

**10. Delegation—**(1) The Registrar may from time to time, by writing under his hand, either generally or particularly, delegate to such officer or officers or employee or employees of the Plant Varieties Office as he thinks fit all or any of the powers conferred on him by or under this Act or any other Act, including any powers delegated to him under any other Act, but not including this present power of delegation.

(2) Subject to any general or special directions given or conditions attached by the Registrar, the officer or employee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a

specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Registrar.

(6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Registrar by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Registrar; and in the event of the holder of a specified office to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding that office.

**11. Publication of certain matters—**(1) The Registrar shall publish in the *Gazette* all such particulars of applications for and grants of plant selectors' rights as are prescribed by regulations made under this Act and all such other matters as are directed by this Act or otherwise by law to be published therein and such other matters and information as may appear to him to be useful or important.

(2) The Registrar may prepare and publish, in such form as he thinks expedient, such indexes, particulars, abridgments of particulars, catalogues, and other works relating to plant varieties and grants of plant selectors' rights, as he thinks fit.

(3) The Registrar may maintain and revise from time to time a classification by variety of details filed in the Plant Varieties Office and open to public inspection and of such printed publications relating to plant selectors' rights as may be necessary or useful for the purpose of determining with readiness and accuracy the novelty of varieties for which applications for grants of plant selectors' rights are filed.

(4) All persons shall be deemed to have notice of an application for or grant of plant selectors' rights when the application or grant is notified in the *Gazette* as provided in this Act.

**12. Provision for publication of Plant Varieties Journal—**

(1) While the volume of matters to be published in the *Gazette* pursuant to this Act warrants their inclusion in a separate journal, the Registrar may issue periodically a journal, to be called the Plant Varieties Journal, which shall contain those matters.

(2) At least 28 days before the Registrar commences to issue the Plant Varieties Journal, he shall publish in the *Gazette* notice of his intention to do so.

(3) If at any time the Registrar proposes to cease issuing the Plant Varieties Journal, he shall, at least 28 days before doing so, publish in that Journal notice of his intention to do so.

(4) For the purposes of this Act publication in the Plant Varieties Journal shall be deemed to be publication in the *Gazette*, and references in this Act to the *Gazette* shall be construed accordingly.

**13. Application for grant—**(1) An application for a grant of plant selectors' rights in respect of any new plant variety to which this Act applies that has not previously been sold in New Zealand, and that has not been sold overseas for more than 4 years before the date of the application, may be made to the Registrar by or on behalf of any person claiming to be the breeder of a new plant variety, and may be made by any such person either alone or jointly with any other person.

(2) An application for a grant of plant selectors' rights may be withdrawn by the applicant at any time before the grant is made. The withdrawal of an application shall not affect the liability of the applicant for fees that have become payable up to the date of the withdrawal.

**14. Requirements of application—**Every application to the Registrar for a grant of plant selectors' rights under this Act shall be in writing, and shall be accompanied by—

- (a) Details of whether the plant variety was bred or discovered, or whether it resulted from a natural or induced mutation:
- (b) A description upon a form provided for the purpose by the Registrar detailing the botanical features of the variety in addition to diagrams and coloured photographs, as required by the Registrar:
- (c) Details of the features and qualities of the variety which the applicant considers distinguish it from known varieties of the same species:
- (d) A proposed name or other form of identification of the variety which, if approved, will form part of the grant of plant selectors' rights:

- (e) Details of any application for, or approval of a grant of rights for, the variety in an overseas country:
- (f) Such fees as may be prescribed from time to time by regulations made under this Act.

**15. Prerequisites to grant—**(1) Before the Registrar may make a grant of plant selectors' rights pursuant to any application, he shall be satisfied that the plant variety to which the application relates conforms with the criteria contained in the Schedule to this Act.

(2) The Registrar may require that any plant variety in respect of which an application for a grant of plant selectors' rights is made be test grown for such period, and in such place (whether in New Zealand or elsewhere), and subject to such conditions, as he thinks fit before he makes the grant, and may require that reproductive material and information necessary for the trials shall be supplied.

(3) If the Registrar considers that a plant variety does not comply with the criteria referred to in subsection (1) of this section, he may—

- (a) Refuse to make a grant of plant selectors' rights in respect of the variety; or
- (b) Make the grant subject to such conditions as he thinks fit.

(4) Any application which has been deferred for want of information, fees, or reproductive material for trial for one year from the date of application, may be declared null and void, or lose priority, as the Registrar sees fit.

**16. Application to be notified—**Every application for a grant of plant selectors' rights shall be notified in the *Gazette*, and shall thereafter be open to public inspection.

**17. Restriction upon publication before notification—**

(1) An application for a grant of plant selectors' rights, and any document or instrument which accompanies it, shall not, except with the consent of the applicant, be published by the Registrar or be open to public inspection at any time before it is notified in the *Gazette* pursuant to section 16 of this Act.

(2) The reports made by an advisory committee and the Registrar and his officers and employees in relation to any

application for a grant of plant selectors' rights shall not be liable to production or inspection in any legal proceeding unless the Court or officer having power to order discovery in the proceeding certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

**18. Protective direction**—(1) Any breeder who has duly deposited an application for protection of a new plant variety may apply to the Registrar for a protective direction while the application is being considered.

(2) Every breeder applying for a protective direction shall undertake not to sell or offer for sale plants of that variety while the application is being considered, unless the sale is for scientific purposes or of non-reproductive material:

Provided that the sale of the subsequent rights or the sale of reproductive material for the purposes of bulking up of stock for subsequent resale to the applicant shall be exempt from the provisions of this subsection.

(3) If the applicant satisfies the requirements of subsection (2) of this section, the Registrar may grant a protective direction, and while such a protective direction is in force anything which, if the plant selectors' rights to which the application in question relates had been granted, would have constituted an infringement of those rights shall be actionable under this section as if it were such an infringement.

(4) If the Registrar has reason to suspect that an applicant for a protective direction is not the breeder of the plant in respect of which application is made, he may refuse to grant a protective direction.

(5) The Registrar may withdraw a protective direction if requested to do so by the applicant or if he is satisfied that—

(a) The applicant has given an undertaking, whether or not for consideration, not to institute proceedings under this section; or

(b) A breach of the provisions of subsection (2) of this section has occurred.

(6) As soon as the Registrar has made a decision pursuant to section 15 of this Act to make a grant or to refuse to make a grant of plant selectors' rights, the protective direction in respect of that plant shall lapse.

(7) An appeal shall lie to the Appeal Authority in accordance with section 26 of this Act against any decision of the Registrar under this section, and notwithstanding subsection (6) of this section, until a decision has been made by the Appeal Authority in respect of the appeal, any protective direction that has been granted to the appellant in respect of that plant shall continue in force.

**19. Objections—**(1) If any interested person considers that he is likely to be unfairly affected by any application for a grant of plant selectors' rights which has been notified in the *Gazette* as aforesaid, he may lodge an objection to the application with the Registrar within 2 months from the date of the notification of the application in the *Gazette*. Where an objection is so lodged, the objector shall, as soon as practicable thereafter, serve a copy thereof on the applicant for the grant.

(2) Every such objection shall specify the reasons for the objection, and shall be accompanied by the fee prescribed by regulations made under this Act.

(3) Where an objection to an application has been lodged with the Registrar, the Registrar shall not make any grant of plant selectors' rights pursuant to the application until he has considered the objection and given the objector and the applicant for the grant a reasonable opportunity to be heard in respect thereof.

**20. Date and term of grant—**(1) Every grant of plant selectors' rights shall be dated with the date of the completion of the granting of the application.

(2) Except as otherwise expressly provided in this Act, the term of every grant shall be,—

(a) In the case of a grant in respect of any fruit trees, vines, or forest or ornamental trees to which this Act for the time being applies, a term of 18 years:

(b) In the case of every other grant, a term of 15 years.

(3) The Registrar shall enter the date of every grant in a register which he shall keep for the purpose.

(4) A grant shall cease to have effect, notwithstanding anything therein or in this Act, on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within that period.

(5) The holder of a grant of plant selectors' rights may at any time make an application to the Registrar offering to surrender his grant; and if, after notice of the application has been given in the manner prescribed by regulations under this Act, and after the procedure so prescribed for hearing any person on whom the right to object is conferred by such regulations has been followed, the Registrar is satisfied that the grant may properly be surrendered, he may accept the offer and terminate the period for which the grant shall have effect.

**21. Extension of term of grant**—If on an application made by the holder of a grant of plant selectors' rights the Registrar is satisfied that the holder of the grant has not been adequately remunerated by it, the Registrar may, by order, subject to such restrictions, conditions, and provisions (if any) as may be specified in the order,—

- (a) Extend the term of the grant for a period not exceeding 5 years; or
- (b) In exceptional cases, notwithstanding that the term of the grant has been previously extended or has expired, grant extension for a further term not exceeding 5 years.

**22. Rights of grantee**—(1) Every person who is for the time being the holder of a grant of plant selectors' rights shall, during the term of the grant or any extension thereof granted under section 21 of this Act have the exclusive right to—

- (a) Reproduce for sale, sell, or offer for sale whole plants or reproductive material of the plant variety to which the grant relates:
- (b) License others to reproduce or sell, or to both reproduce and sell, plants and reproductive material of that plant variety, subject to such conditions as he may impose including the payment of a royalty.

(2) Notwithstanding anything in this section, where it is necessary in the public interest to restrict the holder of a grant of plant selectors' rights from freely exercising those rights, the Minister may impose such restrictions on the exercise of those rights as he thinks fit.

(3) Notwithstanding subsection (1) of this section, any person may, without the authority of the holder of a grant of plant selectors' rights,—

- (a) Propagate, grow, and use plants of the variety to which the grant relates for non-commercial purposes:
  - (b) Hybridise any such plant or otherwise produce new varieties from it:
  - (c) Use plants or parts of plants to which the grant relates for human consumption or other non-reproductive purposes.
- (4) Nothing in this Act shall prevent—
- (a) The holder of a grant of plant selectors' rights from assigning, mortgaging, or otherwise disposing of his grant; or
  - (b) The devolution of any such grant by operation of law.

### **23. Obligations of grantee, and compulsory licences—**

(1) Notwithstanding anything in section 22 of this Act, the holder for the time being of a grant of plant selectors' rights shall ensure that plants of reasonable quality of the variety to which the grant relates are available to the public in reasonable quantities and at a reasonable price.

(2) Upon the application of any person, if the Registrar considers that the provisions of subsection (1) of this section have not been complied with by the holder of any grant, and after the Registrar has done whatever may be practicable to give the holder notice of the application and an opportunity of being heard, the Registrar may issue to the applicant a compulsory licence for the reproduction and sale of plants of the variety to which the grant relates in accordance with the provisions of subsection (1) of this section and subject to such conditions as the Registrar may impose, including the payment of a royalty.

(3) Subject to the provisions of this Act, upon the application of any person, the Registrar may, if he thinks fit, extend, limit, or vary in any other respect, or revoke, a compulsory licence.

**24. Revocation of a grant—**(1) If at any time during the term of a grant the Registrar is satisfied that the criteria

set out in the Schedule to this Act were not effectively complied with at the time of the application for the grant, he may declare the grant to be null and void.

(2) At any time commencing with the date of making a grant of plant selectors' rights, until the term of the grant expires, the Registrar may declare the grant null and void if he is satisfied that the breeder is no longer in a position to provide the Registrar, within a reasonable period, with reproductive material capable of producing the new variety with its morphological, physiological, and other characteristics as defined when the grant was made.

(3) Where the Registrar revokes any grant under this section, or refuses to renew any grant on an application for its renewal, the grant shall (notwithstanding the Registrar's decision) be deemed to be only suspended while it is still open for any person to appeal to the Appeal Authority, and thereafter while any appeal to that Authority has not been disposed of or withdrawn:

Provided that the Registrar may, in his discretion, direct that a grant which he has revoked or suspended shall remain valid pending the disposal or withdrawal of any appeal and while it is still open for any person to appeal to the Appeal Authority.

**25. Appeal Authority—**(1) There shall be an Appeal Authority to be known as the Plant Varieties Appeal Authority.

(2) The Appeal Authority shall consist of 3 members, of whom one, being a barrister of not less than 7 years' practice, shall be appointed as Chairman.

(3) Every member of the Appeal Authority shall be appointed by the Minister of Justice with the concurrence of the Minister of Agriculture and Fisheries, and (except as otherwise provided in this Act) shall hold office for a term of 3 years, but may from time to time be reappointed.

(4) Nothing in this Act shall make it necessary for any appointment to the Appeal Authority to be made before the Minister of Justice is advised by the Registrar under subsection (1) of section 27 of this Act of the receipt of the first appeal.

(5) Any member of the Appeal Authority may at any time be removed from office by the Minister of Justice for

disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of that Minister, or may at any time resign his office by writing addressed to that Minister.

(6) If any member of the Appeal Authority dies, resigns, or is removed from office, the vacancy so created shall be filled by the appointment by the Minister of Justice with the concurrence of the Minister of Agriculture and Fisheries of a qualified person. Every member appointed under this subsection shall hold office for the residue of the term for which his predecessor was appointed.

(7) Unless he sooner vacates office as provided in subsection (6) of this section, every member of the Appeal Authority shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(8) The powers of the Appeal Authority shall not be affected by any vacancy in the membership thereof.

(9) The Appeal Authority may seek advice and assistance from competent persons in respect of any particular plant under appeal. Where the Appeal Authority receives any such advice in connection with any appeal, it shall give particulars thereof to every party to the appeal.

(10) The Secretary for Justice shall designate an officer of the Department of Justice to be the Secretary of the Appeal Authority, and shall provide such secretarial, recording, and clerical services as may be necessary to enable the Appeal Authority to discharge its functions.

**26. Right of appeal to Appeal Authority—**(1) Any person affected by a decision of the Registrar withholding any grant of plant selectors' rights or protective direction may, within 28 days after the date on which notice of the decision is given to him by the Registrar, appeal to the Appeal Authority against the decision on the ground that the grant or direction was improperly withheld and should have been made or given.

(2) Any person affected by any grant of plant selectors' rights or protective direction may, at any time, appeal to the Appeal Authority against the grant or direction upon the ground that—

(a) The grant or direction infringes some existing right of the original breeder; or

(b) The grant or direction was made or given in contravention of the requirements of this Act.

(3) Any person affected by any other decision of the Registrar—

(a) Relating to an application for a grant of plant selectors' rights or for the renewal of such a grant; or

(b) Imposing any condition in respect of any such grant—may, within 28 days after the date on which notice of the decision is given to him by the Registrar, appeal to the Appeal Authority against the whole or any part of the decision.

(4) In any case where a compulsory licence is issued, extended, or varied under section 23 of this Act, the holder of the grant immediately before the issue, extension, or variation of the compulsory licence, or any person claiming through or under him, may, within the period specified in subsection (6) of this section, appeal to the Appeal Authority against the issue, extension, or variation, of the licence.

(5) In any case where a compulsory licence is limited, varied, or revoked under section 23 of this Act, the holder of the licence immediately before the limitation, variation, or revocation of the compulsory licence, or any person claiming through or under him, may, within the period specified in subsection (6) of this section, appeal to the Appeal Authority against the limitation, variation, or revocation of the licence.

(6) No appeal under subsection (4) or subsection (5) of this section shall lie after the expiration of 28 days from the first of the following dates:

(a) The date on which any person who is entitled to appeal under the subsection is served with notice, or otherwise becomes aware, of the issue, extension, limitation, variation, or revocation (as the case may be) of the compulsory licence; or

(b) The date on which notice of the issue, extension, limitation, variation, or revocation (as the case may be) is first published in the *Gazette*.

(7) Every appeal to the Appeal Authority shall be made in writing and shall be lodged with the Registrar.

**27. Hearing of appeals—**(1) On receipt of the first appeal after the commencement of this Act, the Registrar shall immediately inform the Minister of Justice, who shall, with

the concurrence of the Minister of Agriculture and Fisheries, thereupon make the prescribed appointments to the Appeal Authority.

(2) On receipt of a notice of appeal, the Registrar shall appoint a day and place for the hearing of the appeal, and shall notify the appellant and the Appeal Authority of the day and place so appointed.

(3) The Appeal Authority may adjourn the hearing of any appeal from time to time and from place to place.

(4) All appeals shall be heard in public unless the Appeal Authority in any particular case, due regard being had to the interests of all persons concerned and to the public interest, considers that the hearing or any part of it should take place in private.

(5) At the hearing of any appeal, the Appeal Authority may hear all evidence tendered and representations made by or on behalf of the appellant, the Registrar, and other persons, being evidence which it considers relevant to the appeal, whether or not the evidence would be otherwise admissible in a Court of law:

Provided that, at any time during the hearing, if the Appeal Authority considers that it has sufficient evidence to arrive at a decision on the appeal, it may decide not to receive further evidence or representations which would support the proposed decision.

(6) At the hearing of any appeal, the Registrar may, after the presentation of evidence by the appellant, furnish to the Appeal Authority reasons for the decision appealed against and all available evidence on which the decision was based.

(7) At the hearing of any appeal, the appellant, the applicant or holder of the right (if other than the appellant), and the Registrar may each be represented by counsel or any advocate.

(8) Subject to the provisions of this Act and any regulations made under this Act, the Appeal Authority may regulate its procedure in such manner as it thinks fit, and for that purpose may make such rules as it thinks fit.

**28. Decisions of Appeal Authority—**(1) The Appeal Authority, after hearing any appeal, may—

(a) Confirm the decision of the Registrar; or

- (b) Modify or reverse the decision or any part of the decision of the Registrar; or
- (c) Order a grant to be made to the applicant, or order a protective direction to be given or cancelled, or order any grant that has expired or is due to expire to be renewed, or order a grant to be restored to its holder, or order the reversal of any decision of the Registrar revoking or suspending the grant or issuing a compulsory licence, or make such other order as the case may require:

Provided that nothing in this subsection shall give the Appeal Authority power to review any part of the Registrar's decision other than the part against which the appellant has appealed.

(2) The decision of not fewer than 2 members of the Appeal Authority shall be the decision of the Authority.

(3) The Appeal Authority shall in each case state reasons for its decision, which decision and reasons shall, if so requested by the appellant or the Registrar, be delivered in writing.

(4) On any appeal to it, the Appeal Authority may make an order for the payment by or to the Registrar, as the case may be, of the costs incurred in respect of the appeal, including the costs and expenses of the Appeal Authority; and in any such case the costs so awarded may be recovered as a debt due from the party against whom they have been awarded to the party in whose favour they have been awarded.

**29. Appeal Authority deemed to be Commission of Inquiry**—On any appeal the Appeal Authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act, except sections 2 and 4A and sections 11 to 15 shall apply accordingly. For the purposes of this subsection, the power to issue summonses requiring the attendance of witnesses before the Appeal Authority, or the production of documents, or the doing of any other act preliminary or incidental to the hearing of any matter by the Appeal Authority, may be exercised by the Chairman, or by the Registrar purporting to act by the direction or authority of the Chairman.

**30. Appeal to Supreme Court**—(1) Where any person who is entitled to appeal under subsection (3) of this section is dissatisfied with any decision of the Appeal Authority as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a point of law only.

(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court.

(3) The following persons and no others may appeal under this section:

(a) The person in respect of whose application the decision of the Appeal Authority was given:

(b) Any other person affected by the decision.

(4) Within 1 month after the date of the decision appealed against, the appellant shall lodge a notice of appeal with the Secretary of the Appeal Authority. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings in which the decision was given.

(5) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Appeal Authority may in his discretion allow, the appellant shall state in writing and lodge with the Secretary of the Appeal Authority a case setting out the facts and the reasons given by the Appeal Authority for its decision, and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

(6) As soon as practicable after the lodging of the case, the Secretary of the Appeal Authority shall submit it to the Chairman of the Appeal Authority.

(7) The Chairman shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, send it to the Registrar of the Supreme Court at Wellington, and make a copy available to each party.

(8) The settling and signing of the case by the Chairman shall be deemed to be the statement of the case by the Appeal Authority.

(9) If within 14 days after the lodging of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (5) of this section, the Chairman of the Appeal Authority may certify that the appeal has not been prosecuted.

(10) The Supreme Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal or the stating of any case.

(11) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

**31. Suspension of decision while appeal pending**—Where any decision of the Registrar or the Appeal Authority is appealed against, the operation of that decision shall be suspended until the final decision of the appeal.

**32. Service of notices, etc.**—(1) Where any notice has to be given or any document has to be served under this Act, it may be given or served by—

- (a) Delivering it to the person to whom it has to be given or on whom it has to be served; or
- (b) Leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) Sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand.

(2) Where a notice or document is sent by post in the manner prescribed by paragraph (c) of subsection (1) of this section, it shall be deemed to have been given or served at the time at which the letter would have been delivered in the ordinary course of post.

(3) For the purposes of this section every applicant for a grant of plant selectors' rights shall nominate an address for service within New Zealand.

**33. Remuneration and travelling allowances**—(1) The Appeal Authority, and every committee appointed under section 8 of this Act, is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There may be paid to the members of the Appeal Authority and any such committee remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

34. Fees—(1) Subject to the provisions of this Act, there shall be paid in respect of the grant of plant selectors' rights and application therefor, and in respect of other matters relating to such grants arising under this Act, such fees as may be from time to time prescribed by regulations made under this Act, and all such fees shall be paid into the Public Account to the credit of the Consolidated Revenue Account.

(2) Any sum paid to the Registrar by mistake, and any sum the payment of which is not required by regulations made under this Act, may be refunded by the Registrar, and all money so refunded shall be paid out of the Consolidated Revenue Account without further appropriation than this Act.

Cf. 1953, No. 64, s. 115

35. Offences—(1) Every person who makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in that register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

(2) Every person who falsely represents that he or another person is the holder of a grant of plant selectors' rights, or that he or another person has applied for such a grant, commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(3) Every person who falsely represents that a plant sold by him is of a variety that is the subject of a grant of plant selectors' rights or the subject of an application for such a grant commits an offence and is liable on summary conviction to a fine not exceeding \$100.

(4) Every person who, by using on his place of business or on any document issued by him or otherwise the words "Plant Varieties Office" or any other words, suggests that his place of business is or is officially connected with the Plant Varieties Office commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(5) Every person who commits a breach of any undertaking given in accordance with subsection (2) of section 18 of this Act commits an offence and is liable on summary conviction to—

(a) A fine not exceeding \$100 for a first offence; and

(b) A fine not exceeding \$200 for a second or subsequent offence.

(6) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“The Plant Varieties Act 1973	Section 35 (1)	Falsification of register, etc.”
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**36. Act to be administered by Ministry of Agriculture and Fisheries**—The Ministry of Agriculture and Fisheries Act 1953 is hereby amended by inserting in the Schedule, in their appropriate alphabetical order, the words “The Plant Varieties Act 1973”.

**37. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the business of the Plant Varieties Office:
- (b) Regulating all matters which are by this Act placed under the direction or control of the Registrar:
- (c) Prescribing the form and manner of applications for grants and the surrender of grants, and the form of diagrams, photographs, and other documents which may be filed in the Plant Varieties Office; and requiring copies to be furnished of any such applications, diagrams, photographs, and documents:
- (d) Regulating the procedure to be followed in connection with any application or request to the Registrar and in connection with any proceeding before the Registrar, and authorising the rectification of irregularities of procedure:
- (e) Prescribing classes of persons whom the Registrar may refuse to recognise as agents in respect of proceedings under this Act:
- (f) Authorising the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents in the Plant Varieties Office, and of indexes to and abridgments of them:
- (g) Prescribing the mode of publishing any matters which by this Act are required to be published:
- (h) Prescribing fees and charges for anything authorised by this Act:

- (i) Providing for the testing and treatment of plant varieties to which applications under this Act relate:
  - (j) Providing for the naming of varieties and prescribing the criteria to be met in selecting such names:
  - (k) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
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## Section 15

**SCHEDULE****CRITERIA FOR A GRANT OF PLANT SELECTORS' RIGHTS**

1. The variety shall be distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. A new variety may be defined and distinguished by morphological, physiological, or other characteristics. In all such cases, such characteristics must be capable of precise description and recognition.

2. The new variety shall be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

3. The new variety shall be stable in its essential characteristics, that is to say, it shall remain true to its description after repeated propagation or reproduction, or where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

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This Act is administered in the Ministry of Agriculture and Fisheries.

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