

PLANT VARIETY RIGHTS BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Plant Varieties Act 1973 and its amendments.

Since the 1973 Act was passed, New Zealand has become a member of an international organisation called the "International Union for the Protection of New Varieties of Plants". The Bill brings New Zealand law into line with that expressed in the international agreement (to which this country was a party) that instituted that organisation.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on a date specified by Order in Council.

Clause 2 is the interpretation clause.

Clause 3 declares the Bill is to bind the Crown.

PART I

GRANTS OF PLANT VARIETY RIGHTS

Clause 4 provides for applications to be made for grants of plant variety rights. Every grant will be made in respect of a single variety, and give to the person who discovered or bred that variety rights similar to those given in respect of an invention to the holder of a patent in respect of that invention. (See *clause 15* for the rights given by a grant of plant variety rights.)

Clause 5 provides for objections to be made to the Commissioner before the making of a grant, where the objector—

- (a) Objects to the denomination proposed for the variety concerned; or
- (b) Considers that that variety should not be the subject of a grant, or that the person who has applied for the grant did not discover or breed the variety (and is not the successor of a person who did).

If an objection is made, the Commissioner is not to make a grant until both the objector and the applicant have been given a reasonable opportunity to be heard.

Clause 6 authorises an application to be withdrawn, and provides for a situation where the application is to lapse.

Clause 7 provides that an application is to be held available for public inspection. See *clause 8* for the protection available to the applicant.

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Clause 8 affords protection to a variety during the period from the making of an application for a grant until the Commissioner's determination on the matter.

Clause 9 sets out the circumstances under which the Commissioner can make a grant. Generally, the Commissioner is to be satisfied that the variety in respect of which the application is made is new, distinct, and homogeneous, and is stable or breeds true, and that the applicant discovered or bred the variety or is a successor to a person who did so.

Clause 10 provides for the situation where 2 or more persons have discovered or bred a variety independently.

Clause 11 relates to the priority of an application for a grant in New Zealand where an application has already been made overseas by the same person.

Clause 12 sets out the date and term of a grant.

Clause 13 provides for objections to be made to the Commissioner after the making of any grant, where the objector considers that the variety concerned should not have been the subject of a grant or that the person to whom the grant was made did not discover or breed the variety (and was not the successor of a person who did). In effect, any such objection invites the Commissioner to cancel the grant under *clause 14*.

Clause 14 provides for the circumstances under which the Commissioner may cancel a grant.

Clause 15 sets out the rights of a grantee. In general, these are an exclusive right to produce and sell, or to licence others to produce or sell, reproductive material of the variety in respect of which the grant was made.

Provision is made for the rights to be extended or restricted in certain cases.

Clause 16 sets out some exceptions to the rights given under *clause 15*.

Clause 17 provides that the holder of a licence from a grantee has the same power as the grantee to enforce the rights given under the licence.

Clause 18 requires a grantee to take reasonable steps (by labelling, etc.) to inform purchasers of a protected variety that it is protected by a grant.

Clause 19 empowers the Commissioner in certain cases to issue a compulsory licence or compulsory sale order to use or sell a protected variety.

Clause 20 requires persons selling reproductive material of a protected variety to use the approved name or denomination of the variety.

PART II

APPEALS

Clauses 21 to 25 provide for appeals against decisions of the Commissioner. Appeals are to be heard by District Courts; and District Court Judges are empowered to appoint expert assessors (who sit with the Judge but have no power of decision) where an appeal appears to involve technical matters.

PART III

PLANT VARIETY RIGHTS OFFICE

Clause 26 relates to the establishment of a Plant Variety Rights Office. See also the transitional provision in *clause 37 (1)* of the Bill.

Clause 27 relates to the seal of the Office.

Clause 28 provides for the appointment of a Commissioner of Plant Variety Rights, and other officers. The person holding office as Registrar of Plant Varieties as at the commencement of the Bill is deemed to be the first Commissioner—see *clause 37 (2)*.

Clause 29 forbids an officer or employee of the Office to apply for or acquire any interest in a grant of plant variety rights, except pursuant to the terms of a will or on an intestacy.

Clause 30 provides for the appointment of committees, and authorises the employment of technical advisors in certain circumstances.

Clause 31 relates to the powers of delegation of the Commissioner.

Clause 32 requires the Commissioner to publish from time to time a “Plant Variety Rights Journal”, and requires the Commissioner to publish certain matters in that Journal.

PART IV

MISCELLANEOUS PROVISIONS

Clause 33 relates to the service of notices.

Clause 34 relates to the payment of any fees, and the making of refunds.

Clause 35 relates to offences and penalties.

Clause 36 authorises the making of regulations.

Clause 37 contains transitional provisions.

Clause 38 amends the Schedule to the Ministry of Agriculture and Fisheries Act 1953, which specifies the Acts administered by that Ministry, by omitting the reference to the Plant Varieties Act 1973 and substituting a reference to this Bill.

Clause 39 relates to repeals and revocations.

Hon. Colin Moyle

PLANT VARIETY RIGHTS

ANALYSIS

	<p>PART II APPEALS</p> <p>21. Rights of appeal 22. Appeals to be made to District Court 23. Assessors 24. Procedure 25. Suspension of decision while appeal pending</p> <p>PART III PLANT VARIETY RIGHTS OFFICE</p> <p>26. Plant Variety Rights Office 27. Seal of Office 28. Commissioner, Assistant Commissioners, and officers 29. Officers and employees not to acquire interests in grants 30. Advisory and technical committees, and technical advisors 31. Delegations 32. Plant Variety Rights Journal</p> <p>PART IV MISCELLANEOUS PROVISIONS</p> <p>33. Service of notices, etc. 34. Fees and refunds 35. Offences and penalties 36. Regulations 37. Transitional provisions 38. Consequential amendment 39. Repeals and revocations</p>
<p>Title</p> <p>1. Short Title and commencement 2. Interpretation 3. Act to bind the Crown</p> <p>PART I GRANTS OF PLANT VARIETY RIGHTS</p> <p>4. Applications 5. Objections before grant 6. Withdrawal or lapse of applications 7. Inspection of applications 8. Provisional protection 9. Making of grants 10. Varieties bred or discovered by 2 or more persons independently 11. Priorities relating to overseas applications 12. Date and term of grants 13. Objections after grant 14. Cancellation of grants 15. Rights of grantees 16. Exceptions to grantees' rights 17. Licensees 18. Notice of protection 19. Obligations of owners, and compulsory licences and sales 20. Use of denomination</p>	

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:

No. 114—1

1. Short Title and commencement—(1) This Act may be cited as the Plant Variety Rights Act 1985.

(2) This Act shall come into force on a day to be fixed by the Governor-General by Order in Council.

2. Interpretation—In this Act, unless the context otherwise requires,— 5

“Applicant”, in relation to any application, means the person by whom or on whose behalf that application is made:

“Application”, except in **section 11** of this Act, means an application for a grant: 10

“Assistant Commissioner” means an Assistant Commissioner of Plant Variety Rights appointed under **section 28 (1) (b)** of this Act:

“Commissioner” means the Commissioner of Plant Variety Rights appointed in accordance with **section 28 (1) (a)** of this Act; and includes an Assistant Commissioner: 15

“Denomination”, in relation to any protected variety, or any variety that was a protected variety until the grant made in respect of it expired, means the distinguishing name or identification approved for that variety by the Commissioner under **section 9 (2) (b)** of this Act: 20

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

“Grant” means a grant of plant variety rights under this Act: 25

“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

“Journal” means the Plant Variety Rights Journal required to be published by **section 32 (1)** of this Act:

“Minister” means the Minister of Agriculture:

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

“Office” means the Plant Variety Rights Office established under **section 26 (1)** of this Act:

“Owner”,—

(a) In relation to a protected variety, means the holder of a grant in respect of that variety; and 40

(b) In relation to any other variety, means a person who discovered or bred that variety or is a successor in title to any such person:

“Plant” does not include an alga, a bacterium, or a fungus:
“Protected variety” means a variety in respect of which
a grant is in force:

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

“Reproductive material”, in relation to any variety, means
any portion of a plant of that variety by means of
which plants of that variety may be reproduced or
propagated; and includes spores, seeds, and whole
10 plants:

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

15 “Variety” means any cultivar of a plant; and includes any
clone, line, stock, or hybrid, of a plant.

Cf. 1973, No. 37, s. 2

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

Cf. 1973, No. 37, s. 3

PART I

20 GRANTS OF PLANT VARIETY RIGHTS

4. Applications—(1) Any person may apply to the
Commissioner on a form provided for the purpose by the
Commissioner for a grant in respect of any variety.

(2) Every application shall—

25 (a) Be completed and signed by or on behalf of the person
concerned; and

(b) Nominate an address for service in relation to that
application (being an address within New Zealand);
and

30 (c) Be accompanied by the prescribed fee (if any).

(3) Either at the time of making an application or later, the
applicant shall give to the Commissioner, in such detail as the
Commissioner requires,—

35 (a) A description of the origin and breeding of the variety
concerned; and

(b) A description (on a form provided for the purpose by the
Commissioner) of the botanical features of that
variety; and

40 (c) A description of those aspects of that variety that, in the
opinion of that applicant, distinguish it from those
other varieties whose existence is a matter of common
knowledge at the date of that application.

(4) If so requested by the Commissioner at any time, an applicant shall give to the Commissioner either or both of the following in relation to the application concerned:

(a) Such reproductive material of that variety as the Commissioner specifies: 5

(b) Any other information that the Commissioner thinks relevant to that application and requests from that applicant.

(5) An application that complies with **subsection (2)** of this section at the time it is received at the Office shall, for the 10 purposes of this Act, be deemed to be made at that time.

(6) An application that does not comply with **subsection (2)** of this section at the time it is received at the Office shall, for the purposes of this Act, be deemed to be made at the time at which it first complies with that subsection while being held 15 at the Office.

(7) If satisfied that an application complies with **subsection (2)** of this section, the Commissioner shall—

(a) Notify in the Journal the making of that application; and 20

(b) Advise the applicant accordingly.

(8) The Commissioner shall notify in the Journal every proposed denomination for a variety given to the Commissioner by any applicant.

Cf. 1973, No. 37, ss. 14, 15 (4), 16

5. Objections before grant—(1) Any person who considers 25 that the Commissioner should not approve a proposed denomination notified in the Journal may, within 3 months of its notification, by notice in writing to the Commissioner, object to the approval of that name.

(2) Any person who considers that an application has been 30 made by or on behalf of a person who is not an owner of the variety concerned may, at any time before a grant is made to the applicant in respect of that variety, by notice in writing to the Commissioner, object to the making of a grant in respect of that variety to the applicant. 35

(3) Any person who considers that an application has been made in respect of a variety that is not new, distinct, stable, and sufficiently homogeneous (as required by **section 9** of this Act) may, at any time before a grant is made in respect of that variety, by notice in writing to the Commissioner, object to 40 the making of a grant in respect of that variety.

(4) If an objection is made under this section, the Commissioner shall not make a grant in respect of the variety concerned before giving the applicant concerned and the objector a reasonable opportunity to be heard. 45

Cf. 1973, No. 37, s. 19

6. Withdrawal or lapse of applications—(1) Any application may be withdrawn by the applicant at any time before a grant is made in respect of it.

5 (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 that withdrawal.

10 (3) If any information or material required to be given to the Commissioner under **subsection (3)** or **subsection (4) of section 4** of this Act is not supplied within the prescribed period, the application concerned shall lapse upon the expiration of that period.

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

7. Inspection of applications—After an application is made, the Commissioner shall hold it and any document or instrument accompanying it or supplied subsequently pursuant to **subsection (3)** or **subsection (4) of section 4** of this Act available for public inspection during ordinary business hours of the Office on payment of the prescribed fee (if any).

Cf. 1973, No. 37, s. 16

20 **8. Provisional protection**—(1) Subject to **subsection (2)** of this section, on and after the day on which an application is made, the applicant shall have the same rights to take proceedings under this Act as if on that day a grant had been made to the applicant in respect of the variety concerned.

25 (2) The rights conferred by **subsection (1)** of this section shall be deemed never to have been conferred if—

(a) The application concerned is withdrawn or lapses; or

(b) The Commissioner declines to make a grant in respect of that application.

30 Cf. 1973, No. 37, s. 18

9. Making of grants—(1) Subject to **subsection (2)** of this section and to **sections 10 (1)** and **29 (2)** of this Act, the Commissioner shall make a grant in respect of every application made under this Act.

35 (2) The Commissioner shall decline to make a grant in respect of any variety unless—

40 (a) There has been submitted to the Commissioner by or on behalf of the applicant concerned a proposed denomination for that variety that, in the opinion of the Commissioner, complies with the prescribed requirements (if any); and

- (b) The Commissioner has approved that denomination for that variety; and
- (c) The Commissioner is satisfied that that applicant is, or is a successor to, a person who discovered or bred that variety; and 5
- (d) The Commissioner is satisfied that that variety is new, distinct, stable, and sufficiently homogeneous.
- (3) The Commissioner shall approve every proposed denomination that, in the opinion of the Commissioner, complies with the prescribed requirements, unless the Commissioner is satisfied that its approval would be contrary to the public interest. 10
- (4) For the purposes of **subsection (2) (d)** of this section,—
- (a) Subject to **subsection (5)** of this section, a variety is new if there has been no sale of that variety with the agreement of the applicant concerned— 15
- (i) In New Zealand, for more than 12 months before the date on which that application was made; and
- (ii) Overseas, for more than 6 years before that date in the case of a woody plant, or for more than 4 years before that date in every other case: 20
- (b) A variety is distinct if it is distinguishable by one or more characteristics from any other variety whose existence was a matter of common knowledge at the earlier of the following times: 25
- (i) The time at which the application concerned was made:
- (ii) The time of a priority under **section 11 (1)** of this Act obtained by the applicant concerned in respect of that variety: 30
- (c) A variety is stable if, in its essential characteristics, it remains true to its description—
- (i) Where the applicant concerned has described particular cycles of reproduction or multiplication for that variety, at the end of each such cycle; and 35
- (ii) In every other case, after repeated propagation or reproduction.
- (5) Where, to increase the stock of a variety or for evaluation trials or tests of a variety, its owner makes arrangements under which— 40
- (a) Reproductive material of that variety is to be sold to or used by some other person; and
- (b) Any unused portion of that reproductive material, and all the material of any sort produced from that reproductive material, is— 45

- (i) To be sold to that owner, by that other person;
or
(ii) Otherwise to become the property of that owner,—
- 5 for the purposes of **subsection (4) (a)** of this section, no account shall be taken of any sale under that arrangement of—
- (c) Reproductive material of that variety by that owner to that other person; or
(d) Material of any sort of that variety by that other person
10 to that owner.
- (6) For the purposes of **subsection (2) (d)** of this section, a variety does not cease to be new by virtue only of the sale at any time of—
- (a) Material that is not reproductive material; or
15 (b) Reproductive material disposed of for purposes other than reproduction,—
- that, having been produced during the breeding, increase of stock, tests, or trials, of that variety, is not (or no longer) required for any of those activities.
- 20 (7) For the purposes of **subsection (4) (b)** of this section, the characteristics by which a variety may be distinguished from others may be morphological, physiological, or of any other kind or description, so long as those characteristics are capable of precise description and recognition.
- 25 Cf. 1973, No. 37, s. 15 (1)

10. Varieties bred or discovered by 2 or more persons independently—(1) Subject to **subsection (2)** of this section, where—

- (a) Before a grant is made in respect of a variety, 2 or more
30 applications in respect of that variety have been made; and
- (b) The Commissioner is satisfied that the 2 or more applicants concerned bred or discovered that variety independently; and
- 35 (c) The Commissioner is satisfied that, but for this subsection, each of those 2 or more applicants is or would be entitled to a grant in respect of that variety,—
- the Commissioner shall make a grant to that one of those 2 or more applicants whose application in respect of that variety
40 was made first.
- (2) For the purposes only of **subsection (1)** of this section, where—
- (a) An application has been made in respect of a variety; and

(b) The applicant has obtained a priority under **section 11 (1)** of this Act in respect of that variety,—
that application shall be deemed to have been made at the time of that priority.

(3) Where—

- (a) After a grant is made in respect of a variety, an application is (or 2 or more applications are) made in respect of that variety; and
- (b) The applicant (or any of those applicants) has obtained a priority under **section 11 (1)** of this Act in respect of that variety; and
- (c) The time of that priority (or any of those priorities) is earlier than the time at which the application for that grant was made; and
- (d) The Commissioner is satisfied that, if that grant had not already been made, that applicant (or one of those applicants) would be entitled to a grant in respect of that variety—

the Commissioner shall cancel that grant, and shall make a new grant to the person who would be entitled to a grant in respect of that variety under **subsection (1)** of this section if the cancelled grant had never been made.

Cf. 1973, No. 37, s. 13A, (1), (2)

11. Priorities relating to overseas applications—(1) Any person who makes an application for a grant in New Zealand in respect of a variety in respect of which that person has already made overseas an equivalent application that has been accepted, shall have a priority under this subsection if—

- (a) The country in which the equivalent 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 for a grant in New Zealand is made not more than 12 months after the equivalent application was made; and
- (c) A claim for priority is included with the application for a grant in New Zealand; and
- (d) Within 3 months after the date of the application for a grant in New Zealand, a copy of any documents constituting the equivalent application, certified as correct by the authority to which the equivalent application was made in the country concerned, is submitted to the Commissioner.

(2) The time of a priority under **subsection (1)** of this section shall be the time at which the equivalent application concerned was accepted.

(3) If—

5 (a) Any person has made equivalent applications in respect of a single variety in 2 or more countries overseas; and

(b) But for this subsection, that person would be eligible to obtain more than one priority under **subsection (1)** of this section in respect of those equivalent applications,—

10 the reference in **subsection (2)** of this section to the time at which the equivalent application concerned was accepted shall be read as a reference to the earliest of the times at which those
15 equivalent applications were accepted.

Cf. 1973, No. 37, s. 13A

12. Date and term of grants—(1) The Commissioner shall seal every grant with the seal of the Office, and endorse it with the date of its making.

20 (2) Except as otherwise provided in this Act, every grant shall be in force for a term (commencing on the day it is made)—

(a) Of 23 years, or any longer period specified in that behalf by the Governor-General by Order in Council (made before, on, or after the day that grant is made, but
25 before that grant expires), in the case of a woody plant or its rootstock; and

(b) Of 20 years in every other case;—
and, unless sooner cancelled, shall then expire.

(3) The Commissioner shall keep a register, and record in it
30 the date and other prescribed particulars (if any) of every grant.

Cf. 1973, No. 37, s. 20

13. Objections after grant—(1) Any person who considers that a grant has been made in respect of a variety that is not new, distinct, stable, and sufficiently homogeneous (as required
35 by **section 9** of this Act) may at any time, by notice in writing to the Commissioner, object to the continuation in force of that grant.

(2) Any person who considers that a grant was made to a person who neither discovered or bred the variety concerned
40 nor was a successor to a person who did so may, at any time within 5 years after that grant was made, by notice in writing to the Commissioner, object to the continuation in force of that grant.

(3) An objection under **subsection (2)** of this section may be accompanied by an application in respect of the variety concerned.

14. Cancellation of grants—(1) The Commissioner may cancel a grant before the end of its term if so requested in writing by the owner of the protected variety concerned. 5

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

(a) That any information supplied in the application concerned or in relation to that application was incorrect and that if the correct information had been known before that grant was made, the Commissioner would have declined to make that grant: 10

(b) That the variety concerned was not, at the time of the application concerned, new and distinct within the meaning of **section 9** of this Act: 15

(c) That that variety is not stable and sufficiently homogeneous within the meaning of **section 9** of this Act: 20

(d) That the owner of the variety was, at the time that grant was made, neither a person who had discovered or bred that variety nor a successor to a person who did so:

(e) That the owner of that variety, after being requested by the Commissioner to provide the Commissioner (within a period specified by the Commissioner) with reproductive material capable of producing that variety with its characteristics as described when the grant was made, has failed to do so: 25 30

(f) That that owner, after being requested by the Commissioner to allow the Commissioner (within a period specified by the Commissioner) to inspect the measures taken for the maintenance of that variety, or to provide documents or information in relation to that variety, has failed to do so: 35

(g) That any annual grant fee in relation to the grant has not been paid within the prescribed period:

(h) That that owner has failed to comply with any compulsory licence or compulsory sale order made against that owner under **section 19** of this Act in relation to that variety. 40

(3) Before cancelling a grant under **subsection (2)** of this section, the Commissioner shall give the owner concerned written notice of intention to do so and, unless that owner shows 45

sufficient cause within 28 days of the date of the notice why that grant should not be cancelled, shall cancel that grant on the expiration of that period.

(4) Where—

- 5 (a) The Commissioner has cancelled a grant under **subsection (2) (d)** of this section; and
- (b) Any application (other than the application in respect of which that grant was made) has at any time (whether before or after the making of that grant) been made
- 10 in respect of the variety concerned,—
- the Commissioner shall deal with all applications in respect of that variety as if that grant had never been made.

Cf. 1973, No. 37, ss. 13A (8), 20, 24

15 15. Rights of grantees—(1) The owner of a protected variety shall have the exclusive right—

- (a) To produce for sale, and to sell, reproductive material of that variety:
- (b) If that variety is a plant of a type specified by the Governor-General by Order in Council for the purposes of this paragraph, to propagate that variety for the purposes of the commercial production of fruit, flowers, or other products, of that variety:
- 20
- (c) Subject to any terms and conditions that owner specifies, to authorise any other person or persons to do any of the things described in **paragraph (a) or paragraph (b)** of this subsection.
- 25

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

30

(3) Notwithstanding **subsection (1)** of this section the Minister may, by notice in the Journal, and after ensuring that the owner concerned will be adequately compensated, impose such restrictions on the exercise of the rights of that owner in respect of any specified variety as the Minister thinks necessary in the public interest during a national emergency.

35

(4) Nothing in this Act shall prevent—

- (a) The holder of a grant from assigning, mortgaging, or otherwise disposing of that grant; or
- 40 (b) The devolution of any grant by operation of law.
- (5) The infringement of the rights of the owner of a protected variety under this section shall be actionable to the same extent as the infringement of any other proprietary right; and in

awarding damages (including any exemplary damages) or granting any other relief, a Court shall take into consideration—

- (a) Any loss suffered or likely to be suffered by that owner as a result of that infringement; and 5
- (b) Any profits or other benefits derived by any other person from that infringement; and
- (c) The flagrancy of that infringement.

(6) Where there is imported into New Zealand any reproductive material of a protected variety, any propagation, 10 sale, or use, of that material—

- (a) As reproductive material; and
- (b) Without the authority of the owner of that variety,— constitutes an infringement of the rights of that owner under this section. 15

(7) Where, in any proceedings for the infringement of the rights of the owner of a protected variety under this section, it is proved or admitted that an infringement was committed but that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that 20 it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(8) Nothing in **subsection (7)** of this section affects any 25 entitlement of the owner of a protected variety to any relief in respect of the infringement of that owner's rights under this section other than damages.

Cf. 1973, No. 37, s. 22

16. Exceptions to grantees' rights—Notwithstanding 30 **section 15** of this Act, any person may—

- (a) Propagate, grow, or use a protected variety, for non-commercial purposes; or
- (b) If the production of the hybrid or new variety concerned does not require repeated use of that variety,— 35
 - (i) Hybridise, or produce a new variety from, a protected variety; or
 - (ii) Sell any hybrid of, or new variety produced from, a protected variety; or
- (c) Use reproductive material from a protected variety for 40 human consumption or other non-reproductive purposes.

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

5 **17. Licensees**—The holder of a licence from the owner of a protected variety shall have the same rights as that owner to take proceedings in respect of any infringement of the rights of that owner in respect of that variety affecting the rights given under the licence and committed after the date that licence was granted.

Cf. 1973, No. 37, s. 10 (1)

10 **18. Notice of protection**—(1) Any person who—
(a) Has acquired rights in respect of a variety under **section 8 (1)** or **section 15** of this Act; and

(b) Sells any reproductive material of that variety,—
shall take all reasonable steps, by means of suitable labelling or other identification of that material, to inform the purchaser concerned of those rights.

15 (2) In determining, for the purposes of **section 15 (7)** of this Act, whether or not any person had reasonable grounds for supposing that any action was an infringement of the rights of the owner of a protected variety, a Court may take into account the extent (if any) to which that owner or, as the case
20 requires, the licensee concerned had complied with **subsection (1)** of this section in respect of any material in respect of which, or in respect of material propagated from which, that infringement occurred.

25 **19. Obligations of owners, and compulsory licences and sales**—(1) Notwithstanding **section 15** of this Act, the owner of a protected variety shall, during the period commencing 3 years after the date of the grant concerned and ending when that grant is cancelled or expires, ensure that reasonable quantities of reproductive material of reasonable quality of that variety
30 are available for purchase by members of the public at a reasonable price.

(2) Any person may, on payment of the prescribed fee (if any), request the Commissioner to consider whether or not **subsection (1)** of this section is being complied with in respect
35 of any protected variety; and if the Commissioner, after giving the owner of that variety notice of that request and a reasonable time to be heard in relation to it, and considering any submissions that owner makes to the Commissioner within that time, is satisfied that that subsection is not being complied
40 with, the Commissioner may issue to the person who made the request either or both of the following:

(a) A compulsory licence for the reproduction and sale of reproductive material of that variety:

(b) An order requiring that owner to sell to that person reproductive material of that variety.

(3) A licence or order issued under **subsection (2)** of this section shall be in writing and sealed with the seal of the Office, and shall be subject to such terms and conditions as the Commissioner thinks fit. 5

(4) Without limiting the generality of **subsection (3)** of this section, it may be a term or condition of a licence or order issued under **subsection (2)** of this section that the other person concerned should pay royalties or other amounts to the owner concerned, or to any licensee concerned, or both. 10

(5) A licence or order issued under **subsection (2)** of this section shall have effect according to its tenor as if it were a contract voluntarily entered into by the owner and the other person concerned. 15

(6) Subject to the provisions of this Act, the Commissioner may at any time—

(a) On the application of any person; and

(b) If the Commissioner thinks it appropriate,—
limit, vary, extend, or revoke, a licence or order issued under **subsection (2)** of this section. 20

(7) As soon as is possible after issuing a licence or order under **subsection (2)** of this section, or limiting, varying, extending, or revoking, any such licence or order, the Commissioner shall publish in the Journal brief details of the action taken. 25

Cf. 1973, No. 37, s. 23

20. Use of denomination—Any person who sells reproductive material of—

(a) A protected variety; or 30

(b) A variety that was a protected variety until the grant made in respect of it expired,—
shall use its denomination, and shall not associate any trade mark, trade name, or other similar indication with that denomination unless that denomination is clearly recognisable. 35

PART II

APPEALS

21. Rights of appeal—(1) Any person affected by a decision of the Commissioner to decline to make a grant may, within 28 days after being given notice of that decision by the Commissioner, appeal against that decision. 40

(2) Any person affected by a grant may, at any time, appeal against the making of that grant upon the ground that that grant was made in contravention of this Act.

(3) Where the Commissioner cancels a grant under **section 10 (3)** of this Act, the grantee concerned may, within 28 days after being given notice of the cancellation by the Commissioner, appeal against that cancellation on the ground
5 that the purported priority concerned had not been established.

(4) Any person affected by any decision of the Commissioner (not being a decision referred to in any of **subsections (1) to (3)** of this section)—

- (a) Relating to an application or the cancellation of a grant;
10 or
- (b) Imposing any condition in respect of a grant; or
- (c) Declining to modify any aspect of a grant; or
- (d) Refusing to issue a licence or order under **section 19 (2)**
of this Act,—

15 may, within 28 days after being given notice of that decision by the Commissioner, appeal against that decision.

(5) Subject to **subsection (7)** of this section, the owner of a protected variety may appeal against any decision of the Commissioner to issue a licence or order under **section 19 (2)**
20 of this Act in respect of that variety, or to extend or vary any such licence or order.

(6) Subject to **subsection (7)** of this section, the person to whom a licence or order was issued under **section 19 (2)** of this Act may appeal against any decision of the Commissioner to limit,
25 vary, or revoke that licence or order, or to issue it subject to any terms or conditions.

(7) No appeal under **subsection (5) or subsection (6)** of this section shall lie after the 28th day after the earlier of the following days:

- 30 (a) The day on which the appellant is served with notice, or otherwise becomes aware, of the issue, extension, limitation, variation, or revocation, concerned;
- (b) The day on which notice of that issue, extension, limitation, variation, or revocation was first published
35 in the Journal under **section 19 (7)** of this Act.

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

22. Appeals to be made to District Court—Every appeal under **section 21** of this Act shall be made to a District Court by—

- 40 (a) Filing a notice of appeal in the prescribed form in the District Court nearest the Office; and
- (b) Serving a copy of that notice on the Commissioner.

23. Assessors—(1) If a District Court Judge is satisfied (whether or not on the application of any party to that appeal)

that any appeal under **section 21** of this Act involves the consideration of technical or specialised matters, and that it would be desirable for a person with expert knowledge of those matters to be an assessor in relation to that appeal, the following provisions shall apply: 5

- (a) The Judge shall consult the parties to the appeal as to a suitable person to be an assessor in relation to the appeal:
- (b) If the Judge and those parties agree on a suitable person, the Judge shall appoint that person to be an assessor in relation to that appeal: 10
- (c) If the Judge and those parties do not agree on a suitable person, the Judge may appoint to be an assessor in relation to that appeal any person the Judge thinks suitable: 15
- (d) An assessor appointed under this subsection shall sit with the Judge during the appeal, but shall have no power of decision in relation to the appeal.

(2) A District Court Judge may appoint 2 or more assessors under **subsection (1)** of this section in respect of a single appeal if satisfied that the nature of the technical or specialised matters concerned so warrants. 20

(3) No appointment of an assessor under **subsection (1)** of this section shall, in any proceedings, be called into question on the grounds that the occasion for that appointment had not arisen or had ceased. 25

(4) Every assessor appointed under **subsection (1)** of this section is entitled to receive—

- (a) Remuneration by way of fees, salary, or allowances, for that assessor's services as assessor; and 30
- (b) Payment of travelling allowances or expenses in respect of time spent travelling in connection with undertaking services as assessor,—

as if a District Court is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 35

(5) Subject to **subsection (6)** of this section, a District Court, after hearing an appeal under **section 21** of this Act, may—

- (a) Confirm the decision appealed against; or
- (b) Modify or reverse that decision or any part of it.

(6) Nothing in **subsection (5)** of this section authorises a District Court to review any decision of the Commissioner, or any part of a decision of the Commissioner, if no appeal has been made against that decision or part. 40

24. Procedure—In dealing with an appeal under **section 21** of this Act,— 45

- (a) A District Court may hear all evidence tendered and representations made by or on behalf of any party to that appeal that that Court considers relevant to that appeal, whether or not that evidence would be otherwise admissible in that Court:
- 5 (b) Subject to **section 22** of this Act and to **paragraph (a)** of this section, the District Courts Rules 1948 shall apply to that appeal:
- 10 (c) Except as provided in this Act, a District Court shall determine its own procedure in relation to the determination of that appeal.

25. Suspension of decision while appeal pending—Where any person has appealed against any decision of the Commissioner, the operation of that decision shall be suspended until the appeal concerned has been finally disposed of.

Cf. 1973, No. 37, s. 31

PART III

PLANT VARIETY RIGHTS OFFICE

20 **26. 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 may from time to time, by notice in the *Gazette*, fix the hours during which the Office shall be 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.

30 (3) Where the time prescribed for doing any act or taking any proceeding under this Act expires on a day on which the Office is not open and the act or proceeding cannot therefore be done or taken on that day, that 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

35 **27. Seal of Office**—(1) There shall be a seal of the Office, whose affixing to any document shall be authenticated by the signature of the Commissioner.

(2) Every Court and person acting judicially shall take judicial notice of—

- 40 (a) The seal of the Office; and
(b) The appointment and signature of the Commissioner and every Assistant Commissioner.

(3) For the purposes of **subsection (2)** of this section, the terms “Court” and “person acting judicially” shall have the meanings assigned to them by the Evidence Act 1908.

Cf. 1973, No. 37, s. 6

28. Commissioner, Assistant Commissioners, 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, who shall be under the control and direction of the Commissioner. 10

(2) All persons appointed under **subsection (1)** of this section shall be officers or employees of the Ministry, and any such appointment under that subsection may be held either separately or in conjunction with any other office in the Ministry. 15

(3) The Director-General may from time to time designate any officer or employee of the Ministry an officer of the Office; and any person so designated may hold any other office in the Ministry at the same time. 20

Cf. 1973, No. 37, s. 7

29. Officers and employees not to acquire interests in grants—(1) This subsection applies to every person who is, or during the previous 12 months was, the Commissioner, an Assistant Commissioner, or a person designated under **section 28 (3)** of this Act. 25

(2) No person to whom **subsection (1)** of this section applies shall apply under this Act for a grant, or acquire any right or interest in any grant directly or indirectly, except under a will or on an intestacy. 30

Cf. 1973, No. 37, s. 9

30. 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 the Director-General thinks fit to advise or assist the Commissioner for such purposes and during such periods as the Director-General thinks desirable. 35

(2) A person may be appointed to be a member of any committee appointed under this section whether or not that person is an officer or employee of the Ministry or otherwise holds an appointment under the State Services Act 1962. 40

(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 which that person is a member shall, as soon as is possible
5 after the relevant facts have come to that person's knowledge, disclose the nature of that 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 that application or matter.

10 (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 that the Commissioner considers necessary for the purposes of this Act
15 or in assessing the results of any tests or trials (whether carried out by the Commissioner or not) that the Commissioner considers relevant to those purposes.

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

Cf. 1973, No. 37, s. 8

31. Delegations—(1) The Commissioner may from time to
25 time, by writing under the Commissioner's hand, generally or particularly or subject to conditions, delegate to such officer or officers or employee or employees of the Ministry for the time being designated under **section 28 (3)** of this Act as the Commissioner thinks fit all or any of the powers conferred on
30 the Commissioner by or under this Act or any other Act, including any powers delegated under any other Act, but not including any power to appoint technical advisors under **section 30 (4)** of this Act or this present power of delegation.

(2) Every delegation under this section shall be revocable,
35 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
40 ceased to hold office, and shall continue to have effect as if made by the successor in office of that Commissioner; but if the holder of a specified office to whom any such delegation has been made ceases 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 that delegation.

Cf. 1973, No. 37, s. 10

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32. Plant Variety Rights Journal—(1) The Commissioner shall from time to time, as circumstances require, issue a journal, to be called the Plant Variety Rights Journal.

(2) The Commissioner shall publish in the Journal—

(a) All prescribed particulars relating to applications and grants; and 10

(b) Any other matters and information relating to plant varieties or plant variety rights whose publication appears to the Commissioner to be important or useful. 15

Cf. 1973, No. 37, ss. 11, 12

PART IV

MISCELLANEOUS PROVISIONS

33. 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— 20

(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 or address for service in New Zealand of that person; 25
or

(c) Sending it by post in a registered letter addressed to that person at that person's usual or last known place of abode or address for service in New Zealand.

(2) Where a notice or document is sent by post in the manner described in **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. 30

Cf. 1973, No. 37, s. 32

34. Fees and refunds—(1) Subject to this Act, there shall be paid in respect of grants and applications, and in respect of other matters relating to grants arising under this Act, the fees (if any) from time to time prescribed; and all such fees shall be paid into the Public Account to the credit of the Consolidated Account. 35
40

(2) Any sum paid to the Commissioner in error or in excess 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
5 this Act.

Cf. 1973, No. 37, s. 34

35. Offences and penalties—(1) Every person who, in an application or in an attachment to an application, supplies with intent to deceive any false or misleading information commits
10 an offence.

(2) Every person who falsely represents that any person is the owner of a protected variety or that any person has applied for a grant in respect of any variety, commits an offence.

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

(a) That that variety is a protected variety or a variety in respect of which an application has been made; or

(b) That that material is material of some other variety (being a variety that is a protected variety or a variety in
20 respect of which an application has been made)—
commits an offence.

(4) Every person who wilfully or negligently sells reproductive material in contravention of **section 20** of this Act commits an offence.

(5) Every person who, by using on that person's place of
25 business or on any document issued by that person or otherwise the words "Plant Variety Rights Office" or any other words, suggests that that person's place of business is or is officially connected with the Office commits an offence.

(6) Every person who acts in contravention of **section 29 (2)**
30 of this Act commits an offence.

(7) Every person who commits an offence against this Act shall be liable on summary conviction to a fine not exceeding \$1,000.

(8) 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 Plant Varieties Act 1973.
35

Cf. 1973, No. 37, s. 35

40 **36. 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 Office:

- (b) Regulating any matters placed under the direction or control of the Commissioner by this Act:
- (c) Prescribing the form and manner of applications and the form of diagrams, photographs, and other documents that may be filed in the Office; and requiring copies to be furnished of any such applications, surrenders, diagrams, photographs, and documents; and authorising the rectification or amendment of any of them: 5
- (d) Regulating the procedure to be followed in connection with any application or request to the Commissioner or in connection with any proceeding before the Commissioner, and authorising the rectification of irregularities of procedure: 10
- (e) Providing for the forfeiture of any priority given in respect of an application: 15
- (f) Prescribing any requirements for the entry of particulars in the register kept under **section 12 (3)** of this Act, and for corrections of recorded details:
- (g) Prescribing a form for appeals under **section 21** of this Act: 20
- (h) Authorising the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents in the Office, and of indexes to and abridgments of them:
- (i) Prescribing the mode of publishing any matters required by this Act to be published: 25
- (j) Prescribing fees and charges for anything authorised by this Act:
- (k) Providing for the testing and treatment of varieties to which applications relate: 30
- (l) Prescribing the requirements to be met in selecting the denomination of varieties, and providing for the approval, rejection, or amendment of any denomination by the Commissioner:
- (m) Giving effect to the terms of any international agreement to which New Zealand is a party: 35
- (n) 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.

Cf. 1973, No. 37, s. 37

40

37. Transitional provisions—(1) The place appointed by the Minister as the Plant Varieties Office under the Plant Varieties Act 1973 shall be deemed to have been appointed the Office under **section 26** of this Act on the commencement of this Act.

45

(2) The person who, immediately before the commencement of this Act, was the Registrar of Plant Varieties under the Plant Varieties Act 1973 shall be deemed to have been appointed as the Commissioner on the commencement of this Act.

5 (3) Every grant of plant selectors' rights made under the Plant Varieties Act 1973 and in force immediately before the commencement of this Act shall remain in force in all respects as if—

(a) This Act had been in force when it was made; and

10 (b) An application under this Act in respect of the variety concerned was made by the grantee concerned on the day on which that grant was made under that Act; and

(c) It was made under this Act.

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

20 (5) Every application for a grant of plant selectors' rights made under the Plant Varieties Act 1973 and not determined before the commencement of this Act, shall be deemed to be an application under this Act, and shall be dealt with accordingly.

25 (6) Every grant of protective direction made under the Plant Varieties Act 1973 and in force immediately before the commencement of this Act shall be deemed to be provisional protection given under **section 8 (1)** of this Act, and shall be subject to the provisions of that section.

30 **38. Consequential amendment**—The Schedule to the Ministry of Agriculture and Fisheries Act 1953 (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972 and from time to time thereafter amended) is hereby amended by omitting the item “The Plant
35 Varieties Act 1973” (as inserted by section 36 of that Act), and substituting the item “The Plant Variety Rights Act 1985”.

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

40 (2) The Plant Varieties Appeal Authority established under section 25 of the Plant Varieties Act 1973 is hereby abolished.

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

- (a) The Plant Varieties Act Commencement Order 1974:
- (b) The Plant Varieties Act Extension Order 1981.
- (4) Section 2 of the Scientific and Industrial Research Act 1974 is hereby consequentially amended by repealing the definition of the term "breeder".

5