

Plant Variety Rights Act 1987

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This Act is administered by the Ministry of Economic Development.

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An Act to consolidate and amend the law relating to the granting of proprietary rights in respect of plant varieties

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Plant Variety Rights Act 1987.
- (2) This Act shall come into force on a day to be fixed by the Governor-General by Order in Council.

2 Interpretation

In this Act, unless the context otherwise requires,—

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

Application, except in section 12 of this Act, means an application for a grant

Assistant Commissioner means an Assistant Commissioner of Plant Variety Rights appointed under section 30(1)(b) of this Act:

Commissioner means the Commissioner of Plant Variety Rights appointed in accordance with section 30(1)(a) of this Act; and includes an Assistant Commissioner

Convention party means an entity that for the time being—

- (a) Is declared by an order under section 38A to be a convention party for the purposes of this Act; or
- (b) Is a contracting party to the body that, on the commencement of the Plant Variety Rights Amendment Act 1999, was known as the International Union for the Protection of New Varieties of Plants (constituted under the international agreement then called the International Convention for the Protection of New Varieties of Plants):

Convention party: this definition was inserted, as from 14 October 1999, by section 2(2) Plant Variety Rights Amendment Act 1999 (1999 No 122).

Denomination, in relation to any protected variety, or any variety that was a protected variety until the grant made in respect of it expired, means the distinguishing name or identification approved for that variety by the Commissioner under section 10(2)(a) of this Act

Director-General*[Repealed]*

Director-General: this definition was repealed, as from 1 August 1990, by section 2(1) Plant Variety Rights Amendment Act 1990 (1990 No 82).

[Repealed]

Grant means a grant of plant variety rights under this Act

Grantee means the holder of a grant; and, in relation to a protected variety, means the holder of a grant in respect of that variety

International agreement*[Repealed]*

International Agreement: this definition was repealed, as from 14 October 1999, by section 2(2) Plant Variety Rights Amendment Act 1999 (1999 No 122).

[Repealed]

Journal means the Plant Variety Rights Journal required to be published by section 34(1) of this Act

Minister means the Minister of the Crown for the time being responsible for the administration of this Act

Minister: this definition was substituted, as from 1 August 1990, by section 2(1) Plant Variety Rights Amendment Act 1990 (1990 No 82).

Ministry means the department of State for the time being responsible for the administration of this Act

Ministry: this definition was substituted, as from 1 August 1990, by section 2(1) Plant Variety Rights Amendment Act 1990 (1990 No 82).

Office means the Plant Variety Rights Office established under section 28(1) of this Act

Owner, in relation to any variety, means a person who bred or discovered that variety, and includes a successor of that person

Plant—

- (a) Includes a fungus; but
- (b) Does not include an alga or a bacterium:

Plant: this definition was substituted, as from 1 July 1994, by section 2(1) Plant Variety Rights Amendment Act 1994 (1994 No 52).

Protected variety means a variety in respect of which a grant is in force

Publication means public notification; and includes publication in the Journal

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

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

Secretary means the chief executive of the Ministry

Secretary: this definition was inserted, as from 1 August 1990, by section 2(1) Plant Variety Rights Amendment Act 1990 (1990 No 82).

UPOV country*[Repealed]*

UPOV country: this definition was repealed, as from 14 October 1999, by section 2(2) Plant Variety Rights Amendment Act 1999 (1999 No 122).

[Repealed]

Variety means a cultivar, or cultivated variety, of a plant, and includes any clone, hybrid, stock, or line, of a plant; but does not include a botanical variety of a plant.

Variety: this definition was substituted, as from 1 July 1994, by section 2(2) Plant Variety Rights Amendment Act 1994 (1994 No 52).

Compare: 1973 No 37 s 2

3 Application

[Repealed]

Section 3 was repealed, as from 1 July 1994, by section 2(3) Plant Variety Rights Amendment Act 1994 (1994 No 52).

4 Act to bind the Crown

This Act shall bind the Crown.

Compare: 1973 No 37 s 3

Part 1

Grants of plant variety rights

5 Applications

(1) Every application shall be made on a form approved by the Commissioner; and shall—

(a) Be accompanied by—

(i) The quantity of seed (if any) prescribed in respect of varieties of the kind concerned; and

(ii) A technical questionnaire, supplied by the Commissioner and completed by the applicant, in respect of the botanical taxon to which the subject of the application belongs; and

- (iii) Where required by regulations made under section 38 of this Act, colour photographs of material of the variety to which the application relates; and
 - (b) Be completed and signed by or on behalf of the applicant; and
 - (c) Nominate an address for service in relation to that application (being an address within New Zealand); and
 - (d) Be accompanied by the prescribed application fee.
- (2) Within the prescribed period after making an application, the applicant shall give to the Commissioner—
 - (a) If required by the Commissioner, and in such detail as the Commissioner requires, a description—
 - (i) Of the origin and breeding of the variety concerned; and
 - (ii) On a form provided by the Commissioner for the purpose, of the botanical features of that variety; and
 - (iii) Of those aspects of that variety that, in the opinion of that applicant, distinguish it from those other varieties whose existence was a matter of common knowledge at the time of that application; and
 - (b) A proposed denomination for that variety; and
 - (c) The prescribed trial or examination fee.
- (3) Within the prescribed period after being requested by the Commissioner to do so, an applicant shall give to the Commissioner either or both of the following in relation to the application concerned:
 - (a) Such reproductive material of the variety concerned as the Commissioner specifies;
 - (b) Any other information that the Commissioner thinks relevant to that application and requests from that applicant.
- (4) An application that complies with subsection (1) of this section at the time it is received at the Office shall, for the purposes of this Act, be deemed to be made at that time.
- (5) An application that does not comply with subsection (1) of this section at the time it is received at the Office shall, for

the purposes of this Act, be deemed to be made at the time at which it first complies with that subsection while being held at the Office.

- (6) If satisfied that an application complies with subsection (1) of this section, the Commissioner shall—
 - (a) Notify in the Journal the making of that application; and
 - (b) Advise the applicant accordingly.
- (7) The Commissioner shall notify in the Journal every proposed denomination for a variety given to the Commissioner by any applicant that, in the opinion of the Commissioner, complies with the prescribed requirements.

Compare: 1973 No 37 ss 14, 15(4), 16

Subsection (1) was substituted, as from 2 September 1996, by section 2(1) Plant Variety Rights Amendment Act 1996 (1996 No 141).

Subsection (2)(a) was amended, as from 2 September 1996, by section 2(2) Plant Variety Rights Amendment Act 1996 (1996 No 141) by substituting the words “If required by the Commissioner, and in” for the word “In”.

6 Objections before grant

- (1) Any person who considers that the Commissioner should not approve a proposed denomination notified in the Journal may, within 3 months of its notification, by notice in writing to the Commissioner, object to the approval of that name.
- (2) Any person who considers that an application has been made by or on behalf of an applicant who is not an owner of the variety concerned may, at any time before a grant is made to the applicant in respect of that variety, by notice in writing to the Commissioner, object to the making of a grant in respect of that variety to the applicant.
- (3) Any person who considers that an application has been made in respect of a variety that is not new, distinct, stable, and homogeneous (as required by section 10 of this Act) may, at any time before a grant is made in respect of that variety, by notice in writing to the Commissioner, object to the making of a grant in respect of that variety.
- (4) If an objection is made under this section, the Commissioner shall not make a grant in respect of the variety concerned be-

fore giving the applicant concerned and the objector a reasonable opportunity to be heard.

Compare: 1973 No 37 s 19

7 Withdrawal or lapse of applications

- (1) Any application may be withdrawn by the applicant at any time before a grant is made in respect of it.
- (2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of that withdrawal.
- (3) If any information or material required to be given to the Commissioner under subsection (2) or subsection (3) of section 5 of this Act is not supplied within the prescribed period, the application concerned shall lapse upon the expiration of that period.

Compare: 1973 No 37 s 13(2)

8 Inspection of applications

After an application is made, the Commissioner shall hold it and any document, instrument, or photograph accompanying it and any document or instrument supplied subsequently pursuant to subsection (2) or subsection (3) of section 5 of this Act (or a copy of that document, instrument, or photograph, certified by the Commissioner to be a true copy) available for public inspection during ordinary business hours of the Office.

Compare: 1973 No 37 s 16

Section 8 was substituted, as from 2 September 1996, by section 3 Plant Variety Rights Amendment Act 1996 (1996 No 141).

9 Provisional protection

- (1) Subject to subsection (2) of this section, on and after the day on which an application is made, the applicant shall have the same rights to take proceedings under this Act as if on that day a grant had been made to the applicant in respect of the variety concerned.
- (2) The rights conferred by subsection (1) of this section shall be deemed never to have been conferred if—
 - (a) The application concerned is withdrawn or lapses; or

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

Compare: 1973 No 37 s 18

10 Making of grants

- (1) The Commissioner shall—
 - (a) Subject to sections 11 and 31(2) of this Act, make a grant in respect of every application that is eligible for the making of a grant; and
 - (b) Decline to make a grant in respect of every application that is not eligible for the making of a grant.
- (2) An application shall be eligible for the making of a grant if, and only if, the applicant has given the Commissioner all re-productive material of the variety concerned requested by the Commissioner, and the Commissioner—
 - (a) Has approved for that variety a denomination proposed by the applicant; and
 - (b) Is satisfied that that applicant is an owner of that variety; and
 - (c) Has received the prescribed fee; and
 - (d) Is satisfied that that variety is new, distinct, homogeneous, and stable.
- (3) The Commissioner shall approve a proposed denomination for a variety if, and only if, in the opinion of the Commissioner, it complies with the prescribed requirements.
- (4) For the purposes of subsection (2)(d) of this section,—
 - (a) Subject to subsection (6) of this section, a variety is new if there has been no sale of that variety with the agreement of any relevant owner of that variety—
 - (i) In New Zealand, for more than 12 months before the date on which that application was made; and
 - (ii) Overseas, for more than 6 years before that date in the case of a woody plant, or for more than 4 years before that date in every other case:
 - (b) A variety is distinct if it is distinguishable by one or more characteristics from any other variety whose existence was a matter of common knowledge when the application concerned was made.

- (c) A variety is stable if, in its essential characteristics, it remains true to its description—
- (i) Where the applicant concerned has described particular cycles of reproduction or multiplication for that variety, at the end of each such cycle; and
 - (ii) In every other case, after repeated propagation or reproduction.
- (5) In determining, for the purposes of subsection (2)(d) of this section, whether or not the Commissioner is satisfied that a variety is homogeneous, the Commissioner shall have regard to the particular features of its sexual reproduction or vegetative propagation (whichever is applicable to it).
- (6) Where, to increase the stock of a variety or for evaluation trials or tests of a variety, its owner makes arrangements under which—
- (a) Reproductive material of that variety is to be sold to or used by some other person; and
 - (b) Any unused portion of that reproductive material, and all the material of any sort produced from that reproductive material, is—
 - (i) To be sold to that owner, by that other person; or
 - (ii) Otherwise to become the property of that owner,—for the purposes of subsection (4)(a) of this section, no account shall be taken of any sale under that arrangement of—
 - (c) Reproductive material of that variety by that owner to that other person; or
 - (d) Material of any sort of that variety by that other person to that owner.
- (7) For the purposes of subsection (2)(d) of this section, a variety does not cease to be new by virtue only of the sale at any time of—
- (a) Material that is not reproductive material; or
 - (b) Reproductive material disposed of for purposes other than reproduction,—
- that, having been produced during the breeding, increase of stock, tests, or trials, of that variety, is not (or no longer) required for any of those activities.

- (8) For the purposes of subsection (4)(b) of this section, the characteristics by which a variety may be distinguished from others may be morphological, physiological, or of any other kind or description, so long as those characteristics are capable of precise description and recognition.

Compare: 1973 No 37 s 15(1)

11 Varieties bred or discovered by 2 or more persons independently

Subject to section 12 of this Act, where—

- (a) Before a grant is made in respect of a variety, 2 or more applications in respect of that variety have been made; and
- (b) The Commissioner is satisfied that the 2 or more applicants concerned are persons who, or successors of persons who, bred or discovered that variety independently; and
- (c) The Commissioner is satisfied that, but for this section, each of those 2 or more applicants is or would be entitled to a grant in respect of that variety,—

the Commissioner shall make a grant to that one of those 2 or more applicants whose application in respect of that variety was made first.

Compare: 1973 No 37 s 13A(1), (2)

12 Priorities resulting from earlier overseas applications

1 Where—

- (a) Any person makes an application for a grant in New Zealand in respect of a variety in respect of which that person has earlier,—
- (i) After a convention party that is a state, part of a state, or a territory for whose international relations a state is responsible most recently became a convention party, made in and under the law of that convention party an equivalent application that has been accepted; or
- (ii) After a convention party that is not a state, part of a state, or a territory for whose

- international relations a state is responsible most recently became a convention party, made under the rules of that convention party an equivalent application that has been accepted; and
- (b) That application for a grant in New Zealand is made not more than 12 months after that equivalent application (or, if more than 1 equivalent application has been made, whether in or under the rules of several convention parties, the earliest of them) was made; and
 - (c) A claim for priority in relation to that equivalent application accompanies the application for a grant in New Zealand; and
 - (d) Within 3 months of the making of that application for a grant in New Zealand, a copy of any documents constituting that equivalent application, certified as correct by the authority to which it was made, is submitted to the Commissioner,— sections 10(4)(b) and 11 of this Act shall apply to that application for a grant in New Zealand as if it had been made when that equivalent application was accepted.

Compare: 1973 No 37 s 13A

Subsection (1)(a) and (b) was substituted, as from 14 October 1999, by section 2(3) Plant Variety Rights Amendment Act 1999 (1999 No 122).

13 Cancellation of grants because of earlier overseas applications

Where—

- (a) After a grant is made 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 grant had not already been made, that other person would, by virtue of section 12 of this Act, be entitled to a grant in respect of that application,—

the Commissioner shall cancel that grant, and shall make a new grant to the person who would be entitled to it if the cancelled grant had never been made.

Compare: 1973 No 37 s 13A(8)

14 Date and term of grants

- (1) The Commissioner shall seal every grant with the seal of the Office, and endorse it with the date of its making.
- (2) Except as otherwise provided in this Act, every grant shall be in force for a term (commencing on the day it is made)—
 - (a) Of 23 years, or any longer period specified in that behalf by the Governor-General by Order in Council (made before, on, or after the day that grant is made, but before that grant expires), in the case of a woody plant or its rootstock; and
 - (b) Of 20 years in every other case;—
and, unless sooner cancelled, shall then expire.
- (3) The Commissioner shall keep a register, and record in it the date and other prescribed particulars (if any) of every grant.

Compare: 1973 No 37 s 20

15 Objections after grant

- (1) Any person who considers that a grant has been made in respect of a variety that is not new, distinct, stable, and homogeneous (as required by section 10 of this Act) may at any time, by notice in writing to the Commissioner, object to the continuation in force of that grant.
- (2) Any person who considers that a grant was made to a person who was not an owner of that variety may, by notice in writing to the Commissioner, object to the continuation in force of that grant.
- (3) An objection under subsection (2) of this section may be accompanied by an application in respect of the variety concerned.

16 Cancellation of grants

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

- (2) Subject to subsection (3) of this section, the Commissioner shall cancel a grant at any time during its term if satisfied—
- (a) That any information supplied in the application concerned or in relation to that application was incorrect and that if the correct information had been known before that grant was made, the Commissioner would have declined to make that grant; or
 - (b) That the variety concerned was not, at the time of the application concerned, new and distinct within the meaning of section 10 of this Act; or
 - (c) That that variety is not stable and homogeneous within the meaning of section 10 of this Act; or
 - (d) That the grantee was not, at the time that grant was made, an owner of that variety; or
 - (e) That the grantee of that variety, after being requested by the Commissioner to provide the Commissioner (within a period specified by the Commissioner) with reproductive material capable of producing that variety with its characteristics as described when the grant was made, has failed to do so; or
 - (f) That that grantee, after being requested by the Commissioner to allow the Commissioner (within a period specified by the Commissioner) to inspect the measures taken for the maintenance of that variety, or to provide documents or information in relation to that variety, has failed to do so; or
 - (g) That any annual grant fee in relation to the grant has not been paid within the prescribed period; or
 - (h)
- (3) Before cancelling a grant under subsection (2) of this section, the Commissioner shall give the grantee written notice of intention to do so and, unless that grantee shows sufficient cause within 28 days of the date of the notice why that grant should not be cancelled, shall cancel that grant on the expiration of that period.
- (4) Where—
- (a) The Commissioner has cancelled a grant under subsection (2)(d) of this section; and

- (b) Any application (other than the application in respect of which that grant was made) has at any time (whether before or after the making of that grant) been made in respect of the variety concerned,—

the Commissioner shall deal with all applications in respect of that variety as if that grant had never been made.

Compare: 1973 No 37 ss 13A(8), 20, 24

Subsection (2)(h) was repealed, as from 2 September 1996, by section 4 Plant Variety Rights Amendment Act 1996 (1996 No 141).

17 Rights of grantees

- (1) Subject to section 19 of this Act, a grantee shall have the exclusive right—
- (a) To produce for sale, and to sell, reproductive material of the variety concerned:
- (b) If that variety is a plant of a type specified by the Governor-General by Order in Council for the purposes of this paragraph, to propagate that variety for the purposes of the commercial production of fruit, flowers, or other products, of that variety:
- (c) Subject to any terms and conditions that grantee specifies, to authorise any other person or persons to do any of the things described in paragraph (a) or paragraph (b) of this subsection.
- (2) Notwithstanding subsection (1) of this section the Minister may, by notice in the Journal, and after ensuring that the grantee under the grant concerned will be adequately compensated, impose such restrictions on the exercise of the rights of that grantee in respect of any specified variety as the Minister thinks necessary in the public interest during a state of national emergency declared under the Civil Defence Emergency Management Act 2002.
- (3) A grant may be assigned, mortgaged, or otherwise disposed of, and may devolve by operation of law.
- (4) The rights of a grantee under a grant are proprietary rights, and their infringement shall be actionable accordingly; and in awarding damages (including any exemplary damages) or granting any other relief, a Court shall take into consideration—

- (a) Any loss suffered or likely to be suffered by that grantee as a result of that infringement; and
 - (b) Any profits or other benefits derived by any other person from that infringement; and
 - (c) The flagrancy of that infringement.
- (5) Where there is imported into New Zealand any reproductive material of a protected variety, any propagation, sale, or use, of that material—
- (a) As reproductive material; and
 - (b) Without the authority of the grantee concerned,— constitutes an infringement of the rights of that grantee under this section.
- (6) The importation into New Zealand,—
- (a) From a country that is not a convention party of produce of a protected variety; or
 - (b) From a convention party of produce of a protected variety in respect of which, under the law of that country, it is not possible to make the equivalent of a grant,— without the consent of the grantee is an infringement of the grantee's rights under this section.
- (7) The sale under the denomination of a protected variety of reproductive material of some other variety constitutes an infringement of the rights under this section of the grantee of that protected variety, unless the groups of plants to which those varieties belong are internationally recognised as being distinct for the purposes of denomination.
- (8) Where, in any proceedings for the infringement of the rights under this section of a grantee, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.
- (9) Nothing in subsection (8) of this section affects any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this section other than damages.
- Compare: 1973 No 37 s 22

Subsection (2) was amended, as from 1 December 2002, by section 117 Civil Defence Emergency Management Act 2002 (2002 No 33) by substituting the words “a state of national emergency declared under the Civil Defence Emergency Management Act 2002” for the words “a national emergency” See sections 118 to 121 of that Act as to the transitional provisions.

Subsection (6)(a) and (b) was amended, as from 14 October 1999, by section 2(4) Plant Variety Rights Amendment Act 1999 (1999 No 122) by substituting the words “convention party” for the words “UPOV country”.

18 Exceptions to grantees’ rights

Notwithstanding section 17 of this Act, any person may—

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

Compare: 1973 No 37 s 22(3)

19 Licences

The holder of a licence from a grantee shall have the same rights as that grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the variety concerned affecting the rights given under that licence and committed after it was granted.

Compare: 1973 No 37 s 10(1)

20 Notice of protection

- (1) Any person who—
 - (a) Has acquired rights in respect of a variety under section 9(1) or section 17 of this Act; and
 - (b) Sells any reproductive material of that variety,—shall take all reasonable steps, by means of suitable labelling or other identification of that material, to inform the purchaser concerned of those rights.

- (2) In determining, for the purposes of section 17(8) of this Act, whether or not any person had reasonable grounds for supposing that any action was an infringement of the rights of a grantee, a Court may take into account the extent (if any) to which that grantee or, as the case requires, the licensee concerned had complied with subsection (1) of this section in respect of any material in respect of which, or in respect of material propagated from which, that infringement occurred.

21 Compulsory licences and sales

- (1) Any person may at any time after the expiration of 3 years from the making of a grant, on payment of the prescribed fee request the Commissioner to consider whether or not reasonable quantities of reproductive material of a reasonable quality of the variety concerned are available for purchase by members of the public at a reasonable price.
- (2) Where a request is made under subsection (1) of this section, the Commissioner shall give the grantee concerned notice of it and a reasonable time to be heard in relation to it, and if, after considering any submissions made to the Commissioner by that grantee within that time, the Commissioner is satisfied there are not available for purchase by members of the public at a reasonable price reasonable quantities of reproductive material of reasonable quality of the variety concerned, the Commissioner shall issue to the person who made that request one or both of the following:
- (a) A compulsory licence for the reproduction and sale of reproductive material of that variety:
 - (b) An order requiring that grantee to sell to that person reproductive material of that variety.
- (3) In considering whether or not there are available to members of the public at a reasonable price reasonable quantities of reproductive material of reasonable quality of a variety, the Commissioner shall not take into account any reproductive material that is available only subject to the condition that all or any of the produce from that material must be sold or offered to a specified person, or to one of a specified group of persons, or to a member of a specified class or description of person.

- (4) A licence or order issued under subsection (2) of this section shall be in writing, and sealed with the seal of the Office.
- (5) When issuing a licence or order under subsection (2) of this section, the Commissioner shall specify a royalty or payment, or a means of calculating a royalty or payment, payable by the licensee or purchaser concerned to the grantee concerned (being, in the opinion of the Commissioner, a royalty or payment that is, or a means that will produce a royalty or payment that is, in all the circumstances, equitable) and—
 - (a) It shall be a condition of that licence or order that that licensee or purchaser shall pay to that grantee that royalty or payment or a royalty or payment so calculated (as the case requires); and
 - (b) That licence or order shall be subject to any other terms and conditions the Commissioner thinks fit.
- (6) A licence or order issued under subsection (2) of this section shall have effect according to its tenor as if it were a contract voluntarily entered into by the grantee and the other person concerned.
- (7) Subject to the provisions of this Act, the Commissioner may at any time—
 - (a) On the application of any person; and
 - (b) If the Commissioner thinks it appropriate,—
limit, vary, extend, or revoke, a licence or order issued under subsection (2) of this section.
- (8) As soon as is possible after issuing a licence or order under subsection (2) of this section, or limiting, varying, extending, or revoking, any such licence or order, the Commissioner shall publish in the Journal brief details of the action taken.

Compare: 1973 No 37 s 23

22 Use of denomination

Any person who sells reproductive material of—

- (a) A protected variety; or
- (b) A variety that was a protected variety until the grant made in respect of it expired,—

shall use its denomination, and shall not associate any trade mark, trade name, or other similar indication with that denomination unless that denomination is clearly recognisable.

Part 2

Appeals

23 Rights of appeal

- (1) Any person affected by a decision of the Commissioner to decline to make a grant may, within 28 days after being given notice of that decision by the Commissioner, appeal against that decision.
- (2) Any person affected by a grant may, at any time, appeal against the making of that grant upon the ground that that grant was made in contravention of this Act.
- (3) Where the Commissioner cancels a grant under section 13 of this Act, the grantee may, within 28 days after being given notice of the cancellation by the Commissioner, appeal against that cancellation on the ground that it has not been established that, if that grant had not already been made, some other person making an application in respect of the variety concerned would, by virtue of section 12 of this Act, be entitled to a grant in respect of that application.
- (4) Any person affected by any decision of the Commissioner (not being a decision referred to in any of subsections (1) to (3) of this section)—
 - (a) Relating to an application or the cancellation of a grant; or
 - (b) Imposing any condition in respect of a grant; or
 - (c) Declining to modify any aspect of a grant; or
 - (d) Refusing to issue a licence or order under section 21(2) of this Act,—may, within 28 days after being given notice of that decision by the Commissioner, appeal against that decision.
- (5) Subject to subsection (7) of this section, the owner of a protected variety may appeal against any decision of the Commissioner to issue a licence or order under section 21(2) of this Act in respect of that variety, or to extend or vary any such licence or order.
- (6) Subject to subsection (7) of this section, the person to whom a licence or order was issued under section 21(2) of this Act may appeal against any decision of the Commissioner to limit,

vary, or revoke that licence or order, or to issue it subject to any terms or conditions.

- (7) No appeal under subsection (5) or subsection (6) of this section shall lie after the 28th day after the earlier of the following days:
- (a) The day on which the appellant is served with notice, or otherwise becomes aware, of the issue, extension, limitation, variation, or revocation, concerned:
 - (b) The day on which notice of that issue, extension, limitation, variation, or revocation was first published in the Journal under section 21(8) of this Act.

Compare: 1973 No 37 s 26; 1979 No 29 s 12

24 Appeals to be made to District Court

Every appeal under section 23 of this Act shall be made to a District Court by—

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

25 Assessors

- (1) If a District Court Judge is satisfied (whether or not on the application of any party to that appeal) that any appeal under section 23 of this Act involves the consideration of technical or specialised matters, and that it would be desirable for a person with expert knowledge of those matters to be an assessor in relation to that appeal, the following provisions shall apply:
- (a) The Judge shall consult the parties to the appeal as to a suitable person to be an assessor in relation to the appeal:
 - (b) If the Judge and those parties agree on a suitable person, the Judge shall appoint that person to be an assessor in relation to that appeal:
 - (c) If the Judge and those parties do not agree on a suitable person, the Judge may appoint to be an assessor in relation to that appeal any person the Judge thinks suitable:
 - (d) An assessor appointed under this subsection shall sit with the Judge during the appeal, but shall have no power of decision in relation to the appeal.

- (2) A District Court Judge may appoint 2 or more assessors under subsection (1) of this section in respect of a single appeal if satisfied that the nature of the technical or specialised matters concerned so warrants.
- (3) No appointment of an assessor under subsection (1) of this section shall, in any proceedings, be called into question on the grounds that the occasion for that appointment had not arisen or had ceased.
- (4) Every assessor appointed under subsection (1) of this section is entitled to receive—
 - (a) Remuneration by way of fees, salary, or allowances, for that assessor's services as assessor; and
 - (b) Payment of travelling allowances or expenses in respect of time spent travelling in connection with undertaking services as assessor,—as if a District Court is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (5) Subject to subsection (6) of this section, a District Court, after hearing an appeal under section 23 of this Act, may—
 - (a) Confirm the decision appealed against; or
 - (b) Modify or reverse that decision or any part of it.
- (6) Nothing in subsection (5) of this section authorises a District Court to review any decision of the Commissioner, or any part of a decision of the Commissioner, if no appeal has been made against that decision or part.

26 Procedure

In dealing with an appeal under section 23 of this Act,—

- (a) A District Court may hear all evidence tendered and representations made by or on behalf of any party to that appeal that that Court considers relevant to that appeal, whether or not that evidence would be otherwise admissible in that Court:
- (b) Subject to section 24 of this Act and to paragraph (a) of this section, the District Courts Rules 1948 shall apply to that appeal:
- (c) Except as provided in this Act, a District Court shall determine its own procedure in relation to the determination of that appeal.

27 Suspension of decision while appeal pending

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

Compare: 1973 No 37 s 31

Part 3
Plant Variety Rights Office

28 Plant Variety Rights Office

- (1) The Secretary may from time to time, by notice in the *Gazette*, appoint a place to be the Plant Variety Rights Office.
- (2) The Secretary may from time to time, by notice in the *Gazette*, fix the hours during which the Office shall be open for the transaction of public business under this Act, and may authorise the closing of the Office for the transaction of public business on any day.
- (3) Where the time prescribed for doing any act or taking any proceeding under this Act expires on a day on which the Office is not open and the act or proceeding cannot therefore be done or taken on that day, that act or proceeding shall be deemed to be in time if it is done or taken on the next day on which the Office is open.

Compare: 1973 No 37 s 5

Subsections (1) and (2) were amended, as from 1 August 1990, by section 2(2) Plant Variety Rights Amendment Act 1990 (1990 No 82) by substituting the word “Secretary” for the word “Director-General” wherever that word occurred.

29 Seal of Office

- (1) There shall be a seal of the Office, whose affixing to any document shall be authenticated by the signature of the Commissioner.
- (2) Every Court and person acting judicially shall take judicial notice of—
 - (a) The seal of the Office; and
 - (b) The appointment and signature of the Commissioner and every Assistant Commissioner.
- (3) For the purposes of subsection (2),—

Court includes the Supreme Court, the Court of Appeal, the High Court, and any District Court

District Court includes—

- (a) a Family Court; and
- (b) a Youth Court

person acting judicially means any person having in New Zealand by law authority to hear, receive, and examine evidence.

Compare: 1973 No 37 s 6

Subsection (3) was substituted, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

30 Commissioner, Assistant Commissioners, and officers

- (1) There may from time to time be appointed under the State Sector Act 1988—
 - (a) A Commissioner of Plant Variety Rights;
 - (b) One or more Assistant Commissioners of Plant Variety Rights, who shall be under the control and direction of the Commissioner.
- (2) All persons appointed under subsection (1) of this section shall be officers or employees of the Ministry, and any such appointment under that subsection may be held either separately or in conjunction with any other office in the Ministry.
- (3) The Secretary may from time to time designate any officer or employee of the Ministry an officer of the Office; and any person so designated may hold any other office in the Ministry at the same time.

Compare: 1973 No 37 s 7

The reference to the State Sector Act 1988 in subsection (1) was substituted, as from 1 April 1988, for a reference to the State Services Act 1962 pursuant to section 88(1) State Sector Act 1988 (1988 No 20).

Subsection (3) was amended, as from 1 August 1990, by section 2(2) Plant Variety Rights Amendment Act 1990 (1990 No 82) by substituting the word “Secretary” for the word “Director-General” wherever that word occurred.

31 Officers and employees not to acquire interests in grants

- (1) This subsection applies to every person who is, or during the previous 12 months was, the Commissioner, an Assistant

Commissioner, or a person designated under section 30(3) of this Act.

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

Compare: 1973 No 37 s 9

32 Advisory and technical committees, and technical advisors

- (1) The Secretary may from time to time appoint advisory or technical committees of one or more persons as the Secretary thinks fit to advise or assist the Commissioner for such purposes and during such periods as the Secretary thinks desirable.
- (2) A person may be appointed to be a member of any committee appointed under this section whether or not that person is an officer or employee of the Ministry or otherwise holds an appointment under the State Sector Act 1988.
- (3) Any person appointed under subsection (1) of this section who has an interest directly or indirectly connected with any application or matter to be considered by the committee of which that person is a member shall, as soon as is possible after the relevant facts have come to that person's knowledge, disclose the nature of that interest to the Commissioner and, except as otherwise allowed by the Commissioner, shall not take part after the disclosure in any deliberation or decision relating to that application or matter.
- (4) The Secretary may appoint, or may authorise the Commissioner to appoint, persons who are not officers or employees of the Ministry as technical advisors to assist the Commissioner in carrying out any tests or trials that the Commissioner considers necessary for the purposes of this Act or in assessing the results of any tests or trials (whether carried out by the Commissioner or not) that the Commissioner considers relevant to those purposes.
- (5) The Secretary may, from money appropriated by Parliament for the purpose, pay to the member or members of any com-

mittee, or to any technical advisor, appointed under this section such fees, salary, allowances, and expenses as the Minister from time to time approves.

Compare: 1973 No 37 s 8

Subsection (1), (4), and (5) were amended, as from 1 August 1990, by section 2(2) Plant Variety Rights Amendment Act 1990 (1990 No 82) by substituting the word “Secretary” for the word “Director-General” wherever that word occurred.

The reference to the State Sector Act 1988 in subsection (2) was substituted, as from 1 April 1988, for a reference to the State Services Act 1962 pursuant to section 88(1) State Sector Act 1988 (1988 No 20).

33 Delegations

- (1) The Commissioner may from time to time, by writing under the Commissioner’s hand, generally or particularly or subject to conditions, delegate to such officer or officers or employee or employees of the Ministry for the time being designated under section 30(3) of this Act as the Commissioner thinks fit all or any of the powers conferred on the Commissioner by or under this Act or any other Act, including any powers delegated under any other Act, but not including any power to appoint technical advisors under section 32(4) of this Act or this present power of delegation.
- (2) Every delegation under this section shall be revocable, and no such delegation shall prevent the exercise of any power by the Commissioner.
- (3) A delegation under this section shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Commissioner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Commissioner; but if the holder of a specified office to whom any such delegation has been made ceases to hold office, it shall expire.
- (4) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of that delegation.

Compare: 1973 No 37 s 10

34 Plant Variety Rights Journal

- (1) The Commissioner shall from time to time, as circumstances require, issue a journal, to be called the Plant Variety Rights Journal.
- (2) The Commissioner shall publish in the Journal—
 - (a) Notice of every decision of the Commissioner to make or decline to make a grant, and all prescribed particulars relating to applications and grants; and
 - (b) Any other matters and information relating to plant varieties or plant variety rights whose publication appears to the Commissioner to be important or useful.

Compare: 1973 No 37 ss 11, 12

Part 4
Miscellaneous provisions

35 Service of notices, etc

- (1) Where any notice has to be given or any document has to be served under this Act, it may be given or served by—
 - (a) Delivering it to the person to whom it has to be given or on whom it has to be served; or
 - (b) Leaving it at the usual or last known place of abode or address for service in New Zealand of that person; or
 - (c) Sending it by post in a registered letter addressed to that person at that person's usual or last known place of abode or address for service in New Zealand.
- (2) Where a notice or document is sent by post in the manner described in subsection (1)(c) of this section, it shall be deemed to have been given or served at the time at which the letter would have been delivered in the ordinary course of post.

Compare: 1973 No 37 s 32

36 Fees and refunds

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

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

Compare: 1973 No 37 s 34

37 Offences and penalties

- (1) Every person who, in an application or in an attachment to an application, supplies with intent to deceive any false or misleading information commits an offence.
- (2) Every person who falsely represents that any person is the owner of a protected variety or that any person has applied for a grant in respect of any variety, commits an offence.
- (3) Every person selling material of a variety who falsely represents—
- (a) That that variety is a protected variety or a variety in respect of which an application has been made; or
 - (b) That that material is material of some other variety (being a variety that is a protected variety or a variety in respect of which an application has been made)—
- commits an offence.
- (4) Every person who wilfully or negligently sells reproductive material in contravention of section 22 of this Act commits an offence.
- (5) Every person who, by using on that person's place of business or on any document issued by that person or otherwise the words "Plant Variety Rights Office" or any other words, suggests that that person's place of business is or is officially connected with the Office commits an offence.
- (6) Every person who acts in contravention of section 31(2) of this Act commits an offence.
- (7) Every person who commits an offence against this Act shall be liable on summary conviction to a fine not exceeding \$1,000.
- (8) Part 2 of Schedule 1 to the Summary Proceedings Act 1957 (as amended by section 35(6) of the Plant Varieties Act 1973) is hereby consequentially amended by repealing the item that relates to the Plant Varieties Act 1973.

Compare: 1973 No 37 s 35

38 Regulations

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

- (a) Regulating the business of the Office:
- (b) Regulating any matters placed under the direction or control of the Commissioner by this Act:
- (c) Prescribing the form and manner of applications and the form of diagrams, photographs, and other documents that may be filed in the Office; and requiring copies to be furnished of any such applications, surrenders, diagrams, photographs, and documents; and authorising the rectification or amendment of any of them:
- (d) Prescribing the quantity of seed required to accompany an application; and—
 - (i) Different quantities may be prescribed in respect of applications in respect of varieties of different kinds; and
 - (ii) Quantities may be prescribed in respect of applications in respect of varieties of some kinds and not in respect of applications in respect of varieties of other kinds:
- (e) Regulating the procedure to be followed in connection with any application or request to the Commissioner or in connection with any proceeding before the Commissioner, and authorising the rectification of irregularities of procedure:
- (f) Providing for the forfeiture of any priority given in respect of an application:
- (g) Prescribing any requirements for the entry of particulars in the register kept under section 14(3) of this Act, and for corrections of recorded details:
- (h) Prescribing a form for appeals under section 23 of this Act:
- (i) Authorising the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents in the Office, and of indexes to and abridgments of them:

- (j) Prescribing the mode of publishing any matters required by this Act to be published:
- (k) Prescribing fees and charges for anything authorised by this Act:
- (l) Providing for the testing and treatment of varieties to which applications relate:
- (m) Prescribing the requirements to be met in selecting the denomination of varieties, and providing for the approval, rejection, or amendment of any denomination by the Commissioner:
- (n) Giving effect to the terms of any international agreement to which New Zealand is a party:
- (o) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Compare: 1973 No 37 s 37

38A Orders in Council as to convention parties

For the purpose of giving effect to any international agreement or arrangement to which New Zealand is a party or that applies to New Zealand, the Governor-General may by Order in Council declare that any entity specified in the order that is a party to the agreement or arrangement or to which the agreement or arrangement applies (whether a state, part of a state, a territory for whose international relations a state is responsible, a political union, an international organisation, or any other entity) is a convention party for the purposes of this Act.

Section 38A was inserted, as from 14 October 1999, by section 2(1) Plant Variety Rights Amendment Act 1999 (1999 No 122).

39 Transitional provisions

- (1) The place appointed by the Minister as the Plant Varieties Office under the Plant Varieties Act 1973 shall be deemed to have been appointed the Office under section 28 of this Act on the commencement of this Act.
- (2) The person who, immediately before the commencement of this Act, was the Registrar of Plant Varieties under the Plant Varieties Act 1973 shall be deemed to have been appointed as the Commissioner on the commencement of this Act.

- (3) Every grant of plant selectors' rights made under the Plant Varieties Act 1973 and in force immediately before the commencement of this Act shall remain in force in all respects as if this Act had been in force when it was made.
- (4) For the purposes of any action or proceedings taken in relation to a grant subsisting pursuant to subsection (3) of this section, or any amendment or cancellation of such grant, the provisions of this Act shall apply as if that grant were a grant of plant variety rights under this Act.
- (5) Every application for a grant of plant selectors' rights made under the Plant Varieties Act 1973 and not determined before the commencement of this Act, shall be deemed to be an application under this Act, and shall be dealt with accordingly.
- (6) Every grant of protective direction made under the Plant Varieties Act 1973 and in force immediately before the commencement of this Act shall be deemed to be provisional protection given under section 9(1) of this Act, and shall be subject to the provisions of that section.

40 Consequential amendment

[Repealed]

Section 40 was repealed, as from 3 July 1990, by section 2(4)(l) Ministry of Agriculture and Fisheries Amendment Act 1990 (1990 No 53).

41 Repealed and revocations

[Repealed]

Section 41 was repealed, as from 3 July 1990, by section 2(4) Plant Variety Rights Amendment Act 1990 (1990 No 82).

Schedule

Section 3

Plants to which this Act applies

[Repealed]

The Schedule was repealed, as from 1 July 1994, by section 2(3) Plant Variety Rights Amendment Act 1994 (1994 No 52).