

House of Representatives

Supplementary Order Paper

Wednesday, 27 July 2022

Plant Variety Rights Bill

Proposed amendment

Hon Judith Collins, in Committee, to move the following amendment:

New clause 39A

After *clause 39* (page 24, after line 33), insert:

39A Provisional protection

- (1) An applicant has the right to take proceedings under this Act from the application date as if on that date a PVR had been granted to the applicant in respect of the variety concerned.
- (2) However, the rights conferred by **subsection (1)** are to be deemed never to have been conferred if—
 - (a) the PVR application is withdrawn or lapses; or
 - (b) the Commissioner, after considering the application, refuses to grant the PVR.

Explanatory note

This Supplementary Order Paper amends the Plant Variety Rights Bill to retain the current provision for provisional protection set out in section 9 of the Plant Variety Rights Act 1987.

Without this amendment, the Bill allows only for a plant variety right holder to bring an action against infringement after the grant of the right. This does not recognise the unique nature of plant variety rights that differentiates them from traditional patents, notably the biological and climatic limitations to growing trials and the low skill requirement for infringement (which renders them especially vulnerable to theft). The examination period can take many years to complete, and removal of provisional pro-

tection for applicants provides no remedy for theft of applicants' intellectual property during this time.

Further, retaining the provision in the current Plant Variety Rights Act 1987 allows New Zealand to give effect to Article 13 of the International Convention for the Protection of New Varieties of Plants (1991), as it is required to under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Article 13 provides:

“Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14.”

This Supplementary Order Paper recognises the unique nature of plant variety rights that warrants provisional protection, and ensures New Zealand gives effect to the relevant provisions in an international agreement to which it has obligations.