

Mr McLean

PLANT VARIETIES

ANALYSIS

Title	24. Licensee
1. Short Title	25. Notice of protection
2. Interpretation	26. Obligations of grantee, and compulsory licences and sales
3. Act to bind the Crown	27. Use of variety denomination
4. Application of Act	
	PART III
	APPEALS
	28. Appeal Authority
	29. Right of appeal to Appeal Authority
	30. Hearing of appeals
	31. Decisions of Appeal Authority
	32. Appeal Authority deemed to be Commission of Inquiry
	33. Appeals to High Court on question of law
	34. Notice of appeal
	35. Right to appear and be heard on appeals
	36. Orders relating to determination of appeals
	37. Dismissal of appeal
	38. Extension of time
	39. Date of hearing
	40. Suspension of decision while appeal pending
	PART IV
	MISCELLANEOUS PROVISIONS
	41. Service of notices, etc.
	42. Remuneration and travelling allowances of Authority
	43. Fees and refunds
	44. Offences
	45. Regulations
	46. Transitional provisions
	47. Repeals and revocations
	Schedule

No. 22—1

Price \$1.40c

A BILL INTITULED

An Act to consolidate and amend the law relating to plant variety rights

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

1. Short Title—This Act may be cited as the Plant Varieties Act 1984.

2. Interpretation—In this Act, unless the context otherwise requires,— 10

“Authority” means the Appeal Authority constituted under **section 28** of this Act:

“Application” means an application for a grant:

“Approved” means approved by the Commissioner:

“Commissioner” means the Commissioner of Plant Variety Rights appointed in accordance with **section 7 (1) (a)** of this Act; and, to the extent specified in **section 7 (1) (b)** of this Act, includes an Assistant Commissioner of Plant Variety Rights appointed in accordance with that section: 15

“Denomination” means such distinguishing name or identification of a variety as may be approved by the Commissioner pursuant to **section 16 (1)** of this Act: 20

“Director-General” means the Director-General of the Ministry of Agriculture and Fisheries: 25

“Grant” means a grant of plant variety rights under this Act:

“Grantee” means a holder of a grant:

“International agreement” means any bilateral or multilateral 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: 30

“Minister” means Minister of Agriculture:

“Ministry” means the Ministry of Agriculture and Fisheries: 35

“Office” means the Plant Variety Rights Office established under **section 5** of this Act:

“Owner” means a breeder or discoverer of a new variety; and includes his successor in title: 40

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

“Plant Varieties Journal” means the journal issued under **section 11 (2) (a)** of this Act; and includes any journal or publication in which plant varieties matters are published under **section 11 (2) (b)** of this Act:

5 “Protected variety” means the variety in respect of which a grant has been made:

“Publication” means public notification; and includes publication in the Plant Varieties Journal:

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

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

Cf. 1973, No. 37, s. 2; 1979, No. 29, s. 2

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

Cf. 1973, No. 37, s. 3

20 **4. Application of Act**—(1) This Act shall apply to varieties of such plants as may be specified in the Schedule to this Act.

(2) Notwithstanding **subsection (1)** of this section, the Governor-General may, from time to time by Order in Council, amend the Schedule to this Act by omitting, adding, or amending the
25 description or name of any genus, or species, or group of plants.

Cf. 1973, No. 37, s. 4; S.R. 1981/297

PART I

PLANT VARIETY RIGHTS OFFICE

30 **5. Plant Variety Rights Office**—(1) The Director-General may from time to time, by notice in the *Gazette*, appoint a place to be the Plant Variety Rights Office.

(2) The Director-General, from time to time by notice in the *Gazette*, may fix the hours during which the Office shall be
35 open for the transaction of public business under this Act, and may authorise the closing of the 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 Office is not
40 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 Office is open.

Cf. 1973, No. 37, s. 5

6. Seal of Office—(1) There shall be a seal of the Office which shall be authenticated by the signature of the Commissioner. 5

(2) Judicial notice shall be taken of—

(a) The seal of the Office; and

(b) The appointment and signature of the Commissioner.

Cf. 1973, No. 37, s. 6

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7. Commissioner, Assistant Commissioner, and officers—(1) There may from time to time be appointed under the State Services Act 1962—

(a) A Commissioner of Plant Variety Rights:

(b) One or more Assistant Commissioners of Plant Variety Rights; and every person so appointed while he remains in office shall have, and may exercise (subject to the control and direction of the Commissioner) the powers of the Commissioner: 15

(c) Such other officers as may be necessary for the purposes of this Act. 20

(2) All persons appointed under this section shall be officers or employees of the Ministry, and any such appointment may be held either separately or in conjunction with any other office in the Ministry. 25

Cf. 1973, No. 37, s. 7

8. Officers and employees not to acquire interest in grant—(1) Every officer and employee of the Office shall be ineligible, during the period for which he holds his appointment and for one year thereafter, to apply under this Act for a grant or to acquire any right or interest in any grant directly or indirectly, except under a will or on an intestacy. 30

(2) Every person who acts in contravention of this section commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000. 35

Cf. 1973, No. 37, s. 8

9. Advisory and technical committees, and technical advisors—(1) The Director-General may from time to time appoint advisory or technical committees of one or more persons as he thinks fit to advise or assist the Commissioner 40

for such purposes and during such periods as the Director-General thinks desirable.

(2) A person may be appointed to be a member of any committee appointed under this section whether or not he is
5 an officer or employee of the Ministry or otherwise holds an appointment under the State Services Act 1962.

(3) Any person appointed under **subsection (1)** of this section who has an interest directly or indirectly connected with any application or matter to be considered by the committee of
10 which that person is a member shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest to the Commissioner and, except as otherwise allowed by the Commissioner, shall not take part after the disclosure in any deliberation or decision relating to
15 the application or other matter.

(4) The Director-General may appoint, or may authorise the Commissioner to appoint, persons who are not officers or employees of the Ministry as technical advisors to assist the Commissioner in carrying out any tests or trials which the
20 Commissioner considers necessary for the purposes of this Act or in assessing the results of any tests or trials (whether carried out by him or not) which he considers relevant to those purposes.

(5) The Director-General may, from money appropriated by
25 Parliament for the purpose, pay to the member or members of any committee or to any technical advisor such fees, salary, allowances, and expenses as the Minister may from time to time approve.

Cf. 1973, No. 37, s. 8

30 **10. Delegation**—(1) The Commissioner may from time to time, by writing under his hand, generally or particularly or subject to conditions, delegate to such officer or officers or employee or employees of the Office as he thinks fit all or any
35 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 any power to appoint technical advisors under **section 9 (4)** of this Act or this present power of delegation.

(2) Every delegation under this section shall be revocable,
40 and no such delegation shall prevent the exercise of any power by the Commissioner.

(3) A delegation under this section shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Commissioner 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 Commissioner; 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 expire.

(4) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 5

Cf. 1973, No. 37, s. 10

11. Publication—(1) The Commissioner shall publish in the *Gazette* details of any application, all such particulars of applications and grants as are prescribed, and such other matters and information as may appear to him to be useful or important. 10

(2) Notwithstanding subsection (1) of this section, the Commissioner may, from time to time,— 15

(a) Issue periodically a journal, to be called the Plant Varieties Journal, which shall contain the matters referred to in subsection (1) of this section; 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”. 20

(3) Before the Commissioner commences to issue the Plant Varieties Journal, he shall publish in the *Gazette* notice of his intention to do so. 25

(4) If at any time the Commissioner intends to cease issuing the Plant Varieties Journal, he shall publish in that Journal notice of his intention to do so.

(5) For the purposes of this Act, publication in the Plant Varieties Journal shall be deemed to be publication in the *Gazette*, and reference in this Act to the *Gazette* shall be construed accordingly. 30

Cf. 1973, No. 37, ss. 11, 12; 1979, No. 29, s. 3

PART II

35

GRANT OF PLANT VARIETY RIGHTS

12. Persons who may apply for grant—(1) An application may be made by or on behalf of an owner; and where several persons have together bred or discovered a variety they may jointly apply for a grant. 40

(2) If a variety has been bred or discovered by 2 or more persons independently, the person who first makes an application in compliance with **section 14 (1)** of this Act shall, subject to **section 13** of this Act, have the precedent claim to a grant.

Cf. 1973, No. 37, ss. 13, 13A (1), (2); 1979, No. 29, ss. 4, 5

13. Priority relating to overseas applications—(1) Any person who makes application in New Zealand in respect of a variety for which he has already made application overseas, shall have a right of priority if—

(a) The country in which the overseas application is made is a member State of the International Union for the Protection of New Varieties of Plants (constituted pursuant to the international agreement called the International Convention for the Protection of New Varieties of Plants); and

(b) The application is made in New Zealand not more than 12 months after the date of making the application overseas; and

(c) A claim for priority is included with the application made in New Zealand; and

(d) Within 3 months after the date of an application to the Commissioner, a copy of any documents constituting an application in the specified country, certified as correct by the appropriate authority to whom the application was made, is submitted to the Commissioner.

(2) If an application in respect of the one variety has been made in more than one country overseas, the period of 12 months specified in **subsection (1)** of this section shall be taken from the earliest of those applications, and **subsection (1) (d)** of this section shall apply accordingly.

(3) The date of application overseas to which the claim for priority relates shall be the priority date, and shall count as the date on which protection is applied for under this Act for the purposes of **subsections (2), (5), and (6) of section 16** and of **subsection (2) of section 12** of this Act.

Cf. 1973, No. 37, s. 13A; 1979, No. 29, s. 5

14. Application for grant—(1) Every application shall be made to the Commissioner on an approved form which shall—

(a) Be completed and signed by or on behalf of the owner; and

(b) Be accompanied by the prescribed fee (if any).

(2) When the Commissioner is satisfied that the provisions of **subsection (1)** of this section have been complied with he shall accept the application, notify his acceptance in the *Gazette*, and advise the applicant accordingly.

(3) The applicant shall also, together with the application or subsequently as requested by the Commissioner, supply the Commissioner with—

- (a) A description of the origin and breeding history of the variety:
- (b) A description upon a form provided for the purpose by the Commissioner detailing the botanical features of the variety:
- (c) Details which the applicant considers distinguish his variety from all other varieties of the same species, being varieties whose existence is a matter of common knowledge at the date of the application:
- (d) Such reproductive material or plants of the variety as may be specified by the Commissioner:
- (e) A proposed denomination of the variety which, subject to any change made pursuant to **section 16 (1) (b)** of this Act, will form part of the grant:
- (f) Such other information relevant to the application as may be required by the Commissioner.

(4) Every applicant may make a statement in writing to the Commissioner, setting forth such information or comment as the applicant considers will assist the Commissioner in his consideration of the application.

(5) For the purposes of this Act, the date of application for a grant shall be deemed to be the date on which the application is received at the Office or, if it does not comply with **subsection (1)** of this section when received at the Office, the date on which the application form is completed and signed or, as the case may be, prescribed fee paid, whichever is the later.

Cf. 1973, No. 37, ss. 14, 15 (4), 16; 1979, No. 29, s. 6

15. Withdrawal or lapse of application—(1) An application may be withdrawn by the applicant at any time before a grant is made.

(2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of the withdrawal.

(3) If any information or material requested by the Commissioner under **section 14 (3)** of this Act is not supplied to him within such period (including any extension or extensions of that period) as may be prescribed, the application
5 in respect of which the request was made shall lapse with the expiry of that period.

Cf. 1973, No. 37, s. 13 (2)

16. Requirements for grant—(1) Before the Commissioner makes a grant he shall—

10 (a) Be satisfied that the variety in respect of which the application is made is new, is distinct, is uniform, and is stable:

(b) Approve a denomination for the variety which complies with any prescribed requirements, being the
15 denomination proposed in respect of the application or such other denomination as may subsequently be submitted.

(2) A variety shall be deemed to be new if there has been no sale of that variety with the agreement of the owner—

20 (a) In New Zealand for more than one year before the date of application in this country, or before the priority date duly claimed under **section 13** of this Act, whichever is the earlier; or

(b) Overseas, for more than 6 years in the case of woody plants (including their rootstocks) or for more than
25 4 years in the case of non-woody plants, before the date of application in New Zealand.

(3) Where an applicant makes, or proposes to make, arrangements under which—

30 (a) Some other person uses reproductive material of the variety the subject of the application for the purpose of increasing the applicant's stock, or for evaluation trials or tests; and

(b) The whole of the material produced from that
35 reproductive material, and any unused reproductive material, becomes or remains the property of the applicant,—

the eligibility of an application with respect to **subsection (2)** of this section shall not be affected by—

40 (c) A sale of the reproductive material by the applicant to any such other person as part of such arrangements; or

(d) A sale by the other person to the applicant of the material
45 produced from that reproductive material, or of any unused reproductive material.

(4) The eligibility of an application with respect to **subsection (2)** of this section shall not be affected by a sale of—

(a) Non-reproductive material; or

(b) Reproductive material disposed of for non-reproductive purposes—

which, having been produced during the breeding, increasing of stock, or tests and trials of the variety, is not required for those purposes.

(5) A variety shall be considered distinct if it is distinguishable by one or more characteristics from any other variety whose existence is a matter of common knowledge at the date on which protection is applied for, or at the priority date duly claimed under **section 13** of this Act, whichever is the earlier.

(6) For the purposes of **subsection (5)** of this section, a variety may be defined and distinguished by morphological, physiological, or other characteristics, but, in all such cases, the characteristics must be capable of precise description and recognition.

(7) A variety shall be sufficiently uniform, having regard to the particular features of its sexual reproduction or vegetative propagation.

(8) A variety shall be considered stable if, in its essential characteristics, it remains true to its description after repeated propagation or reproduction or, where the owner has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(9) If the Commissioner considers that a variety does not comply with the conditions referred to in **subsection (1)** of this section, he shall decline to make a grant in respect of the variety.

17. Inspection of applications—After an application has been accepted by the Commissioner under **section 14 (2)** of this Act, the application and any document or instrument accompanying the application or supplied subsequently pursuant to **section 14 (3)** of this Act shall be held available for public inspection during ordinary business hours of the Office on payment of the prescribed fee (if any).

Cf. 1973, No. 37, s. 17

18. Provisional protection—An applicant shall, as from the date of application for a grant until the determination of the application by the Commissioner, have the right to take proceedings in respect of the acts of any person where these acts would constitute an infringement of a grant if a grant had

already been made in relation to that application (such right being referred to in this section as provisional protection); but where the Commissioner determines not to make a grant in respect of the application, the provisional protection shall be
5 void *ab initio*:

Provided that any provisional protection shall cease in respect of any application that is withdrawn or lapses as from the time of that withdrawal or lapse.

Cf. 1973, No. 37, s. 18

10 **19. Objections**—(1) If any person considers that a denomination proposed for a variety should not be accepted, he may, within 3 months of publication of the notice of the proposal, object to the Commissioner in writing giving the reasons for his objection.

15 (2) Where the ownership of a variety is disputed, the person disputing ownership may, at any time after the making of an application in respect of the variety but not later than 5 years after the making of a grant as a consequence of that application, lodge a written objection with the Commissioner accompanied
20 by the prescribed fee (if any), requesting—

- (a) The rejection of the application; or
- (b) The assignment of the application to the objector; or
- (c) If a grant has already been made, the assignment of the grant to the objector.

25 (3) Any person may, until such time as the Commissioner issues a grant, lodge an objection to an application with the Commissioner on the grounds that the variety is not new or sufficiently distinct, or is not uniform or stable as required under **section 16** of this Act. Every such objection shall be in
30 writing giving the reasons for the objection, and be accompanied by the prescribed fee (if any).

(4) Where an objection has been lodged pursuant to this section and a grant has not been made in respect of the
35 application objected to, the Commissioner shall not make any grant until he has considered the objection and given the objector and the applicant a reasonable opportunity to be heard.

Cf. 1973, No. 37, s. 19

20. Date and term of grant—(1) Every grant made shall be
40 endorsed by the Commissioner under seal with the date of issue.

(2) Except as otherwise provided in this Act, the term of every grant, commencing with the date of its issue, shall be—

(a) In the case of a grant in respect of woody plants (including their rootstocks) to which this Act for the time being applies, 23 years or such longer period as may be specified by the Governor-General by Order in Council:

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(b) In the case of every other grant, 20 years.

(3) Where regulations under this Act prescribe an annual fee to be paid in respect of any grant, the term of that grant shall be deemed to commence with the date of its issue and be extended annually upon payment of the annual grant fee until the maximum term specified in **subsection (2)** of this section.

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(4) The Commissioner shall keep a register in which he shall record the date, and all other prescribed particulars, of every grant.

Cf. 1973, No. 37, s. 20; 1979, No. 29, s. 9

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21. Cancellation of grant—(1) The Commissioner may cancel a grant before the end of its term if so requested in writing by the grantee.

(2) Subject to **subsection (3)** of this section, the Commissioner shall cancel a grant at any time during its term if he is satisfied—

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- (a) That any information supplied in the application or in relation to the application was incorrect and, if the correct information had been known before the grant was made, the grant would have been refused:
- (b) That a protected variety was not, at the time of application for the grant, new and distinct within the meaning of **subsections (2), (5), and (6) of section 16** of this Act:
- (c) That the provisions of **subsections (7) and (8) of section 16** of this Act relating to uniformity and stability are not being effectively complied with:
- (d) That the grantee, after being requested to do so within a specified period, has failed to provide the Commissioner with reproductive material capable of producing the protected variety with its characteristics as defined when the grant was made:
- (e) That the grantee, after being requested to do so within a specified period, has not allowed an inspection to be made of the measures taken for the maintenance of the variety or has failed to provide such documents or information in relation to the variety as the Commissioner considered relevant:
- (f) That any annual grant fee in relation to the grant has not been paid within the prescribed period.

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(3) Where the Commissioner determines to cancel a grant under subsection (2) of this section, he shall give the grantee written notice of his intention to do so and, unless the grantee shows sufficient cause within 28 days of the date of the notice why the grant should not be cancelled, shall cancel the grant at the expiry of that period.

(4) If priority for an application is established under **section 13** of this Act after a grant has already been made in pursuance of an application against which the priority is established, the Commissioner shall cancel the grant.

Cf. 1973, No. 37, ss. 13A (8), 20, 24; 1979, No. 29, s. 5

22. Rights of grantee—(1) A grantee shall have the exclusive right—

(a) To produce for sale, and to sell, reproductive material of the protected variety:

(b) To propagate the protected variety for the purposes of the commercial production of fruit, flowers, or other products of the variety, if the variety is of such type or types of plant as may from time to time be prescribed by the Governor-General by Order in Council for the purposes of this paragraph:

(c) To authorise, subject to such terms and conditions as the grantee may specify, any other person or persons to do any of the things described in **paragraphs (a) and (b)** of this subsection.

(2) The rights specified in **subsection (1) (a)** of this section shall extend to ornamental plants and parts thereof normally marketed for purposes other than propagation if the plants or parts thereof are used commercially as propagating material.

(3) Notwithstanding **subsection (1)** of this section the Minister may, by notice in the *Gazette*, and after ensuring that the grantee will be adequately compensated, impose such restrictions on the exercise of a grantee's rights as he thinks necessary in the public interest during a national emergency.

(4) Nothing in this Act shall prevent—

(a) The holder of a grant from assigning, mortgaging, or otherwise disposing of his grant; or

(b) The devolution of any such grant by operation of law.

(5) The infringement of the rights of a grantee shall be actionable in a Court of law as any other proprietary right, and in awarding damages (including any exemplary damages) or granting any other relief, the Court shall take into consideration—

- (a) Any loss suffered or likely to be suffered by the grantee as such; and
 - (b) Any profits or other benefits which may have arisen as a result of the infringement; and
 - (c) The flagrancy of the infringement. 5
- (6) Where any reproductive material of a variety is imported and is, in New Zealand, reproductive material of a protected variety, any unauthorised propagation, sale, or use of that reproductive material as such may constitute an infringement of the grantee's rights, notwithstanding that the material was 10 imported.
- (7) Where in any proceedings for the infringement of a grantee's rights it is proved or admitted that an infringement was committed but, at the time of the infringement, the 15 defendant was not aware and had no reasonable grounds for supposing that it was an infringement of the grant, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be 20 entitled to an account of profits in respect of the infringement, whether any other relief is granted under this section or not.

Cf. 1973, No. 37, s. 22; 1979, No. 29, s. 10

23. Exceptions to grantee's rights—Notwithstanding section 22 of this Act, any person may—

- (a) Propagate, grow, or use plants of a protected variety for non-commercial purposes; or 25
- (b) Hybridise any such plant or otherwise produce new varieties from it, 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 variety; or 30
- (c) Use the plants or parts of the protected variety for human consumption or other non-reproductive purposes.

Cf. 1973, No. 37, s. 22 (3)

24. Licensee—The holder of a licence from a grantee shall have the same rights as the grantee to take proceedings in 35 respect of any infringement of the grant affecting the rights given under the licence committed after the date of the grant.

25. Notice of protection—(1) When reproductive material of a variety (which is protected in terms of section 18 or section 22 of this Act) is sold, the grantee, to protect his interests, shall 40 take all reasonable steps, by means of suitable labelling or other identification of the material, to inform purchasers of the protection.

(2) For the purposes of **section 22 (7)** of this Act, the Court may take into account the fact of whether or not the reproductive material, in respect of which the proceedings were taken, was suitably labelled or otherwise identified.

5 **26. Obligations of grantee, and compulsory licences and sales**—(1) Notwithstanding anything in **section 22** of this Act, a grantee shall, no later than 3 years after the date of the grant, ensure that reproductive material of reasonable quality of the variety to which the grant relates is available to the public in
10 reasonable quantities and at a reasonable price.

(2) Upon the application of any person, if the Commissioner considers that the provisions of subsection (1) of this section have not been complied with by a grantee, and after the Commissioner has done whatever may be practicable to give
15 the grantee notice of the application and an opportunity of being heard, the Commissioner may, as he thinks appropriate, issue to the applicant—

- (a) A compulsory licence for the reproduction and sale of reproductive material of the protected variety; or
- 20 (b) A compulsory sale order ordering the grantee to sell one or more lots of the reproductive material to the applicant—

in accordance with the provisions of **subsection (1)** of this section and subject to such conditions as the Commissioner may
25 impose, including the payment by the applicant to the grantee of such royalties or other amounts as are reasonable in the circumstances.

(3) Subject to the provisions of this Act, upon the application of any person, the Commissioner may, if he thinks fit, limit,
30 vary, extend, or revoke a compulsory licence or compulsory sale order.

(4) The Commissioner shall publish in the *Gazette* brief details of every compulsory licence or compulsory sale order issued or made under this section, and of every limitation, variation,
35 extension, or revocation of such a licence or order as soon as practicable after the licence or order is issued or made, limited, varied, extended, or revoked, as the case may be.

Cf. 1973, No. 37, s. 23

40 **27. Use of variety denomination**—(1) Any person who sells reproductive material of a protected variety shall, even after the expiration of the grant issued in relation to that variety, use the approved variety denomination.

(2) When a protected variety is sold, a trade mark, trade name, or other similar indication may be associated with the approved variety denomination if that denomination is easily recognisable.

PART III

5

APPEALS

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

(2) The Authority shall consist of 3 members, of whom one, 10
being a barrister or solicitor of not less than 7 years' practice, shall be appointed as Chairman.

(3) Every member of the Authority shall be appointed by the Minister of Justice with the concurrence of the Minister of Agriculture and (except as otherwise provided in this Act) shall 15
hold office for a term of 3 years, but may from time to time be reappointed.

(4) The Minister of Justice with the concurrence of the Minister of Agriculture may, from time to time, appoint such 20
qualified persons as he thinks fit to be deputies to act for members of the Authority in any case where a member is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office; and every deputy so appointed shall, when he acts as such, be deemed for all 25
purposes to be a member of the Authority.

(5) Any member of the 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 30
office by writing addressed to that Minister.

(6) If any member of the 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, of a qualified 35
person; and 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 Authority shall continue 40
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 Authority shall not be affected by any vacancy in its membership.

(9) The Authority may seek advice and assistance from competent persons in respect of any particular variety under appeal; but where the 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 Authority, and shall provide such secretarial, recording, and clerical services as may be necessary to enable the Authority to discharge its functions.

Cf. 1973, No. 37, s. 25

29. Right of appeal to Appeal Authority—(1) Any person affected by a decision of the Commissioner withholding any grant may, within 28 days after the date on which notice of the decision is given to him by the Commissioner, appeal to the Authority against the decision.

(2) Any person affected by any grant may, at any time, appeal to the Authority against the grant upon the ground that the grant was made or given in contravention of the requirements of this Act.

(3) Any person holding a grant affected by a decision of the Commissioner pursuant to **section 21 (4)** 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 Commissioner, appeal to the Authority on the grounds that no priority applied.

(4) Any person affected by any other decision of the Commissioner—

(a) Relating to an application, or to the cancellation of a grant;
or

(b) Imposing any condition in respect of a grant; or

(c) Declining to modify any aspect of a grant—

may, within 28 days after the date on which notice of the decision is given to him by the Commissioner, appeal to the Authority against the whole or any part of the decision.

(5) In any case where a compulsory licence or compulsory sale order is issued or made, extended, or varied under **section 26** of this Act, the grantee or any person claiming through or under him, may, within the period specified in **subsection (7)** of this section, appeal to the Authority against the issue, extension, or variation, of the licence or sale order.

(6) In any case where a compulsory licence or compulsory sale order is limited, varied, extended, or revoked under **section 26** of this Act, the holder of the licence or the person

in whose favour the sale order was made or any person claiming through or under that holder or person may, within the period specified in **subsection (7)** of this section, appeal to the Appeal Authority against the limitation, variation, extension, or revocation of the licence or sale order. 5

(7) No appeal under **subsection (5) or subsection (6)** 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 sale order; or 10

(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* under **section 26 (4)** of this Act. 15

(8) Every appeal to the Authority shall be made in writing, and shall be lodged with the Commissioner.

Cf. 1973, No. 37, s. 26; 1979, No. 29, s. 12 20

30. Hearing of appeals—(1) On receipt of the first appeal after the commencement of this Act, the Commissioner shall immediately inform the Minister of Justice, who shall, with the concurrence of the Minister of Agriculture, appoint the 3 members of the Authority. 25

(2) On receipt of a notice of appeal, the Secretary of the Authority shall appoint a day and place for the hearing of the appeal, and shall notify the parties to the appeal and the Authority of the day and place so appointed.

(3) The Authority may adjourn the hearing of any appeal from time to time and from place to place. 30

(4) All appeals shall be heard in public unless the Authority in any particular case, due regard being had to the interests of all persons concerned and to the public interest, considers, on the application of any party to the proceedings, that the hearing or any part of it should take place in private. 35

(5) At the hearing of any appeal, the Authority may hear all evidence tendered and representations made by or on behalf of the appellant, the Commissioner, 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. 40

(6) At the hearing of any appeal, the appellant, the applicant or grantee (if other than the appellant), and the Commissioner may each be represented by counsel, solicitor, or agent.

(7) Subject to this Act and any regulations made under it, the Authority may regulate its own procedure, and for that purpose may make such rules as it thinks fit.

Cf. 1973, No. 37, s. 27

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

- 10 (a) Confirm the decision of the Commissioner; or
- (b) Modify or reverse the decision or any part of the decision of the Commissioner; or
- (c) Order any grant that has expired or is due to expire to be renewed, or make such other order as the case may require:

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

20 (2) The decision of not fewer than 2 members of the Authority or, in the case of any question on a point of law, the decision of the Chairman alone shall be the decision of the Authority.

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

30 (4) On any appeal to it, the Authority may make an order for the payment by or to the Commissioner, as the case may be, of the costs incurred in respect of the appeal, including the costs and expenses of the 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.

Cf. 1973, No. 37, s. 28

35 **32. Appeal Authority deemed to be Commission of Inquiry**—(1) On any appeal the 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.

40 (2) For the purposes of this section, the power to issue summonses requiring the attendance of witnesses before the Authority, or the production of documents, or the doing of any other act preliminary or incidental to the hearing of any

matter by the Authority, may be exercised by the Chairman, or by the Secretary of the Authority acting pursuant to the directions of the Chairman.

Cf. 1973, No. 37, s. 29

33. Appeals to High Court on question of law—(1) Where any party to any proceedings before the Authority is dissatisfied with any decision of the Authority as being erroneous in point of law, that party may appeal to the High Court on that question of law. 5

(2) Every such appeal shall be heard and determined by the Administrative Division of the High Court (in this section and in sections 34 to 40 of this Act referred to as the Court), the decision of which shall be final. 10

(3) Subject to this section the procedure in respect of any such appeal shall be in accordance with the rules of the Court. 15

34. Notice of appeal—(1) Every such appeal shall be instituted by the appellant lodging a notice of appeal within one month after the date of the decision with—

(a) The Registrar of the Court in Wellington; and

(b) The Authority. 20

(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other party to the proceedings before the Authority.

(3) Service under subsection (2) of this section, if by post, shall be by registered letter and shall be deemed in the absence of proof to the contrary for the purposes of this section to be effected at the time when the letter would be delivered in the ordinary course of post. 25

(4) Every notice of appeal shall specify— 30

(a) The decision or the part of the decision appealed from; and

(b) The error of law alleged by the appellant; and

(c) The question of law to be resolved; and

(d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved. 35

(5) The Authority shall, as soon as is practicable after receiving a copy of the notice of appeal, send a copy of the whole of the decision appealed from to the Registrar of the Court in Wellington. 40

35. Right to appear and be heard on appeals—(1) Any party to the proceedings before the Authority who wishes to appear and be heard on the hearing of the appeal shall, within 10 days after the date of the service on him of a copy of the
5 notice of appeal pursuant to **section 34 (2)** of this Act, give notice to the Registrar of the Court in Wellington of that party's intention to appear and be heard.

(2) Any party who gives a notice of intention to appear and be heard and the appellant shall be parties to the appeal and
10 shall be entitled—

- (a) To be served with every document which is thereafter filed or lodged with the Registrar of the Court in Wellington and which relates to the appeal; and
- (b) To receive a notice of the date set down for the hearing
15 of the appeal.

36. Orders relating to determination of appeals—

(1) Subject to **subsections (2) and (3)** of this section, the Court may, of its own motion or on the application of any party to the appeal, make all or any of the following orders—

- 20 (a) An order directing the Authority to lodge with the Registrar of the Court in Wellington any document or other written material or any exhibit in its possession or custody:
- 25 (b) An order directing the Authority to lodge with the Registrar a report recording, in respect of any matter or issue which the Court may specify any findings of fact which are not fully set out in its determination:
- 30 (c) An order directing the Authority to lodge with the Registrar a report setting out, in respect of any matter or issue which the Court may specify, any reasons or considerations of the Authority to which it had regard but which are not set out in its determination.

(2) An application under **subsection (1)** of this section shall be made—

- 35 (a) In the case of the appellant, within one month of the date of the lodging of the notice of appeal; or
- (b) In the case of any other party to the appeal, within one month after the date of the service on him of a copy of the notice of appeal.

40 (3) The Court may make an order under **subsection (1)** of this section only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the Court thinks fit.

37. Dismissal of appeal—The Court may dismiss any appeal under **section 33** of this Act—

- (a) If the appellant does not appear at the time appointed for the hearing of the appeal; or
- (b) If the appellant does not prosecute his appeal with all due diligence and any party applies to the Court for the dismissal of the appeal. 5

38. Extension of time—The Court or a Judge thereof may, in its or his discretion, on the application of the appellant, or intending appellant, or any other party, extend any time prescribed or allowed under any of the provisions of **sections 34 to 37** of this Act for the lodging of any notice, application, or other document. 10

39. Date of hearing—When any party to the appeal notifies the Registrar of the Court in Wellington— 15

- (a) That the notice of appeal has been served on all parties to the proceedings; and
 - (b) That any application lodged under **section 36** of this Act has been heard and that any order under that section has been complied with,— 20
- the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date and place for the hearing as soon as is practicable.

Cf. 1973, No. 37, s. 30

40. Suspension of decision while appeal pending—Where any decision of the Commissioner or the Authority is appealed against, the operation of that decision shall be suspended until the final determination of the appeal. 25

Cf. 1973, No. 37, s. 31

PART IV

30

MISCELLANEOUS PROVISIONS

41. 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 35
- (b) Leaving it at the usual or last known place of abode or address for service 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 or address for service in New Zealand. 40

(2) Where a notice or document is sent by post in the manner prescribed by **subsection (1) (c)** 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.

5 (3) For the purposes of this section, every applicant for a grant shall nominate an address for service within New Zealand.

Cf. 1973, No. 37, s. 32

42. Remuneration and travelling allowances of Authority—(1) The Authority is hereby declared to be a
10 statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

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

Cf. 1973, No. 37, s. 33

43. Fees and refunds—(1) Subject to this Act, there shall be paid in respect of a grant of plant variety rights and any
20 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; and all such fees shall be paid into the Public Account to the credit of the Consolidated Account.

(2) Any sum paid to the Commissioner in error or in excess
25 of the sum properly payable may be refunded by the Commissioner, and all money so refunded shall be paid out of the Consolidated Account without further appropriation than this Act.

Cf. 1973, No. 37, s. 34

30 **44. Offences**—(1) Any person who, in an application or in an attachment to an application, supplies with intent to deceive any false or misleading information commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.

35 (2) Every person who falsely represents that he or another person is a grantee or that he or another person has applied for a grant, commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

(3) Every person selling material of a variety who falsely
40 represents—

(a) That the variety is protected; or

(b) That the variety is the subject of an application for a grant—
 commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

(4) Any person who wilfully or negligently sells reproductive material of a variety without using the approved variety denomination commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000. 5

(5) Every person who, by using on his place of business or on any document issued by him or otherwise the words “Plant Variety Rights Office” or any other words, suggests that his place of business is or is officially connected with the Plant Variety Rights Office commits an offence and is liable on summary conviction to a fine not exceeding \$1,000. 10

(6) Part II of the First Schedule to the Summary Proceedings Act 1957 (as amended by section 35 (6) of the Plant Varieties Act 1973) is hereby consequentially amended by repealing the item that relates to the said Plant Varieties Act 1973. 15

Cf. 1973, No. 37, s. 35

45. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 20

- (a) Regulating the business of the Plant Variety Rights Office:
- (b) Regulating all matters which are by this Act placed under the direction or control of the Commissioner: 25
- (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 Variety Rights Office; and requiring copies to be furnished of any such applications, diagrams, photographs, and documents; and authorising the rectification or amendment of any of them: 30
- (d) Regulating the procedure to be followed in connection with any application or request to the Commissioner and in connection with any proceeding before the Commissioner, and authorising the rectification of irregularities of procedure: 35
- (e) Providing for the forfeiture of any priority given in respect of an application for a grant: 40
- (f) Prescribing any requirements for the entry of particulars in the Register, and for corrections of recorded details:

- (g) Authorising the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents in the Plant Variety Rights Office, and of indexes to and abridgments of them:
- 5 (h) Prescribing the mode of publishing any matters which by this Act are required to be published:
- (i) Prescribing fees and charges for anything authorised by this Act:
- (j) Providing for the testing and treatment of plant varieties to which applications under this Act relate:
- 10 (k) 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 Commissioner:
- 15 (l) Giving effect to the terms of any international agreement to which New Zealand is a party:
- (m) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

20 **46. Transitional provisions**—(1) The place appointed by the Minister as the Plant Varieties Office under the Plant Varieties Act 1973 as at the commencement of this Act shall be deemed to be the place appointed by the Director-General as the Plant Variety Rights Office under this Act.

25 (2) The person who, as at the commencement of this Act, was the Registrar of Plant Varieties under the Plant Varieties Act 1973 shall be deemed to be the person appointed as the Commissioner of Plant Varieties under this Act.

30 (3) Every grant of plant selectors' rights made under the Plant Varieties Act 1973 and in force as at the commencement of this Act shall remain in force subject to the terms and conditions under which it was granted, except that the term of any such grant shall be deemed to be extended to the term it would have had if it had been a grant under this Act; and

35 no extension to any term shall be made under the Plant Varieties Act 1973.

(4) For the purposes of any action or proceedings taken in relation to a grant subsisting pursuant to **subsection (3)** of this section, or any amendment or cancellation of such grant, the

40 provisions of this Act shall apply as if that grant were a grant of plant variety rights under this Act.

(5) Every application for a grant of plant selectors' rights made under the Plant Varieties Act 1973 and not determined as at the commencement of this Act, shall be deemed to be

45 an application for plant variety rights under this Act, and considered accordingly.

(6) Every grant of protective direction made under the Plant Varieties Act 1973 and in force as at the commencement of this Act shall be deemed to be provisional protection given under **section 18** of this Act, and shall be subject to the provisions of that section.

5

47. Repeals and revocations—(1) The Plant Varieties Act 1973 and the Plant Varieties Amendment Act 1979 are hereby repealed.

(2) The following Orders in Council are hereby revoked:

(a) The Plant Varieties Act Commencement Order 1974: 10

(b) The Plant Varieties Act Extension Order 1981.

(3) Section 2 of the Scientific and Industrial Research Act 1974 is hereby consequentially amended by repealing the definition of the term “breeder”.

SCHEDULE

Section 4

PLANTS TO WHICH THIS ACT APPLIES

ALL plants (except fungi, algae, and bacteria).