



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Further Policy Decisions on the Review of the Plant Variety Rights Act 1987	Date to be published	22 November 2021

List of documents that have been proactively released		
Date	Title	Author
September 2021	Further Policy Decisions on the Review of the Plant Variety Rights Act 1987	Office of the Minister of Commerce and Consumer Affairs
27 September 2021	CAB-21-MIN-0388.01	Cabinet Office

Information redacted

YES / NO

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Cabinet

Minute of Decision

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Further Policy Decisions on the Review of the Plant Variety Rights Act 1987

Portfolio Commerce and Consumer Affairs

On 27 September 2021, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

- 1 **noted** that in 2019 and 2021, Cabinet agreed to policy decisions as part of the review of the Plant Variety Rights Act 1987 [DEV-19-MIN-0301, CAB-21-MIN-0063.02];
- 2 **noted** that there are three policy decisions from November 2019 that the Minister of Commerce and Consumer Affairs recommends amending following consideration of submissions to the Economic Development, Science and Innovation Committee (the Committee) on the Plant Variety Rights Bill;
- 3 **noted** that these decisions will be reflected in the Departmental Report to be presented by officials to the Committee on 30 September 2021;

Include a right of appeal

- 4 **noted** that in November 2019, DEV agreed that determinations of the Māori Plant Varieties Committee only be subject to judicial review [DEV-19-MIN-0301, paragraph 24];
- 5
 - 5.1 **rescinded** the decision referred to in paragraph 4; and instead
 - 5.2 **agreed** that there is a right of appeal regarding decisions of the Māori Plant Varieties Committee;
- 6 **authorised** the Minister of Commerce and Consumer Affairs, in consultation with the Associate Minister for Māori Development, to make further decisions on the nature of the appeal pathway;

Extend the term for potatoes

- 6 **noted** that in in November 2019, DEV agreed to adopt the minimum terms provided for in the International Convention for the Protection of New Varieties of Plants 1991 (UPOV 91), namely 25 years for woody plants and 20 years for all other plants [DEV-19-MIN-0301, paragraph 31];
- 7 **agreed** that there are good commercial reasons to make an exception for potatoes and to extend the term of protection for new varieties of potatoes to 25 years;

Amend the definition of an essentially derived variety

- 8 **noted** that in in November 2019, DEV agreed to adopt a definition of an essentially derived variety that followed the approach in the Australian Plant Breeder's Rights Act 1994 [DEV-19-MIN-0301, paragraph 33];
- 9 10.1 **rescinded** the decision referred to in paragraph 9; and instead
- 10.2 **agreed** to substantively adopt the wording in Article 14(5) of UPOV 91 in defining an essentially derived variety;
- 10 **noted** that this proposal is made on the basis that the current guidance provided by UPOV on essentially derived varieties (the 2017 Explanatory Note) remains in effect, and this decision may be revisited in the future if a broader interpretation creates issues for downstream innovation.

Michael Webster
Secretary of the Cabinet

Secretary's Note: This minute replaces DEV-21-MIN-0187. Cabinet agreed to the recommendations from DEV to rescind a number of earlier decisions (paragraphs 5.1 and 10.1).