

Plant Variety Rights Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Plant Variety Rights Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would repeal and replace the Plant Variety Rights Act 1987.

A plant variety right (PVR) is a type of intellectual property right granted to breeders of new plant varieties. PVR holders receive exclusive rights to “exploit” a plant variety that they have developed, so they can earn a commercial return from their work breeding it. Clause 14 of the bill defines exploiting a variety as undertaking certain “restricted acts” in relation to that variety, including producing, reproducing, selling, or exporting the propagating material needed to grow it. Under the PVR regime, only the PVR holder is authorised to do these restricted acts, unless the PVR holder grants another person a licence to also exploit the variety.

The bill seeks to modernise the PVR regime to account for developments in the plant breeding industry. It would also give effect to the Crown’s obligations under Te Tiriti o Waitangi/the Treaty of Waitangi, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in relation to the plant variety rights regime.

In 2011, the Waitangi Tribunal released several recommendations to the Government about what protections the Treaty requires for treasured and significant (taonga) species.¹ It considered that Māori guardianship and caretaker (kaitiaki) relationships with taonga species, and Māori traditional knowledge (mātauranga Māori), are entitled to a reasonable degree of protection.

As introduced, the bill would implement the Tribunal's recommendations by establishing a Māori Plant Varieties Committee. That committee would consider applications for PVRs in relation to indigenous and certain non-indigenous plant species. It would assess the effect that granting such PVRs could have on kaitiaki relationships, and make decisions about whether the PVR application should proceed.

The bill would also give effect to New Zealand's international treaty obligations. New Zealand is party to the International Convention for the Protection of New Varieties of Plants (UPOV). The 1978 revision of that agreement is reflected in the 1987 PVR Act. However, under the CPTPP which New Zealand signed in 2018, the Government agreed to implement law to either "accede" to, or "give effect" to, the 1991 revision of UPOV (UPOV-91).

The bill's intention is to align PVR law with New Zealand's international obligations, while recognising the country's unique heritage and deference to Te Tiriti o Waitangi/the Treaty of Waitangi.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality.

We identified an issue relating to clause 116, which would allow the Commissioner of Plant Variety Rights to delegate their functions and powers to others. As introduced, the bill would permit the Commissioner to delegate their functions to any person.

The intention of this provision is to allow the Commissioner to authorise their staff, for example, to act on their behalf. However, its wording might allow a broader interpretation than intended. We propose amending clause 116 to limit this provision. We recommend that the Commissioner be able to delegate functions and powers to employees, contractors, or secondees of the Ministry of Business, Innovation and Employment.

We also raised questions relating to various other clauses in the bill. The Regulations Review Committee reported to us on the powers contained in clause 150. However, after receiving advice, we are satisfied that our concerns have been addressed.

We have no further issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss in detail minor or technical amendments.

¹ *Ko Aotearoa Tēnei*, also known as the Wai-262 report, can be found on the Waitangi Tribunal website.

Three changes to the bill's purpose provision

Clause 3 is the purpose clause. As introduced, the purpose of the bill is:

- to revise and consolidate the laws on plant variety rights in light of changes made to the UPOV Convention in 1991
- to give effect to the Crown's obligations under the principles of the Treaty of Waitangi to recognise in New Zealand law kaitiaki relationships with taonga species and mātauranga Māori.

We recommend the following changes to the purpose clause to make the bill's intention clearer.

Recognising the Crown's obligations under the principles of the Treaty of Waitangi

Clause 3(b), as introduced, expresses the Crown's obligations under the principles of the Treaty in the PVR regime as to "recognise kaitiaki relationships with taonga species and mātauranga Māori".

Some submitters suggested that this definition is too narrow. They told us that the Crown has an overarching duty to actively protect Māori rights in relation to taonga. This duty is not limited to merely recognising kaitiaki relationships with taonga species and mātauranga Māori.

While we agree with these submitters in principle, we note that this provision was not intended to limit the Crown's general obligations. Instead, it was meant to set out the Crown's obligations under the Treaty, specifically in relation to PVR law.

To address these submitters' concerns we recommend amending clause 3 to clarify its intent. Our proposed drafting would list "to protect kaitiaki relationships with taonga species and mātauranga Māori" as a specific purpose of the legislation.

We then recommend inserting a separate provision to recognise and respect, in relation to plant variety rights, the Crown's obligations under the principles of Te Tiriti o Waitangi/the Treaty of Waitangi. Our amendment would expressly note that Part 5 of the bill is intended to give effect to these obligations. We also recommend that the bill better highlight the importance of the Treaty by separating this broader provision into its own new clause 3A.

We propose several consequential amendments in clause 52, "Overview of Part 5", to reflect these changes to clause 3(b) and new clause 3A.

Acknowledging New Zealand's international obligations under the CPTPP

Clause 3(a) of the bill, as introduced, states that the bill intends to update PVR law "in light of changes made to the UPOV Convention in 1991". We note that some elements of UPOV-91 are inconsistent with the Crown's Treaty obligations. Therefore, the bill would "give effect" to UPOV-91, but not "accede" to it.

Giving effect to UPOV-91 fulfils New Zealand's obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

We believe the CPTPP should be reflected in the bill's purpose, for clarity. In our view, the CPTPP resolves the inconsistencies between New Zealand's different obligations. We therefore recommend amending clause 3(a) to expressly acknowledge the CPTPP.

Promoting innovation and economic growth

PVRs are a form of intellectual property right. Intellectual property laws are intended to promote innovation and economic growth.

Innovation can benefit society as a whole. Strong intellectual property laws incentivise creators to develop new and innovative products, by assuring them that their creations cannot be used without authorisation. Some submitters noted that the 2019 Cabinet paper² for this bill included "innovation and economic growth" as one of the bill's purposes. The Patents Act 2013, a similar intellectual property law, also contains a similar provision.

We recommend inserting clause 3(c) to include an express purpose, based on the wording in the Patents Act 2013, of promoting innovation and economic growth. Our proposed amendment highlights the need to balance the interests of plant breeders, growers, and society as a whole.

Changes affecting the Māori Plant Varieties Committee

The bill recognises that Māori may have kaitiaki relationships with some taonga plant species. Part 5 of the bill would establish a Māori Plant Varieties Committee. This committee would have decision-making power over PVR applications which relate to taonga plant species. In the bill as introduced, this would include species that occur naturally in New Zealand or arrived in New Zealand without human assistance ("indigenous plant species"), and plant species that were brought to New Zealand on migrating waka before 1769 ("non-indigenous plant species of significance"). We discuss some proposed changes to this definition later.

Under clause 59, the Commissioner must refer to the committee any PVR applications that relate to an indigenous plant species or non-indigenous plant species of significance. Clause 56(b) requires the committee to consider the PVR application and make decisions under Part 5 of the Act.

Clause 65 states that the committee must determine whether:

- there is a kaitiaki relationship between Māori (whether generally, or a specific iwi, group, or person) and the plant variety
- granting the PVR would be likely to affect the kaitiaki relationship
- any adverse, or likely adverse, effects on the kaitiaki relationship could be mitigated by imposing conditions on the PVR. Conditions may be agreed to by the

² *Policy decisions for the review of the Plant Variety Rights Act 1987* is available on the Ministry of Business, Innovation and Employment website.

parties, or set out in an undertaking given by the breeder after discussion with the committee.

If the committee determines that a kaitiaki relationship exists and would be negatively affected in a way that cannot be appropriately mitigated, under clause 65(3) it must inform the Commissioner of Plant Varieties that the PVR application must be declined.

Appealing the Māori Plant Varieties Committee's decision

In recognising that Māori should be self-determining about issues affecting Māori, decisions of the Māori Plant Varieties Committee are binding. The bill as introduced does not contain any right to appeal a determination by the committee.³

Some submitters suggested that there should be an appeal process to the Commissioner, who determines all other PVR applications. We disagree. The committee will consist of experts in their fields, and it would go against the bill's purpose (in our recommended new clause 3A) to have these decisions reconsidered by other officials who may not have the necessary cultural expertise. The committee must also follow the rules of natural justice, which allow all parties a fair opportunity to be heard throughout the process.

However, in keeping with good governance, we believe it is important to have some form of general right of appeal to an appropriate body. We considered a range of issues, including expertise and accessibility, to determine which court would be an appropriate body for hearing appeals. We also sought the views of the Chief Justice, who consulted the chief judges of the High Court and the Māori Land Court. They suggested that the appropriate body for an appeal should be the Māori Appellate Court.

We agree. We therefore recommend inserting new clauses 68A to 68D. These clauses would, depending on the circumstances, allow affected parties to appeal to the Māori Appellate Court. This right of appeal would be limited to certain decisions made under Part 5 of the bill, which are set out in Schedule 1A.

Other changes relating to the Māori Plant Varieties Committee

We propose several smaller, clarifying amendments affecting the scope of the Māori Plant Varieties Committee's operations. They include:

- Moving the definition of “kaitiaki relationship” from clause 54 to the main interpretation section in clause 5. This makes it clear that the definition applies to references to “kaitiaki relationships” throughout the bill, not just those in Part 5.
- Clarifying the definition of “indigenous plant species” in clause 54. As introduced, this is defined as a native plant species that “occurs naturally in” New

³ Determinations could be judicially reviewed under the Judicial Review Procedure Act 2016.

Zealand. We believe this term is unclear, and not appropriate in the context of kaitiaki relationships. We think that a better definition would be species which “are endemic to” New Zealand. We recommend amending clause 54 accordingly.

- Amending clause 55 to provide that the Commissioner must consider advice from Te Puni Kōkiri when appointing members to the Māori Plant Varieties Committee. This would help ensure that committee members have appropriate expertise.
- Inserting paragraph (aa) into clause 150(2) to allow PVR renewal fees to cover a portion of the committee’s operating costs. As introduced, the bill would allow the Commissioner to use application fees to cover a portion of their operating costs. However, there was no similar provision for the committee’s operating costs, should the Commissioner refer a matter to the committee.

Aligning the definition of “essentially derived varieties” with UPOV-91

What is an essentially derived variety?

Clause 7 includes a definition of “essentially derived variety” (EDV). This is a new concept that was not in the 1987 PVR Act but was introduced by UPOV-91.

In the bill as introduced, to be considered an EDV, a new plant variety must:

- be “predominantly derived” from a variety that is subject to a PVR license
- be “clearly distinguishable” from the original variety
- retain the “essential characteristics” of the original
- not have important features that distinguish it from the original variety.

Under UPOV-91, PVR holders have the right to control the exploitation of any EDVs that are derived from their protected variety, regardless of whether the derived variety has also been granted a PVR.

Suggested changes to the definition

This definition of “essentially derived variety” is consistent with the definition used in UPOV-91 but differs slightly from the UPOV-91 wording. Instead, the bill as introduced mirrors the definition of EDV in the Australian Plant Breeder’s Rights Act 1994. The bill used this definition as it was meant to be clearer and easier to apply than the UPOV-91 definition. Aligning New Zealand and Australian law was seen as beneficial, given the countries’ close economic ties.

However, many submitters raised concerns that the Australian definition is narrower than the UPOV-91 definition and would weaken protections for plant breeders. They also suggested that the law should align to the international standard. They feared that, if New Zealand adopted a different definition to UPOV-91, international breeders would be reluctant to import varieties due to a perceived lack of protection.

We do not share the same concerns as submitters about international breeders' reluctance to import varieties. This is because New Zealand has a thriving plant breeding industry, despite having had no EDV definition in the 1987 PVR Act.

However, we agree that adopting the international standard wording of UPOV-91 would improve clarity and certainty for plant breeders. During our consideration of the bill, we were also advised that Australia has been consulting on amending its EDV definition. Therefore, it would not be beneficial to adopt the Australian wording. We recommend amending clause 7 to align the bill's definition of EDV with the UPOV-91 definition.

We also recommend inserting clause 7(2) to provide examples of how a plant variety might be derived. We suggest that this subclause should reflect examples given in comparable legislation overseas.

Clarifying the farm-saved seed exception

The bill would grant certain exceptions to PVR holders' exclusive rights. Clause 15 includes an exception relating to farm-saved seed, which the 1987 PVR Act currently allows for. This practice permits a farmer to grow plants from seeds of a protected variety, then harvest and store seeds from those crops to plant for the next season.

Many submitters commented on this exception. Some argued that the farm-saved seed exception should not extend to certain types of plants, or suggested that farmers should pay royalties on farm-saved seed. Others argued that the exception should be broader, and the drafting focused too much on breeders' rights.

We believe the bill as introduced strikes an appropriate balance. We are not recommending any substantive amendment to this provision.

However, we suggest making it clear that farmers could only save seed for use on their own holdings. This would prevent a farmer from distributing farm-saved seed, to the detriment of a PVR holder's interests. We therefore recommend amending clause 15(3) to clarify that farmers may only reproduce, or condition for propagation, farm-saved seed for farming activities on their own farm holdings.

Compulsory licences

Part 7 of the bill would allow the Commissioner to grant compulsory licences in relation to plant varieties.

In most cases, PVR owners will make propagating material of their protected varieties available to the public on reasonable terms. This is usually in their interests, as they can maximise profit by having other people pay to exploit their protected varieties. However, there may be situations where the PVR owner's interests lie in restricting access to a protected variety, which could disadvantage the public interest. A compulsory licence is intended to prevent this situation.

A compulsory licence may override a PVR holder's rights, by authorising another person to undertake restricted acts in relation to the protected variety. It could, for

example, allow that person to grow or sell the protected variety without the PVR holder's permission.

Two changes to the public interest test

Clause 103 sets out what criteria the Commissioner must apply when deciding whether to grant a compulsory licence. In the bill as introduced, they must be satisfied that a compulsory licence would be in the public interest. This requires an assessment of whether the protected variety is reasonably available to the public, considering:

- the kinds of propagating material that are available
- to whom the material is available
- the quantity and quality of available material
- the price at which the material is available.

We recommend two changes to these provisions.

First, we do not believe that the bill should differentiate between propagating material and harvested material in these provisions. By focusing only on the propagating material, the bill as introduced might allow a person to obtain a compulsory licence even if the harvested material was widely available. We believe that, if the PVR holder is making their variety's harvested material available, this may satisfy the public interest in some situations. We therefore recommend amending clause 103(2)(a) to include harvested material.

We also note that the clause's intent is that the Commissioner should consider whether the quantity, quality, and price of the available material is reasonable. Some submitters suggested that not explicitly including the reasonableness test in each individual criterion would weaken the Commissioner's powers.

We agree that the drafting could be clearer. As introduced, the Commissioner might form an overall view of reasonableness by weighing each factor against the others. Our amendments to clause 103(2) would make it clear that the Commissioner should consider whether the quantity and quality of the available material is reasonable, and whether the price of the available material is reasonable.

Compulsory licences should not apply to dependent varieties or essentially derived varieties

Under clause 101 as introduced, a compulsory licence for a protected variety would also allow the licensee to undertake restricted acts in relation to any varieties that are dependent on the protected variety, or EDVs of the protected variety.

We believe that extending a compulsory licence to dependent varieties and essentially derived varieties could be problematic. Dependent varieties and EDVs may not be protected by their own PVRs. Therefore, a compulsory licence cannot be granted over them as they do not meet the requirements set out in clause 103. If a dependent variety or EDV were protected by its own PVR, then we believe that anyone seeking to obtain a compulsory licence in relation to those varieties should lodge a separate compulsory licence application.

We therefore recommend amending clause 101 to reflect that a compulsory licence for a protected variety would only apply to that variety, and not to any dependent varieties or EDVs.

Other changes to this Part

We recommend further small changes to this Part, to improve its administration.

We recommend amending clause 102 to expand the list of parties that have a right to be heard in relation to a compulsory licence application. PVR holders often grant an exclusive licence to another person to exploit their variety. If that variety is then subject to a compulsory licence application, the Commissioner should hear that exclusive licensee's views when considering the compulsory licence application.

Clause 102(5) as introduced would require the Commissioner to publicly notify any decision to grant a compulsory licence. However, there is no such requirement in clause 102(6) if the Commissioner refused to grant a compulsory licence. As introduced, they would only be required to notify the applicant and the PVR holder. We believe that these decisions, and the reasons for the refusal, should be open to public inspection as they would form a precedent. We therefore recommend amending clause 102(6) to require the Commissioner to publicly notify the decision and the reasons for it.

We also recommend expanding clause 108, which details what requirements a compulsory licence should include. If a PVR covers a taonga species it might be subject to conditions, under clause 64, that would mitigate any adverse effects on the kaitiaki relationship. We believe that clause 108 should include a requirement that any kaitiaki conditions on the PVR should also apply to any compulsory licence. This would ensure that compulsory licences do not negatively affect kaitiaki relationships.

Changes to Part 4 – Grant of plant variety rights

Part 4 of the bill sets out the requirements an applicant must meet before being granted a PVR. We propose a number of amendments, mostly of a technical nature, to improve the administration of the bill. We discuss the notable amendments here.

Novel varieties

One requirement is that the variety must be new, or “novel”. Clause 31 defines when a variety is novel. In general, clause 31 requires that the variety, or its propagating material, has not been distributed in New Zealand before a set timeframe, prior to the breeder lodging their PVR application.

We are aware that breeders often distribute their propagating material within, or outside, New Zealand for a number of reasons. For example, for testing or evaluation trials of that variety. Breeders might also contract people to grow their initial breeding stock, to have supply ready for commercial sale.

Some submitters are concerned that these standard practices would, under the bill's definition, cause the variety to no longer be considered novel. We agree that the bill as introduced is unclear in this regard. We therefore recommend inserting subclauses

(1A) to (1D) into clause 31. These subclauses would make it clear that these practices would not affect whether the variety fits the definition of novel.

Uniform and stable varieties

The bill also requires that a variety must be “uniform” and “stable” for a PVR to be granted. Uniform varieties have consistent characteristics across all plants (for example, all plants in a variety are the same height). Stable varieties have characteristics that, for the most part, do not change after repeated breeding cycles (for example, one generation should not unexpectedly change colour).

As introduced, clauses 33 and 34 define these in relation to a variety’s “essential characteristics”. This is the same term as used in the 1987 PVR Act and UPOV-78. However, UPOV-91 defines these using the term “relevant characteristics”. For clarity, and consistency with UPOV-91, we recommend amending clauses 33 and 34 to match.

Publishing PVR applications

Clause 45 requires the Commissioner to publicly notify all PVR applications and make any supporting information publicly available. Clause 45 is not clear about whether the Commissioner must publicly release any additional information received after the application is lodged, or whether this provision only applied to the original information received.

We believe it should be clarified that any further information should be published alongside the original application. We recommend amending clause 45 to this effect.

We also consider that there may be good grounds for withholding certain information, in relation to applications over which a kaitiaki relationship is being asserted. Some submitters noted historical incidents where the disclosure of wāhi tapu (areas sacred to Māori) has resulted in the desecration of these sacred sites. We also foresee that publicly disclosing information of this nature could allow people to exploit mātauranga.

We believe that the bill’s default position, for disclosure of all documents, should be subject to an exception for certain information relating to kaitiaki relationships. We consider that the Māori Plant Varieties Committee is an appropriate body to assess whether these circumstances apply.

We therefore propose amending clause 45 so that, if the Māori Plant Varieties Committee recommends that the Commissioner should not disclose information relating to a kaitiaki relationship, the Commissioner must not make that information publicly available.

Other recommended changes

Deleting the definition of “harvested material”

As introduced, clause 5 defines “harvested material” as a plant, or any part of a plant, that cannot be used for propagation, or can be used for propagation but can also be used for another purpose.

Many submitters commented on this definition. They argued that the above definition could include any plant material, because any plant material can be “used for another purpose”. They suggested that the definition should be limited to material that cannot be used for propagation.

We note that UPOV-91 does not specifically define “harvested material”, nor does the 1987 PVR Act. We consider that these words have a plain and ordinary meaning and that this meaning is appropriate and sufficiently clear. We therefore recommend removing the clause 5 definition of harvested material.

Clarifying the definition of “breed”

Clause 9 defines what breeding a plant variety means. As introduced, to “breed” a plant variety includes the process of selection within the natural variation of a plant or plant population, together with the process of propagation and evaluation so as to enable the variety’s development.

Some submitters suggested that this definition was unclear and may be inconsistent with UPOV-91 (which does not differentiate between methods used to breed a plant variety). They noted that the word “includes” suggests that other methods exist for breeding a plant. However, they recommended making this explicit.

We believe that the definition in the bill as introduced is meant to be non-exhaustive. Plant breeders may invent new technologies for breeding plant varieties (for example, gene editing technologies) and these should be covered by the definition. We agree that this could be clearer.

We therefore recommend amending clause 9 so that the definition is not restricted to any method or technique by which the variety is bred.

Duration of PVRs, and associated definitions

Clause 18(3) defines the expiry date for a PVR grant. As introduced, the general duration of a PVR relating to a “tree or vine” is 25 years. All other PVRs apply for 20 years.

Different terms apply to different plant types because of the processes required to breed them, and associated investment costs.

We heard from a range of submitters who represented various plant industries. Many suggested that their industry’s plant type should have a longer duration of PVR, or that the bill should have longer term lengths in general.

Although we do not recommend extending the term for most plants, we do recommend doing so for potatoes. Potatoes are tubers and have unique characteristics and breeding challenges that make it appropriate for these plants to have a longer PVR term. We therefore recommend including potatoes in the list of plant types that receive a 25-year term under clause 18(3).

We also note that the definition used in clause 18(3) of “tree or vine” is different from that used in the 1987 PVR Act. That Act uses the term “woody plant or its rootstock”, which is a broader definition. We are concerned that, if the bill applied a narrower

definition, some existing plants could have their PVR term reduced to 20 years. For consistency, we therefore propose amending clause 18(3) to revert to the definition used in the 1987 PVR Act.

Using a variety's denomination

UPOV-91 requires that any person who sells or markets propagating material of a protected variety must use that variety's trade name ("denomination"). They are required to continue doing so, even after the PVR has expired. The 1987 PVR Act reflects this requirement in section 22.

We note that the bill as introduced did not contain a similar clause. We therefore recommend inserting clause 25(4) to carry this provision over into the bill.

Clarifying when interests must be registered

Under clause 72, any person who acquires an interest in a PVR or a share in a PVR must apply to the Commissioner to register that interest. For example, if a PVR owner sells their PVR to another person, that change in ownership must be reflected in the Register.

In the bill as introduced, clause 72 would also require registration of licences (other than a compulsory licence), including licence agreements between a PVR holder and a grower. We believe that registration of licences is unnecessary as regular contract laws will cover these. We therefore recommend amending clause 72 to remove licences from the list of interests that must be registered.

We also recommend an identical amendment to clause 73, for the same reason.

Retaining the Plant Variety Rights Office

Clause 7 in Schedule 1 of the bill would abolish the Plant Variety Rights Office (PVRO). The PVRO was established under the 1987 Act as a location, nominated by the Commissioner, for applicants to send hardcopy documents and propagating material to. Since then, the PVRO has been subsumed into the Intellectual Property Office of New Zealand (IPONZ), which is a business unit within the Ministry of Business, Innovation and Employment. The IPONZ also administers other intellectual property regimes, such as patents and trademarks.

While there is no need to have the PVRO established as a separate entity, there is also no need to formally abolish it. Doing so would not change how the regime operates but could, for example, confuse people about where to seek advice regarding PVR issues.

We recommend deleting clause 7 of Schedule 1, to retain the PVRO.

Appendix

Committee process

The Plant Variety Rights Bill was referred to the committee on 19 May 2021.

The closing date for submissions on the bill was 1 July 2021. We received and considered 38 submissions from interested groups and individuals. We heard oral evidence from 20 submitters.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 150.

Committee membership

Jamie Strange (Chairperson)

Glen Bennett

Naisi Chen

Melissa Lee

Hon Todd McClay

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

Plant Variety Rights Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5

- (a) **sections 1 and 2:**
- (b) **Part 1** (preliminary provisions and interpretation), except for **section 12:**
- (c) **subparts 1 and 2 of Part 5:**
- (d) **sections 150 and 151:** 5
- (e) **clause 6 of Schedule 1.**
- (2) The rest of this Act, including any provisions in the schedules which are not referred to in **subsection (1)**, comes into force—
 - (a) on 1 or more dates appointed by the Governor-General by Order in Council: 10
 - (b) to the extent not brought into force earlier, on the second anniversary of the date on which this Act receives the Royal assent.
- (3) However, an Order in Council may not bring **subpart 3 of Part 5** into force—
 - (a) earlier than the first anniversary of the date on which this Act receives the Royal assent; or 15
 - (b) until a date later than the date on which **Part 4** is brought into force.
- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

20

Preliminary provisions

Subpart 1—Purpose and overview

3 Purposes

The purposes of this Act ~~is~~ are—

- (a) to provide an efficient and effective plant variety rights system that revises and consolidates the law on plant variety rights in light of changes made to the UPOV Convention in 1991 in the light of New Zealand's obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in relation to the UPOV Convention: 25
30
- (b) ~~to give effect to the obligations of the Crown under the principles of the Treaty of Waitangi to recognise in New Zealand law kaitiaki relationships with taonga species and mātauranga Māori:~~
- (b) to protect kaitiaki relationships with taonga species and mātauranga Māori in the plant variety rights system: 35
- (c) to promote innovation and economic growth in New Zealand by providing incentives for the development and use of new plant varieties while

maintaining an appropriate balance between the interests of plant breeders, growers, and others so there is a net benefit to society as a whole.

3A Principles of Treaty of Waitangi

This Act recognises and respects the Crown's obligations under the principles of Te Tiriti o Waitangi/the Treaty of Waitangi in relation to the law on plant variety rights, through the provisions of **Part 5** and related provisions that support the purpose of **Part 5**.

4 Outline of regulatory scheme

- (1) This Act provides a framework for protecting intellectual property rights in plant varieties. 10
- (2) This Act (with the exception of **Part 5**) applies to all plant genera and species.
- (3) **Part 5** applies only to indigenous plant species and non-indigenous plant species of significance.
- (4) This Act provides for— 15
 - (a) plant variety rights (**PVRs**) granted under this Act; and
 - (b) existing plant variety rights that were granted under the Plant Variety Rights Act 1987 and are continued by **section 20**.

Subpart 2—Interpretation

5 Interpretation

In this Act, unless the context otherwise requires,— 20

application date, in relation to a PVR application, has the meaning set out in **section 40**

breed has the meaning set out in **section 9**

breeder has the meaning set out in **section 10**

chief executive means the chief executive of the Ministry 25

Commissioner means the person appointed as Commissioner of Plant Variety Rights under **section 114**

compulsory licence means a licence granted by the Commissioner under **section 102**

court means the High Court 30

denomination, in the case of a protected variety, means the name recorded in the register for that variety

dependent, in relation to a plant variety, has the meaning set out in **section 8**

essential characteristics, in relation to a plant variety, means the heritable traits that are determined by the expression of 1 or more genes, or other herita- 35

ble determinants, that contribute to the principal features, performance, or value of the plant variety

essentially derived, in relation to a plant variety, has the meaning set out in **section 7**

exclusive licensee means the licensee referred to in **section 24(3)** 5

exploit has the meaning set out in **section 14**

~~**harvested material** means a plant or any part of a plant that—~~

~~(a) cannot be used for propagation; or~~

~~(b) can be used for propagation but can also be used for another purpose~~

journal means the journal required to be published under **section 145** 10

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

(a) an indigenous plant species; or

(b) a non-indigenous plant species of significance 15

make publicly available, in relation to the Commissioner, has the meaning set out in **section 149**

Māori Plant Varieties Committee or **committee** means the Māori Plant Varieties Committee appointed under **section 55**

Ministry means the department of State, that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 20

non-UPOV country means a country that is not a UPOV party

overseas application means an application for an overseas breeder's right

overseas breeder's right means a breeder's right (as defined in the UPOV Convention) for a plant variety that is in force under the law of a UPOV party (other than New Zealand) 25

plant has the meaning set out in **section 6**

plant variety has the meaning set out in **section 6**

priority date has the meaning set out in **section 41**

propagate has the meaning set out in **section 11** 30

propagating material has the meaning set out in **section 11**

protected variety means a plant variety for which a PVR is in force

publicly notify, in relation to the Commissioner, has the meaning set out in **section 148**

PVR means a plant variety right granted under **section 28(3)(a)** 35

PVR application means an application made under **section 28(1)** for a PVR for a plant variety

PVR holder, in relation to a protected variety, means the person recorded in the register as the holder of the PVR for that variety

register means the register of plant variety rights kept under **section 128**

regulations means regulations made under **section 150**

restricted act has the meaning set out in **section 14(3)** 5

territory, in relation to a UPOV party, means,—

- (a) for a State, the territory of that State; or
- (b) for an intergovernmental organisation, the territory in which the constituting treaty of the organisation applies

UPOV Convention means the International Convention for the Protection of New Varieties of Plants done at Paris on 2 December 1961, as revised at Geneva on 10 November 1972, 23 October 1978, and 19 March 1991 10

UPOV party means—

- (a) a State or an intergovernmental organisation that is a party to the UPOV Convention (whether or not it is also party to some or all of the revisions to that convention); or 15
- (b) a State, an international organisation, or another international entity that is declared to be a UPOV party under **section 151**.

6 Meaning of plant and plant varieties

(1) A **plant** means a member of any plant genus and species,— 20

- (a) including a fungus or an alga; but
- (b) not including a bacterium.

(2) A **plant variety** means a plant grouping that—

- (a) is contained within a single botanical taxon of the lowest known rank; and 25
- (b) can be defined by the expression of the characteristics resulting from a particular genotype or combination of genotypes; and
- (c) can be distinguished from any other plant grouping by the expression of at least 1 of those characteristics; and
- (d) can be considered as a unit because of its suitability for being propagated unchanged. 30

7 Essentially derived varieties

(1) A plant variety (**variety B**) is **essentially derived** from another plant variety (**variety A**) if—

- (a) ~~variety B is predominantly derived from variety A (or from another variety that is essentially derived from variety A); and~~ 35

- (b) ~~variety B retains the essential characteristics that result from the genotype or combination of genotypes of variety A; and~~
- (e) ~~variety B is clearly distinguishable from variety A; but~~
- (d) ~~variety B does not exhibit any important (as distinct from cosmetic) features that differentiate it from variety A.~~ 5
- (a) variety B is predominantly derived from variety A, or from a variety that is itself predominantly derived from variety A, while retaining the essential characteristics that result from the genotype or combination of genotypes of variety A; and
- (b) variety A is clearly distinguishable from variety B; and 10
- (c) except for the differences that result from the act of derivation, variety B conforms to variety A in the expression of the essential characteristics that result from the genotype or combination of the genotypes in variety A.
- (2) For the purposes of **subsection (1)** a plant variety may be derived (for example) by— 15
 - (a) the selection of—
 - (i) a natural or induced mutant; or
 - (ii) a somaclonal variant; or
 - (iii) a variant individual from plants of the initial variety; or 20
 - (b) backcrossing; or
 - (c) transformation by genetic engineering.

8 Dependent varieties

A plant variety (**variety C**) is **dependent** on another plant variety (**variety A**) if— 25

- (a) ~~variety C— is not clearly distinguishable from variety A; or~~
 - (i) ~~is not clearly distinguishable from variety A; but~~
 - (ii) ~~is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge when a PVR is granted for variety A; or~~ 30
- (b) variety C cannot be reproduced except by the repeated use of variety A or of another dependent variety of variety A.

9 Breeding a plant variety

To **breed** a plant variety ~~includes the process of selection within the natural variation of a plant or plant population, together with the process of propagation and evaluation so as to enable the development of the variety.~~ 35

- (a) includes the process of selection within the variation of a plant or plant population generated by natural or other means, together with the

process of propagation and evaluation so as to enable the development of the variety; and

- (b) is not restricted to any method or technique by which a new variety is bred.

- 10 Who is the breeder** 5
- (1) If a plant variety is bred by only 1 person, that person is the **breeder**.
- (2) If a plant variety is bred by 2 or more persons (whether jointly or independently and whether at the same time or different times), each of them is a **breeder**.
- (3) A breeder includes a successor in title to a person who is a breeder under **subsection (1) or (2)**. 10

11 Propagation and propagating material

- (1) To **propagate** a plant variety means to grow, culture, ~~or multiply, or reproduce~~ the plant variety (whether by sexual or asexual means).
- (2) **Propagating material**, in relation to a plant variety, means any part or product from which (whether alone or in combination with other parts or products of that plant) another plant with the same essential characteristics can be propagated. 15

Subpart 3—Other preliminary matters

- 12 Transitional, savings, and related provisions** 20
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 13 Act binds the Crown**
- This Act binds the Crown.

Part 2 25

Plant variety rights

Subpart 1—Nature and scope of PVR: UPOV 91

- 14 PVR is exclusive right to exploit protected variety**
- (1) A PVR for a plant variety gives the PVR holder the exclusive right to exploit the protected variety. 30
- (2) To **exploit** a protected variety (**variety A**) means to undertake, or to authorise another person to undertake, 1 or more restricted acts with any of the following:
- (a) propagating material of—

- (i) variety A; or
 - (ii) a plant variety that is essentially derived from variety A, if variety A is not itself an essentially derived variety; or
 - (iii) a plant variety that is dependent on variety A:
- (b) unless the PVR holder has had a reasonable opportunity to exercise their exclusive rights in relation to the propagating material described in **paragraph (a)**, harvested material obtained through the unauthorised use of that propagating material. 5
- (3) Each of the following is a **restricted act**: 10
 - (a) production or reproduction:
 - (b) conditioning for the purpose of propagation:
 - (c) selling or offering for sale or other marketing:
 - (d) importing or exporting:
 - (e) stocking for the purpose of undertaking any other restricted activity.
- (4) However, the PVR holder's right is subject to— 15
 - (a) the exceptions in **sections 15 to 17**; and
 - (b) the Commissioner's power to grant compulsory licences under **section 102**.
- 15 Exception to PVR: farm-saved seed** 20
- (1) This section applies if a person engaged in farming activities (a **farmer**)— 20
 - (a) lawfully obtains seed—
 - (i) of a protected variety; or
 - (ii) of a plant variety that is essentially derived from, or is dependent on, a protected variety; and
 - (b) in the course of their farming activities, grows plants from that seed; and 25
 - (c) harvests seed from those plants.
- (2) However, this section does not apply in relation to a plant variety of a kind specified in the regulations as one to which this section does not apply.
- (3) The farmer may—
 - (a) condition for the purpose of propagation of that seed the amount that they require for their future farming activities on their own farm holdings; and 30
 - (b) in the course of those farming activities on their own farm holdings, reproduce further seed; and
 - (c) store the seed for the purpose of the things described in **paragraphs (a) and (b)**. 35

- (4) However, the farmer may do the things authorised by **subsection (3)** only if they comply with any requirements specified in the regulations.
- (5) In carrying out an activity permitted by this section, the farmer—
- (a) does not require authorisation from the PVR holder; and
 - (b) does not infringe the PVR. 5
- (6) For the purposes of this section, ~~seed is lawfully obtained if it is obtained by the operation of this section on a previous occasion.~~
- (a) a farmer's own farm holdings are land used by the farmer to grow plants whether the land is—
 - (i) owned or leased by the farmer; or 10
 - (ii) managed under the farmer's own responsibility and on their own account;
 - (b) seed is lawfully obtained if it is obtained by the operation of this section on a previous occasion.
- 16 Exception to PVR: private, experimental, and breeding purposes** 15
- (1) A person may exploit a protected variety if they do so solely for 1 or more of the following purposes:
- (a) ~~private or~~ and non-commercial purposes;
 - (b) experimental purposes;
 - (c) breeding other plant varieties. 20
- (2) In doing the things authorised by **subsection (1)**, the person—
- (a) does not require authorisation from the PVR holder; and
 - (b) does not infringe the PVR.
- 17 Exhaustion of PVR: material lawfully sold or marketed**
- (1) If any protected material is sold or otherwise marketed in New Zealand with the authority of the PVR holder, another person may undertake a restricted act in relation to that protected material without the authority of the PVR holder unless that restricted act involves—
- (a) further propagation of the variety; or
 - (b) the export of the propagating material for a purpose other than final consumption, to a non-protected place. 30
- (2) In this section,—
- non-protected place**, in relation to a plant variety, means— a country that provides no protection for varieties of the genus or species to which the variety belongs 35
- (a) ~~a non-UPOV country that provides no protection in relation to the plant variety; or~~

- (b) ~~a non-UPOV country that provides some protection in relation to the plant variety; or~~
- (e) ~~the territory of a UPOV party where there is no protection for that plant variety~~

protected material means— 5

- (a) propagating material of—
 - (i) a protected variety; or
 - (ii) a plant variety that is essentially derived from a protected variety; or
 - (iii) a plant variety that is dependent on a protected variety; or 10
- (b) harvested material of a variety described in **paragraph (a)**; or
- (c) any product made directly from harvested material of a variety described in **paragraph (a)**.

18 Duration of PVR

- (1) A PVR for a plant variety— 15
 - (a) takes effect when it is granted under **section 28(3)(a)**; and
 - (b) remains in effect until the close of the expiry date.
- (2) However, the PVR ceases to be in effect before the expiry date if—
 - (a) it is cancelled or nullified under **section 79, 80, or 84**; or
 - (b) it is surrendered under **section 85**; or 20
 - (c) it is deemed to be cancelled for non-payment of a PVR renewal fee under **section 86** (subject to **section 94**).
- (3) The **expiry date** for a PVR is the date that is,—
 - (a) if the plant variety is a tree or vine woody plant or its root stock or a potato, 25 years after the PVR was granted; or 25
 - (b) otherwise, 20 years after the PVR was granted.

19 PVR is personal property

A PVR is personal property.

Subpart 2—Nature and scope of PVR: UPOV 78

20 Status of plant variety rights granted under 1987 Act 30

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

- (a) is the right conferred by the 1987 Act; and
- (b) does not include additional rights granted to the holders of plant variety rights under this Act. 35

Part 3

Infringement and enforcement

Subpart 1—Infringement of PVR

21 Infringement of PVR

- (1) In this Act, a person **infringes** the PVR for a protected variety if— 5
 - (a) the person exploits the protected variety; and
 - (b) the exploitation is not excluded from the operation of this section under **section 22**; and
 - (c) the exploitation occurs—
 - (i) on or after the priority date for the application that results in the PVR being granted but before the PVR is granted; or 10
 - (ii) while the PVR is in force.
- (2) A person (**person A**) also infringes the PVR for a protected variety (**variety 1**) with a specified denomination if person A—
 - (a) exploits another variety (**variety 2**) by referring to it as that specified denomination; and 15
 - (b) does not own the PVR for variety 1 and is not authorised to exploit it under a licence issued by the owner of the PVR for variety 1.
- (3) **Subsection (2)** does not apply if the groups of plants to which variety 1 and variety 2 belong are recognised as being distinct for the purposes of denomination. 20
- (4) **Subsections (1) and (2)** do not apply to—
 - (a) a PVR holder, unless the holder has conferred the exclusive right to exploit the protected variety on another person (the **exclusive licensee**); or 25
 - (b) an exclusive licensee of the PVR holder.

22 What does not constitute infringement

A person does not infringe a PVR for a protected variety by doing something that—

- (a) they are authorised to do by the PVR holder; or 30
- (b) they are permitted to do under **sections 15 to 17**; or
- (c) they are authorised to do by a compulsory licence.

23 Limitation of damages

- (1) If, in any proceedings for the infringement under **section 21** of the rights of the holder of a PVR, it is proved or admitted that an infringement was committed but the defendant proves that, at the time of that infringement, the defend- 35

ant was not aware, and had no reasonable grounds for supposing, that it was an infringement, the plaintiff—

- (a) is not entitled under **section 27** to any damages against the defendant in respect of that infringement; but
 - (b) is entitled instead to an account of profits in respect of that infringement. 5
- (2) **Subsection (1)** does not affect any entitlement of the holder of a PVR to any relief in respect of the infringement of that holder's rights under **section 21**, other than damages.

24 PVR holder's authorisation

- (1) The PVR holder for a protected variety may authorise any other person (the licensee) to exploit the protected variety. 10
- (2) The authorisation may be given subject to any conditions or limitation the PVR holder thinks fit.
- (3) If the authorisation gives the licensee exclusive rights to exploit the protected variety in New Zealand (an **exclusive licence**), the licensee (the **exclusive licensee**) has the same rights as the PVR holder to take proceedings in respect of any infringement of the PVR that— 15
 - (a) affects the rights of the licensee; and
 - (b) occurs after the authorisation is granted.
- (4) If an exclusive licensee brings an infringement proceeding, the PVR holder must be joined as a defendant (unless joined as a plaintiff). 20
- (5) A PVR holder who is joined as a defendant is not liable for costs unless that holder defends the proceedings.

25 Notice of protection

- (1) ~~This section applies~~ **Subsections (2) and (3) apply** to a breeder who— 25
 - (a) has acquired a PVR in respect of a plant variety; and
 - (b) sells or markets any propagating material of that variety.
- (2) The breeder must take all reasonable steps, by means of suitable labelling or other identification of that material, to inform the purchaser concerned of that right. 30
- (3) In determining, for the purposes of **section 23**, whether any person had reasonable grounds for supposing that any action was an infringement of the rights of a PVR holder, the court may take into account the extent (if any) to which that PVR holder or, as the case requires, the defendant concerned, complied with **subsection (2)** in respect of any propagating material in respect of which that infringement occurred. 35

- (4) Any person who at any time sells propagating material of a protected variety, or of a variety that was a protected variety until the grant made in respect of it expired, must—
- (a) use its denomination; and
 - (b) not associate any trade mark, trade name, or other similar indication with that denomination unless that denomination is clearly recognisable.

5

Subpart 2—Infringement proceedings

26 Commencement of infringement proceedings

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

10

27 Types of relief available for infringement

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

15

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

Part 4

Grant of plant variety rights

Subpart 1—Grant of PVR and criteria

20

28 Grant of PVR

- (1) A breeder may apply to the Commissioner for a PVR for a plant variety in accordance with **section 36** and (if applicable) **section 37**.
- (2) The Commissioner must consider the application in accordance with **subparts 3 and 4** of this Part, and (if applicable) **Part 5**, and any procedures specified in the regulations.
- (3) After considering the application, the Commissioner must—
 - (a) grant the PVR to the applicant—
 - (i) if satisfied that the criteria for granting a PVR in **section 30** are met; and
 - (ii) in a case where **Part 5** applies, if the Māori Plant Varieties Committee has informed the Commissioner under **section 65** that the application should proceed; but
 - (b) otherwise, refuse to grant the PVR.
- (4) If the Commissioner grants a PVR, they must—

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30

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- (a) notify the applicant and anyone who opposed the application under **section 49** (other than a person who withdrew their notice of opposition before the Commissioner decided to grant the PVR); and
 - (b) enter the PVR in the register.
- (5) If the Māori Plant Varieties Committee decides, under **section 65(1)(c)**, that an agreed or a proposed condition must be a condition of grant of a PVR, the Commissioner must impose that condition when granting the plant variety right. 5
- (6) If the Commissioner refuses to grant a PVR, they must notify the applicant and anyone who opposed the application under **section 49** of the decision and the reasons for it. 10
- (7) The Commissioner must not grant a PVR until the applicant has complied with all requirements imposed on the applicant by this Act or the regulations that are prescribed as relevant requirements for the purposes of this subsection.
- 29 Grant of PVR where there are 2 or more breeders** 15
- (1) If 2 or more persons breed a plant variety jointly, those persons, or some of them, may make a joint application for the PVR for that variety.
- (2) If 2 or more persons breed a plant variety jointly, one of those persons may not apply for a PVR for that variety otherwise than jointly with, or except with the consent in writing of, each other of those persons. 20
- 30 Criteria for granting PVR**
- The criteria that must be met to grant a PVR for a plant variety to an eligible applicant are that—
- (a) the plant variety is all of the following:
 - (i) novel (*see section 31*): 25
 - (ii) distinct (*see section 32*):
 - (iii) uniform (*see section 33*):
 - (iv) stable (*see section 34*):
- (b) the name for the plant variety meets the denomination criteria in **section 35**. 30
- 31 Meaning of novel**
- (1) A plant variety is **novel** if propagating material or harvested material for the plant variety has not been distributed—
- (a) in New Zealand ~~within the~~ before the period beginning 12 months before the priority date; ~~or and~~ 35
- (b) in any other territory ~~within the following period before the priority date:—~~

- (i) if the plant variety is a ~~tree or vine~~, woody plant or its root stock or a potato, before the period beginning 6 years before the priority date;
- (ii) otherwise, before the period beginning 4 years before the priority date. 5
- (1A) **Subsection (1B)** applies where, to increase the stock of a variety or for evaluation trials or tests of a variety, its owner makes arrangements under which—
- (a) propagating material of that variety is to be sold to, or used by, some other person; and
- (b) any unused portion of that propagating material, and all the material of any sort produced from that propagating material, is— 10
- (i) to be sold to that owner by that other person; or
- (ii) keep to become the property of the owner.
- (1B) For the purposes of **subsection (1)**, no account may be taken of any sale under that arrangement of— 15
- (a) propagating material of that variety by that owner to that other person; or
- (b) material of any sort of that variety by that other person to that owner.
- (1C) For the purposes of **subsection (1)**, a variety does not cease to be novel because of the sale at any time of—
- (a) material to which **subsection (1D)** applies that is not propagating material: 20
- (b) propagating material to which **subsection (1D)** applies that is disposed of for purposes other than reproduction.
- (1D) **Subsection (1C)** applies to material that, having been produced during the breeding of a variety, or to increase the stock of a variety or for evaluation tests or trials of a variety, is not (or no longer) required for any of those activities. 25
- (2) In this section, **distributed**, in relation to a variety, means sold or otherwise disposed of to another person for the purposes of exploiting the variety by, or with the consent of, the breeder.
- 32 Meaning of distinct** 30
- (1) A plant variety is **distinct** if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the application date.
- (2) Without limiting what is common knowledge, the existence of a plant variety (**variety K**) is taken to be **common knowledge** if— 35
- (a) there is or has been an overseas breeder's right for variety K; or
- (b) an application of either of the following kinds has been made in relation to variety K:

- (i) a PVR application made under this Act or under the laws of any other country, resulting in the grant of PVR for variety K; or
- (ii) an application under this Act or the laws of any other country to enter variety K onto an official register, resulting in the entry of the variety on the official register in the relevant country. 5

33 Meaning of uniform

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

34 Meaning of stable 10

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

35 Criteria for plant variety denomination

- (1) The criteria for the denomination of a plant variety are that the denomination— 15
 - (a) enables the plant variety to be identified; and
 - (b) does not consist solely of figures (unless that is an established practice for designating varieties); and
 - (c) is not liable to mislead or cause confusion concerning—
 - (i) the characteristics, value, or identity of the plant variety; or 20
 - (ii) the name of the breeder applying for the PVR (or, if there is more than 1 applicant, the name of each breeder); and
 - (d) is different from any denomination that designates an existing plant variety of the same or a similar species in New Zealand or the territory of any other UPOV party; and 25
 - (e) is the same as the denomination—
 - (i) in any overseas breeder's right for the plant variety; or
 - (ii) in any overseas application in relation to the plant variety that has been made and has not yet been finally determined; and
 - (f) is not one in respect of which another person has a prior right that would prevent a person from using the denomination when they are required to do so in order to avoid infringing the PVR under **section 21(2)**; and 30
 - (g) meets any other prescribed criteria.
- (2) However, **subsection (1)(e)** does not apply if the denomination used overseas does not meet the criteria in **subsection (1)(a) to (d) and (f)**. 35
- (3) Despite **subsections (1) and (2)**, if in the opinion of the Commissioner, the use or approval of a denomination would be likely to offend a significant sec-

tion of the community, including Māori, the Commissioner must not approve the denomination.

Subpart 2—PVR applications

36 Application for PVR

- (1) A PVR application in relation to a plant variety may be made by 1 breeder or by 2 or more breeders jointly. 5
- (2) The application must—
 - (a) be made in the way specified in the regulations; and
 - (b) include the following information:
 - (i) ~~a description of completed technical questionnaire about the plant variety (being a questionnaire supplied to the applicant by the Commissioner):~~ 10
 - (ii) the name of the breeder applying for the PVR (or each of them if there is more than 1);
 - (iii) ~~the proposed denomination of the plant variety:~~ 15
 - (iv) any other information specified in the regulations; and
 - (c) be accompanied by any propagating material of the candidate variety specified in the regulations; and
 - (d) be accompanied by any fee specified in the regulations.
- (2A) The proposed denomination of the plant variety must be filed with the Commissioner by the prescribed date, and if it is not filed by that date the application lapses. 20
- (3) If an application is not accompanied by the prescribed fee (if any), the Commissioner may not process the application until the prescribed fee is paid.

37 Additional requirements for applications where kaitiaki relationship asserted 25

- (1) This section applies if—
 - (a) **subpart 3 of Part 5** has come into force and a PVR application is made on or after the date on which **subpart 3 of Part 5** comes into force; and 30
 - (b) the breeder knows that a ~~person, hapū, iwi, or individual of Māori descent, or Māori entity group~~ has asserted that they have a kaitiaki relationship with an indigenous plant species or a non-indigenous plant species of significance (*see subpart 3 of Part 5*).
- (2) If the breeder makes a PVR application under **section 36** in relation to a plant species in respect of which a kaitiaki relationship is asserted, that application must include— 35

- (a) the name of the kaitiaki referred to in **subsection (1)**:
 - (b) a summary of the engagement the breeder has conducted with the kaitiaki:
 - (c) if available,—
 - (i) a copy of any assessment by the kaitiaki of the potential effects on the kaitiaki relationship if the PVR is granted: 5
 - (ii) a summary of—
 - (A) any consideration given by the breeder or kaitiaki, or both, to how those effects could be mitigated; and
 - (B) any agreement reached between the breeder and the kaitiaki about how those effects can be mitigated. 10
 - (3) For the purposes of this section, **kaitiaki** includes a ~~person~~, hapū, iwi, ~~or individual of Māori descent, or Māori entity group~~ that has asserted that they have a kaitiaki relationship with a plant species.
- 38 Variation of PVR application to alter denomination sought** 15
- (1) An applicant may vary their PVR application to alter the denomination sought, by giving a variation notice to the Commissioner.
 - (2) The applicant may do so at any time before the Commissioner decides the PVR application under **section 28(3)**.
 - (3) A variation notice must— 20
 - (a) be made in the way specified in the regulations; and
 - (b) if the PVR application was made by 2 or more persons jointly, be made by both or all of those persons jointly; and
 - (c) include any information specified in the regulations; and
 - (d) be accompanied by any fee specified in the regulations. 25
 - (4) The Commissioner must publicly notify the variation notice and make it publicly available.
- 39 Withdrawal of PVR application**
- (1) An applicant may withdraw their PVR application by giving a withdrawal notice to the Commissioner at any time before the Commissioner decides the PVR application under **section 28(3)(a)**. 30
 - (2) The Commissioner must publicly notify the withdrawal notice (unless it is received before the application is publicly notified).

Subpart 3—Dates and priority

- 40 Application date** 35
- The **application date** for a PVR application is the later of the following:

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

41 Priority date

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

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

42 Priority arising from overseas application

(1) This section applies if—

- (a) a person makes a PVR application in relation to a plant variety in New Zealand (the **New Zealand application**); and 10
- (b) the person has previously made 1 or more overseas applications in relation to that plant variety in another country that is a UPOV party; and
- (c) the application date for the New Zealand application (as determined under **section 40**) is within 12 months after the date on which the first overseas application was made; and 15
- (d) the New Zealand application includes a claim for priority based on the overseas application.

(2) The **overseas application date**, in relation to the New Zealand application, is the date on which the first overseas application referred to in **subsection (1)(b)** was made. 20

(3) However, this section does not apply if evidence of the overseas application—

- (a) is not included in the New Zealand application; and
- (b) is not given to the Commissioner within 3 months after the New Zealand application is made. 25

(4) In this section, **evidence of the overseas application** means a copy of the documents that constitute the overseas application (or the first overseas application if there was more than 1) certified to be a true copy by the authority with which that application was filed.

43 Priority of PVR applications

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If 2 or more PVR applications are made in relation to the same plant variety, the PVR applications must be considered and determined in order of their priority dates, starting with the PVR application with the earliest priority date.

44 Cancellation of PVR because of earlier overseas applications

(1) This section applies if,—

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- (a) after a PVR is granted to any person in respect of a variety, another person makes an application in respect of that variety; and

- (b) the Commissioner is satisfied that, if that PVR had not already been granted, that other person would, because of **section 42**, be entitled to a PVR in respect of that application.
- (2) If this section applies, the Commissioner must—
 - (a) cancel that PVR; and
 - (b) grant a new PVR to the person who would be entitled to it if the cancelled PVR had never been granted.

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Subpart 4—Consideration of PVR application

45 PVR application to be notified and made publicly available

- (1) The Commissioner must publicly notify a PVR application, the information referred to in **section 36(2) and (2A)**, and any additional information that the Commissioner obtains on a request under **section 46(1A)**, and make it publicly available,—
 - (a) as soon as practicable after the Commissioner receives the application; or
 - (b) if, when the application is received, it does not comply with **section 36(2)**, as soon as practicable after that non-compliance is remedied.
- (2) However, if the application contains information about kaitiaki relationships supplied by any iwi, hapū, individual of Māori descent, or Māori entity, the Commissioner must consult with the Māori Plant Varieties Committee as to whether that information should be made publicly available.
- (3) If the Māori Plant Varieties Committee recommends that the information not be disclosed, the Commissioner must not make that information publicly available.

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46 Propagating material and information

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- (1) The Commissioner may request the applicant to give the Commissioner—, or any person nominated by the Commissioner propagating material reasonably needed by the Commissioner, to properly consider the PVR application.
 - (a) ~~propagating material reasonably needed by the Commissioner to properly consider a PVR application:~~
 - (b) ~~any other information reasonably needed by the Commissioner to properly consider a PVR application.~~
- (1A) The Commissioner may request the applicant to give the Commissioner any information reasonably needed by the Commissioner to properly consider the PVR application.
- (2) The Commissioner's request must be made in writing and allow the applicant—
 - (a) a reasonable time (specified in the request) to comply with it; or

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- (b) if the time for responding to the request is prescribed, the prescribed time (which must be specified in the request) to comply with it.
- (3) The Commissioner—
 - (a) may, subject to **subsection (4)**, defer consideration of the PVR application until the request is complied with; and 5
 - (b) must make any information given in response to the request publicly available.
- (4) If the applicant does not comply with the request within the specified time,—
 - (a) the PVR application lapses; and
 - (b) the Commissioner must publicly notify that fact. 10
- (5) The Commissioner may give propagating material to a person if the Commissioner considers it necessary or desirable to do so for the purposes of performing or exercising the Commissioner's functions, powers, or duties under this Act.
- (6) If propagating material supplied by a PVR holder under **section 69(2)** is 15

given to an applicant, but the applicant uses that material in a way that contravenes the directions of the Commissioner, the Commission may decline the application.

47 Growing trials

- (1) A PVR must not be granted for a plant variety unless a growing trial has been 20

undertaken for that variety.
- (2) The Commissioner must decide whether a growing trial is to be undertaken—
 - (a) by or on behalf of the Commissioner; or
 - (b) by or on behalf of the applicant; or
 - (c) by an overseas testing body approved by the Commissioner; or 25
 - (d) by or on behalf of an authority of a State that is a member of UPOV and grants plant variety rights.
- (3) The Commissioner must inform the applicant of their decision under **subsection (2)**.
- (4) The Commissioner may give directions about the way the growing trial is to be 30

conducted and impose conditions about the trial (for example a timetable for conducting the trial).
- (5) A growing trial must be conducted in accordance with any prescribed requirements.

48 Fees 35

- (1) A PVR applicant must pay the prescribed fee for conducting growing trials if

the growing trial is to be conducted by or on behalf of the Commissioner.

- (2) A PVR applicant must pay the prescribed examination fee ~~if the Commissioner decides that a growing trial is to be conducted in the manner described in **section 47(2)(b), (c), or (d)** for the application.~~
- (3) The fees payable under **subsections (1) and (2)** must be paid within the prescribed time after the Commissioner has requested payment. 5
- (4) The request must be in writing and specify the prescribed time.
- (5) If the applicant does not pay the prescribed growing trial or examination fees within the prescribed time—
- (a) the PVR application lapses; and
 - (b) the Commissioner must publicly notify that fact. 10
- 49 Opposition to grant of PVR**
- (1) A person may oppose the grant of a PVR for a plant variety on the ground that 1 or more of the criteria in **section 30(a) and (b)** are not met, by giving a notice of opposition.
- (2) A notice of opposition must be given— 15
- (a) in the way specified in the regulations; and
 - (b) within the following times:
 - (i) if the opposition relates to a proposed denomination, within 3 months after the application is notified in accordance with **section 45:** 20
 - (ii) in any other case, at any time before the PVR is granted.
- 50 Consideration of application and notices of opposition**
- (1) This section applies after the close of the period for giving notice of opposition in relation to a PVR application.
- (2) As soon as practicable after the close of that period, the Commissioner must— 25
- ~~(a) give the applicant a copy of any notices of opposition received; and~~
 - ~~(b) give public notice of any notices of opposition and make them publicly available.~~
- (3) The Commissioner must— 30
- (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and
 - (b) take the notices of opposition and any submissions into account in considering the PVR application; and
 - (c) otherwise decide and deal with the application in the prescribed manner. 35

51 Alternative denomination if criteria for denominations not met

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

Part 5

15

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

Subpart 1—Preliminary provisions

52 Treaty of Waitangi (Te Tiriti o Waitangi) Overview of Part 5

~~In order to recognise and respect the Crown's responsibility to apply the principles of the Treaty of Waitangi through the recognition and protection of kaitiaki relationships with taonga species and mātauranga Māori, this Part~~ This Part recognises and respects the Crown's obligations under the principles of Te Tiriti o Waitangi/the Treaty of Waitangi through protecting kaitiaki relationships with taonga species and mātauranga Māori in the plant variety rights system, by— 20

- (a) ~~provides~~ providing additional procedures that will recognise and protect kaitiaki relationships; and
- (b) ~~provides~~ providing for a Māori Plant Varieties Committee to administer those procedures, to make determinations about kaitiaki relationships, and to have advisory functions; and 30
- (c) ~~enables~~ enabling the nullification or cancellation of PVRs that have adverse effects on kaitiaki relationships.

53 Application of this Part

This Part applies to a PVR application that relates to a plant variety— 35

- (a) that is derived wholly or partly from—
 - (i) an indigenous plant species; or

- (ii) a non-indigenous plant species of significance; and
- (b) in circumstances where the material from which the plant variety was derived was ~~sourced~~ obtained from New Zealand.

54 Interpretation of this Part

In this Part, unless the context otherwise requires,—

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

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

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

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

- (a) believed to have been brought to New Zealand before 1769 on waka migrating from other parts of the Pacific region; and

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- (b) listed in the regulations as a non-indigenous plant species of significance

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

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Subpart 2—Māori Plant Varieties Committee

55 Appointment and membership of Māori Plant Varieties Committee

- (1) The Commissioner must establish a committee called the Māori Plant Varieties Committee.

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- (2) The Commissioner may, at any time,—

- (a) appoint a person as a member of the committee;
- (b) remove a member from the committee and, if the Commissioner thinks fit, appoint another member in that member's place.

- (2A) Before appointing a person under **subsection (2)(a)**, the Commissioner must consult the chief executive of Te Puni Kōkiri.

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- (3) A person must not be appointed as a member of the committee unless, in the opinion of the Commissioner, the person is qualified for appointment, having regard to that person's knowledge of mātauranga Māori (Māori traditional knowledge), tikanga Māori (Māori protocol and culture), te ao Māori (the Māori world view), and taonga species.

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- (4) In making an appointment, the Commissioner must also consider—

- (a) whether the proposed member has the mana, standing in the community, skills, knowledge, or experience to participate effectively in the committee and to contribute to carrying out the functions of the committee; and
 - (b) the committee's overall knowledge and experience as a whole.
- (5) The members must appoint one of their number to be the chairperson of the committee. 5
- (6) A member of the committee may at any time resign office by notice in writing to the Commissioner.
- (7) The Commissioner may not delegate the power of establishment or appointment in this section. 10
- Compare: 2013 No 68 s 225

56 Functions of Māori Plant Varieties Committee

The functions of the Māori Plant Varieties Committee are to—

- (a) issue engagement guidelines and provide advice to applicants for a PVR and kaitiaki: 15
- (b) consider PVR applications referred to it by the Commissioner and make decisions under this Part:
- (c) advise the Commissioner whether the use or approval of a proposed denomination is likely to be offensive to Māori:
- (d) provide advice to the Commissioner on any information that may be relevant to application of the criteria listed in **section 30** for granting a PVR. 20

57 ~~Commissioner not bound by advice~~ Advice given under section 56(c) and (d)

The Commissioner must consider, but is not bound by, the advice given by the Māori ~~committee~~ Plant Varieties Committee under **section 56(c) and (d)**. 25

Compare: 2013 No 68 ss 226, 227

58 Remuneration of Māori Plant Varieties Committee

- (1) The members of the Māori Plant Varieties Committee are entitled, in accordance with the fees framework, to— 30
- (a) remuneration for services as a member at a rate and of a kind determined by the Commissioner; and
 - (b) be reimbursed for actual and reasonable expenses incurred by them in undertaking the functions and duties of the committee.
- (2) In **subsection (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of other bodies in which the Crown has an interest. 35

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

59 Commissioner must refer applications to Māori Plant Varieties Committee

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

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60 Māori Plant Varieties Committee's role

- (1) The role of the Māori Plant Varieties Committee in relation to any PVR application that is referred to it is to assess and determine whether that ~~application~~ PVR, if granted, will or could have adverse effects on 1 or more kaitiaki relationships with the plant variety that is the subject of the PVR application. 10
- (2) In carrying out its role under **subsection (1)**, the committee must,—
 - (a) ~~if a person, an iwi, hapū, or group~~ individual of Māori descent, or Māori entity asserts that they have a kaitiaki relationship with the plant variety that is the subject of the PVR application, assess that relationship (if any) and the effect of granting a PVR on that relationship, in the manner described in **section 61**: 15
 - (b) if **paragraph (a)** does not apply, consider the nature of any kaitiaki relationships as understood by Māori generally that Māori in general have with the plant variety that is the subject of the application, and the effect on those relationships of granting a PVR for the plant variety in question. 20
- (3) The matters that the committee may take into account in carrying out its role under **subsection (1)** also include—
 - (a) the effects of any PVR already granted in relation to the plant species that is the subject of the application: 25
 - (b) the purpose of this Act (explained in **section 3**):
 - (c) whether any adverse effects on a kaitiaki relationship with the plant species that is the subject of the application can be mitigated by an agreement or undertaking.
- (4) It is also the committee's role to publicly notify the committee's rules about hearing and timing requirements for the making and hearing of submissions, responding to information requests from the committee and others, and convening hui. 30

61 Assessment where kaitiaki relationship asserted

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

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- (a) whether that person, iwi, hapū, or other group have demonstrated their kaitiaki relationship with the relevant plant variety and associated mātauranga Māori:
- (b) if a kaitiaki relationship has been demonstrated,—
 - (i) the kaitiaki's assessment of the effect of a grant of the PVR on their relationship; and 5
 - (ii) any agreement to mitigate adverse effects reached between the breeder and the kaitiaki; and
 - (iii) whether there is any evidence that the parties have not acted in good faith during their engagement (if any). 10

62 Process to be adopted by Māori Plant Varieties Committee

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

- (a) must, where practicable, consider any submissions made, in accordance with the times and procedures set out in the committee's publicly notified rules, by the applicant, ~~or a particular person, an~~ iwi, hapū, ~~or group~~ individual of Māori descent, or Māori entity that asserts they have a kaitiaki relationship with a plant variety, and any organisation that the committee considers represents Māori generally or significant Māori interests (and any evidence given by an expert on behalf of any of those ~~persons, iwi, hapū, groups, individuals, or organisations entities~~); 15 20
- (b) may conduct any investigations the committee considers appropriate to carry out its functions (including requesting further information from any party or convening hui):
- (c) must comply with the requirements of natural justice: 25
- (d) must act as quickly as is practicable in the circumstances:
- (e) must provide written reasons to the parties for every determination that it makes:
- (f) may, except as provided in this Act or any other enactment, regulate its own procedure as it thinks fit. 30

63 Decision-making by Māori Plant Varieties Committee

- (1) In making decisions under this Part, members of the Māori Plant Varieties Committee must strive to reach consensus.
- (2) However, if the chairperson of the committee is satisfied that a consensus is not possible, the chairperson may authorise the members to make a decision by a simple majority. 35

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

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

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

65 Decision by Māori Plant Varieties Committee that PVR application should proceed or be declined

- (1) The Māori Plant Varieties Committee must inform the Commissioner that the PVR application should proceed to be further considered by the Commissioner if the committee is satisfied that—

- (a) there is no kaitiaki relationship between—
 - (i) Māori in general and the plant variety that ~~has been~~ is the subject of the application; or
 - (ii) a particular ~~person~~, iwi, hapū, individual of Māori descent, or ~~group~~ Māori entity, and the plant variety that is the subject of the application; or
- (b) there is such a kaitiaki relationship but it is unlikely to be affected by the grant of ~~the application~~ that PVR; or
- (c) any adverse effect or likely adverse effects on the kaitiaki relationship will be adequately mitigated by a condition of the grant agreed between the parties or set out in an undertaking given by a breeder following discussion between the breeder and the committee.

- (2) If **subsection (1)(c)** applies, the committee must inform the Commissioner that the proposed condition must be imposed by the Commissioner as a condition of the grant of the PVR.

- (3) If **subsection (1)** does not apply, the committee must inform the Commissioner that the PVR application must be declined.

- (4) The committee must notify the Commissioner and the parties in writing, as soon as practicable after making a decision under this section, of the decision and the reasons for it.

66 Request for reconsideration of Māori Plant Varieties Committee's decisions

- (1) An applicant may request the Commissioner to ask the Māori Plant Varieties Committee to reconsider its decision to inform the Commissioner that a PVR application must be declined, on the basis of further information that was not available to the committee when it made its decision. 5
- (2) ~~Any person (other than the applicant)~~ iwi, hapū, individual of Māori descent, or Māori entity may request the Commissioner to ask the committee to reconsider its decision that the application should proceed for further consideration by the Commissioner, on the basis of further information that was not available to the committee when it made its decision. 10
- (3) A request under **subsection (1) or (2)** must be made within 10 working days after the date on which the ~~applicant or person, iwi, hapū, or group, as the case requires, is~~ Commissioner and the parties are notified in writing under **section 65(4)** of the committee's decision. 15
- (4) On receiving a request under **subsection (1) or (2)** for reconsideration the committee—
 - (a) must consider whether the new information, had it been available at the time it made its decision, would be likely to have altered the committee's decision; and 20
 - (b) if so, must reconsider its decision in accordance with **sections 59 to 65**, but may rely on information previously obtained, and need not repeat any process previously undertaken before the original decision, unless the committee is satisfied that the information or that process is likely to be affected by the new information. 25
- (5) The committee must notify the Commissioner and the parties in writing as soon as practicable after making a decision under this section not to reconsider the committee's decision.

Other provisions

67 Powers to require nullification or cancellation of PVR to which this Part applies 30

- (1) Any person may apply at any time to the Commissioner for the nullification or cancellation of a PVR to which this Part applies on the grounds set out in **section 67(3)(a) or (b)**, in the manner described in **section 81**.
- (2) On receiving an application under **subsection (1)** the Commissioner must, unless they dismiss the application under **section 68**, refer the application to the Māori Plant Varieties Committee. 35
- (3) The committee may,—

- (a) if it determines that there was an adverse effect on a kaitiaki relationship with a plant species at the time a PVR was granted for that ~~plant species~~ variety, inform the Commissioner that the PVR must be nullified:
 - (b) if it determines that the PVR holder has breached any condition of the grant of the PVR or any undertaking made by the PVR holder before or at or after the time of the grant, being a condition or an undertaking designed to mitigate an adverse effect on kaitiaki relationships with the plant species, inform the Commissioner that the PVR must be cancelled:
 - (c) if neither **paragraph (a) nor paragraph (b)** applies, dismiss the application.
- (4) The committee may, if **subsection (3)(a) or (b)** applies, but the PVR holder makes a further undertaking that is acceptable to the committee—
- (a) dismiss the application instead of making a decision under **subsection (3)(a) or (b)**; and
 - (b) inform the Commissioner that an existing or new condition must be imposed as a formal condition of the PVR holder continuing to hold the PVR.
- (5) The Commissioner must give effect to any decision made under **subsection (3)(a) or (b)** or **subsection (4)(b)(a)**.
- (6) The committee must notify the Commissioner and the parties in writing as soon as practicable after making a decision referred to in **subsection (5)**.
- 68 Frivolous, vexatious, or repetitious applications**
- (1) The Commissioner may dismiss an application made under **section 67(1)** (without considering its merits) if satisfied that—
- (a) it is frivolous or vexatious; or
 - (b) all of the issues raised by it are previously considered issues.
- (1A) The Commissioner must notify the parties in writing as soon as practicable after making a decision in **subsection (1)**.
- (2) In this section, **previously considered issue** means an issue that is the same, or substantially the same, as an issue previously considered under this Part.

Appeals against certain Part 5 decisions

68A Māori Appellate Court

- (1) A person may appeal to the Māori Appellate Court against a **Part 5** decision if—
- (a) the decision is a kind of decision listed in **Schedule 1A** as an appealable decision under **Part 5**; and
 - (b) the person is a kind of person listed in **Schedule 1A** as a person who may appeal against that decision.

- (2) An appeal must be made—
- (a) in accordance with the rules of the Māori Appellate Court; and
 - (b) within the appeal period specified in **Schedule 1A** for the appeal; and
 - (c) in any other case, within—
 - (i) 20 working days after the date of the decision; or
 - (ii) any further time the Māori Appellate Court allows on an application made before or after that period expires.

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Compare: 2013 No 68 s 214

68B Decision stayed pending determination of appeal

If an appeal against a decision is made under **section 68A**, the operation of that decision is stayed until the appeal is finally disposed of, unless the Māori Appellate Court orders otherwise.

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68C Decision on appeal

In determining an appeal under **section 68A**, the Māori Appellate Court may—

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- (a) confirm or reverse the decision of the Māori Plant Varieties Committee or modify the decision in the manner that the Māori Appellate Court thinks fit; and
- (b) confirm or reverse or modify a decision of the Commissioner implementing the decision of that committee.

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68D Jurisdiction of Māori Appellate Court

- (1) The provisions of Part 2 of Te Ture Whenua Maori Act 1993 (except for sections 55, 56, 58, 58B, 59, 60, 61, and 62 of that Act) apply for the purposes of any appeal under this Part, with any necessary modifications.
- (2) Section 58A(1) of Te Ture Whenua Maori Act 1993 applies, as if for the words “section 58” there were substituted “**section 68A** of the Plant Varieties Act **2021**” and as if for the words “on the appeal” there were substituted the words “on the appeal under **section 68A** of the Plant Variety Rights Act **2021**”.
- (3) The provisions of Part 3 of Te Ture Whenua Maori Act 1993 (except for sections 72, 76, 77, 81A, 82 to 85, 87, and 88) apply for the purposes of any appeal under this Part, with any necessary modifications.

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Part 6

Plant variety rights: other matters

Subpart 1—General matters

Requests for information or propagating material

- 69 Commissioner may request propagating material or information about maintenance of variety** 5
- (1) The Commissioner may request a PVR holder to give to the Commissioner any information reasonably needed by the Commissioner to verify the maintenance of the variety to which the PVR relates or for any other purpose in relation to that variety. 10
- (2) The Commissioner may request ~~a~~ an applicant for a PVR in respect of a variety or a PVR holder of the protected variety, as the case requires to give propagating material of the variety to the Commissioner or to any person nominated by the Commissioner, if the Commissioner considers that this is necessary or desirable for the purposes of exercising or performing the Commissioner's functions, duties, or powers under this Act. 15
- (3) The Commissioner's request must be made in writing and specify the prescribed time within which it must be complied with.
- (4) If a PVR holder fails, without reasonable excuse, to comply with a request under **subsection (1) or (2)**, the Commissioner may cancel the holder's PVR. 20
- (5) If an applicant fails to comply with a request under **subsection (2)**, the application lapses.

Substitution of applicants

- 70 Persons claiming under assignment or agreement or by operation of law**
- (1) This section applies if, before a PVR is granted, a person would, if the PVR were then to be granted, be entitled under an assignment or agreement, or by operation of law, to— 25
- (a) the PVR; or
- (b) an interest in the PVR; or
- (c) an undivided share in the PVR or in an interest in the PVR. 30
- (2) The Commissioner may, on a request made by the person in the prescribed manner, direct that the PVR application proceed in the name of the person, or in the names of the person and the applicant or the other joint applicant or applicants (as the case may require).
- (3) If the Commissioner gives a direction, the person must be taken to be the applicant, or a joint applicant, as the case may require. 35

Compare: 2013 No 68 s 129

71 Death of applicant

- (1) If an applicant dies before a PVR is granted, their personal representative may proceed with the PVR application.
- (2) However, the Commissioner may also, under **section 74**, dispense with probate and letters of administration and allow a person to proceed with a deceased applicant's application. 5

Compare: 2013 No 68 s 130

*Registration of assignments, ~~licenees~~, and certain other interests in PVRs***72 Application for registration of assignments, ~~licenees~~, and certain other interests in PVRs** 10

- (1) A person (A) who acquires a PVR or a share in a PVR or an interest in a PVR must apply to the Commissioner for registration of A's title or interest.
- (2) However, the person who disposes of the PVR or share in a PVR or who confers the interest may instead apply to register A's title or interest (in which case **subsection (1)** does not apply). 15
- (3) In either case, the application must be made in the prescribed manner.
- (4) This section applies to acquisitions and disposals by assignment, transmission, operation of law, mortgage, ~~licenee~~, or any other means, but does not apply in respect of the grant of a licence (including the grant of a compulsory licence under (other than a compulsory licence granted under **section 102**)). 20

Compare: 2013 No 68 s 165

73 Registration of assignments, ~~licenees~~, and certain other interests in PVRs

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

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

Compare: 2013 No 68 s 166

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

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

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

Compare: 2013 No 68 s 167

Cessation of PVR before expiry date 25

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

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

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

76 Grounds for cancellation or nullification

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

77 Effect of cancellation

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

- (b) record the cancellation in the register.

78 Effect of nullification

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

Cancellation or nullification by Commissioner

79 Cancellation or nullification by Commissioner on own initiative 10

- (1) The Commissioner may cancel or nullify a PVR on their own initiative if satisfied that there are grounds to do so under **section 76(1)(a) or (b)** or, as the case requires, **section 76(2)**.
- (2) However, before doing so the Commissioner must— 15
 - (a) notify the PVR holder of the Commissioner's intention to cancel or nullify the PVR and the reasons for doing so; and
 - (b) give the PVR holder a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in deciding whether to cancel or nullify the PVR. 20

80 Cancellation or nullification by Commissioner on application

- (1) Any person may apply to the Commissioner to have a PVR cancelled or nullified.
- (2) The application must be made in accordance with **section 81**.
- (3) The Commissioner must consider the an application under subsection (1) in accordance with **sections 82 and 83** and any procedures specified in the regulations. 25
- (3A) To avoid doubt an application made under section 67(1) must be dealt with in accordance with section 67 and 68.
- (4) If the Commissioner cancels or nullifies the PVR, **section 77** or, as the case requires, **section 78** applies. 30
- (5) If the Commissioner dismisses the application, they must notify the applicant and PVR holder of the decision and the reasons for it.

81 Application to Commissioner to cancel or nullify PVR

- (1) An application under **section 67(1) or section 80** must— 35
 - (a) be made in the way specified in the regulations; and

- (b) include the following information:
 - (i) the grounds on which cancellation or nullification is sought;
 - (ii) any other information specified in the regulations; and
- (c) be accompanied by any fee specified in the regulations.
- (2) If a relevant proceeding relating to the PVR is pending in the court, the application may be made only with the leave of the court. 5
- (3) In this section, **relevant proceeding**, in relation to a PVR, means a court proceeding—
 - (a) for infringement of the PVR; or
 - (b) for the PVR to be cancelled or nullified. 10

82 Frivolous, vexatious, or repetitious applications

- (1) The Commissioner may dismiss an application made under **section 80** (without considering its merits) if satisfied that—
 - (a) it is frivolous or vexatious; or
 - (b) all of the issues raised by it are previously considered issues. 15
- (1A) The Commissioner must notify the parties in writing as soon as practicable after making a decision in **subsection (1)**.
- (2) In this section and **section 83**, **previously considered issue** means an issue that is the same, or substantially the same, as an issue previously raised in any of the following: 20
 - (a) a notice of opposition given under **section 49**;
 - (b) a previous application made under **section 80**;
 - (c) a previous proceeding before the Commissioner or the court.

83 Consideration of application

- (1) This section applies if an application is made under **section 80** and is not dismissed under **section 82**. 25
- (2) The Commissioner must—
 - (a) give a copy of it to the PVR holder; and
 - (b) give the applicant and PVR holder a reasonable opportunity to be heard on the matter; and 30
 - (c) take any submissions into account in deciding whether to nullify or cancel the PVR.
- (3) The Commissioner need not consider any issues raised by the application that are previously considered issues.

*Cancellation or nullification by court***84 Cancellation or nullification by court**

- (1) The court may, on application, cancel or nullify a PVR if satisfied that there are grounds to do so under **section 76**.
- (2) The application must be made and dealt with in accordance with the rules of court. 5

*Surrender***85 Surrender of PVR**

- (1) The holder of a PVR may, by notice given to the Commissioner in the prescribed manner (if any), offer to surrender the PVR. 10
- (2) The Commissioner must publish the offer in the journal.
- (3) A person may, within the prescribed period after the publication of the offer, give notice to the Commissioner of opposition to the surrender.
- (4) The Commissioner must notify the holder of the PVR if a notice of opposition is given. 15
- (5) The Commissioner may accept the offer and by order cancel the PVR if—
 - (a) the Commissioner has given the holder of the PVR and any opponents a reasonable opportunity to be heard; and
 - (b) the Commissioner has taken any submissions into account in deciding whether to dismiss the offer of surrender; and 20
 - (c) the Commissioner is satisfied that the PVR may properly be surrendered.

Compare: 2013 No 68 s 116

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

- (1) If the regulations specify a PVR renewal fee, a PVR holder must pay the fee within the period specified in the regulations. 25
- (2) If the fee is not paid within that period, the PVR is deemed to be cancelled.
- (3) The Commissioner must—
 - (a) notify the PVR holder that the PVR is deemed to have been cancelled because of non-payment of the renewal fee for that PVR; and 30
 - (b) record the cancellation in the register.
- (4) A PVR that is deemed to have been cancelled under this section may be restored under **section 94**.

Subpart 3—Restoration of lapsed PVR applications

87 Restoration of lapsed PVR application

- (1) This section applies if a PVR application has lapsed—
 - (a) under **section 46(4)(a)** because of a failure to comply with a request for propagating material or information within the specified period; or 5
 - (b) under **section 48(5)(a)** because of a failure to pay a prescribed fee.
- (2) The Commissioner may, on application, restore the PVR application if—
 - (a) the Commissioner is satisfied that the failure was unintentional; and
 - (b) the applicant for restoration has complied with **section 93(1)(b)(i) and (ii)**. 10
- (3) The application must be made in accordance with **section 88**.
- (4) The Commissioner must consider the application in accordance with **sections 89 to 93** and any procedures specified in the regulations.
- (5) The Commissioner must—
 - (a) notify the applicant of the Commissioner’s decision and the reasons for it; and 15
 - (b) if the PVR application is restored, publicly notify that fact.
- (6) If the PVR application is restored, the lapse referred to in **subsection (1)** is taken to have never occurred.

88 Application for restoration of lapsed PVR application 20

- (1) An application to restore a lapsed PVR application must—
 - (a) be made—
 - (i) by the applicant for the PVR; and
 - (ii) within the period specified in the regulations (but *see* **subsection (2)**); and 25
 - (iii) in the way specified in the regulations; and
 - (b) include the following information:
 - (i) a full explanation of the circumstances that led to the failure referred to in **section 87(1)(a) or (b)**:
 - (ii) if the application is made after the period referred to in **subsection (1)(a)(ii)**,— 30
 - (A) a full explanation of the circumstances that caused the delay; and
 - (B) the reasons why it was not an undue delay:
 - (iii) any other information specified in the regulations; and 35

- (c) be accompanied by any fee specified in the regulations for making the application.
- (2) The Commissioner may accept an application made after the period referred to in **subsection (1)(a)(ii)** if satisfied that the application was made without undue delay. 5
- 89 No prima facie case made out**
- (1) The Commissioner may dismiss an application made under **section 87** if they are not satisfied that the application discloses a prima facie case for restoring the PVR application.
- (2) However, before doing so, the Commissioner must— 10
- (a) notify the applicant for restoration of the Commissioner’s intention to dismiss the application and the reasons for it; and
- (b) give the applicant a reasonable opportunity to be heard; and
- (c) take any submissions into account in deciding whether to dismiss the application for restoration. 15
- 90 Consideration of application**
- (1) This section applies if an application is made under **section 87** and is not dismissed under **section 89**.
- (2) The Commissioner must publicly notify the application and make it publicly available. 20
- 91 Opposition**
- (1) A person may, by giving a notice of opposition, oppose the restoration of a PVR application on 1 or both of the following grounds:
- (a) that the failure to comply with the request made under **section 46(1)(a)** or to pay trial and examination fees under **section 48** was intentional: 25
- (b) if the application was accepted under **section 88(2)**, that there was an undue delay in making the application.
- (2) A notice of opposition must be given—
- (a) in the way specified in the regulations; and
- (b) within the period specified in the regulations. 30
- 92 Consideration of application and notices of opposition**
- (1) This section applies after the close of the period for opposing an application to restore a lapsed PVR application.
- (2) As soon as practicable after the close of that period, the Commissioner must—
- (a) give the applicant a copy of any notices of opposition received; and 35

- (b) publicly notify the notices of opposition and make them publicly available.
- (3) The Commissioner must—
 - (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and 5
 - (b) take the notices of opposition and any submissions into account in considering the application.

93 Conditions of restoration

- (1) If the Commissioner is satisfied that the failure to comply with **section 46(1)(a)** or pay the prescribed fee under **section 48** was unintentional and that the PVR application should be restored, they must— 10
 - (a) notify the applicant for restoration that the Commissioner is satisfied that the PVR application may be restored (subject to the applicant complying with **paragraph (b)(i) and (ii)**); and
 - (b) give the applicant for restoration a reasonable time (specified in the notice) to— 15
 - (i) pay all unpaid PVR application fees and trial and examination fees; and
 - (ii) comply with any conditions specified in the regulations referred to in **subsection (2)**. 20
- (2) The regulations may specify conditions for the protection or compensation of persons who exploited the plant variety, or took definite steps to do so, between the date on which the PVR application lapsed and the date on which the application for restoration was publicly notified.

Subpart 4—Restoration of cancelled PVRs 25

94 Restoration of cancelled PVR

- (1) This section applies if a PVR is deemed to be cancelled under **section 86(2)** because of a failure to pay a renewal fee.
- (2) The Commissioner may, on application, restore the PVR if—
 - (a) the Commissioner is satisfied that the failure to comply with **section 86(1)** was unintentional; and 30
 - (b) the applicant has complied with **section 100(1)(b)(i) and (ii)**.
- (3) The application must be made in accordance with **section 95**.
- (4) The Commissioner must consider the application in accordance with **sections 97 to 100** and any procedures specified in the regulations. 35
- (5) The Commissioner must—

- (a) notify the PVR holder of the Commissioner's decision and the reasons for it; and
- (b) if the PVR is restored, record the restoration in the register.
- (6) If the PVR is restored, the cancellation referred to in **subsection (1)** is taken never to have occurred. 5

95 Application for restoration of cancelled PVR

- (1) An application to restore a cancelled PVR may be made—
 - (a) by the person who was the PVR holder immediately before it was cancelled; or
 - (b) if, immediately before it was cancelled, the PVR was held by 2 or more persons, by 1 or some (but not all) of those persons, but only with the consent of the Commissioner. 10
- (2) The application must—
 - (a) be made—
 - (i) within the period specified in the regulations (but *see* **subsection (3)**); and 15
 - (ii) in the way specified in the regulations; and
 - (b) include—
 - (i) a full explanation of the circumstances that led to the failure to pay a renewal fee; and 20
 - (ii) if the application is made after the end of the period referred to in **subsection (2)(a)(i)**,—
 - (A) a full explanation of the circumstances that caused the delay; and
 - (B) the reasons why it was not an undue delay; and 25
 - (iii) any other information specified in the regulations; and
 - (c) be accompanied by any fee specified in the regulations for making the application.
- (3) The Commissioner may accept an application for restoration made after the end of the period referred to in **subsection (2)(a)(i)** if satisfied that the application was made without undue delay. 30

96 No prima facie case made out

- (1) The Commissioner may dismiss an application made under **section 94** if they are not satisfied that the application for restoration discloses a prima facie case for restoring the PVR. 35
- (2) However, before doing so, the Commissioner must—

-
- (a) notify the applicant of the Commissioner's intention to dismiss the application and the reasons for it; and
 - (b) give the applicant a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in considering the application. 5
 - (3) For the purposes of this section, the Commissioner may require the applicant for restoration to provide any further evidence that the Commissioner thinks fit.
- 97 Consideration of application**
- (1) This section applies if an application is made under **section 94** and is not dismissed under **section 96**. 10
 - (2) The Commissioner must publicly notify the application and make it publicly available.
- 98 Opposition**
- (1) A person may, by giving a notice of opposition, oppose the restoration of a PVR on 1 or both of the following grounds: 15
 - (a) that the failure to comply with **section 86(1)** was intentional;
 - (b) if the application to restore the PVR was accepted under **section 95(3)**, that there was an undue delay in making the application.
 - (2) A notice of opposition must be given—
 - (a) in the way specified in the regulations; and 20
 - (b) within the period specified in the regulations.
- 99 Consideration of application and notices of opposition**
- (1) This section applies after the close of the period for giving a notice of opposition to an application to restore a cancelled PVR.
 - (2) As soon as practicable after the close of that period, the Commissioner must— 25
 - (a) give the applicant a copy of any notices of opposition received; and
 - (b) publicly notify all notices of opposition and make them publicly available.
 - (3) The Commissioner must—
 - (a) give the applicant and all opponents a reasonable opportunity to be heard on the matter; and 30
 - (b) take the notices of opposition and any submissions into account in considering the application to restore the PVR; and
 - (c) if the applicant or an opponent has requested a hearing, give the applicant and all opponents a reasonable opportunity to be heard before the 35
Commissioner decides the application.

100 Conditions of restoration

- (1) If the Commissioner is satisfied that the failure to comply with **section 86(1)** was unintentional and that the PVR should be restored, they must—
 - (a) notify the applicant that the Commissioner is satisfied that the PVR may be restored (subject to the applicant complying with **paragraph (b)(i) and (ii)**); and 5
 - (b) give the applicant a reasonable time (specified in the notice) to—
 - (i) pay all unpaid PVR renewal fees; and
 - (ii) comply with any conditions specified in the regulations referred to in **subsection (2)**. 10
- (2) The regulations may specify conditions for the protection or compensation of persons who exploited the protected variety, or took definite steps to do so, between the date on which the PVR was cancelled and the date on which the application for restoration was publicly notified.

Part 7

15

Compulsory licences**Subpart 1—Grant of compulsory licences and criteria****101 Effect of compulsory licence**

- (1) A compulsory licence for a protected variety ~~(variety A)~~ may authorise the licensee to undertake 1 or more restricted acts in New Zealand in relation to propagating material of ~~1 or more of the following:~~ that protected variety. 20
 - ~~(a) variety A;~~
 - ~~(b) a plant variety that is essentially derived from variety A;~~
 - ~~(c) a plant variety that is dependent on variety A.~~
- (2) A compulsory licence may also require the PVR holder to supply propagating material to the licensee on terms (including as to price) set out in the licence. 25
- (3) A compulsory licence—
 - (a) is not exclusive; and
 - (b) is limited to New Zealand; and
 - (c) may be limited geographically within New Zealand or limited, temporally or otherwise, as the Commissioner considers appropriate. 30
- (4) A compulsory licence has effect as if it were a licence entered into by agreement between the PVR holder (as licensor) and the licensee.
- (5) A PVR holder and a licensee may, by agreement,—
 - (a) with the approval of the Commissioner, amend the licence; or 35
 - (b) with the approval of the Commissioner, revoke the licence; or

- (c) with the approval of the Commissioner, transfer the licence to another licensee; or
- (d) do any other thing that the parties to a licence could do.

102 Grant of compulsory licence

- (1) A person may apply to the Commissioner for a compulsory licence for a protected variety in the prescribed manner. 5
- (2) Before deciding the application, the Commissioner must—
 - (a) give the applicant ~~and, the PVR holder, and any exclusive licensee a~~ reasonable opportunity to be heard; and
 - (b) take any submissions into account in deciding whether to grant or dismiss the application for a compulsory licence. 10
- (3) The Commissioner must deal with the application in accordance with this subpart and any procedures specified in the regulations.
- (4) After considering the application, the Commissioner must,—
 - (a) if satisfied that the criteria for granting a compulsory licence in **section 103** are met, grant the licence; or 15
 - (b) otherwise, refuse to grant the licence.
- (5) If the Commissioner grants a compulsory licence, the Commissioner must—
 - (a) notify the PVR holder, any exclusive licensee who has been heard on the application, and the licensee person to whom the compulsory licence is granted; and 20
 - (b) publicly notify the licence in the journal and record it in the register.
- (6) If the Commissioner refuses to grant a compulsory licence, they must ~~notify the applicant and the PVR holder of the decision and the reasons for it.~~—
 - (a) publicly notify the decision, and the reasons for it; and 25
 - (b) notify the applicant, the PVR holder, and any exclusive licensee who has been heard on the application of the decision and the reasons for it.

103 Criteria for granting compulsory licence

- (1) The criteria for granting a compulsory licence for a protected variety are that—
 - (a) 3 years have elapsed from the date on which the PVR was granted; and 30
 - (b) the applicant has been unable, after making reasonable efforts, to obtain authorisation from the PVR holder to undertake the restricted acts in respect of which the compulsory licence is sought; and
 - (c) it is in the public interest that the compulsory licence be granted.
- (2) For the purposes of **subsection (1)(c)**, the Commissioner must have regard to— 35

- (a) whether the protected variety (and, if applicable, any essentially derived or dependent varieties) and any harvested material are reasonably available to the public or any sector of the public (for example, growers), and in doing so consider ~~whether~~—
 - (i) the kinds of ~~propagating material from the protected variety~~ (including material for consumption) that are available; and 5
 - (ii) who the material is available to; and
 - (iii) if the quantity and quality of material that is available is reasonable; and
 - (iv) if the price at which the material is available is reasonable; and 10
- (b) whether the PVR holder has had a reasonable opportunity to make the relevant plant varieties available; and
- (c) the desirability of encouraging innovation in plant breeding; and
- (d) the need to protect the life and health of humans, animals, and plants; 15
- (e) any other matters the Commissioner considers relevant.

104 Royalty payable by licensee

- (1) A compulsory licence for a protected variety is subject to the condition that the licensee must pay a royalty to the PVR holder for exploiting the protected variety. 20
- (2) The compulsory licence—
 - (a) must set out—
 - (i) the amount of, or method of calculating, the royalty; and
 - (ii) when the royalty must be paid; and
 - (b) may set out any other matters relating to payment of the royalty that the 25
Commissioner considers appropriate.

Subpart 2—Applications for compulsory licences

105 Application for compulsory licence

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

- (a) be made in the way specified in the regulations; and 30
- (b) include the following information:
 - (i) the protected variety:
 - (ii) any essentially derived or dependent varieties to which the licence will also apply:
 - (iii) the restricted acts to be authorised: 35

- (iv) details of the efforts made by the applicant to obtain authorisation from the PVR holder (*see* **section 103(1)(b)**);
- (v) any other information specified in the regulations; and
- (c) be accompanied by any fee specified in the regulations.

106 Application to be notified and made publicly available 5

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

107 Commissioner's powers to obtain information

- (1) The Commissioner may request the applicant to give the Commissioner any other information reasonably needed by the Commissioner to properly consider the application for a compulsory licence. 10
- (2) The Commissioner's request must be made in writing and allow the applicant the prescribed time (specified in the notice) to comply with it.
- (3) The Commissioner— 15
 - (a) may, subject to **subsection (4)**, defer consideration of the application until the request is complied with; and
 - (b) must make any information given in response to the request publicly available unless the Commissioner has reasonable grounds to believe that the information should not be made publicly available. 20
- (4) If the applicant does not comply with the request within the specified time,—
 - (a) the application for a compulsory licence lapses; and
 - (b) the Commissioner must publicly notify that fact.
- (5) For the purpose of considering the application, the Commissioner may obtain any other information the Commissioner considers appropriate. 25

108 Content of compulsory licence

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

- (a) the plant variety, and any essentially derived or dependent varieties, to which it relates:
- (b) the restricted acts that it authorises the licensee to undertake: 30
- (c) the material in relation to which the licensee is authorised to undertake those activities:
- (d) the dates on which it comes into force and expires:
- (e) the matters relating to the royalty referred to in **section 104(2)**:
- (f) if the PVR holder is required to supply propagating material (*see* **section 101(2)**), what must be supplied and the terms (including as to price) on which it must be supplied: 35

- (fa) any relevant conditions agreed or set out in an undertaking under **section 64**:
- (g) any other terms and conditions that the Commissioner considers appropriate.

Subpart 3—Amendment or revocation of compulsory licences 5

109 Amendment or revocation of compulsory licence

- (1) A compulsory licence may be amended or revoked by the Commissioner,—
 - (a) on application by the PVR holder or licensee, if the PVR holder and licensee as parties to the licence agree to the amendment or revocation and the Commissioner approves their agreement; or 10
 - (b) on application by the PVR holder or licensee, if the compulsory licence includes provisions allowing the PVR holder or licensee to revoke the licence without the agreement of the other party (for example, as a result of a breach of the licence), in accordance with those provisions; or
 - (c) on application under **section 111**. 15
- (2) This section does not limit **section 101(5)**.

110 Grounds for Commissioner to amend or revoke

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

- (a) it is no longer in the public interest for the compulsory licence to remain in force; or 20
- (b) the licensee has breached a condition of the licence.

111 Amendment or revocation by Commissioner on application

- (1) The Commissioner may, on application by any person, amend or revoke a compulsory licence if satisfied that there are grounds to do so under **section 110**. 25
- (2) The application must be made in accordance with **section 112**.
- (3) The Commissioner must consider the application in accordance with **section 113** and any procedures specified in the regulations.
- (4) If the Commissioner amends or revokes the licence, they must—
 - (a) notify the applicant, the licensee, and the PVR holder of the amendment or revocation and the reasons for it; and 30
 - (b) publicly notify the amendment or revocation and the reasons for it.
- (5) If the Commissioner dismisses the application, they must notify the applicant, the licensee, and the PVR holder of the decision and the reasons for it.

112 Application to Commissioner to amend or revoke compulsory licence 35

The application under **section 111** must—

- (a) be made in the prescribed manner; and
- (b) include the following information:
 - (i) the grounds on which the amendment or revocation is sought;
 - (ii) any other information specified in the regulations; and
- (c) be accompanied by any fee specified in the regulations. 5

113 Consideration of application

- (1) This section applies if an application is made under **section 111**.
- (2) The Commissioner must—
 - (a) give a copy of the application to the licensee and PVR holder (if they are not the applicant); and 10
 - (b) give the applicant, licensee, and PVR holder a reasonable opportunity to be heard on the matter; and
 - (c) take any submissions into account in deciding whether to amend or revoke the licence.

Part 8 15

Administration, secondary legislation, and other matters

Subpart 1—Commissioner and Assistant Commissioners

114 Commissioner and Assistant Commissioners

- (1) The chief executive must appoint a person as the Commissioner of Plant Variety Rights. 20
- (2) The chief executive may appoint 1 or more Assistant Commissioners of Plant Variety Rights.
- (3) The appointments must be made in accordance with the Public Service Act 2020.
- (4) An appointment may be held in conjunction with any other office in the Ministry. 25

115 Functions

- (1) The Commissioner—
 - (a) has the functions conferred on them by this or any other enactment; and
 - (b) has the powers necessary to perform their functions. 30
- (2) An Assistant Commissioner—
 - (a) may perform the functions and exercise the powers of the Commissioner (other than the power to delegate under **section 116**); and
 - (b) is subject to the control of the Commissioner.

116 Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate any of their functions and powers, except this power of delegation, to any ~~person~~ individual who is—
- (a) an employee of the Ministry; or
 - (b) working for the Ministry as a contractor or secondee. 5
- (2) A delegation may be made—
- (a) generally or particularly; and
 - (b) subject to any limitations the Commissioner thinks appropriate.
- (3) A delegate may perform a delegated function or exercise a delegated power in the same manner, and subject to the same restrictions, and with the same effect as if it had been conferred on them directly by this Act. 10
- (4) A delegate is presumed to be acting within the terms of the delegation in the absence of proof to the contrary.
- (5) The delegation of a function or power does not prevent the Commissioner from performing the function or exercising the power. 15

117 Liability of Commissioner and others

The Commissioner, an Assistant Commissioner, or any other person acting on their behalf is not personally liable for any act or omission done in good faith in the performance or intended performance or exercise of the Commissioner's functions, duties, or powers. 20

118 Hearing before exercise of Commissioner's discretion

The Commissioner must not exercise any of the Commissioner's discretionary powers under this Act or the regulations adversely to any applicant or other party to a proceeding before the Commissioner without first giving the person a reasonable opportunity of being heard in the prescribed manner. 25

Compare: 2013 No 68 s 208

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

- (1) Evidence must be given by affidavit or statutory declaration in proceedings before the Commissioner under this Act. 30
- (2) However, the Commissioner may—
- (a) take oral evidence instead of, or as well as, an affidavit or a declaration; and
 - (b) allow a witness to be cross-examined on the witness's affidavit, declaration, or oral evidence. 35

- (3) A statutory declaration may be used before the court in any appeal instead of evidence by affidavit and, if used in this way, has all the same incidents and consequences as evidence by affidavit.
- (4) Section 111 of the Crimes Act 1961 (which relates to false statements or declarations) applies to every affidavit and statutory declaration made for the purposes of this Act. 5

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

120 Commissioner may receive evidence on oath

- (1) The Commissioner may also administer oaths to any witness in proceedings before them. 10
- (2) Evidence given on oath before the Commissioner is given in judicial proceedings for the purposes of sections 108 and 109 of the Crimes Act 1961 (which relate to perjury).

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

121 Issuing of summons by Commissioner 15

- (1) The Commissioner may issue a summons to a person requiring that person to attend a hearing before the Commissioner and to do all or any of the following:
- (a) give evidence:
 - (b) give evidence under oath:
 - (c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person that are relevant to the hearing. 20
- (2) The Commissioner may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.

122 Requirements for summons 25

- (1) A summons issued by the Commissioner under **section 121** must be in writing, be signed by the Commissioner, and specify—
- (a) the date and time when, and the place where, the person must attend; and
 - (b) the documents, things, or information that the person is required to bring and produce to the Commissioner; and 30
 - (c) the entitlement to be paid or tendered a sum in respect of witnesses' fees, allowances, and expenses; and
 - (d) the penalty for failing to attend.
- (2) A summons may be served by—
- (a) delivering it personally to the person summoned; or 35
 - (b) posting it to the person summoned at that person's usual place of residence or address for service; or

- (c) sending it by electronic communication to the person's electronic address for service if the person has provided an electronic address for service.
- (3) A summons must,—
- (a) if it is to be served by personal delivery, be served at least 48 hours before the attendance of the witness is required: 5
- (b) if it is to be served by post, be served at least 10 days before the attendance of the witness is required:
- (c) if it is to be served by electronic communication, be served at least 48 hours before the attendance of the witness is required. 10
- (4) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.
- (5) A summons that is sent by electronic communication is treated as having been served not later than 2 days after the date on which it is sent.
- 123 Witnesses' fees, allowances, and expenses** 15
- (1) A witness appearing before the Commissioner under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.
- (2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the requirement to attend is served or at some other reasonable time before the hearing. 20
- 124 Offence of failing to comply with summons**
- (1) A person summoned to attend before the Commissioner commits an offence if the person, without sufficient cause,—
- (a) fails to attend in accordance with the summons; or 25
- (b) does not give evidence when required to do so; or
- (c) does not give evidence under oath when required to do so; or
- (d) does not answer any question that is lawfully asked by the Commissioner; or
- (e) does not provide any documents, things, or information that the summons requires the person to provide. 30
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.
- (3) A person must not be convicted of an offence against this section if witnesses' fees, allowances, and expenses to which the person is entitled under **section 123** have not been paid or tendered to them. 35

*Appeals against Commissioner's decisions***125 Appeal to High Court**

- (1) A person may appeal to the court against a decision of the Commissioner if—
- (a) the decision is a kind of decision listed in **Schedule 2** as an appealable decision; and 5
 - (b) the person is a kind of person listed in **Schedule 2** as a person who may appeal against that decision.
- (2) An appeal must be made—
- (a) in accordance with the rules of court; and
 - (b) within the appeal period specified in **Schedule 2** for the appeal; and 10
 - (c) in any other case, within—
 - (i) 20 working days of the date of the decision; or
 - (ii) any further time the court allows on an application made before or after that period expires.
- (3) A power exercised by the Commissioner is not appealable under this section if that power is exercised wholly in reliance on an appealable decision referred to in **Schedule 1A**. 15

Compare: 2013 No 68 s 214

126 Decision stayed pending determination of appeal

If an appeal against a decision is made under **section 125**, the operation of that decision is stayed until the appeal is finally disposed of, unless the court orders otherwise. 20

127 Appeals against decisions of High Court on appeal

- (1) A decision of the court on an appeal against a decision of the Commissioner may be appealed to the Court of Appeal if— 25
- (a) the decision was made under **section 28** (which relates to the grant of a PVR); or
 - (b) the decision was made under **section 80** (which relates to the cancellation or nullification of a PVR by the Commissioner); or
 - (c) the decision was to issue a compulsory licence under **section 102**; or 30
 - (d) the court or the Court of Appeal gives leave.
- (2) All other decisions of the court on an appeal against a decision of the Commissioner are final.
- (3) However, this section does not limit the rights of appeal under sections 68 and 69 of the Senior Courts Act 2016. 35

Compare: 2013 No 68 s 215

Subpart 2—Other administrative matters

*Plant variety rights register***128 Register**

- (1) The Commissioner must keep a register of plant variety rights in New Zealand in accordance with this Act and the regulations. 5
- (2) **Sections 138 and 139** provide for evidence relating to the PVR register.
- (3) The purpose of the PVR register is to—
- (a) enable members of the public to—
 - (i) know what PVRs are in force and the key dates for those PVRs (for example, the date of filing of the PVR application); and 10
 - (ii) know who the PVR holder is and who has other interests in the PVR (for example, under a mortgage or licence) and the addresses for service of those persons; and
 - (iii) find out about the scope of a PVR; and
 - (iv) find out about other matters affecting the validity and ownership of the PVR or any licensees of the PVR; and 15
 - (b) facilitate the carrying out of the Commissioner's functions under this Act.

129 Form of register

The register may— 20

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

Compare: 2013 No 68 s 196

130 Contents of PVR register

- (1) The PVR register must contain the following information for each PVR in force in New Zealand: 25
- (a) the name, address, and address for service of each PVR holder:
 - (b) the date of filing of each PVR application, the priority date or dates, the date on which the PVR is granted, and the date on which the next renewal fee is due: 30
 - (c) the genus or species to which the PVR relates:
 - (d) the denomination of the plant variety that is the subject of a PVR:
 - (da) a description of the distinctive features of the plant variety that is the subject of a PVR, where those features are identified by the Commissioner: 35
 - (e) details of assignments and transmissions of PVRs:

- (f) the name, address, and address for service of licensees and other persons with interests in a PVR:
- (g) any other matters required by or under this Act to be entered in the PVR register.
- (2) The PVR register may also contain any other information that the Commissioner considers necessary or desirable. 5
- (3) If the Commissioner is satisfied, on the application of any person, that the disclosure of that person's address (as entered in the register) would be prejudicial to the safety of that person or their family, the Commissioner may direct that that information not be available for inspection or otherwise disclosed. 10
- (4) No notice of any trust may be entered in the PVR register, and the Commissioner is not affected by any notice of that kind.

Compare: 2013 No 68 s 197

Searches of PVR register and obtaining PVR information

131 Search of PVR register 15

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

Compare: 2013 No 68, s 198

132 Requests for PVR information and certified copies

The Commissioner must, if a person requests it in the prescribed manner, give the person— 20

- (a) a copy of, or an extract from, a PVR or any registered document that is certified by the Commissioner as a true copy of, or extract from, the original for the purposes of **section 138**.
- (b) a certificate as to any of the matters stated in **section 139**: 25
- (c) any prescribed information concerning a PVR or PVR application.

Compare: 2013 No 68 s 199

Changes to PVR register and other official documents

133 Changes to PVR register

The Commissioner may make changes to the PVR register in accordance with this Act or the regulations. 30

Compare: 2013 No 68 s 200

134 Commissioner may correct own mistakes in PVR register, etc

- (1) The Commissioner may correct an error or omission that the Commissioner is satisfied has been made by the Commissioner in— 35
 - (a) the PVR register; or

-
- (b) any PVR; or
 - (c) any other document issued under this Act.
 - (2) The Commissioner must, before making the correction,—
 - (a) give notice that the Commissioner proposes to make the correction to persons that the Commissioner thinks have an interest in it; and 5
 - (b) give those persons a reasonable opportunity to be heard.
 - (3) The Commissioner may require production of the PVR or other document to make the correction.
- Compare: 2013 No 68 s 201
- 135 Commissioner may correct other persons' mistakes in PVR register, etc 10**
- (1) The Commissioner may (on application by any person or on the Commissioner's own initiative) correct an error or omission that the Commissioner is satisfied has been made by any person (other than the Commissioner) in—
 - (a) the PVR register; or
 - (b) any PVR; or 15
 - (c) any PVR application; or
 - (d) any documents filed in connection with a PVR application or filed in proceedings before the Commissioner in connection with a PVR or PVR application.
 - (2) Any person (whether or not that person made the error or omission) may apply 20 for a correction under this section in the prescribed manner.
 - (3) In the case of an application made in reliance on **subsection (1)(c) or (d)**, the application must be accompanied by the prescribed fee (if any).
 - (4) The Commissioner must, before making the correction, publicly notify the nature of the proposed correction if the Commissioner thinks that— 25
 - (a) the correction would materially alter the meaning or scope of the document to be corrected; and
 - (b) it ought not be made without notice to persons who have an interest in it.
 - (5) If a person gives notice to the Commissioner of opposition to the application for the proposed correction within the prescribed time, the Commissioner must, 30 before deciding the matter,—
 - (a) give notice of the opposition to the applicant (if any); and
 - (b) give the applicant (if any) and opponent a reasonable opportunity to be heard.
- Compare: 2013 No 68 s 202 35

136 Commissioner may alter certain inconsistent information

- (1) This section applies if information in the PVR register relating to a person is inconsistent with the primary business data of that person in the New Zealand Business Number Register.
 - (2) If this section applies, the Commissioner may, in the prescribed manner (if any), alter the information in the PVR register so that it is consistent with the primary business data in the New Zealand Business Number Register. 5
 - (3) In this section, **primary business data** has the same meaning as in section 20(2) of the New Zealand Business Number Act 2016. 10
- Compare: 2013 No 68 s 202A

137 Court may correct PVR register

- (1) The court may, on application of any person aggrieved, order the PVR register to be corrected by making an entry, or varying or deleting an entry, in it.
 - (2) In a proceeding under this section, the court may determine any question that it is necessary or expedient to decide in connection with the correction of the PVR register. 15
 - (3) The applicant for correction must give notice of the application in the prescribed manner to the Commissioner.
 - (4) The Commissioner is entitled to appear and be heard on the application, and must appear if so directed by the court. 20
 - (5) Any order by the court under this section must direct that notice of the order must be served on the Commissioner in the prescribed manner.
 - (6) The Commissioner must, on receipt of notice of an order, correct the PVR register accordingly. 25
- Compare: 2013 No 64 s 203

*Evidence***138 Evidence: PVR register and PVRs**

- (1) The PVR register is prima facie evidence of any matters required or authorised by or under this Act to be entered in it.
 - (2) A copy of, or an extract from, a PVR or registered document that purports to be certified as a true copy or extract by the Commissioner is admissible in evidence in legal proceedings as if it were the original. 30
- Compare: 2013 No 68 s 204

139 Evidence: anything done by Commissioner

- (1) A certificate purporting to be signed by the Commissioner in relation to the matters referred to in **subsection (2)** is for all purposes prima facie evidence of those matters specified in the certificate. 35
- (2) The matters are—

- (a) that anything that the Commissioner is authorised to do by or under this Act or any other enactment in relation to PVRs or PVR applications (including entries in the PVR register) has or has not been done; or
- (b) that anything that the Commissioner is authorised or required to do by or under this Act or any other enactment in relation to PVRs or PVR applications has been lawfully done; or 5
- (c) that any entry in the PVR register is as stated in the certificate.

Compare: 2013 No 68 s 205

Confidentiality

140 Obligation of confidentiality on applicant, iwi, and hapū, etc 10

- (1) This section applies in relation to any engagement between a breeder and a person, iwi, hapū, or group representing Māori before the breeder lodges a PVR application (the **parties**).
- (2) The parties—
 - (a) must keep confidential all information that comes into their knowledge as a result of engagement before an application is made; and 15
 - (b) must not disclose any of that information except—
 - (i) with the consent of the person to whom the information relates or to whom the information is confidential; or
 - (ii) to the extent that the information is already in the public domain: 20
 - (iii) to the extent required by an order of any court.
- (3) The obligation imposed by **subsection (2)(a)** operates subject to **section 45**, which provides that information submitted with an application must be made publicly available.

141 Breach of confidentiality proceedings 25

Any party who alleges that another party has acted in breach of **section 140** may bring proceedings for breach of confidentiality in the court.

142 Types of relief available for breach of confidentiality

The relief that the court may grant for a breach of confidentiality includes—

- (a) an injunction; and 30
- (b) at the option of the plaintiff, damages or an account of profits.

Fees and other money

143 Fees and other money

- (1) A fee specified in, or other money required to be paid under, this Act or the regulations must be paid to the Commissioner in accordance with this Act and the regulations. 35

- (2) If an application is required to be accompanied by a fee, the application is taken not to have been made until the fee is received by the Commissioner.
- (3) If any other fee is payable in relation to a thing to be done by the Commissioner, the Commissioner may defer doing the thing until the fee is paid.
- (4) Regulations made under **section 150(1)(o)** (relating to fees) may— 5
 - (a) specify a fee or the manner in which it is to be calculated:
 - (b) specify when, or the time within which, the fee must be paid (if that is not specified in this Act):
 - (c) specify how the fee may or must be paid:
 - (d) authorise the Commissioner to waive or refund a fee payable by 1 or 10 more named persons.

144 Payment and application of fees and other money paid under this Act

- (1) The Commissioner must pay all the fees or other money paid to them under this Act into a Departmental Bank Account.
 - (2) The Commissioner may refund any sum paid to the Commissioner by mistake, 15 or any sum the payment of which is not required by the regulations, and the money refunded may be paid out of public money without further appropriation than this Act.
 - (3) Any amount of a fee or other money required to be paid by this Act or the regulations that is not paid is recoverable in a court of competent jurisdiction as a debt due to the Crown or, if the Act or regulations require it to be paid to a person other than the Commissioner, as a debt to that person. 20
 - (4) To avoid doubt, this section applies in relation to fines and costs orders imposed under this Act other than fines for offences.
- Compare: 2013 No 68, s 238(2)–(5) 25

Journal and other publications

145 Commissioner must publish journal

- (1) The Commissioner must periodically publish a journal containing—
 - (a) prescribed details concerning PVRs and PVR applications (for example, the names of PVR holders and brief descriptions of the PVRs); and 30
 - (b) any other information required by this Act, the regulations, or any other law to be published in it; and
 - (c) other information concerning PVRs or PVR applications that the Commissioner thinks is useful or desirable for PVR holders, PVR applicants, licensees, or the public to know. 35
- (2) The journal may be published electronically or in any other manner that the Commissioner thinks fit.

Compare: 2013 No 68 s 206

*Electronic filing and service, etc***146 Electronic filing and service, etc**

- (1) This section applies to a requirement under this Act or the regulations for—
 - (a) a person to file information or a document with, or serve or give information or a document to, the Commissioner; and 5
 - (b) the Commissioner to serve or give information or a document to any person.
- (2) A requirement referred to in **subsection (1)(a)** must be met by using a prescribed electronic delivery method (or another delivery method permitted by the regulations) in the prescribed manner. 10
- (3) A requirement referred to in **subsection (1)(b)** must be met—
 - (a) by using a prescribed electronic delivery method (or another delivery method permitted by the regulations) in the prescribed manner; or
 - (b) by other means that are reasonable in the circumstances.
- (4) Anything that is filed, served, or given by a prescribed electronic or other delivery method must be treated as received for the purposes of that requirement when specified by the regulations. 15
- (5) However, this section does not apply to a requirement—
 - (a) to file, serve, or give information or documents in any proceeding in a court; or 20
 - (b) for which a particular or different method is specified in this Act or the regulations.
- (6) In this section, **information or a document** includes any notice, application, request, certificate, correspondence, or other type of information or document referred to in or under this Act. 25

Compare: 2013 No 68 s 229

*Serving of notices and other documents***147 Service of notices (other than those given to or by Commissioner)**

- (1) Any notice or any other document required to be served on, or given to, any person under this Act or the regulations (other than a notice or other document given to or by the Commissioner) is sufficiently served or given if the notice or document is— 30
 - (a) delivered personally or posted to the person at the person's address for service or last known place of residence or business; or
 - (b) sent by fax or electronic communication to the person's last known fax number or electronic address; or 35

- (c) made available to the person in accordance with a prescribed electronic delivery method (if permitted under the regulations).
- (2) A notice or document that is sent to a person at a fax number or an electronic address must be treated as received by that person on the second working day after the date on which it is sent. 5
- (3) A notice or document that is posted to a person must be treated as received by that person not later than 7 days after the date on which it is posted.
- (4) However, a notice or document must not be treated as received if the person to whom it is posted or sent proves that it was not received, otherwise than through fault on the person's part. 10
- (5) A notice or document that is made available to a person by the prescribed electronic delivery method must be treated as received by that person when specified by the regulations.
- (6) This section does not—
 - (a) apply to any requirement to which **section 146(5)(a)** applies: 15
 - (b) apply to notices or other documents served, given, or filed in any proceeding in any court or to the extent that a different or particular delivery method is specified by this Act or the regulations.

Compare: 2013 No 68 s 233

Meanings of certain terms 20

148 Meaning of publicly notify

- (1) If the Commissioner is required to **publicly notify** a document or information, they must publish a notice about it in the journal.
- (2) The Commissioner must do so as soon as practicable after they receive the document or information, unless this Act provides otherwise. 25
- (3) The notice must—
 - (a) set out, or give a summary of, the document or information; and
 - (b) if the document or information is required to be made publicly available, state where it is available; and
 - (c) if the document or information relates to a matter about which a notice of opposition may be given,— 30
 - (i) state that anyone wishing to do so may give a notice of opposition to the Commissioner; and
 - (ii) set out how and by what date notices of opposition must be given.

149 Meaning of make publicly available 35

- (1) If the Commissioner is required to **make publicly available** a document or other information, they must—

- (a) publish it on an Internet site maintained by or on behalf of the Commissioner; and
 - (b) ensure that it can be viewed by members of the public on that site at all reasonable times free of charge; and
 - (c) comply with any other notification requirements specified in the regulations. 5
- (2) The Commissioner must do so as soon as practicable after the document or information is given to the Commissioner, unless this Act provides otherwise.
- (3) **Subsection (1)** does not apply to any document or other information—
 - (a) that is subject to legal professional privilege; or 10
 - (b) that is subject to an order of a court or tribunal prohibiting disclosure of the document or information in the document; or
 - (c) that the Commissioner has reasonable grounds to believe should not be open to public inspection.

Subpart 3—Secondary legislation 15

150 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following:
 - Treaty-related matters*
 - (a) listing which plant species are non-indigenous plant species of significance: 20
 - (b) prescribing matters relating to the Māori Plant Varieties Committee:
 - Applications, requests, notices, and proceedings*
 - (c) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of PVR applications and the granting of PVRs under this Act, including— 25
 - (i) requiring PVR applications, specifications, and any other documents relating to PVR applications or to be filed, made, or otherwise provided to the Commissioner in a prescribed manner:
 - (ii) requiring those PVR applications and documents to be dealt with or proceeded with in a prescribed manner: 30
 - (iii) providing for further information or documents to be filed with or otherwise provided to the Commissioner in a prescribed manner:
 - (iv) specifying requirements relating to farm-saved seed:
 - (v) specifying requirements about the conduct of growing trials: 35
 - (d) providing for the procedure for applications or grants to which **Part 4 or 5** applies:

-
- (e) requiring any applications, requests, or notices under this Act to be made or given in a prescribed manner:
 - (f) providing for the procedure to be followed in connection with any application, request, or notice under this Act, or in connection with any opposition, ~~re-examination~~, revocation, or other proceeding before the Commissioner; and 5
 - (g) authorising the correction of irregularities of procedure:
 - (h) regulating the making of applications or requests or the giving of notices under this Act by agents, and prescribing classes of persons whom the Commissioner may refuse to recognise as agents: 10
 - (i) providing for all matters placed under the direction or control of the Commissioner by this Act or the regulations, including—
 - (i) providing for the Commissioner to extend time limits under the regulations or waive requirements of the regulations:
 - (ii) regulating applications for, oppositions to, and the granting of extensions of time limits by the Commissioner under this Act, including providing for the protection of persons who have in good faith begun to exploit a PVR for which an application for an extension is made: 15
 - (iii) providing for the manner in which a reasonable opportunity to be heard must be given to persons (which may include the making of submissions in writing, the opportunity for an oral hearing, or both): 20
 - (iv) providing for how statutory declarations for proceedings before the Commissioner must be made and given: 25
 - (v) providing for the Commissioner to destroy documents and information provided to them in connection with any application, request, or notice that is abandoned, void, or otherwise inactive for the prescribed period: 30
 - UPOV Convention* 30
 - (j) ~~the UPOV Convention:~~
 - (k) ~~setting out the English text of UPOV regulations as in force for New Zealand:~~
 - Register*
 - (l) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters relating to— 35
 - (i) the operation of the register:
 - (ii) access to and search of the register:
 - (iii) the location of, and hours of access to, the register:

- (m) regulating the manner in which the Commissioner may alter information in the register, including prescribing procedures, requirements, and other matters in respect of an alteration:
- Journal*
- (n) prescribing the manner in which something must be published in the journal: 5
- Fees and penalties*
- (o) prescribing fees and penalties to be paid, or the means by which those fees and penalties may be calculated or ascertained, for any matter under this Act or the regulations: 10
- (p) prescribing the period for the payment of a renewal fee:
- (q) exempting, or providing for the Commissioner to exempt from, waive, or refund, fees, or penalties:
- General*
- (r) providing for— 15
- (i) the filing, serving, or giving of notices or other documents, or classes of notices or other documents, by an electronic method or any other method (including by making those notices or documents available to a person on an Internet site and for the person to be directly alerted to them by means of a notice to the person's last known electronic address or any other specified means); and 20
- (ii) when notices or documents are treated as received under that method; and
- (iii) any other related matters:
- (s) any other matters contemplated by this Act, necessary for its administration, or necessary for giving effect to this Act. 25
- (2) The structure of the fee system under this Act prescribed by regulations under **subsection (1)** may be such that the renewal fees—
- (a) recover a share of the costs incurred by the Commissioner in performing their functions under this Act or the Plant Variety Rights Act 1987; and 30
- (aa) recover a share of the costs incurred by the Māori Plant Varieties Committee in performing its functions under this Act; and
- (b) recover those costs at a level that provides an appropriate incentive (having regard to the purpose of this Act set out in **section 3(a)**) for applicants or PVR holders to let those PVRs expire if they do not receive, or will not receive, sufficient benefit from having the PVRs. 35
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

151 Declaration of entity to be UPOV party

- (1) For the purpose of meeting New Zealand's international obligations, the Governor-General may, by Order in Council, declare a State, an international organisation, or any other international entity to be a UPOV party for the purposes of this Act. 5
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 4—Repeals and revocations**152 Repeals and revocations**

- (1) The Plant Variety Rights Act 1987 (1987 No 5) is repealed. 10
- (2) The following are revoked:
 - (a) the Plant Variety Rights Regulations 1988 (SR 1988/101):
 - (b) the Plant Variety Rights (Grantees' Rights) Order 1997 (SR 1997/358):
 - (c) the Plant Variety Rights (Fees) Order 1999 (SR 1999/159).

Subpart 5—Amendments

15

153 Consequential amendments to other Acts

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

Schedule 1

Transitional, savings, and related provisions

s 12

1 Grants applied for or made before commencement of this clause

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

Example

Person A obtained a grant before the commencement of this clause. Person B obtained a grant after the commencement of this clause but applied for that grant before the commencement of this clause. Person A and person B have both obtained grants in respect of wheat varieties (which are not vegetatively propagated). Their rights are determined under the old law. Their rights include the exclusive right to sell reproductive material of the protected variety. 20 25

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

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

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

2 Continuation of applications, proceedings, actions, and matters made or commenced before commencement of this clause

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

Example 1

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

Example 2

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

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

5

Example 3

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

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- (5) This clause is subject to clause 8.

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

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

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

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Example

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

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

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

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4 Essentially derived varieties

A PVR granted under this Act in respect of a plant variety (**A**) does not confer any rights on the holder of the right in respect of an essentially derived variety (**A1**) if A1 was in existence before the commencement of this clause.

5 Plant variety rights register

5

(1) The register kept under section 14(3) of the Plant Variety Rights Act 1987 continues to be kept as the register under **section 128** of this Act.

(2) The Commissioner must continue to record in the register, kept under **section 128** of this Act, all the matters required to be kept under section 14(3) of the Plant Varieties Act 1987 and the Plant Variety Rights Regulations 1988.

10

(3) Any additional information requested by the Commissioner may be recorded on the Register kept under **section 128** of this Act.

6 Existing appointments preserved

(1) The person holding the position of Commissioner of Plant Variety Rights immediately before the commencement of this clause continues to hold office on and after the commencement of this clause as the Commissioner appointed under **section 114(1)** of this Act.

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(2) Any person holding the position of Assistant Commissioner of Plant Variety Rights immediately before the commencement of this clause continues to hold office on and after the commencement of this clause as an Assistant Commissioner appointed under **section 114(2)** of this Act.

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7 Plant Variety Rights Office abolished

(1) ~~The Plant Variety Rights Office is abolished.~~

(2) **Subclause (1)** does not affect—

(a) ~~the employment or rights of any person;~~

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(b) ~~fees payable under the Plant Variety Rights Regulations 1987, the Plant Variety Rights Regulations 1988, or this Act.~~

8 Compulsory licences

(1) An application for a compulsory licence under **Part 7** of this Act must be dealt with under this Act.

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(2) An application for a compulsory licence under the Plant Variety Rights Act 1987 made before the commencement of **Part 7** of this Act must be dealt with under the Plant Variety Rights Act 1987.

(3) An application for a compulsory licence for a plant variety for which a plant variety right was granted under the Plant Variety Rights Act 1987 (being an application that is made on or after the commencement of **Part 7** of this Act) must be dealt with under this Act.

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9 Renewal fees

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

For a plant variety right referred to in clause 1(2)(a), the next annual grant fee (after this clause comes into force) must be paid when due in accordance with the Plant Variety Rights Act 1987, but after that due date renewal fees become due in accordance with this Act.

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

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

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

15

Schedule 1A

Part 5 appeals

s 68A

	<u>Section</u>	<u>Appealable decision</u>	<u>Who may appeal</u>	<u>Appeal period</u>
<u>1</u>	<u>s 65(1)</u>	<u>That a PVR application should proceed</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after notice given under s 65(4)</u>
<u>2</u>	<u>s 65(3)</u>	<u>That a PVR application must be declined</u>	<u>Applicant</u>	<u>28 days after notice given under s 65(4)</u>
<u>3</u>	<u>s 66(4)</u>	<u>That the committee's decision not be reconsidered</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after notice given under s 66(5)</u>
<u>4</u>	<u>s 67(3)(a)</u>	<u>That a PVR application must be nullified</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after notice given under s 67(6)</u>
<u>5</u>	<u>s 67(3)(b)</u>	<u>That a PVR application must be cancelled</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after notice given under s 67(6)</u>
<u>6</u>	<u>s 67(3)(c)</u> <u>or (4)(a)</u>	<u>Dismissal of application made under s 67(1)</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after notice given under s 67(6)</u>

Schedule 2

Appeals to High Court

s 125

	Section	Appealable decision	Who may appeal	Appeal period
1	s 28(3)(a)	Grant of a PVR	Any person aggrieved by the decision	28 days after notice given under s 28(4)
2	s 28(3)(b)	Refusal to grant a PVR	Applicant	28 days after notice given under s 28(6)
3	s 44(2)(a)	Cancellation of a PVR	Any person aggrieved by the decision	28 days after notification of the decision
4	ss 68(1) and 82(1)	<u>Dismissal of application made under s 67(1) or 80(1)</u>	<u>Any person aggrieved by the decision</u>	<u>28 days after the notification of the decision</u>
4 5	ss 79 and 80	Nullification of a PVR	Any person aggrieved by the decision	28 days after notification of the nullification
5 6	ss 79 and 80	Cancellation of a PVR	Any person aggrieved by the decision	28 days after notification of the decision
6 7	s 87	Decision not to restore a lapsed PVR application	Any person aggrieved by the decision	28 days after notification of the decision
7 8	s 89	Decision that no prima facie case exists for restoration	Any person aggrieved by the decision	28 days after notification of the decision
8 9	s 94	Decision not to restore a cancelled PVR application	Any person aggrieved by the decision	28 days after notification of the decision
9 10	s 96	Decision that no prima facie case exists for restoration	Any person aggrieved by the decision	28 days after notification of the decision
10 11	s 102(4)(a)	Decision to grant a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
11 12	s 102(4)(b)	Decision not to grant a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
12 13	s 111	Decision not to amend or revoke a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision
13 14	s 111	Decision to amend or revoke a compulsory licence	Any person aggrieved by the decision	28 days after notification of the decision

Schedule 3

Amendments to other enactments

s 153

Part 1

Amendments to Acts

5

Commerce Act 1986 (1986 No 5)

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

Disputes Tribunal Act 1988 (1988 No 110)

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

Income Tax Act 2007 (2007 No 97)

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

Patents Act 2013 (2013 No 68)

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

Public Works Act 1981 (1981 No 35)

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

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

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

Part 2

Amendments to secondary legislation

25

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

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

Plant Variety Rights Bill

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11 May 2021

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