



## COVERSHEET

|                               |  |                             |                               |
|-------------------------------|--|-----------------------------|-------------------------------|
| <b>Minister</b>               | Hon Duncan Webb  | <b>Portfolio</b>            | Commerce and Consumer Affairs |
| <b>Title of Cabinet Paper</b> | Plant Variety Rights Regulations and Plant Variety Rights Act 2022 Commencement Order 2022 | <b>Date to be published</b> | 1 March 2023                  |

### List of documents that have been proactively released

| <b>Date</b>      | <b>Title</b>   | <b>Author</b>   |
|------------------|--|---|
| 15 December 2023 | Plant Variety Rights Regulations and Plant Variety Rights Act 2022 Commencement Order 2022 | Office of the Minister of Commerce and Consumer Affairs |
| 15 December 2022 | LEG-22-MIN-0235 Minute   | Cabinet Office  |

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- To maintain legal professional privilege
- Free and frank expression of opinion

## In Confidence

Minister of Commerce and Consumer Affairs  
Cabinet Legislation Committee

# PLANT VARIETY RIGHTS REGULATIONS 2022 AND PLANT VARIETY RIGHTS ACT 2022 COMMENCEMENT ORDER 2022

## Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of:
  - 1.1 the Plant Variety Rights Regulations 2022 (the **Regulations**); and
  - 1.2 the Plant Variety Rights Act 2022 Commencement Order 2022 (the **Commencement Order**).

## Background

- 2 A review of the Plant Variety Rights (**PVR**) regime was initiated in February 2017 [EGI-16-SUB-0196, CAB-16-MIN-0423 refer]. In addition to modernising a regime that is over 30 years old, the purpose of the review is to meet the Crown's obligations under the Treaty of Waitangi and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
- 3 The PVR Bill was introduced in May 2021 and received Royal assent on 18 November 2022. It replaces and repeals the Plant Variety Rights Act 1987.
- 4 The PVR fees remain at the current level under the Act, which have not been reviewed since 2002 [redacted] Legal professional privilege [redacted]  
[redacted]  
[redacted] The regulations will set new fees that better reflect the cost of providing the services under the Act [redacted] Free and frank opinions [redacted]

## Plant Variety Rights Policy

- 5 PVRs are intellectual property (IP) rights granted under the Act, which give plant breeders and variety owners exclusive rights over new varieties of plants for a limited time. PVRs are intended to act as an incentive for domestic plant breeders to develop new varieties of plants, and for international plant breeders to permit availability of their plant varieties in New Zealand.
- 6 The PVR scheme established under the PVR Act 1987 is administered by the PVR Office within the Intellectual Property Office of New Zealand (IPONZ), a business unit of the Ministry of Business, Innovation and Employment (MBIE). IPONZ grants and registers IP rights in New Zealand. This includes trade marks, patents, designs and geographical indications, as well as plant variety

rights. IPONZ also provides general information about non-registered IP including copyright.

- 7 IPONZ is globally recognised as one of the most innovative intellectual property systems. This is due to the synergies and economies of scale generated across multiple types of IP, which benefit all users of these regimes through the utilisation of a common technology platform. This drives down staff and technology costs as well as associated fees for each regime, all of which would be higher if these different types of IP were managed as stand-alone systems.
- 8 Additionally, by uniting all IP types under one technology system, IPONZ allows for administrative consistency, which supports users who hold multiple IP rights across IP types. This helps to safeguard innovations comprehensively and drive economic development in New Zealand.
- 9 The Plant Variety Rights Act 2022 (**the Act**) replaces the Plant Variety Rights Act 1987, modernising the whole PVR scheme to account for developments in the plant breeding industry. Its intention is to align PVR law with New Zealand's international obligations, while recognising the country's unique heritage and the Crown's obligations under Te Tiriti o Waitangi/the Treaty of Waitangi. The scheme now aligns with the 1991 revision of the International Convention for the Protection of New Varieties of Plants (UPOV 91).<sup>1</sup>

### ***The Regulations***

- 10 The Act will need to be supported by new regulations. Cabinet made policy decisions on the new regulations in November 2021 [DEV-21-MIN-0246, CAB-21-MIN-0507].
- 11 Cabinet agreed that, given the similarities in many of the processes, the new regulations would be based on the Patents Regulations 2014. The regulations include specific adjustments to accommodate the unique nature of plant variety rights.
- 12 Stakeholders were given the opportunity to submit on an exposure draft of the Regulations. Consistent with my delegated authority [DEV-21-MIN-0246, recommendation 7], I have made several minor and technical amendments following submissions. The changes are consistent with the overall policy decisions made by Cabinet.

### ***Fees***

- 13 PVRs are granted after an examination process carried out by the Intellectual Property Office of New Zealand (**IPONZ**). The costs of the examination process are met through fees charged to applicants and PVR owners.

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<sup>1</sup> The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organisation based in Geneva, Switzerland. UPOV was established in 1961 by the International Convention for the Protection of New Varieties of Plants. UPOV 91 strengthens breeders' rights with the aim of increasing innovation in plant breeding.

*The PVR scheme is running at a deficit*

- 14 The PVR scheme was intended to operate on a full cost recovery basis. The fees set for the PVR scheme have not been adjusted since 2002, leading to an annual operating deficit of approximately \$0.956 million. [REDACTED]  
[REDACTED] Legal professional privilege [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Free and frank opinions [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 15 The cost to maintain a viable PVR scheme in New Zealand is \$1.394 million annually, based on current application and renewal volumes and a minimum viable staffing level.
- 16 As part of the recent review of the Act, IPONZ reviewed the structure and level of PVR fees. This analysis demonstrated that implementing a full cost recovery model that is legally compliant would necessarily result in a dramatic rise in fees.
- 17 Feedback has suggested that moving towards recovering full costs of the PVR regime from applicants would significantly reduce applications.
- 18 Further work will be carried out by IPONZ to understand the impact of a full cost recovery model.

*Cabinet agreed to reprioritise \$2.000 million in Crown funding to mitigate the impact of fee increases*

- 19 In April 2022, Cabinet agreed to reprioritise \$2.000 million of Crown funding in 2021/22 to subsidise the PVR scheme over a four-year period [CAB-22-MIN-0117 refers]. This Crown funding mitigates the impact of fee increases on users and balances the increase with the policy objectives of the PVR scheme. It thereby safeguards accessibility to the scheme [REDACTED]  
[REDACTED] Free and frank opinions [REDACTED]
- 20 Following Cabinet approval, MBIE commenced public consultation on proposed changes to the PVR fee structure and levels [CAB-22-MIN-0117 refers].
- 21 In setting the final fees, due to the timing of implementation part way through the 2022/23 financial year, Cabinet agreed that the Crown funding be applied across three years rather than four. The changed fee structure is an interim measure, until a review of the fee structures for all registered intellectual property rights is undertaken before 2025/2026.

*Cabinet approved a revised PVR fee structure and fee levels*

- 22 Cabinet also approved changes to the PVR fees structure and levels following public consultation [CAB-22-MIN-0511 refers]. The revised fees better reflect the cost of providing the PVR Office's services
- 23 The structure is now simpler so that there are single application and examination fees respectively, regardless of plant variety. These changes create clarity for applicants and simplify the administration of the scheme, which is consistent with the Act. The updated categories also allow costs to be grouped in a manner that increases transparency about which service each fee covers. Free and frank opinions
- 24 Table 1 below outlines the changes to PVR fees approved by Cabinet. The table reflects the new fee structure and the total amount for each fee category.
- 25 The increases have been assessed against the costs of administering the PVR scheme, and the principles of cost recovery. Officials consider that the Crown funding will help mitigate the impact of overall increased fees, as noted in paragraph 16.

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**Table 1:** Current and new PVR fees (excluding GST) agreed by Cabinet [CAB-22-MIN-0511 refers]

| Fee category  | New fee | Current fee | Change  |
|---|---------|-------------|---------|
| <b>Applications</b>                                   |         |             |         |
| Herbage, agriculture, vegetable and fungi             | \$625   | \$500       | \$125   |
| Fruit and nut   |         | \$500       | \$125   |
| All other plants                                      |         | \$350       | \$275   |
| Applications made but later withdrawn (no refund)     |         | \$500       | \$125   |
| <b>Examinations</b>                                   |         |             |         |
| Agriculture and vegetable crops                       | \$770   | \$600       | \$170   |
| Fruits and nuts                                       |         | \$300       | \$470   |
| All other plants (incl. ornamentals)                  |         | \$230       | \$540   |
| <b>Growing trials (per year of trial)</b>             |         |             |         |
| <b>Agriculture and vegetable crops</b>                |         |             |         |
| - seed propagated varieties (cereals, peas, forage)   | \$4,200 | \$2,300     | \$1,900 |
| - vegetatively propagated varieties (potatoes, hops)  | \$2,800 | \$1,600     | \$1,200 |
| <b>Fruit and nut</b>                                  |         |             |         |
| - strawberry varieties                                | \$290   | \$500       | -\$210  |
| - all other varieties - year 1                        | \$530   | \$500       | \$30    |
| - all other varieties - subsequent year annual charge | \$700   | \$500       | \$200   |
| <b>Ornamentals</b>                                    |         |             |         |
| - roses   | \$130   | \$450       | -\$320  |
| - all other varieties - year 1                        | \$310   | \$450       | -\$140  |
| - all other varieties - subsequent year annual charge | \$450   | \$450       | \$0     |
| <b>Grasses, white clover</b>                          | \$4,510 | \$3,200     | \$1,310 |
| <b>Grass endophytes, fungi</b>                        | \$2,800 | \$1,500     | \$1,300 |
| <b>Annual grant fee</b>                               |         |             |         |
| Single annual grant fee                               | \$385   | \$160       | \$225   |
| <b>Other fees</b>                                     |         |             |         |
| Compulsory license application                        | \$1,000 | \$600       | \$400   |
| Cancellation or nullification of application          | \$350   | N/A         |         |
| Request for hearing                                   | \$850   | N/A         |         |

### **The Commencement Order**

- 26 Under section 2 of the Act:
- 26.1 some provisions came into force on Royal assent (including the regulation-making powers)
  - 26.2 the remaining provisions are brought into force by Order in Council within two years of Royal assent
  - 26.3 subpart 3 of Part 5 (under which the Māori Plant Varieties Committee starts considering certain PVR applications) cannot, however, be brought into force within one year of Royal assent.
- 27 The Commencement Order will bring the remaining provisions (other than subpart 3 of Part 5) into force when the Regulations come into force.

### **Timing and 28-day rule**

- 28 The Commencement Order brings all the remaining provisions of the Act (other than subpart 3 of Part 5) into force on 24 January 2023. This is the same date on which, subject to Cabinet's agreement in this paper, the Regulations will also come into force.
- 29 I am not seeking a waiver of the 28-day rule for either the Regulations or the Commencement Order.

### **Compliance**

- 30 The Regulations and Commencement Order comply with:
- 30.1 the principles of the Treaty of Waitangi;
  - 30.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 30.3 the principles and guidelines set out in the Privacy Act 2020;
  - 30.4 relevant international standards and obligations; and
  - 30.5 the Legislation Guidelines (2021 edition).
- 31 There are no statutory prerequisites for the making of the Regulations.

### **Regulations Review Committee**

- 32 I do not anticipate any grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 33 Parliamentary Counsel Office has certified that the Regulations and Commencement Order are in order for submission to the Executive Council.

## Impact Analysis

- 34 The Ministry of Business, Innovation and Employment (**MBIE**) prepared a regulatory impact statement (**RIS**) for the new regulations in accordance with the necessary requirements. This document met the criteria necessary for Ministers to make informed decisions on the policy proposals.
- 35 The RIS was submitted to Cabinet at the same time agreement to the policy decisions was sought [DEV-21-MIN-0246, CAB-21-MIN-0507].
- 36 MBIE also prepared a RIS for each of the three sets of Cabinet decisions leading to the provisions in the Act [CAB-21-MIN-0388.01, DEV-21-MIN-0026, CAB-21-MIN-0063, DEV-19-MIN-0301, CAB-19-MIN-0593]. No further regulatory impact assessment is required for the Commencement Order.
- 37 In relation to the proposed fees, MBIE prepared and submitted a Stage Two Cost Recovery Impact Statement (CRIS 2) to Cabinet when policy decisions were sought. MBIE's Regulatory Impact Analysis Review Panel assessed the CRIS 2 and considered that the information and analysis summarised met the criteria necessary for decisions by Ministers to be made on the fee proposals [CAB-22-MIN-0511 refers].

## Publicity

- 38 Notice of the Regulations and Commencement Order will be published in the New Zealand Gazette.

## Proactive release

- 39 I propose to release this paper proactively within 30 business days. Any redactions made will be consistent with the Official Information Act 1982.

## Consultation

### *Regulations*

- 40 Stakeholders and Māori organisations and individuals gave feedback through public consultation on the proposed new regulations and on an exposure draft. A hui also took place on the proposed list of non-indigenous plant species of significance.
- 41 The Ministry for Primary Industries, the Ministry for the Environment, Department of Conservation, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, Te Arawhiti and Te Puni Kōkiri were consulted on the proposals in this paper (excluding the fees). The Department of Prime Minister and Cabinet were informed.

### *Fees*

- 42 Public consultation began online on 13 April 2022, running for a period of five weeks. A total of 12 written submissions were received from the public. A



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summary of consultation submissions was provided to Cabinet [CAB-22-MIN-0511 refers].

- 43 The Office of the Auditor General's Setting and Administering Fees and Levies for Cost Recovery: Good practice guide (2021), and The Treasury's Guidelines for Setting Charges in the Public Sector (2017), have been consulted.
- 44 The Treasury and the Department of Prime Minister and Cabinet were informed about the fee proposals.

**Commencement Order**

- 45 No consultation is required for the Commencement Order.

**Recommendations**

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 24 November 2021 the Cabinet Economic Development Committee agreed that the regulations to support the new Plant Variety Rights Act 2022 be based on the Patents Regulations 2014 where it makes sense to do so, with specific adjustments to accommodate the unique nature of plant variety rights [DEV-21-MIN-0246, CAB-21-MIN-0507 refer];
- 2 **note** that on 22 November 2022 Cabinet approved changes to the PVR fees structure and levels [CAB-22-MIN-0511 refers];
- 3 **note** that the Plant Variety Rights Regulations 2022 will give effect to the decisions referred to in recommendations 1 and 2;
- 4 **authorise** the submission to the Executive Council of the Plant Variety Rights Regulations 2022;
- 5 **note** that the Plant Variety Rights Regulations 2022 will come into force on 24 January 2023;
- 6 **note** that some provisions of the Plant Variety Rights Act 2022 came into force the day after Royal assent, and under section 2(2) of the Act the remaining provisions must be brought into force by Order in Council within two years of Royal assent;
- 7 **note**, however, that subpart 3 of Part 5 of the Plant Variety Rights Act 2022 (under which the Māori Plant Varieties Committee starts considering certain PVR applications) cannot be brought into force within one year of Royal assent;
- 8 **note** that the Plant Variety Rights Act 2022 Commencement Order 2022 will bring the remaining provisions of the Plant Variety Rights Act 2022 (except subpart 3 of Part 5) into force on 24 January 2023;
- 9 **authorise** the submission to the Executive Council of the Plant Variety Rights

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Act 2022 Commencement Order 2022;

- 10 **note** that the Plant Variety Rights Act 2022 Commencement Order 2022 comes into force on 24 January 2023.

Authorised for lodgement

Hon Dr David Clark  
Minister for Commerce and Consumer Affairs

**I N C O N F I D E N C E**

**Appendix**

**Plant Variety Rights Regulations 2022**

**Plant Variety Rights Act 2022 Commencement Order 2022**