

PLANT VARIETIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Plant Varieties Act 1973.

The main purpose of the Bill is to bring the Act into accord with the provisions of the International Convention for the Protection of New Varieties of Plants 1961 as revised at Geneva in October 1978. The Government of New Zealand will then be enabled to ratify the Convention if desired.

Some minor technical amendments have also been made.

Clause 1 relates to the Short Title.

Clause 2 relates to interpretation.

Subclause (1) inserts a new definition, that of "denomination". The term is used in the Convention and also in the Plant Variety Regulations 1975 (S.R. 1975/138).

Subclause (2) defines the term "international agreement". Provision is made in *clause 12 (3)* to make regulations giving effect to any international agreement to which New Zealand is a party.

Subclause (3) is a technical amendment.

Subclause (4) defines "Plant Varieties Journal". See also *clause 3* of the Bill.

Subclause (5) relates to consequential amendments.

Clause 3 amends the provisions relating to the Plant Varieties Journal by authorising the Registrar to publish certain matters in any publication if the name of the publication refers to plant varieties.

Clause 4: Section 13 (1) of the Act provides that an application for a grant of plant selectors' rights may only be made in respect of a new variety if that variety had not previously been sold in New Zealand and had not been sold overseas for more than 4 years before the date of the application. This clause extends the time limits, and also allows certain sales of reproductive material without affecting the eligibility of an application for a grant.

Clause 5 sets out provisions relating to the order of priorities to be established between rival applicants for a grant of plant selectors' rights.

Generally, the person entitled to priority of grant will be the first person to make a correct application to the Registrar.

Procedures to be followed by persons making applications in different overseas countries or territories in respect of the one variety, and then in New Zealand, are also set out.

The Minister has power under *subclause (9)* of the clause to designate by *Gazette* notice any country or territory outside New Zealand as being a country to which the clause applies.

Clause 6 substitutes the new defined term "denomination" for other words in section 14 (d) of the Act.

Clause 7 makes a technical amendment to section 15 (1) of the Act which relates to the prerequisites to a grant, and also provides that the Registrar is to satisfy himself that the proposed denomination of the plant variety meets any conditions set down by regulation.

Clause 8 includes, among the plants for which a grant may enure for 18 years, the rootstocks of those plants, and also provides for the Governor-General by Order in Council to extend the term of certain other grants.

Clause 9 sets out, in the manner required by the Convention, the rights that a grantee of plant selectors' rights has, and also extends the rights to encompass the use of certain propagating material used in the production of ornamental plants and cut flowers.

Clause 10 relates to the powers of the Registrar to revoke a grant of plant selectors' rights.

Subclause (1) sets out the provisions of section 24 (1) of the Act in more appropriate fashion.

Subclause (2) introduces new grounds for revocation. If the grantee fails to provide certain documentation or does not allow certain inspections to be made of the measures taken to maintain the plant variety, the Registrar may revoke the grant.

Clause 11 allows decisions of the Registrar relating to priority of grant (see *clause 5*) to be the subject of an appeal to the Appeal Authority.

Clause 12 relates to the power to make regulations.

Hon. Mr MacIntyre

PLANT VARIETIES AMENDMENT

ANALYSIS

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2. Interpretation	7. Prerequisites to grant
3. Provision for publication of matters relating to plant varieties	8. Date and terms of grant
4. Application for grant	9. Rights of grantee
5. Priorities between applicants for rights	10. Revocation of a grant
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A BILL INTITULED

An Act to amend the Plant Varieties Act 1973

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

1. **Short Title**—This Act may be cited as the Plant Varieties Amendment Act 1979, and shall be read together with and deemed part of the Plant Varieties Act 1973* (hereinafter referred to as the principal Act).

10 2. **Interpretation**—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “breeder”, the following definition:

15 “‘Denomination’ means such distinguishing name or identification of a variety as may be approved by the Registrar pursuant to regulations made under this Act.”

*1973, No. 37

(2) The said section 2 is hereby further amended by inserting, after the definition of the term “grant of plant selectors’ rights”, the following definition:

“‘International agreement’ means any bilateral or multi-lateral treaty, convention, or agreement, to which New Zealand is a party, and any understanding concluded by the Government of New Zealand and the government of any other country:”.

(3) The said section 2 is hereby further amended by omitting from the definition of the term “Minister”, the words “and Fisheries”.

(4) The said section 2 is hereby further amended by inserting, after the definition of the term “Minister”, the following definition:

“‘Plant Varieties Journal’ means the journal issued under section 12 (1) (a) of this Act; and includes any journal or publication in which plant varieties matters are published under section 12 (1) (b) of this Act:”.

(5) Section 25 (3) and (6) and section 27 (1) of the principal Act are hereby consequentially amended by omitting the words “and Fisheries”.

3. Provision for publication of matters relating to plant varieties—Section 12 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where the Registrar considers that the volume of matters to be published in the *Gazette* pursuant to this Act warrants their inclusion in a separate publication, he may—

“(a) Issue periodically a journal, to be called the Plant Varieties Journal, which shall contain those matters; or

“(b) Publish those matters in any other journal or publication (whether relating exclusively to plant varieties or not), if the name of that journal or publication contains the words ‘plant varieties’.”

4. Application for grant—Section 13 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) An application for a grant of plant selectors’ rights 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
5 other person if the variety, before the date of the application, has been sold with the agreement of the breeder—

“(a) In New Zealand, for not more than one year before that date:

“(b) Overseas, for not more than 6 years before that date
10 in the case of vines, forest trees, fruit trees, or ornamental trees (including, in each case, their root-stocks) or for not more than 4 years before that date in the case of all other genera or species.

“(1A) The eligibility of an application for a grant in respect
15 of a plant variety shall not be affected if the applicant, in any case where he proposes selling reproductive material of that plant variety for the purpose of bulking up stock but not for further sale without the applicant’s consent, informs the Registrar of the proposal and the Registrar gives his
20 consent to it.”

5. Priorities between applicants for rights—The principal Act is hereby amended by inserting, after section 13, the following section:

“13A. (1) If a plant variety was independently bred or
25 discovered by 2 or more persons, the first person to make an application to the Registrar in accordance with regulations made under this Act shall be the person entitled to a grant.

“(2) As between 2 persons each making an application on the same day, the person who first makes a valid application
30 for a grant shall be the person entitled to a grant.

“(3) For the purposes of subsection (1) of this section, an application duly made in a country or territory designated by the Minister pursuant to subsection (9) of this section shall be treated as duly made under this Act if the conditions
35 set out in subsections (4) to (10) of this section are satisfied.

“(4) Notwithstanding subsection (3) of this section, the Registrar shall take no account of an application made in a designated country or territory when the plant variety to which the application relates was not a variety falling within
40 a group of plant varieties or species of plants declared under section 4 of this Act as being a group or species to which this Act applies.

“(5) Where any person makes an application in New Zealand for a grant for which an application has already been made in one or more countries or territories designated pursuant to subsection (9) of this section, a right of priority may be claimed—

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“(a) If the application is made in New Zealand not more than 12 months after the date of making the application in a designated country or territory; and

“(b) A claim for priority is included with the application made in New Zealand.

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“(6) Within 3 months after the date of an application to the Registrar, a copy of any documents constituting an application in a designated country or territory, certified as correct by the appropriate authority to whom the application was made in that country or territory, shall be submitted to the Registrar.

“(7) If an application in respect of the one variety has been made at different dates in more than one country or territory to which subsection (3) of this section applies, the period of 12 months specified in subsection (5) of this section shall be taken from the date of the earlier or earliest of those applications, and subsection (6) of this section shall be construed accordingly.

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“(8) If priority for an application for a grant is established under this section after a grant of plant selectors’ rights has already been made in pursuance of an application against which the priority is established, the Registrar shall terminate the period for which the rights under the grant are exercisable.

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“(9) The Minister may, by notice in the *Gazette*, designate any country or territory outside New Zealand as being a country to which this section applies, and may from time to time vary or revoke any such notice.

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“(10) Regulations under this Act may provide for the forfeiture of any priority obtained under this section where the person making the application does not, within a prescribed period, satisfy all the requirements which are to be satisfied by an applicant before a grant of plant selectors’ rights can be made.”

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6. Requirement of application—Section 14 of the principal Act is hereby amended by omitting from paragraph (d) the words “name or other form of identification”, and substituting the word “denomination”.

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7. Prerequisites to grant—Section 15 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

5 “(1) Before a grant of plant selectors’ rights is made, the Registrar shall satisfy himself that, whether the origin of the initial variation from which the plant variety resulted was natural or artificial, the plant variety in respect of which the application is made conforms to the criteria contained in the Schedule to this Act and that the proposed denomi-
10 nation of the plant variety meets such requirements as may be prescribed by regulations made under this Act.”

8. Date and terms of grant—Paragraph (a) of section 20 (2) of the principal Act is hereby amended—

15 (a) By inserting, after the words “ornamental trees”, the words “(including, in each case, their rootstocks)”;
(b) By adding the words “or such longer period as may be specified by the Governor-General by Order in Council”.

9. Rights of grantee—(1) Section 22 of the principal Act
20 is hereby amended by repealing subsection (1), and substituting the following subsections:

“ (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 of it granted under section 21
25 of this Act, have the exclusive right to—

“ (a) Licence other persons to—

“ (i) Produce or reproduce for the purposes of sale; or

“ (ii) Sell; or

30 “ (iii) Produce, reproduce, and sell—
plants and reproductive material or vegetative propagating material of that plant variety:

“ (b) Produce, for the purpose of commercial marketing or sale, reproductive material or vegetative propagating material to which the grant relates—
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subject in each case to such conditions as the holder may impose (including the payment of a royalty).

“ (1A) The rights of the holder of a grant specified in sub-
section (1) of this section shall extend to ornamental plants
40 and parts thereof normally marketed for purposes other than

propagation if the plants or parts thereof are used commercially as propagating material in the production of ornamental plants or cut flowers.”

(2) Section 22 (3) of the principal Act is hereby amended by adding to paragraph (b) the words “, and sell any such hybrid or new variety if the production of the hybrid or new variety does not require the repeated use of the protected plant”.

10. Revocation of a grant—(1) Section 24 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) If at any time during the term of a grant the Registrar is satisfied that—

“(a) The criteria set out in clause (1) of the Schedule to this Act were not effectively complied with or that any provision of section 13 (1) of this Act had been breached, in either case at the time of the application for the grant, he shall declare the grant to be void and of no effect:

“(b) The criteria set out in clause (2) and clause (3) of the Schedule to this Act are no longer being effectively complied with, he shall revoke the grant.”

(2) The said section 24 is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Where, during the period commencing with the date of making of a grant and ending with the expiry of its term, the holder of the grant, after being requested to do so and after the expiry of a specified period,—

“(a) Fails to provide the Registrar—

“(i) With reproductive material capable of producing the new variety with its morphological, physiological, and other characteristics as defined when the grant was made; or

“(ii) With such documents or information as the Registrar considers necessary for the checking of the plant variety; or

“(b) Does not allow an authorised officer of the Plant Varieties Office to inspect the measures taken for the maintenance of the plant variety—
the Registrar may revoke the grant.”

11. Right of appeal to Appeal Authority—Section 26 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

5 “(2A) Any person holding a grant of plant selectors’ rights affected by a decision of the Registrar pursuant to section 13A (8) of this Act (which relates to the establishment of a priority of 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 on the grounds that no
10 priority applied.”

12. Regulations—(1) Section 37 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

15 “(da) Providing for the loss of any priority given in respect of an application for a grant, and prescribing a period of time during which an application for a grant must be duly completed before any priority is lost.”

(2) The said section 37 is hereby further amended by
20 repealing paragraph (j), and substituting the following paragraph:

25 “(j) Prescribing the criteria to be met in selecting the denomination of varieties, and providing for the approval, rejection, or amendment of any denomination by the Registrar.”

(3) The said section 37 is hereby further amended by inserting, after paragraph (j), the following paragraph:

“**(ja)** Giving effect to the terms of any international agreement to which New Zealand is a party.”