

Trans-Pacific Partnership Agreement Amendment Bill

Government Bill

Explanatory note

General policy statement

The Trans-Pacific Partnership Agreement Amendment Bill (the **Bill**) is an omnibus Bill introduced in accordance with Standing Order 263(a). The amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Bill amends New Zealand law as part of the implementation of the free trade agreement named the Trans-Pacific Partnership (**TPP**) Agreement between New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States, and Viet Nam, signed at Auckland on 4 February 2016 (the **Agreement**).

Most of the obligations in the Agreement would be met by New Zealand's existing domestic legal and policy regime. However, a number of legislative and regulatory amendments would be required to align New Zealand's domestic law with certain obligations in the Agreement, and thereby enable New Zealand to ratify the Agreement. The Bill introduces amendments to the following enactments:

- the Agricultural Compounds and Veterinary Medicines Act 1997, so as to extend current data protection from 5 to 10 years for data provided in support of an application for marketing approval for a new agricultural chemical product, as required by the intellectual property chapter of the Agreement;
- the Copyright Act 1994, so as to extend the copyright term from life plus 50 years to life plus 70 years, to provide a new regime for protection of technological protection measures, to provide new rights for performers, to provide additional protection for rights management information, to extend the border protection measures to allow the New Zealand Customs Service to detain exports of suspected pirated copyright works where a notice has been accepted from rights holders and to give ex officio powers to Customs officers to temporarily detain suspected pirated copyright works without a notice from rights holders,

and to extend the protection of encrypted programme-carrying satellite and cable signals, as required by the intellectual property chapter of the Agreement:

- the Customs and Excise Act 1996, so as to allow the New Zealand Customs Service to issue advance rulings on the valuation of imports to TPP importers, exporters, or producers, as required by the customs administration and trade facilitation chapter of the Agreement:
- the Dairy Industry Restructuring Act 2001 (including Schedules 5A and 5B), so as to implement an export licence allocation system for the country-specific quota access received for dairy products in the Agreement for the United States market:
- the Hazardous Substances and New Organisms Act 1996, so as to provide a 60-day comment period on proposed technical regulations that will need to be notified to the World Trade Organization, as required by the technical barriers to trade chapter of the Agreement:
- the Legislation Act 2012, so as to ensure that New Zealand can promptly publish on a single Internet site all central Government subordinate instruments, together with an explanation of their purpose and rationale, to the extent required by the transparency and anti-corruption chapter of the Agreement:
- the Overseas Investment Act 2005, so as to provide a power to make regulations to implement higher investment screening thresholds for overseas investments in significant business assets in order to comply with New Zealand's obligations under the investment chapter of the Agreement and other related existing international trade agreements (being the Most-Favoured-Nation obligations in New Zealand's existing trade agreements with China, Chinese Taipei, Korea, and Hong Kong, and the CER Investment Protocol with Australia). Under TPP and existing most-favoured-nation (**MFN**) obligations, the screening threshold for certain non-government investors will increase from \$100 million to \$200 million. The threshold for Australia is currently \$498 million for non-government investors and \$104 million for government investors (indexed for inflation), which will remain unchanged:
- the Patents Act 2013, so as to provide for the requirement to provide a 12-month grace period for patent applications and to allow for the granting of patent term extensions to compensate a patent holder if there are unreasonable delays in the Intellectual Property Office of New Zealand granting the patent, or an unreasonable curtailment of the patent term as a result of Medsafe's marketing approval process for pharmaceutical products, as required by the intellectual property chapter of the Agreement:
- the Tariff Act 1988, so as to enable regulations to be made that apply the preferential tariff rates agreed under the Agreement, to provide for the transitional safeguard mechanism required under the trade remedies chapter of the Agreement, and to provide for the emergency action (safeguards) mechanism and as-

sociated procedures required under the textiles and apparel chapter of the Agreement:

- the Trade Marks Act 2002, so as to provide authority to courts to award additional damages for trade mark infringement, to extend the border protection measures to allow the New Zealand Customs Service to detain exports of suspected trade mark infringing goods where a notice has been accepted from rights holders and to give ex officio powers to Customs officers to temporarily detain suspected trade mark infringing goods without a notice from rights holders, and to require the courts in trade mark infringement cases to order the destruction of counterfeit goods except in exceptional cases, as required by the intellectual property chapter of the Agreement;
- the Wine Regulations 2006, so as to introduce a standard that restricts the export of grape wine labelled as “ice wine” that is not made from grapes frozen on the vine as required by the wine and distilled spirits annex of the technical barriers to trade chapter of the Agreement.

A copy of the Agreement can be found at <https://www.tpp.mfat.govt.nz/text>

Departmental disclosure statement

The Ministry of Foreign Affairs and Trade is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=133>

National interest analysis and regulatory impact statement

An extended national interest analysis has been prepared that fulfils the requirements for a regulatory impact analysis. The Government publicly released the national interest analysis on 26 January 2016. The national interest analysis sets out the reasons for and the implications of New Zealand becoming a party to the Trans-Pacific Partnership Agreement and the means of implementing the treaty domestically. The national interest analysis was presented to the House of Representatives on 9 February 2016, in accordance with Standing Order 397(2) (presentation of national interest analyses for international treaties). A copy of the national interest analysis can be found at—

- <https://www.tpp.mfat.govt.nz/resources#nia>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

In addition, the Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 6 April 2016 to help inform the main policy decisions taken by the Government relating to the intellectual property contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/info-services/business/intellectual-property/tpp-intellectual-property-chapter>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on a date appointed by the Governor-General by Order in Council. One or more Orders in Council may be made bringing different provisions into force on different dates (for example, if desirable for the transition).

Commencement of the Bill by Order in Council is necessary in order to co-ordinate the Bill's commencement with the entry into force of the Agreement.

Part 1

Amendments to Agricultural Compounds and Veterinary Medicines Act 1997

Part 1 amends the Agricultural Compounds and Veterinary Medicines Act 1997 (the **ACVM Act**). The amendments relate to Article 18.47 of the Agreement, which provides for the protection of undisclosed test and other data required to gain marketing approval for an agricultural chemical product. Under the ACVM Act, registration of an agricultural compound is required before a compound may be sold, used, manufactured, or imported.

Clause 4 inserts *new section 2A*, which gives effect to the provisions set out in *new Schedule 1* (*clause 6* inserts *new Schedule 1*). *New Schedule 1* contains a savings provision for innovative agricultural compound applications made before the amendments set out in *Part 1* come into force.

Clause 5—

- amends the definition of innovative agricultural compound application in section 72 so that an application is excluded from the definition only if it is for an agricultural compound that has an active ingredient in common with a previously registered compound (currently, an application is excluded if the compound has an active ingredient that has been referred to in a previous application, even if that previous application has not been granted); and
- amends the definition of protected period in section 72—
 - to extend from 5 to 10 years after the date of registration the protected period that applies to confidential supporting information given in support of a successful innovative agricultural compound application for full registration; and
 - so that the protected period for an application for full registration no longer ends if the application is not decided within 5 years.

At the time of this Bill's introduction, the Agricultural Compounds and Veterinary Medicines Amendment Bill is being considered by the Primary Production Committee. That Bill also contains amendments to Part 6 of the ACVM Act, including the definitions of innovative agricultural compound application and protected period.

Part 2

Amendments to Copyright Act 1994

Part 2 amends the Copyright Act 1994.

Clause 8 amends the interpretation section to insert a definition of rights management information.

Clauses 9 to 12 relate to copyright term extension. The provisions relate to Article 18.63 of the Agreement.

Clause 9 amends section 22 to—

- increase the copyright term for most literary, dramatic, musical, and artistic works from 50 years to 70 years:
- amend how the copyright term is calculated if a work is computer-generated or of unknown authorship.

Clause 10 amends section 23 to increase the copyright term for sound recordings and films from 50 years to 70 years.

Clause 11 amends section 28 to—

- increase the copyright term in relation to literary, dramatic, musical, and artistic works of international organisations from 50 years to 70 years:
- amend how the copyright term of those works is calculated.

Clause 12 consequentially amends section 67 to update a reference to the previous copyright term duration.

Clauses 13 to 19 relate to border protection measures. The provisions relate to Articles 18.74 and 18.76 of the Agreement.

Clause 13 amends the definitions of certain border protection terms in section 135 to clarify that the border protection measures apply to both imports and exports. The definitions also clarify how items for private and domestic use are described.

Clause 14 inserts *new sections 135A to 135C*. The new provisions introduce a power for Customs to detain an item *ex officio* if an officer has reasonable cause to suspect that an item may be a pirated copy. In summary,—

- *new section 135A* includes the power to detain items:
- *new section 135B* includes notice provisions related to the power to detain:
- *new section 135C* relates to the release of items.

Clauses 15 to 18 amend sections 137, 140, 141, and 141A—

- so that those sections apply to items in the control of the Customs:

- to clarify how items for private and domestic use are described.

Clause 19 amends section 142 to—

- provide that a remedy for pirated copies is for the item to be forfeited to the Crown instead of the claimant;
- clarify how items for private and domestic use are described.

Clauses 20 to 38 relate to performers' rights and contractual transfers. The provisions relate to Articles 18.7.2(f) and 18.67 of the Agreement. Article 18.7.2(f) requires New Zealand to accede to the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996 (the **WIPO treaty**).

Clause 20 amends the definitions of performers' rights terms in section 169 to—

- include definitions of exclusive performer's rights licence and performers' property rights;
- amend the definition of illicit recording, as used in certain provisions, to include recordings used in relation to performers' rights being infringed under *new section 174C* and recordings referred to in *new section 198(1A)(b)*.

Clause 21 amends section 170 to repeal the previous application provisions. New application and transitional provisions are included in Schedule 1.

Clause 22 inserts *new sections 170A to 170I* relating to moral rights for performers. In summary,—

- *new section 170A* provides that a performer's rights are infringed if the performer is not identified in relation to a performance in certain circumstances;
- *new section 170B* sets out how a performer should be identified and contains provisions about identifying groups;
- *new section 170C* provides that a performer must assert the right to be identified and how an assertion may take place;
- *new section 170D* sets out exceptions to the right to be identified;
- *new section 170E* provides that a performer's rights are infringed if a performance is subjected to derogatory treatment;
- *new section 170F* sets out how a performance is subjected to derogatory treatment;
- *new section 170G* sets out exceptions to the right relating to derogatory treatment;
- *new section 170H* relates to consent and waiver of rights relating to the moral rights provided for in *new sections 170A and 170E*;
- *new section 170I* sets out the application of the new moral rights.

Clause 23 repeals the cross-heading above section 171 as this is no longer an accurate description of the relevant provisions.

Clause 24 amends section 172 to clarify which rights apply to sound recordings and which rights apply to films.

Clauses 25 to 27 amend sections 173 and 174 to restrict their application to recordings that are films and to insert a new subpart heading.

Clause 28 inserts *new sections 174A to 174D*, relating to performers' property rights in relation to sound recordings. In summary,—

- *new section 174A* provides that *new sections 174B to 174D* only apply to recordings that are sound recordings:
- *new section 174B* relates to Article 10 of the WIPO Treaty and provides that a performer's rights are infringed if a person makes a sound recording of a performance available to the public without the performer's consent:
- *new section 174C* relates to Article 7 of the WIPO Treaty and provides that a performer's rights are infringed if a person copies a sound recording of a performance without the performer's consent:
- *new section 174D* relates to Article 8 of the WIPO Treaty and provides that a performer's rights are infringed if a person issues a copy of a sound recording of a performance to the public without the performer's consent.

Clause 29 repeals the cross-heading above section 175 as this is no longer an accurate description of the relevant provisions.

Clause 30 updates references to "this Part" in specified sections to clarify which performers' rights the exemptions in those sections apply to. *Clause 30* also amends section 180 to include recordings, or copies of recordings, made in accordance with *new section 192A*.

Clause 31 inserts *new section 192A*, which allows certain acts to be done without infringing a performer's property rights.

Clause 32 replaces section 193, relating to duration of rights, and extends the general term of protection from 50 years to 70 years.

Clause 33 replaces section 194, relating to transmission of performers' rights, and inserts *new sections 194 to 194K*. These sections largely mirror equivalent provisions in the principal Act relating to copyright. In summary,—

- *new section 194* sets out the general rule about transmission:
- *new section 194A* provides that moral rights are not assignable:
- *new section 194B* relates to the transmission of moral rights on death:
- *new section 194C* provides that the rights conferred by sections 171 to 174 (relating to consent for recording or live transmission and to film recordings) are not assignable:
- *new section 194D* relates to the transmission of the rights conferred by sections 171 to 174 (relating to consent for recording or live transmission and to film recordings) on death:
- *new section 194E* sets out the general rules about transmission of performers' property rights:
- *new section 194F* relates to assignment of performers' property rights:

- *new section 194G* relates to the transmission of performers' property rights on death:
- *new section 194H* relates to the assignment of future property rights:
- *new section 194I* relates to licences and exclusive licences:
- *new section 194J* relates to the rights and remedies of exclusive licensees:
- *new section 194K* sets out provisions relating to the exercise of concurrent rights as between performers and exclusive licensees.

Clauses 34 and 35 amend section 195 (and the cross-heading above that section) to include references to waiver as well as consent in section 195.

Clause 36 amends section 196 to—

- include an account of profits as a possible remedy for infringement of performers' rights:
- provide that damages are not available as a remedy in cases of innocent infringement.

Clause 37 inserts *new section 196A*, relating to proceedings against the Crown. This provision mirrors the equivalent provision for copyright in section 65.

Clause 38 amends section 198 to include a new offence related to specified recordings. The new provision is based on section 131(1)(f), which provides an equivalent offence in relation to copyright. *Clause 38* also replaces the term illicit recording with specified recording.

Clauses 39 to 42 relate to technological protection measures (TPMs). The provisions relate to Article 18.68 of the Agreement.

Clause 39 replaces section 226 to amend the definitions of TPM terms. The current definition of TPM is extended to include access control TPMs (in addition to measures that prevent or inhibit the infringement of copyright or of certain related performers' rights). An access control TPM is a measure that controls access to a work. This means that the prohibitions that relate to providing devices or services that enable circumvention will now extend to access control TPMs.

The definitions clarify that devices that can be circumvented accidentally are not TPMs.

Clause 40 replaces section 226A (which relates to prohibited conduct in relation to TPMs). The clause inserts new provisions that prohibit 3 kinds of conduct. In summary,—

- *new section 226A* prohibits dealing in TPM circumvention devices. A TPM circumvention device includes, for example, a device, product, or component that is promoted, advertised, or otherwise marketed for the purpose of circumventing a TPM:
- *new section 226AB* prohibits providing a service for the purpose of circumventing a TPM:

- *new section 226AC* prohibits a person from circumventing an access control TPM without authority if the person knows, or has reason to believe, that he, she, or it is circumventing the TPM. The section does not prevent a person from circumventing a TPM in accordance with *new sections 226D to 226K*. This is a new prohibition.

Clause 41 amends section 226B. This section gives rights to an issuer of a work to obtain a civil remedy for a contravention of the prohibitions (for example, damages or an account of profits). The amendments make consequential changes. In addition, the application of section 121(1) is clarified. Section 121(1) limits the available remedies to an account of profits (rather than damages) in the case of an innocent infringement (that is, where the defendant did not know and had no reason to believe that the acts complained of infringed the relevant rights).

Clause 42 replaces sections 226C to 226J.

New section 226C provides for an offence where a person knowingly contravenes *new sections 226A to 226AC* in the course of a business. The offence has a maximum penalty of a \$150,000 fine or a 5-year term of imprisonment, or both.

New sections 226D to 226J provide for situations in which a person may circumvent a TPM without contravening the various prohibitions. The provisions are designed to ensure that a person can still use copyright content for legitimate purposes (that is, for a use that does not infringe copyright or certain related performers' rights). In summary,—

- *new section 226D* allows a person to circumvent a TPM to enable the person to do an act that does not infringe the copyright in the TPM work and does not infringe related performers' rights. This may include, for example, a permitted act under Part 3 (such as fair dealing with a work for the purposes of criticism, review, news reporting, research, or private study). However, regulations may provide that this provision does not apply in prescribed circumstances. Regulations may be necessary, for example, to narrow this exemption to prevent it from applying in inappropriate circumstances:
- *new section 226E* allows a person to circumvent a TPM that controls geographic market segmentation by preventing in New Zealand the playing or operating of a physical non-infringing copy of the TPM work:
- *new section 226F* allows the Crown to circumvent a TPM in connection with anything lawfully done by or on behalf of the Crown for the purposes of law enforcement, national security, or performing or exercising statutory functions, powers, or duties:
- *new section 226G* allows a person to circumvent a TPM to enable the person to undertake encryption research:
- *new section 226H* relates to computer programs that are embedded in a machine or device. It allows a person to circumvent a TPM to enable the person to circumvent a restriction on the use of goods or services where the use of the goods or services does not infringe copyright or related performers' rights:

- *new section 226I* allows a person to circumvent a TPM in certain circumstances where the TPM involves a computer program that is no longer supported by a remote server:
- *new section 226J* allows a person to circumvent a TPM in certain circumstances in order to allow 2 or more computer programs to work together, to maintain the security of a computer or a computer network, or to protect privacy.

New section 226K allows a person to circumvent a TPM to do an act that is permitted by regulations. Under *new section 234(3)*, the regulations must not permit a person to circumvent a TPM to do an act that infringes copyright or a related performers' right. This regulation-making power is designed to provide more certainty about the circumstances in which a TPM may be circumvented for a non-infringing use.

New section 226L provides that the exceptions in *new sections 226E to 226J* are subject to modifications that are prescribed by regulations. The regulations can provide that the exceptions do not apply, or apply with modifications. This regulation-making power is designed to provide more certainty about the circumstances in which a TPM may be circumvented for a non-infringing use and to prevent the exceptions from applying in inappropriate circumstances. Under *new section 234(3)*, the regulations must not permit a person to circumvent a TPM to do an act that infringes copyright or a related performers' right.

Clause 44 amends section 234 to provide for these new regulation-making powers. The powers are subject to a number of safeguards, including a consultation requirement, a requirement for the Minister to have regard to the purposes of the principal Act, and for the Minister to be satisfied of certain matters. The Minister's reasons for his or her recommendation to make the regulations must be published together with the regulations.

New section 226M protects certain not-for-profit entities (including educational establishments, archives, and libraries) from civil and criminal liability relating to acts done in the performance or exercise of their functions, powers, or duties.

Clause 42 also inserts *new sections 226N to 226S*, which relate to rights management information (**RMI**) and replace sections 226F to 226J (which relate to copyright management information). The provisions relate to Article 18.69 of the Agreement. In summary,—

- *new section 226N* defines terms relating to RMI, including rights management information. The definition is similar to the existing definition of copyright management information (except that it includes information that identifies a performer and information in the form of numbers and codes):
- *new section 226O* prohibits a person from removing or modifying RMI without authority. The provision is similar to the current section 226G. However, rather than referring to the authority of the copyright owner or the exclusive licensee, the provision refers to the authority of the person who authorises or instigates the information being attached to the copy of the work (or their successor):

- *new section 226P* prohibits a person from distributing or importing RMI if the information has been modified without authority. This is a new prohibition:
- *new section 226Q* prohibits a person from dealing in a copy of a work if any RMI has been removed or modified without authority. The provision is similar to the current section 226H. However, the provision applies whether or not the dealing is in the course of a business. The requirement for the contravention to be in the course of a business has been moved to the offence section (*new section 226S*). However, the “in the course of a business” requirement will no longer apply in relation to civil remedies:
- *new section 226R* provides for civil remedies for a contravention of the prohibitions (for example, damages or an account of profits). The provision is similar to the current section 226I. However, the provision is extended to protect the rights of performers, authors, and directors. In addition, the application of section 121(1) is clarified. Section 121(1) limits the available remedies to an account of profits (rather than damages) in the case of an innocent infringement (that is, where the defendant did not know and had no reason to believe that the acts complained of infringed the relevant rights):
- *new section 226S* provides for an offence for a contravention of the prohibitions. The provision is similar to the current section 226J. However, the offence applies to each of the prohibitions (not just the prohibition against commercial dealing in a work that is subject to interference). In addition, the element of the offence relating to knowledge has been clarified. The offence has a maximum penalty of a \$150,000 fine or a 5-year term of imprisonment, or both.

Clause 42 also inserts *new sections 226T to 226Y*, which relate to the protection of encrypted programme-carrying satellite and cable signals. The provisions relate to Article 18.79 of the Agreement. In summary,—

- *new section 226T* defines various relevant terms:
- *new section 226U* prohibits a person from dealing in a decoding device or system if, for example, the person knows or has reason to believe that it is intended to be used to assist in the unauthorised decoding of a satellite signal:
- *new section 226V* prohibits a person from receiving and decoding, or further distributing, a satellite signal if the person knows that it is being or has been decoded without authorisation:
- *new section 226W* prohibits a person from dealing in equipment knowing that the equipment is intended to be used in the unauthorised reception of a cable signal. It also prohibits a person from receiving, or assisting another person to receive, a cable signal knowing that the reception of the signal is unauthorised:
- *new section 226X* provides for civil remedies for a contravention of the prohibitions (for example, damages or an account of profits):
- *new section 226Y* provides for an offence of contravening *new section 226U*. If the offence is committed in the course of a business, the maximum penalty is a

\$150,000 fine or a 5-year term of imprisonment, or both. In any other case, the maximum penalty is a \$5,000 fine. A contravention of *new section 226V* is also an offence with a maximum penalty of a \$5,000 fine.

Clause 43 consequentially amends section 228.

Clause 44 amends the regulation-making power in section 234. *See* the explanation for *new sections 226D, 226K, and 226L*.

Clause 45 amends Schedule 1 to—

- separate the schedule into different Parts and make associated consequential amendments:
- repeal clause 17(2)(b):
- update the references to copyright term from 50 years to 70 years in clauses 17(2)(d)(ii) and 18:
- clarify that clauses 17 to 19 are subject to new Part 2 of the schedule:
- introduce a new Part 2 with transitional provisions.

New subpart 1 of Part 2 sets out the application of the new copyright term provisions and how they apply to existing matters (including some examples).

New subpart 2 of Part 2 sets out the application of the new performers' rights provisions and how they apply to existing matters.

Part 3

Amendments to Customs and Excise Act 1996

Part 3 amends the Customs and Excise Act 1996.

Clause 47 amends section 119 to allow a person to apply for a Customs ruling on the application of any provision of Schedule 2, which concerns the calculation of the Customs value of goods.

Clause 48 amends section 120 to allow the chief executive to make a ruling in respect of the application of any provision of Schedule 2.

Clause 49 amends section 122 to prescribe the effect of the ruling.

Part 4

Amendments to Dairy Industry Restructuring Act 2001

Part 4 amends the Dairy Industry Restructuring Act 2001.

Clause 51 amends section 5, which is the Act's interpretation provision. The amendments relate to the new tariff-rate quotas for exports to the United States of dairy products under the Agreement.

Clause 52 inserts *new section 5A* to give effect to a new schedule for the Act for transitional, savings, and related provisions.

Clauses 53 and 54 amend sections 26 and 27A to extend the export licensing regime for dairy products provided by the Act to cover exports to the United States of dairy products under the new tariff-rate quotas under the Agreement.

Clause 55 and Schedule 3 insert *new Schedule 1*, which contains transitional, savings, and related provisions.

Clause 56 amends Schedule 5A to insert details of the new tariff-rate quotas for exports to the United States of dairy products under the Agreement.

Clause 57 amends Schedule 5B in relation to the allocation of export licences for the export of organic butter under the new tariff-rate quotas for exports to the United States under the Agreement.

Part 5

Amendment to Hazardous Substances and New Organisms Act 1996

Part 5 amends the Hazardous Substances and New Organisms Act 1996.

Clause 59 amends section 59 to require the Environmental Protection Authority to extend the period for submissions on publicly notified applications where that is appropriate for giving effect to Article 8.7.14 of the Agreement (which relates to periods allowed for comments on proposals).

Part 6

Amendments to Legislation Act 2012

Part 6 amends the Legislation Act 2012.

Clause 61 amends section 3, which states the Act's purposes. A *new section 3(ea)* is inserted, to reflect that *new Part 2A* (inserted by *clause 64*) provides for the publishing, to help meet international transparency obligations, of copies of and links to certain subordinate legislation.

Clause 62 amends section 4, which contains definitions. The amendments ensure the definitions of legislative instrument and reprint relate only to instruments published under Part 2.

Clause 63 amends section 13, which relates to complying with a requirement to publish or notify in the *Gazette* by publishing and notifying under Part 2. The amendments ensure references to publication relate only to publication under Part 2.

Clause 64 inserts a *new Part 2A*, on publishing, for international transparency, of copies of and links to certain subordinate legislation.

The Part contains *new sections 36A to 36G*.

Purpose, overview, and definitions

New section 36A states the Part's purpose. That purpose is to help New Zealand meet its international transparency obligations. Those obligations, as defined by *new sec-*

tion 36C(2), are obligations under paragraph 5 of Article 26.2 (publication) of Chapter 26 (transparency and anti-corruption) of the Agreement.

New section 36B is an overview of, and only a general guide to, the Part.

The Part applies to instruments if—

- they are made under an enactment by a Minister of the Crown or a central government entity, and have a significant legislative effect; and
- they are not published (under Part 2) as, or as if they were, legislative instruments; and
- publication under the Part of copies of them, and links to them, would help New Zealand meet its international transparency obligations.

The Part—

- requires copies of the instruments to be published on the administrator's website, if no other enactment requires that; and
- requires to be in or with the copies, as so published, all the details necessary or desirable for meeting all applicable international transparency obligations; and
- requires links to them, as so published, to be forwarded to the Chief Parliamentary Counsel, and published on the legislation website.

New section 36C defines terms, including instrument.

New section 36C(1) ensures that an instrument, in the Part, means an instrument—

- that is made under an enactment by a Minister of the Crown or central government entity; and
- that has, or a portion of which has, under sections 37 to 40, a significant legislative effect; and
- that is related to international transparency obligations (because the publishing under the Part of copies of and links to the instrument would help meet those obligations); and
- that is not, and is not an instrument published (for example, under section 14) as if it were, a legislative instrument.

Legislative instruments (and those published as if they were legislative instruments) are excluded because—

- they are required to be, or are in fact, published in full in the legislative instruments series on the legislation website; and
- they are forwarded without delay to the Chief Parliamentary Counsel under sections 10 and 14 of the Legislation Act 2012; and
- legislative drafting and publication practice requirements for these excluded instruments (*see* the PCO's functions under sections 59(1)(b) and (g) and (2)(c) of that Act) ensure or will ensure that they contain all information necessary or desirable for meeting all applicable international transparency obligations.

New section 36C(2) defines a central government entity as any of the following:

- a government department named in Schedule 1 of the State Sector Act 1988, including any departmental agency that, under section 27A and Schedule 1A of that Act, is part of that department;
- a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004, but excluding a school board of trustees and a tertiary education institution);
- the Reserve Bank of New Zealand;
- any other instrument of the Crown prescribed, for the purposes of the definition, by an order made under *new section 36C(3)*.

New section 36C(2) also defines other terms (including administrator, administrator's website, details, legislation website, and links).

Duty to publish and make available copies on administrator's website

New section 36D applies to an instrument—

- made after the commencement of *Part 6*; and
- unless an enactment other than *new section 36D* requires a copy of the instrument to be published and made available on the administrator's website.

New section 36D requires the administrator to ensure that a copy of the instrument is as soon as practicable published and made available on the administrator's website.

Duty to ensure details are in or with copies as on administrator's website

New section 36E applies to an instrument—

- made after the commencement of *Part 6*; and
- a copy of which is published and made available on the administrator's website.

New section 36E requires the administrator to ensure that the instrument's details are in or with a copy of the instrument as published and made available on the administrator's website.

However, details of an instrument are taken to be in or with a copy of the instrument as published and made available on the administrator's website (*new section 36E(3)*) if—

- the instrument amends (without also replacing wholly) a principal instrument; and
- the details relate to the amendments the instrument makes to the principal instrument; and
- the details are in or with a compilation of the principal instrument published and made available on the administrator's website.

The instrument's details, for an instrument at any time, means (*new section 36C(2)*) all information necessary or desirable for meeting, for that instrument at that time, all applicable international transparency obligations. Examples of that information therefore are, or may be, explanations of the purpose of, and rationale for, the instrument.

New section 36E(4) requires the Chief Parliamentary Counsel to give all or any administrators, and ensure there is or are in force for all instruments, a direction or directions setting out, in general terms, the nature of their details. *New section 36E(5)* relates to the availability, and disallowance, of administrative directions given under *new section 36E*.

New section 36E(6) obliges the administrator, if required to do so by a document given by the Chief Parliamentary Counsel, to republish the instrument promptly on the administrator's website in a form that complies with *new section 36E*.

Links to be forwarded and made available on legislation website

New section 36F applies to an instrument—

- made after the commencement of *Part 6*; and
- a copy of which is published and made available on the administrator's website.

New section 36F requires the administrator to forward the instrument's links to the Chief Parliamentary Counsel, without delay and in line with all applicable directions given under the section. Links (as defined in *new section 36C(2)*) means all information necessary or desirable to enable a user to access, using the legislation website, the instrument as currently published and made available on the administrator's website.

New section 36F(3) requires the Chief Parliamentary Counsel to give administrators, and ensure there is or are in force for all instruments, a direction or directions setting out, in general terms, the nature of their links and the form and manner in which they are to be forwarded. *New section 36F(4)* relates to the availability, and disallowance, of administrative directions given under *new section 36F*.

New section 36G requires the Chief Parliamentary Counsel to ensure that links forwarded under *new section 36F* are as soon as practicable published and made available on the legislation website.

Functions of Parliamentary Counsel Office

Clause 65(1) amends section 59(1), which states functions of the Parliamentary Counsel Office (the **PCO**). The amendment inserts *new section 59(1)(fa)*, which recognises the PCO's new function of arranging for the publication, to help meet international transparency obligations, of details or copies of certain subordinate legislation (as provided in *new Part 2A*).

Clause 65(2) amends section 59(2)(c), to make clear it covers only instruments that are required by an Act to be published (as legislative instruments) under Part 2 of the Legislation Act 2012.

Part 7

Amendments to Overseas Investment Act 2005

Part 7 amends the Overseas Investment Act 2005 to enable obligations under certain free trade agreements to be implemented. The obligations relate to alternative screening thresholds for overseas investments in significant business assets.

Clause 67 inserts *new section 8A* to give effect to a new schedule of the Act for transitional, savings, and related provisions.

Clause 68 amends section 13, which refers to the threshold of \$100 million for overseas investments in significant business assets, to refer also to alternative value thresholds that apply in accordance with regulations made under *new section 61A*.

Clause 69 inserts *new section 61A* to enable regulations to be made in order to implement obligations in certain international agreements in respect of certain overseas investments in New Zealand in significant business assets by certain investors. These free trade agreements are listed in *new section 61A(1)* and can be viewed on the Internet site of the Ministry of Foreign Affairs and Trade (other than the agreement relating to Chinese Taipei, which is on the Internet site of the New Zealand Commerce and Industry Office in Taipei). To avoid doubt, the references to the international agreements listed in *new section 61A(1)* do not include any amendments to all or any of those agreements. The regulations may provide for alternative value thresholds under section 13 that apply, on terms and conditions (if any), to 1 or more classes of transactions, persons, interests, rights, or assets. *New section 61A* provides that the regulations may not provide for an alternative value threshold that is higher than the amount provided for in the relevant international agreement, but the text of the regulations may otherwise differ from the text of an agreement.

Clause 70 inserts *new Schedule 1AA*, which contains transitional and validation provisions.

Part 8

Amendments to Patents Act 2013

Part 8 provides for the 3 matters in the Agreement related to patents and pharmaceuticals that are to be implemented by amendments to the Patents Act 2013, as follows:

- a grace period for public disclosures within 1 year so that, if inventors make their inventions public, they will not lose their ability to be granted a patent in New Zealand if a complete specification is filed within 12 months of the disclosure:
- extension of patent term if there is unreasonable delay by the Commissioner in granting a patent. Patent office delays will only be counted if the patent has not been granted within 5 years of its filing date, or 3 years from the time the patent applicant requests its examination. Delays attributable to actions of applicants and third parties do not require an extension:

- extension of patent term if there is unreasonable delay in obtaining marketing approval from Medsafe for a pharmaceutical substance. Delays attributable to actions of applicants and third parties do not require an extension.

Clause 72 provides for the new grace period for public disclosures within 1 year before the filing of a complete specification. The amendments relate to Article 18.38 of the Agreement which, in summary, provides that a Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant and occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

Clause 73 inserts a flag to point readers to the *new subpart 10A* being inserted into Part 3, which deals with the 2 types of extension of patent term.

Clause 74 provides that, if a patent of addition becomes an independent patent under *new section 1110(3)(b)*, the renewal fees are payable from that time, on the same dates, as if the patent had been originally granted as an independent patent.

Clause 75 inserts *new subpart 10A* into Part 3, which deals with the 2 types of extension of patent term.

New sections 111A and 111B provide for patent terms to be extended if there are Patent Office delays. Applications can be made only if the patent is granted more than 5 years after the date of filing the complete specification and more than 3 years after the date of requesting examination. The new sections relate to Article 18.46 of the Agreement which, in summary, provides for adjustments of the term of the patent to compensate for unreasonable delays in a Party's issuance of patent, where an unreasonable delay at least includes a delay in the issuance of a patent of more than 5 years from the date of filing of the application in the territory of the Party, or 3 years after a request for examination of the application has been made, whichever is later. There is a regulation-making power in the new sections to prescribe time intervals to be disregarded by the Commissioner of Patents when determining whether there has been an unreasonable delay in the grant of a patent.

New sections 111C to 111I provide for patent terms to be extended if there is unreasonable curtailment of the effective patent term as a result of the medicines marketing approval process in respect of a biologic or a pharmaceutical substance *per se*. The new sections relate to Article 18.48 of the Agreement which, in summary, provides that, with respect to a pharmaceutical product that is subject to a patent, each Party must make available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process. Three years for small molecule pharmaceuticals and 5 years for biologics are the time periods now specified in the new sections for the purposes of calculating whether there has been "unreasonable curtailment". In many places, the new sections use the same wording as the Australian Patents Act 1990 and, for example, the intention is that the term "pharmaceutical substance *per se*" will have the same meaning as in Australian law. *See*, for example, the Australian Federal Court deci-

sions of *Boehringer Ingelheim International GmbH v Commissioner of Patents* [2001] FCA 647 and *Pharmacia Italia SpA v Mayne Pharma Pty Ltd* [2006] FCA 305. The new sections provide that the patent owner must obtain from Medsafe a certificate setting out information regarding the time interval between the date that the application for marketing approval was filed and the date it was granted, and any time periods not attributable to the actions of Medsafe.

New sections IIIJ to IIIO contain general provisions that apply to all extensions of patent term under *new subpart 10A*.

Clause 76 inserts a flag in the current part of the principal Act that deals with what does not constitute infringement of a patent, to point readers to *new section IIII*, which is a related provision in *new subpart 10A*.

Clause 77 inserts transitional provisions into the Patents Act 2013.

Part 9

Amendments to Tariff Act 1988

Part 9 amends the Tariff Act 1988 to implement the tariff and transitional safeguard provisions of the Agreement.

Clause 79 amends the definitions in section 2 to include the TPP and provide for countries to be specified as TPP parties.

Clause 80 amends section 3 to provide that duties must be levied, collected, and paid in accordance with emergency action measures.

Clause 81 amends section 7A to provide for the Governor-General to declare that a country that is a party to the Agreement be specified as a TPP party for the purposes of the Tariff Act 1988.

Clauses 82 to 88 relate to transitional safeguard measures. The provisions relate to Article 4.3 (regarding emergency actions under the textiles and apparel chapter) and Articles 6.3 to 6.7 (regarding general transitional safeguard measures).

Clause 82 amends the definitions in section 15A to—

- include the TPP within the definition of free trade agreement;
- include new defined terms relating to emergency action investigations and measures and transitional safeguard investigations.

Clause 83 amends section 15B and relates to the introduction of emergency action investigations in relation to textile and apparel goods.

Clause 84 amends section 15C to include references to emergency action investigations and to include a procedural requirement for emergency action investigations.

Clause 85 amends section 15D and sets out the matters the chief executive must consider in an emergency action investigation.

Clause 86 amends section 15F and relates to the imposition of an emergency action measure. It sets out the conditions under which an emergency action measure can be applied.

Clause 87 amends section 15G to make consequential changes to refer to emergency action measures.

Clause 88 amends section 15H to clarify that provisional transitional safeguard measures may not be applied under the Agreement.

Part 10

Amendments to the Tariff

Part 10 amends the Tariff. The provisions relate to implementing the Agreement by applying the appropriate Tariff rates to specified TPP parties.

Clause 90 amends note 2 to the Tariff to include the TPP in the list of preferential abbreviations.

Clause 91 amends note 3 to the Tariff to include specified TPP parties as preferential countries in the Tariff.

Part 11

Amendments to Trade Marks Act 2002

Part 11 amends the Trade Marks Act 2002.

Clauses 92 to 104 relate to border protection measures. The provisions relate to Articles 18.74 and 18.76 of the Agreement.

Clause 93 amends section 106 to provide for additional damages to be available as a remedy for infringement.

Clause 94 amends section 108 to provide that the remedy in relation to infringing goods that are counterfeit goods must, unless there are exceptional circumstances, be an order that the goods be destroyed or delivered to a person who will destroy them.

Clause 95 amends the definition of certain border protection terms in section 135—

- to clarify that the border protection measures apply to both imports and exports:
- to clarify how goods for private and domestic use are described:
- to introduce a new defined term of counterfeit goods (for which different remedies apply).

Clause 96 inserts *new sections 135A and 135B*. The new provisions introduce a power for Customs to detain goods ex officio if they have reasonable cause to suspect that goods may bear an infringing sign. In summary,—

- *new section 135A* includes the power to detain goods:
- *new section 135B* relates to the release of goods.

Clauses 97, 99, and 102 amend sections 142, 149, and 153 to clarify how goods for private and domestic use are described.

Clauses 98 to 102 amend sections 143, 149, 150, 151, and 153 so that those sections apply to goods in the control of the Customs.

Clause 103 amends section 154—

- to clarify how goods for private and domestic use are described:
- to provide that the remedy in relation to counterfeit goods must, unless there are exceptional circumstances, be an order that the goods be destroyed or delivered to a person who will destroy them:
- so that it applies to goods in the control of the Customs.

Clause 104 amends section 157 to extend the protection provisions to the new detention powers in *new sections 135A and 135B*.

Part 12

Amendments to Wine Regulations 2006

Part 12 amends the Wine Regulations 2006.

Clause 106 inserts *new regulation 8A* to give effect to paragraph 19 of Annex 8-A of Chapter 8 of the Agreement (as modified for New Zealand) relating to the labelling of grape ice wine.

Clause 107 makes consequential amendments.

Hon Todd McClay

Trans-Pacific Partnership Agreement Amendment Bill

Government Bill

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Schedule 2 76

Replacing references in sections 175 to 179 and 181 to 189 of Copyright Act 1994

Schedule 3 77

New Schedule 1 of Dairy Industry Restructuring Act 2001 inserted

Schedule 4 78

New Schedule 1AA of Overseas Investment Act 2005 inserted

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Trans-Pacific Partnership Agreement Amendment Act **2016**.

2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions and for different purposes. 5

Part 1**Amendments to Agricultural Compounds and Veterinary Medicines Act 1997****3 Principal Act** 10

This Part amends the Agricultural Compounds and Veterinary Medicines Act 1997 (the **principal Act**).

4 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions 15

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

5 Section 72 amended (Interpretation)

- (1) In section 72, definition of **innovative agricultural compound application**, paragraph (b), after “any other application”, insert “that has been granted”. 20
- (2) In section 72, definition of **protected period**, after “ending”, delete “;”.
- (3) In section 72, definition of **protected period**, replace paragraphs (a) and (b) with:
 - (a) on the date that is 10 years after the date of registration if—
 - (i) the application is made under section 9; and 25
 - (ii) the Director-General registers the agricultural compound that is the subject of the application; or
 - (b) on the date that is 5 years after the date of refusal if—
 - (i) the application is made under section 9; and
 - (ii) the Director-General refuses to register the agricultural compound that is the subject of the application; or 30
 - (c) on the date that is 5 years after the date that the Director-General receives the application if the application is made under section 26 (which relates to applications for provisional registration).

6 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2
Amendments to Copyright Act 1994

5

7 Principal Act

This Part amends the Copyright Act 1994 (the **principal Act**).

8 Section 2 amended (Interpretation)

(1) In section 2(1), repeal the definition of **CMI** or **copyright management information**.

10

(2) In section 2(1), insert in its appropriate alphabetical order:

RMI or **rights management information** has the meaning given to it in **section 226N**

9 Section 22 amended (Duration of copyright in literary, dramatic, musical, or artistic works)

15

(1) In section 22(1), replace “50” with “70”.

(2) Replace section 22(2) with:

(2) If the work is computer-generated, copyright expires on the later of the following:

(a) if the work is first made available to the public by an authorised act before the end of the period of 25 years from when the work is made, the end of the period of 70 years from the end of the calendar year in which the work is first made available to the public by an authorised act:

20

(b) the end of the period of 70 years from the end of the calendar year in which the work is made.

25

(3) Replace section 22(3) with:

(3) If the work is of unknown authorship, copyright expires on the later of the following:

(a) if the work is first made available to the public by an authorised act before the end of the period of 25 years from when the work is made, the end of the period of 70 years from the end of the calendar year in which the work is first made available to the public by an authorised act:

30

(b) the end of the period of 70 years from the end of the calendar year in which the work is made.

(4) In section 22(4), replace “subsection (3)” with “subsections (2) and (3)”.

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10 Section 23 amended (Duration of copyright in sound recordings and films)

Replace section 23(1) with:

- (1) Copyright in a sound recording or film expires on the later of the following:
- (a) if the work is first made available to the public by an authorised act before the end of the period of 50 years from when the work is made, the end of the period of 70 years from the end of the calendar year in which the work is first made available to the public by an authorised act: 5
 - (b) the end of the period of 70 years from the end of the calendar year in which the work is made.

11 Section 28 amended (Copyright vesting in certain international organisations) 10

(1) Replace section 28(2)(b) with:

- (b) in the case of any other work, on the latest of the following:
- (i) if the work is first made available to the public by an authorised act before the end of the period of 25 years from when the work is made, the end of the period of 70 years from the end of the calendar year in which the work is first made available to the public by an authorised act: 15
 - (ii) the end of the period of 70 years from the end of the calendar year in which the work is made: 20
 - (iii) the end of such period as may be specified for the purposes of this paragraph pursuant to subsection (5).

(2) After section 28(2), insert:

- (2A) For the purposes of **subsection (2)(b)**,—
- (a) the circumstances in which an original work that is a literary, dramatic, musical, or artistic work may be made available to the public include those circumstances referred to in section 22(4); and 25
 - (b) an original work that is a film is made available to the public as specified in section 23(2).

12 Section 67 amended (Acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works) 30

(1) In section 67(1)(b)(ii), replace “50” with “70”.

(2) Replace section 67(2)(b)(ii) with:

- (ii) in respect of which an order has been made under that section. 35

13 Section 135 amended (Definitions)

(1) In section 135, insert in their appropriate alphabetical order:

exporter has the meaning given to it in section 2(1) of the Customs and Excise Act 1996

importer has the meaning given to it in section 2(1) of the Customs and Excise Act 1996

specified item means an item imported, or to be exported, other than for private and domestic use 5

- (2) In section 135, definition of **pirated copy**, replace paragraph (a)(iii) with:

(iii) in circumstances in which the making of the copy—

(A) constitutes an infringement of copyright under this Act; or

(B) would, if it had been done in New Zealand, have constituted an infringement of copyright under this Act; and 10

14 New sections 135A to 135C inserted

After section 135, insert:

135A Detention of items suspected of being pirated copies

- (1) Any item in the control of the Customs may be detained in the custody of the chief executive or a Customs officer if a Customs officer has reasonable cause to suspect that the item may be a pirated copy. 15
- (2) The chief executive must, as soon as is reasonably practicable after the item is detained, take reasonable steps to notify the detention to—
- (a) the owner of the copyright (to enable that person to consider whether to give a notice under section 136(1)); and 20
- (b) the importer or exporter from whom the item has been detained, if that person is identified but was not present when the detention took place.
- (3) The detention of an item under **subsection (1)** is not rendered illegal by a failure to serve notice under **subsection (2)(a) or (b)**. 25

135B Notice

- (1) The chief executive may give notice to a person under **section 135A(2)(a) or (b)**—
- (a) by personal delivery to the person; or
- (b) by posting it to the last known address of the person; or 30
- (c) by sending it by fax to the last known fax number of the person; or
- (d) if the person has a known email address, by sending it to the person at that address by email.
- (2) A notice that is posted to a person must be treated as received by the person when it would have been delivered in the ordinary course of post and, in providing delivery,— 35

- (a) it is sufficient to prove that the letter was properly addressed and posted; and
- (b) in the absence of proof to the contrary, the notice must be treated as having been posted on the day on which it was dated.
- (3) A notice that is sent to a person at a fax number must be treated as received by the person on the day after the date on which it is sent, and in proving sending, it is sufficient to prove that a fax machine generated a record of the transmission of the notice to the fax number. 5
- (4) A notice that is sent to a person by email must be treated as received by the person not later than 2 days after the date on which it is sent. 10
- (5) However, a notice must not be treated as received if the person to whom it is sent by email proves that it was not received, otherwise than through fault on the person's part.
- 135C Release of items**
- (1) The item is no longer detained under **section 135A(1)** if— 15
- (a) no notice under section 136(1) is given in respect of the item within 3 working days after the date on which the notice was given under **section 135A(2)(a)**; or
- (b) a notice under section 136(1) is given in respect of the item within 3 working days after the date on which the notice was given under **section 135A(2)(a)** and— 20
- (i) the notice given under section 136(1) is subsequently accepted under section 136(3) and the item is subsequently detained under section 140; or
- (ii) the notice given under section 136(1) is subsequently declined under section 136(3); or 25
- (c) the chief executive considers that it is not reasonably practicable for notice to be given under **section 135A(2)(a)**; or
- (d) the chief executive considers that there is no longer a reason to detain the item. 30
- (2) The chief executive must release any item no longer detained under **section 135A(1)** to the person entitled to it.
- (3) However, the chief executive may release an item under **subsection (2)** only if the item is not detained under section 140 and if—
- (a) any other legal requirements as to importation or exportation of the item are satisfied; and 35
- (b) any requirements, made pursuant to any regulations made under this Act, requiring the deposit of a security have been satisfied; and
- (c) the release of the item is not otherwise contrary to law.

- 15 Section 137 amended (Determination whether item is pirated copy)**
- (1) In section 137(1)(b), delete “that has been imported and”.
 - (2) Replace section 137(4) with:
 - (4) This section applies only to a specified item.
- 16 Section 140 amended (Detention of pirated copy)** 5
- (1) In section 140(1), delete “that has been imported and”.
 - (2) Replace section 140(1)(c) with:
 - (c) any proceedings under section 141(3) in respect of that item (including any appeal) are determined by a decision that the item is not a specified item that is a pirated copy; or 10
 - (3) In section 140(1)(e), replace “consignee” with “exporter”.
 - (4) In section 140(3)(a), after “importation”, insert “or exportation”.
- 17 Section 141 amended (Proceedings)**
- Replace section 141(3) with:
- (3) Any person may apply to the court for a decision on whether an item that is the subject of a determination made under section 137(3) is a specified item that is a pirated copy, and the court must make a decision accordingly. 15
- 18 Section 141A amended (Forfeiture of goods by consent)**
- In section 141A, replace “consignee” with “exporter”.
- 19 Section 142 amended (Powers of court)** 20
- (1) Replace section 142(1) with:
 - (1) If, in proceedings under section 141(3), the court decides that an item that is the subject of a determination made under section 137(3) is a specified item that is a pirated copy, the court must make an order that the item be—
 - (a) forfeited to the Crown; or 25
 - (b) destroyed; or
 - (c) otherwise dealt with as the court thinks fit.
 - (2) Replace section 142(4) with:
 - (4) If, in proceedings under section 141(3), the court decides that an item that is the subject of a determination made under section 141(3) is a specified item but that it is not a pirated copy, the court may make an order that any person who is a party to the proceedings pay compensation in such amount as the court thinks fit to the importer, exporter, or owner of the item. 30
- 20 Section 169 amended (Interpretation)**
- (1) In section 169, insert in their appropriate alphabetical order: 35

exclusive performer’s rights licence means a licence in writing signed by or on behalf of the person entitled to exercise a performer’s property rights that authorises the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the person entitled to exercise the rights

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performers’ property rights means the rights conferred by **subpart 4**

(2) In section 169, insert as subsection (2):

(2) In sections 197 and 199, **illicit recording** includes the following:

(a) a copy of a recording referred to in **section 174C** that is used in relation to the infringement of a performer’s rights under that section:

10

(b) a recording referred to in **section 198(1A)(b)**.

21 Section 170 amended (Application)

(1) Replace the heading to section 170 with “**General provisions relating to performers’ rights**”.

(2) Repeal section 170(1) to (3).

15

(3) In section 170(4)(a), replace “moral rights” with “moral rights conferred by Part 4 and”.

22 New sections 170A to 170I and subpart 1 and 2 headings in Part 9 inserted

After section 170, insert:

Subpart 1—Performers’ moral rights

20

Right to be identified

170A Right to be identified as performer

(1) A performer’s rights are infringed by a person referred to in **subsection (2)** if the performer is not identified in accordance with **section 170B**.

(2) The person is a person who—

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(a) produces or puts on a performance that is given in public; or

(b) communicates live to the public a performance; or

(c) communicates to the public a recording of a performance; or

(d) issues to the public copies of a recording of a performance.

(3) **Subsection (2)(c) and (d)** applies only to a recording that is a sound recording.

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(4) **Subsection (1)** is subject to **sections 170B to 170D and 170H**.

170B Content of right to be identified as performer

(1) For the purposes of **section 170A**, the performer has the right to,—

- (a) in the case of a performance given in public, be identified in any programme accompanying the performance or in some other manner likely to bring the performer's identity to the notice of a person seeing or hearing the performance:
- (b) in the case of a performance that is communicated live, be identified in a manner likely to bring the performer's identity to the notice of a person seeing or hearing the communication: 5
- (c) in the case of a recording referred to in **section 170A(2)(c)**, be identified in a manner likely to bring the performer's identity to the notice of a person hearing the communication: 10
- (d) in the case of a recording referred to in **section 170A(2)(d)**, be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring the performer's identity to the notice of a person acquiring a copy.
- (2) In any of the cases in **subsections (1)(a) to (d)**, the performer and the person may agree that, for the purposes of **section 170A**, the person may instead identify the performer in any other manner. 15
- (3) If the assertion under **section 170C** specifies a pseudonym, initials, or some other particular form of identification, that form must be used, but, in any other case, any reasonable form of identification may be used. 20
- (4) A performer's rights are not infringed as referred to in **section 170A**, in relation to a performance given by a group, if,—
- (a) in a case to which any of **paragraphs (a) to (c) of subsection (1)** apply, the group itself is identified in the manner referred to in those paragraphs or in **subsection (2)** (applied in each case with all necessary modifications); or 25
- (b) in a case to which **subsection (1)(d)** applies,—
- (i) the group itself is identified in the manner referred to in that paragraph or in **subsection (2)** (applied in each case with all necessary modifications); and 30
- (ii) it is not reasonably practicable for each member of the group to be identified.
- (5) In this section, **group** means 2 or more performers who have a particular name by which they may be identified collectively.
- 170C Right to be identified as performer must be asserted** 35
- (1) A person does not infringe a performer's rights by failing to identify the performer in the circumstances described in **section 170A** unless the right to be identified has been asserted under this section in such a way as to require that person to so identify the performer.

- (2) The right may be asserted generally, or in relation to any specified circumstances,—
- (a) on an assignment of the performer’s property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance the performer’s right to be identified as the performer; or
 - (b) at any time, by instrument in writing signed by the performer.
- (3) The persons bound by an assertion of the right under **subsection (2)** are,—
- (a) in the case of an assertion under **subsection (2)(a)**, the assignee and anyone claiming through the assignee, whether or not the person claiming through the assignee has notice of the assertion; and
 - (b) in the case of an assertion under **subsection (2)(b)**, anyone to whose notice the assertion is brought.
- (4) In an action for infringement of the right, the court must, in considering remedies, take into account any delay in asserting the right.

170D Exceptions to right to be identified as performer

A performer’s rights are not infringed as referred to in **section 170A** in any of the following cases:

- (a) if it is not reasonably practicable to identify the performer (or, if applicable, the group) in accordance with **section 170B**;
- (b) in relation to any performance given for the purposes of reporting current events;
- (c) in relation to any performance given for the purposes of advertising any goods or services;
- (d) by an act that, under any of sections 175 to 176, 177(2), 181, and 182, would not infringe the performer’s rights conferred by **subpart 4**.

Right relating to derogatory treatment of performance

170E Right relating to derogatory treatment of performance

- (1) A performer’s rights are infringed by a person if the person subjects a performance to derogatory treatment.
- (2) **Subsection (1)** is subject to **sections 170F to 170H**.

170F Content of right relating to derogatory treatment of performance

- (1) For the purpose of **section 170E**, a person subjects a performance to derogatory treatment if the person,—
 - (a) with any distortion, mutilation, or other modification that is prejudicial to the honour or reputation of the performer,—
 - (i) communicates live to the public the performance; or

- (ii) by means of a recording, plays in public, or communicates to the public, the performance; or
 - (b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes a recording of the performance with any distortion, mutilation, or other modification that is prejudicial to the honour or reputation of the performer. 5
- (2) **Subsection (1)** applies only to a recording that is a sound recording.

170G Exceptions to right relating to derogatory treatment of performance

A performer's rights are not infringed as referred to in **section 170E** in any of the following cases: 10

- (a) in relation to any performance given for the purposes of reporting current events:
- (b) where modifications have been made to a performance that are consistent with reasonable editorial or production practice:
- (c) where any act is done for the purpose of avoiding the commission of an offence, or complying with a duty imposed by or under any enactment, if,— 15
 - (i) where the performer is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the performance has been subjected to treatment to which the performer has not consented; or 20
 - (ii) where the performer has previously been identified in relation to the performance, there is a clear and reasonably prominent indication, given at the time of the act, that the performance has been subjected to treatment to which the performer has not consented. 25

Other provisions relating to moral rights

170H Consent and waiver of rights

- (1) A performer's rights are not infringed as referred to in **sections 170A and 170E**— 30
- (a) by any act to which the person who is entitled to the right has consented; or
 - (b) if the person who is entitled to the right has waived the right by instrument in writing signed by the person.
- (2) A waiver— 35
- (a) may relate to a specific performance, or to performances of a specified description that are in existence, in progress, or about to be commenced; and

<ul style="list-style-type: none"> (b) must state the rights to which the waiver relates; and (c) may be expressed to be subject to revocation; and (d) if made in favour of the person entitled (or prospectively entitled) to exercise the performer’s property rights in the performance to which the waiver relates, is presumed to extend to the person’s licensees and successors in title unless a contrary intention is expressed. 	5
170I Application to parts of performances	
<ul style="list-style-type: none"> (1) The right conferred by section 170A applies in relation to the whole or any substantial part of a performance. (2) The right conferred by section 170E applies in relation to the whole or any part of a performance. 	10
Subpart 2—Consent required for recording, live transmission, or use of recording of performance	
23 Cross-heading above section 171 repealed	
Repeal the cross-heading above section 171.	15
24 Section 172 amended (Infringement by use of recording made without performer’s consent)	
<ul style="list-style-type: none"> (1) In section 172, replace “if” with “if,”. (2) Replace section 172(a) with: <ul style="list-style-type: none"> (a) without the performer’s consent and by means— <ul style="list-style-type: none"> (i) of a recording that is a sound recording, A shows in public or plays in public the whole or a substantial part of a performance; or (ii) of a recording that is a film, A shows in public, plays in public, or communicates to the public the whole or a substantial part of a performance; and 	20
25 New subpart 3 heading in Part 9 inserted	
After section 172, insert:	
Subpart 3—Performers’ rights relating to film	
26 Section 173 amended (Copying of recordings)	
<ul style="list-style-type: none"> (1) In the heading to section 173, after “Copying of”, insert “film”. (2) In section 173(1) and (3), after “copies a recording”, insert “that is a film”. 	30
27 Section 174 amended (Infringement by importing, possessing, or dealing with illicit recording)	
In section 174(1), after “recording”, insert “that is a film and”.	

28 New sections 174A to 174D and subpart 4 and 5 headings in Part 9 inserted

After section 174, insert:

Subpart 4—Performers’ property rights relating to sound recordings

174A Application

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This subpart applies only to recordings that are sound recordings.

174B Consent required for making sound recording available to public

A performer’s rights are infringed by a person who, without the performer’s consent and by means of a recording, communicates to the public the whole or a substantial part of a performance.

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174C Consent required for copying of sound recording

(1) A performer’s rights are infringed by a person who, without the performer’s consent, copies a recording of the whole or a substantial part of a performance.

(2) **Subsection (1)** does not apply if—

(a) the recording is not a communication work or part of a communication work; and

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(b) the copy is made from a recording that is not an illicit recording; and

(c) the recording is not borrowed or hired; and

(d) the copy is made by the owner of the recording; and

(e) that owner acquired the recording legitimately; and

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(f) the copy is used only for that owner’s personal use or the personal use of a member of the household in which the owner lives, or both; and

(g) no more than 1 copy is made for each device for playing recordings that is owned by the owner of the recording; and

(h) the owner of the recording retains the ownership of both the recording and of any copy that is made under this section.

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(3) However **subsection (2)** does not apply if the owner of the recording is bound by a contract that specifies the circumstances in which the recording may be copied.

174D Consent required for issue of copies to public

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(1) A performer’s rights are infringed by a person who, without the performer’s consent, issues to the public a copy of a recording, including the original recording, of the whole or any substantial part of a performance.

(2) **Subsection (1)** does not apply to a copy of a recording if the copy is imported into New Zealand and—

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<ul style="list-style-type: none"> (a) the copy was made in a foreign country with the consent of the person entitled, in that country, to exercise the property rights; or (b) no person was entitled, in the foreign country in which the copy was made, to exercise the property rights, and any of the following applies: <ul style="list-style-type: none"> (i) the property rights in that country had expired: 5 (ii) the person otherwise entitled, in that country, to exercise the property rights failed to take some step legally available to the person to secure, in that country, the property rights: (iii) the copy was made in that country by or with the consent of the person entitled, in New Zealand, to exercise the performers' property rights related to the performance. 10 (3) In subsection (2) (other than paragraph (b)(iii)), property rights means intellectual property rights related to the performance that are equivalent to the performers' property rights conferred by this subpart. 	10
Subpart 5—Acts permitted in relation to performances	15
29 Cross-heading above section 175 repealed	
Repeal the cross-heading above section 175.	
30 Amendments to sections 175 to 189	
<ul style="list-style-type: none"> (1) In the provisions specified in Schedule 2, replace “this Part” with “subparts 2 to 4” in each place. 20 (2) In section 180(1)(a), replace “section 177 or section 179” with “section 177, 179, or 192A(2)”. 	
31 New section 192A and subpart 6 heading in Part 9 inserted	
After section 192, insert:	
<p>192A Other acts permitted in relation to performers' property rights 25</p> <ul style="list-style-type: none"> (1) The purpose of this section is to allow certain acts to be done without infringing a performer's property rights. (2) For the purposes of subpart 4, sections 53, 55, 56, 56A, 57, 58, 79, 82, 83, and 90 apply with all necessary modifications as if— <ul style="list-style-type: none"> (a) references to infringing copyright in any work (or any similar reference) were to infringing the rights conferred by subpart 4 in relation to a recording (that is a sound recording); and 30 (b) references to a work, a literary, dramatic, musical, artistic, or communication work, or a typographical arrangement of a published edition, or a transcript of a recording of a communication work were to a recording (that is a sound recording); and 35 	

- (c) references in sections 53 and 58 to a published edition were to a recording (that is a sound recording); and
- (d) references in section 55 to an item were to a recording (that is a sound recording); and
- (e) references in sections 56 and 79 to a copyright owner were to the person entitled to exercise the rights conferred by **subpart 4**. 5

Subpart 6—Miscellaneous provisions

32 Section 193 replaced (Duration of rights)

Replace section 193 with:

- 193 Duration of rights** 10
- (1) The rights conferred by this Part exist in relation to a performance until the later of the following:
 - (a) if the performance is first made available to the public by an authorised act before the end of the period of 25 years from when the performance takes place, the end of the period of 70 years from the end of the calendar year in which the performance is first made available to the public by an authorised act: 15
 - (b) the end of the period of 70 years from the end of the calendar year in which the performance takes place.
 - (2) For the purposes of **subsection (1)**, the circumstances in which a performance may be made available to the public include— 20
 - (a) a performance that is given in public:
 - (b) a performance that is communicated live to the public:
 - (c) a recording of a performance that is communicated to the public:
 - (d) a copy of a recording of a performance that is issued to the public. 25
 - (3) In this section, **authorised** means authorised by or with the licence of the performer.

33 Section 194 replaced (Transmission of rights)

Replace section 194 with:

- 194 Transmission of performers' rights** 30
- (1) The rights conferred by this Part are transmissible only in accordance with **sections 194A to 194J**.
 - (2) References in this Part to the performer, in the context of the person having rights conferred by this Part, must be construed as references to the person for the time being entitled to exercise those rights. 35

194A Moral rights not assignable

The rights conferred by **sections 170A and 170E** are not assignable.

194B Transmission of moral rights on death

- (1) On the death of a person entitled to the rights conferred by **sections 170A and 170E**,— 5
- (a) the rights pass to the person that he or she may by testamentary disposition specifically direct; or
 - (b) if there is no such direction but the performer's property rights in the performance in question form part of the estate, the rights pass to the person to whom the property rights pass; or 10
 - (c) if or to the extent that the rights do not pass under **paragraph (a) or (b)**, the rights are exercisable by his or her personal representatives.
- (2) If, under **subsection (1)(a) or (b)**, a right becomes exercisable by more than 1 person,—
- (a) in the case of the right conferred by **section 170A**, the right may be asserted by any of those persons; and 15
 - (b) in the case of the right conferred by **section 170E**, the right is exercisable by each of those persons and is not infringed in relation to any of those persons if one of them consents to the treatment or act in question; and 20
 - (c) any waiver of the right in accordance with **section 170H** by one of those persons does not affect the rights of the others.
- (3) Any damages recovered by personal representatives under this section in respect of an infringement after a person's death devolve as part of his or her estate as if the right of action had existed and been vested in him or her immediately before his or her death. 25

194C Performers' rights relating to consent for recording or live transmission and to film recordings not assignable

The rights conferred by sections 171 to 174 are not assignable.

194D Transmission of performers' rights relating to consent for recording or live transmission and to film recordings on death 30

- (1) On the death of a person entitled to the rights conferred by sections 171 to 174,—
- (a) the rights pass to the person that he or she may by testamentary disposition specifically direct; and 35
 - (b) if or to the extent that there is no such direction, the rights are exercisable by his or her personal representatives.

- (2) If, under **subsection (1)(a)**, a right becomes exercisable by more than 1 person, it is exercisable by each of them independently of the other or others.
- (3) Any damages recovered by personal representatives under this section in respect of an infringement after a person's death devolve as part of his or her estate as if the right of action had existed and been vested in him or her immediately before his or her death. 5

194E Transmission of performers' property rights

- (1) A performer's property rights are transmissible, as personal or moveable property, by— 10
- (a) assignment; or
 - (b) testamentary disposition; or
 - (c) operation of law.
- (2) Transmission of a performer's property rights may be partial, that is, limited so as to apply— 15
- (a) to 1 or more, but not all, of the things the person entitled to exercise the performer's property rights has the right to do;
 - (b) to part, but not the whole, of the period for which the performer's property rights are to exist.
- (3) If a performer's property rights become exercisable by more than 1 person, the rights are not exercisable independently and must be exercised by all rights holders acting together. 20

194F Assignment

An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.

194G Performers' property rights to pass under will with unpublished original recording 25

- (1) This section applies if, under a testamentary disposition (whether general or specific), a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance that was not published before the death of the testator. 30
- (2) The testamentary disposition must be construed as including any performers' property rights in relation to the recording in so far as the testator was the person entitled to exercise the performers' property rights immediately before the testator's death.
- (3) **Subsection (2)** does not apply if a contrary intention is indicated in the testator's will or a codicil to it. 35

194H Future property rights

- (1) This section applies if a performer purports to assign future property rights (wholly or partially) to another person by an agreement signed by or on behalf of the performer.
- (2) If, on the rights coming into existence, the assignee or the assignee's successor in title would be entitled as against all other persons to require the rights to be vested in the assignee or the assignee's successor in title, they vest in the assignee or the assignee's successor in title by virtue of this subsection. 5
- (3) A licence granted by a person to whom future property rights have been assigned is binding on every successor in title to that person's interest in the rights, except— 10
- (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or
- (b) a person deriving title from a purchaser referred to in **paragraph (a)**.
- (4) In this section, **future property rights** means a performer's property rights that will or may come into existence in respect of a future recording of a performance. 15

*Licences***194I Licences**

- (1) A licence granted by a person entitled to exercise a performer's property rights is binding on every successor in title to that person's interest in the rights, except— 20
- (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or
- (b) a person deriving title from a purchaser referred to in **paragraph (a)**. 25
- (2) The licensee under an exclusive performer's rights licence has the same rights against a successor in title who is bound by the licence as that licensee has against the person who granted the licence.

194J Rights and remedies of exclusive licensee

- (1) The licensee under an exclusive performer's rights licence has, except against the person granting the licence, the same rights and remedies under this Part in respect of matters occurring after the grant of the licence as if the licence were an assignment. 30
- (2) The rights and remedies of the licensee under an exclusive performer's rights licence under this Part are concurrent with those of the person granting the licence. 35
- (3) In proceedings brought by the licensee under an exclusive performer's rights licence under this section, a defendant may avail himself or herself or itself of

any defence that would have been available if the proceedings had been brought by the person granting the licence.

194K Exercise of concurrent rights

- (1) This section applies if—
 - (a) proceedings for infringement of a performer's rights are brought by the performer or a licensee; and 5
 - (b) those proceedings relate (wholly or partly) to an infringement in respect of which the performer and the licensee have concurrent rights of action.
- (2) The performer or, as the case may be, the licensee may not, without the leave of the court, proceed with the proceedings unless the other is either joined as a plaintiff or added as a defendant. 10
- (3) A performer or licensee who is joined as a plaintiff or added as a defendant under **subsection (2)** is not liable for any costs in the proceedings unless that person takes part in the proceedings.
- (4) **Subsections (2) and (3)** do not affect the granting of interlocutory relief on an application by a performer or licensee alone. 15
- (5) Whether or not the performer and the licensee are both parties to proceedings for infringement of a performer's rights that relate (wholly or partly) to an infringement in respect of which they have or had concurrent rights of action,—
 - (a) the court must, in assessing damages, take into account— 20
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either the performer or the licensee in respect of the infringement; and
 - (b) no account of profits may be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the performer or the licensee in respect of the infringement; and 25
 - (c) the court must, if an account of profits is directed, apportion the profits between the performer and the licensee in the manner that the court considers just, subject to any agreement between them.
- (6) The performer must notify any licensee who has concurrent rights before applying for an order under section 199, and the court may on the application of the licensee make any order under that section that it thinks fit, having regard to the terms of the licence. 30
- (7) In this section, **licensee** means a licensee under an exclusive performer's rights licence. 35

34 Cross-heading above section 195 replaced

Replace the cross-heading above section 195 with:

Consent and waiver

35 Section 195 amended (Consent)

- (1) Replace the heading to section 195 with “**Consent and waiver**”.
- (2) In section 195(2), after “consent”, insert “or waiver” in each place.

36 Section 196 amended (Proceedings for infringement of performers’ rights)

- (1) In section 196(3)(b), replace “damages” with “either damages or an account of profits”. 5
- (2) After section 196(4), insert:
- (5) If, in proceedings for infringement of a performer’s property rights, it is proved or admitted that at the time of the infringement the defendant did not know, and had no reason to believe, that the acts complained of infringed the performer’s property rights, the plaintiff is not entitled to damages but, without prejudice to the award of any other remedy, is entitled to an account of profits. 10

37 New section 196A inserted (Proceedings against the Crown)

After section 196, insert:

196A Proceedings against the Crown 15

If any employee or agent of the Crown infringes a performer’s rights in a performance, and the infringement is committed with the authority of the Crown, civil proceedings in respect of the infringement lie against the Crown under the Crown Proceedings Act 1950 (subject to this Act).

38 Section 198 amended (Criminal liability for making, dealing with, using, or copying illicit recordings) 20

- (1) After section 198(1)(c), insert:
 - (ca) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the performer; or
- (2) In section 198(1), replace “a recording that is, and that the person knows is, an illicit recording” with “a specified recording”. 25
- (3) After section 198(1), insert:
 - (1A) In subsection (1), **specified recording** means—
 - (a) an illicit recording if the person referred to in subsection (1) knows that the recording is an illicit recording; or 30
 - (b) a copy of a sound recording that is made without the performer’s consent if the person referred to in subsection (1) knows that the copy was made without that consent.
- (4) In section 198(3)(c), replace “or sections 181 to 191”, with “, 181 to 191, and **192A**”. 35

39 Section 226 replaced (Definitions of TPM terms)

Replace section 226 with:

226 Definitions of TPM terms

In this section and **sections 226A to 226M**, unless the context otherwise requires,—

access control TPM—

- (a) means a technology, device, or component that, in the normal course of its operation, controls any access to a TPM work; but
- (b) does not include a technology, device, or component that can, in the normal course of its operation, be circumvented accidentally

archive means a person that maintains an archive (as defined in section 50(1))

archivist includes a person acting on behalf of the archivist

issuer of the TPM work means—

- (a) a copyright owner of a TPM work that issued the TPM work to the public; or
- (b) a person that issued the TPM work to the public under licence from the copyright owner

librarian includes a person acting on behalf of the librarian

prescribed library has the same meaning as in section 50(1)

specified performers' rights means the rights conferred by section 172, or **subpart 4 of Part 9**, in respect of a recording that is a sound recording and a TPM work

TPM or **technological protection measure** means—

- (a) an access control TPM; or
- (b) a technology, device, or component that, in the normal course of its operation, prevents or inhibits the infringement of copyright in a TPM work or of any specified performers' rights (other than a technology, device, or component that can, in the normal course of its operation, be circumvented accidentally)

TPM circumvention device means a device, product, or component that—

- (a) is promoted, advertised, or otherwise marketed by or on behalf of a person referred to in **section 226A(1)** for the purpose of circumventing a technological protection measure; or
- (b) has no commercially significant purpose or use other than to circumvent a technological protection measure; or
- (c) is solely or primarily designed or produced for the purpose of circumventing a technological protection measure

TPM work means a copyright work that is protected by a technological protection measure.

40 Section 226A replaced (Prohibited conduct in relation to technological protection measure)

Replace section 226A with:

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226A Dealing in TPM circumvention devices

- (1) A person (A) must not make, import, sell, distribute, let for hire, offer or expose for sale or hire, advertise for sale or hire, or otherwise provide a TPM circumvention device.
- (2) However, this section applies only if A knows, or has reason to believe, that the TPM circumvention device will be, or is likely to be, used for the purpose of circumventing a technological protection measure—
 - (a) otherwise than in a manner that is permitted under **sections 226D to 226K**; and
 - (b) without the authority of the issuer of the TPM work.

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226AB Providing service to circumvent technological protection measures

- (1) A person (A) must not provide, or offer to provide, a service to another person if 1 or more of the following apply:
 - (a) the service is promoted, advertised, or otherwise marketed by or on behalf of A for the purpose of circumventing a technological protection measure:
 - (b) the service has no commercially significant purpose or use other than to circumvent a technological protection measure:
 - (c) the service is solely or primarily designed or performed for the purpose of circumventing a technological protection measure.
- (2) However, this section applies only if A knows, or has reason to believe, that the service will be, or is likely to be, used for the purpose of circumventing a technological protection measure—
 - (a) otherwise than in a manner that is permitted under **sections 226D to 226K**; and
 - (b) without the authority of the issuer of the TPM work.

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226AC Circumventing access control TPM

- (1) A person (A) must not circumvent an access control TPM if—
 - (a) A knows, or has reason to believe, that A is circumventing an access control TPM; and
 - (b) A does not have the authority of the issuer of the TPM work to circumvent the access control TPM.

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- (2) However, this section does not apply if A circumvents the access control TPM in accordance with any of **sections 226D to 226K**.

41 Section 226B amended (Rights of issuer of TPM work)

- (1) Repeal section 226B(1).
- (2) In section 226B(2), replace “rights” with “rights and remedies”. 5
- (3) In section 226B(2), replace “section 226A” with “**section 226A, 226AB, or 226AC**”.
- (4) After section 226B(2), insert:
- (2A) The rights that the issuer of a TPM work has under this section do not prevent or restrict a person from doing an act that the person is allowed to do under any of **sections 226D to 226K**. 10
- (2B) In section 121(1) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright existed in the work must be construed as a reference to not knowing or having reason to believe that the acts complained of infringed the rights conferred by this section. 15
- (5) After section 226B(5), insert:
- (6) A performer (A) must be treated as an issuer of the TPM work for the purposes of this section if— 20
- (a) the performance is fixed in a sound recording; and
- (b) the TPM work is the sound recording; and
- (c) A issued the TPM work to the public.

42 Sections 226C to 226J and cross-heading replaced

Replace sections 226C to 226J and the cross-heading above section 226F with:

- 226C Offence of contravening section 226A, 226AB, or 226AC** 25
- (1) This section applies if a person (A) contravenes **section 226A, 226AB, or 226AC** in the course of a business.
- (2) A commits an offence if,—
- (a) in the case of **section 226A**, A knows that the TPM circumvention device will be, or is likely to be, used for the purpose of circumventing a technological protection measure— 30
- (i) otherwise than in a manner that is permitted under **sections 226D to 226K**; and
- (ii) without the authority of the issuer of the TPM work:
- (b) in the case of **section 226AB**, A knows that the service will be, or is likely to be, used for the purpose of circumventing a technological protection measure— 35

- (i) otherwise than in a manner that is permitted under **sections 226D to 226K**; and
- (ii) without the authority of the issuer of the TPM work:
- (c) in the case of **section 226AC**, A knows that A—
- (i) is circumventing an access control TPM; and 5
- (ii) is doing so without the authority of the issuer of the TPM work.
- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 5 years, or both.
- 226D Acts that do not infringe copyright or specified performers' rights** 10
- (1) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to do an act if the act—
- (a) is a permitted act under Part 3 or otherwise does not infringe the copyright in the TPM work; and
- (b) does not infringe any specified performers' rights in the TPM work. 15
- (2) This section does not apply in the prescribed circumstances.
- 226E Geographic market segmentation**
- (1) Nothing in this Act prevents any person from circumventing a technological protection measure to the extent that the measure controls geographic market segmentation by preventing, in New Zealand, the playing or operating of a non-infringing copy. 20
- (2) **Subsection (1)** does not apply if the playing or operating of the non-infringing copy infringes copyright or any specified performers' rights.
- (3) In this section, **non-infringing copy** means a physical copy of the TPM work that is not an infringing copy. 25
- Compare: Copyright Act 1968 s 10(1) definition of access control technological protection measure (Aust)
- 226F Law enforcement, national security, and performing or exercising other functions, powers, or duties**
- (1) Nothing in this Act prevents the Crown (or any person acting on its behalf) 30 from circumventing a technological protection measure in connection with anything lawfully done by or on behalf of the Crown for the purposes of—
- (a) law enforcement; or
- (b) national security; or
- (c) performing or exercising any function, power, or duty under any enactment. 35
- (2) In this section, **Crown** means—

- (a) Ministers of the Crown and all departments (within the meaning of section 2(1) of the Public Finance Act 1989); and
- (b) all Offices of Parliament (within the meaning of section 2(1) of the Public Finance Act 1989); and
- (c) all statutory entities (within the meaning of section 10(1) of the Crown Entities Act 2004); and 5
- (d) the Reserve Bank of New Zealand.

Compare: Copyright Act 1968 s 116AN(7) (Aust)

226G Encryption research

- (1) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to undertake encryption research if— 10
 - (a) that person is—
 - (i) engaged in a course of study at an educational establishment in the field of encryption technology; or
 - (ii) employed, trained, or experienced in the field of encryption technology; and 15
 - (b) that person has—
 - (i) obtained permission from the copyright owner or exclusive licensee of the copyright in the TPM work for the use of a TPM circumvention device for the purpose of the research; or 20
 - (ii) taken all reasonable steps to obtain that permission; and
 - (c) the research will not infringe copyright or any specified performers' rights.
- (2) In this section,—
 - encryption research** means identifying and analysing flaws and vulnerabilities of encryption technology 25
 - encryption technology** means the scrambling and descrambling of information using mathematical formulae or algorithms.

226H Embedded computer program that involves use of goods or services

- (1) This section applies if a TPM work is a computer program that is embedded in a machine or device. 30
- (2) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to circumvent a restriction on the use of goods or services in relation to the machine or device if the use of the goods or services— 35
 - (a) does not infringe the copyright in the TPM work; and
 - (b) does not infringe any specified performers' rights.

- (3) In this section, **goods** means goods other than the TPM work.
Compare: Copyright Act 1968 s 10(1) definition of access control technological protection measure (Aust)
- 226I Computer programs that are no longer supported by remote server**
- (1) This section applies in relation to a computer program that requires a network connection to a remote server to enable some or all of its functionality and that is no longer supported by a remote server. 5
- (2) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to do an act if the act—
- (a) relates to a copy of the computer program that is not an infringing copy; and 10
- (b) will not infringe the copyright in the computer program; and
- (c) will not infringe any specified performers' rights; and
- (d) will be done for the sole purpose of enabling functionality of the computer program that is lost because the computer program is no longer supported by a remote server. 15
- 226J Other acts relating to computers**
- (1) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to do an act referred to in **subsection (2), (3), or (4)**. 20
- Achieving interoperability of computer programs*
- (2) An act under this subsection—
- (a) must relate to a computer program (the **original program**); and
- (b) must not infringe the copyright in the original program or the TPM work; and 25
- (c) must not infringe any specified performers' rights; and
- (d) must relate to elements of the original program or the TPM work that will not be readily available to the person before the circumvention occurs; and
- (e) must be done for the sole purpose of— 30
- (i) achieving interoperability of an independently created computer program with the original program or any other program; or
- (ii) accessing the TPM work using an independently created computer program that is interoperable with the original program.
- Testing, investigating, or correcting security of computers or networks* 35
- (3) An act under this subsection—
- (a) must relate to a copy of a computer program that is not an infringing copy; and

<ul style="list-style-type: none"> (b) must not infringe the copyright in the computer program; and (c) must not infringe any specified performers' rights; and (d) must be done for the sole purpose of testing, investigating, or correcting the security of a computer, computer system, or computer network; and (e) must be done with the permission of the owner of the computer, computer system, or computer network. 	5
<i>Protecting privacy</i>	
<ul style="list-style-type: none"> (4) An act under this subsection— <ul style="list-style-type: none"> (a) must relate to a copy of a work that is not an infringing copy; and (b) must not infringe the copyright in the work; and (c) must not infringe any specified performers' rights; and (d) must be done for the sole purpose of identifying and disabling a capability to collect or disseminate personal information (as defined in section 2(1) of the Privacy Act 1993). 	10
Compare: Copyright Act 1968 s 116AN(3), (5), (6)	15
226K Non-infringing acts expressly permitted by regulations	
<ul style="list-style-type: none"> (1) Nothing in this Act prevents any person from circumventing a technological protection measure to enable the person to do any act that is permitted by regulations made for the purposes of this section. (2) Subsection (1) is subject to the terms and conditions (if any) that are prescribed by those regulations. (3) <i>See section 234(3)</i> (which provides that the regulations must not permit a person to circumvent a TPM to enable the person to do an act that infringes copyright or a specified performer's right). 	20
226L Sections 226E to 226J apply subject to prescribed modifications	
<ul style="list-style-type: none"> (1) Sections 226E to 226J are subject to regulations made for the purposes of this section. (2) Those regulations may provide that, subject to any conditions stated in the regulations, any of sections 226E to 226J— <ul style="list-style-type: none"> (a) do not apply; or (b) apply with the modifications or additions (or both) that are specified in the regulations. (3) <i>See section 234(3)</i> (which provides that the regulations must not permit a person to circumvent a TPM to enable the person to do an act that infringes copyright or a specified performer's right). 	25 30 35

226M Application of provisions to not-for-profit entities

- (1) For the purposes of section 226B, **sections 226A, 226AB, and 226AC** do not apply to an act done by any of the persons specified in **subsection (3)** if the act was done—
- (a) in good faith in the performance or exercise of the functions, powers, or duties of a person referred to in **subsection (3)(a) to (d)**; and 5
- (b) without knowing that the act infringed the rights conferred by section 226B.
- (2) For the purposes of **section 226C, sections 226A, 226AB, and 226AC** do not apply to an act done by any of the persons specified in **subsection (3)** if the act was done in the performance or exercise of the functions, powers, or duties of a person referred to in **subsection (3)(a) to (d)**. 10
- (3) The persons are—
- (a) an educational establishment:
- (b) an archive: 15
- (c) a prescribed library:
- (d) a broadcaster (within the meaning of section 2(1) of the Broadcasting Act 1989)—
- (i) that is wholly owned by the Crown (within the meaning of section 2(1) of the Public Finance Act 1989); and 20
- (ii) whose business is not carried on for the pecuniary profit of any person:
- (e) a person who is acting on behalf of a person referred to in any of **paragraphs (a) to (d)**. 25

Rights management information 25**226N Definitions of RMI terms**

- (1) In this section and in **sections 226O to 226S**, unless the context otherwise requires,—
- relevant person**, in relation to rights management information, means—
- (a) the person (**A**) who authorises or instigates the information being attached to, or appearing in connection with, the copy of the copyright work; or 30
- (b) the successor in title to **A**'s interest in the copyright in the copyright work or in any rights conferred by Part 4 or 9
- RMI** or **rights management information** means information attached to, or appearing in connection with communicating or making available, a copy of a copyright work that— 35
- (a) identifies 1 or more of the following:

- (i) the work:
- (ii) the author of the work:
- (iii) the copyright owner:
- (iv) a performer:
- (v) in the case of a film, the director of the film; or 5
- (b) identifies or indicates some or all of the terms and conditions for using the work, or indicates that the use of the work is subject to terms and conditions; or
- (c) is a number or code that represents any of the information referred to in **paragraph (a) or (b)**. 10
- (2) In **sections 226P to 226S**, a person **imports** a copy of a copyright work or rights management information if the person imports the copy or information into New Zealand otherwise than for that person's private and domestic use.
- 226O Interference with RMI**
- (1) A person (A) must not remove or modify any rights management information that is attached to, or appears in connection with communicating or making available, a copy of a copyright work. 15
- (2) However, **subsection (1)** does not apply if—
- (a) A has the authority of the relevant person to remove or modify the rights management information; or 20
- (b) A does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work or any rights conferred by Part 4 or 9.
- 226P Dealing in RMI that has been modified**
- (1) A person (A) must not distribute or import rights management information if the rights management information has been modified without the authority of the relevant person. 25
- (2) However, **subsection (1)** does not apply if—
- (a) A has the authority of the relevant person to distribute or import the modified rights management information; or 30
- (b) A does not know that the rights management information has been modified without the authority of the relevant person; or
- (c) A does not know, and has no reason to believe, that distributing or importing the modified rights management information will induce, enable, facilitate, or conceal an infringement of the copyright in a copyright work or any rights conferred by Part 4 or 9. 35

226Q Dealing in work subject to RMI interference

- (1) A person (A) must not distribute, import, communicate, or make available to the public a copy of a copyright work if any rights management information attached to, or appearing in connection with communicating or making available, the copy of the work has been removed or modified without the authority of the relevant person. 5
- (2) However, **subsection (1)** does not apply if—
- (a) A has the authority of the relevant person to carry out the act that would otherwise be prohibited by **subsection (1)**; or
- (b) A does not know that the rights management information has been removed or modified without the authority of the relevant person; or 10
- (c) A does not know, and has no reason to believe, that distributing, importing, communicating, or making available to the public the copy of the work will induce, enable, facilitate, or conceal an infringement of the copyright in the work or any rights conferred by Part 4 or 9. 15

226R Rights and remedies for contravention of sections 226O to 226Q

- (1) A copyright owner or an exclusive licensee of a copyright work has the same rights and remedies in relation to a contravention of any of **sections 226O to 226Q** as a copyright owner has in respect of an infringement of copyright.
- (2) If the rights management information is or includes information that identifies an author, a director, or a performer (or is a number or code that represents information that identifies that person), the author, director, or performer (or a person entitled to exercise that person's rights under Part 4 or 9) has the same rights and remedies in relation to a contravention of any of **sections 226O to 226Q** as an author, a director, or a performer has in respect of an infringement of the rights conferred by Part 4 or 9. 20
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) In section 121(1), as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright existed in the work must be construed as a reference to not knowing or having reason to believe that the acts complained of infringed the rights conferred by this section. 30

226S Offence of contravening sections 226O to 226Q

- (1) This section applies if a person (A) contravenes any of **sections 226O to 226Q** in the course of a business. 35
- (2) A commits an offence if,—
- (a) in the case of **section 226O**,—
- (i) A knowingly removes or modifies the rights management information; and

- (ii) A knows that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the copyright work or any rights conferred by Part 4 or 9:
- (b) in the case of **section 226P**,—
- (i) A knowingly distributes or imports the rights management information; and 5
- (ii) A knows that distributing or importing the information will induce, enable, facilitate, or conceal an infringement of the copyright in the copyright work or any rights conferred by Part 4 or 9:
- (c) in the case of **section 226Q**,— 10
- (i) A knowingly distributes, imports, communicates, or makes available to the public the copy of the copyright work; and
- (ii) A knows that distributing, importing, communicating, or making available the copy of the work will induce, enable, facilitate, or conceal an infringement of the copyright in the work or any rights conferred by Part 4 or 9. 15
- (3) A person who commits an offence under **subsection (2)** is liable on conviction to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 5 years, or both.

Protection of encrypted programme-carrying satellite and cable signals 20

226T Definitions

- (1) In this section and **sections 226U to 226Y**, unless the context otherwise requires,—
- cable signal** means an encrypted programme-carrying cable signal that has been broadcast 25
- decoding device or system** means a tangible or an intangible device, product, component, or system—
- (a) that is intended to be used to assist in decoding a satellite signal or cable signal; or
- (b) that is primarily of assistance in decoding a satellite signal or cable signal; or 30
- (c) the principal function of which is solely to assist in decoding a satellite signal or cable signal
- lawful distributor**, in relation to a satellite signal or a cable signal, means a person that has the right in relation to New Zealand to distribute the signal and authorise its decoding 35
- satellite signal** means an encrypted programme-carrying satellite signal that has been broadcast.

- (2) In this section, a signal is **broadcast** if—
- (a) visual images, sounds, or other information is transmitted electronically; and
 - (b) the signal—
 - (i) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them; or 5
 - (ii) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public; and
 - (c) in the case of a signal transmitted on the Internet, the transmission—
 - (i) takes place simultaneously on the Internet and by other means; or 10
 - (ii) is a concurrent transmission of a live event; or
 - (iii) is a transmission of a film or sound recording forming part of a programme service that is offered by the person responsible for making the transmission and that involves programmes being transmitted at scheduled times determined by that person. 15
- (3) For the purposes of **subsection (2)(b)(i)**, an encrypted signal is capable of being lawfully received by members of the public only if decoding devices or systems have been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission. 20

226U Prohibited dealing in decoding devices or systems relating to satellite signals

- (1) A person (A) must not make, import, export, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire a decoding device or system if A knows or has reason to believe that— 25
- (a) it is intended to be used to assist in the unauthorised decoding of a satellite signal; or
 - (b) it is primarily of assistance in the unauthorised decoding of a satellite signal; or
 - (c) its principal function is solely to assist in the unauthorised decoding of a satellite signal. 30
- (2) In this section, the decoding of a satellite signal is **unauthorised** if the decoding is without the authorisation of the lawful distributor.

226V Prohibited receipt and decoding of satellite signals or distribution of decoded satellite signals 35

A person (A) must not receive and decode, or further distribute, a satellite signal if A knows that it is being or has been decoded without the authorisation of the lawful distributor.

226W Prohibited conduct in relation to cable signals	
(1) A person (A) must not make, import, export, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire equipment if A knows that the equipment is intended to be used in the unauthorised reception of a cable signal.	5
(2) A person (A) must not receive, or assist another person to receive, a cable signal if A knows that the reception of the signal is unauthorised.	
(3) In this section, reception of a cable signal is unauthorised if the reception is without the authorisation of the lawful distributor.	
226X Civil remedies for contravention of sections 226U to 226W	10
(1) This section applies to a person (B) who—	
(a) has an interest in a satellite signal or its content or is the lawful distributor of a cable signal; and	
(b) has suffered loss or damage as a result of the contravention of any of sections 226U to 226W .	15
(2) B—	
(a) has the same rights and remedies in relation to a contravention of any of sections 226U to 226W as a copyright owner has in respect of an infringement of copyright; and	
(b) has the same rights under section 122 in relation to any decoding device or system, or equipment referred to in section 226W , as a copyright owner has in relation to an infringing copy.	20
(3) Section 134 applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (2)(b) .	
226Y Offence for contravention of section 226U or 226V	25
(1) A person who contravenes section 226U in the course of a business commits an offence and is liable on conviction to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 5 years, or both.	
(2) A person who contravenes section 226U otherwise than in the course of a business commits an offence and is liable on conviction to a fine not exceeding \$5,000.	30
(3) A person who contravenes section 226V commits an offence and is liable on conviction to a fine not exceeding \$5,000.	
<i>Fraudulently receiving programmes and unauthorised reception of transmissions</i>	35

- 43 Section 228 amended (Rights and remedies in respect of apparatus, etc, for unauthorised reception of transmissions)**
In section 228(2)(b), delete “or section 132”.
- 44 Section 234 amended (Regulations)**
- (1) After section 234(q), insert: 5
- (qa) prescribing circumstances for the purposes of **section 226D(2)** (whether by reference to classes of persons, acts, works, or technological protection measures or otherwise):
- (qb) prescribing matters for the purposes of **sections 226K and 226L**:
- (2) In section 234, insert as subsections (2) to (5): 10
- (2) Regulations may be made under **subsection (1)(qa) and (qb)** only on the recommendation of the Minister, and the Minister may make a recommendation only if the Minister—
- (a) has consulted the persons or representatives of the persons that the Minister considers will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Minister; and 15
- (b) has considered those comments; and
- (c) has had regard to the purposes of this Act; and
- (d) in the case of **subsection (1)(qa)**, is satisfied that the regulations are necessary or desirable in order to prevent **section 226D(1)** from applying in inappropriate circumstances, having regard to whether the regulations may cause any actual or likely adverse impact on the use of a copy of a work that does not infringe the copyright in the work or any specified performers’ rights (which in this section has the same meaning as in **section 226**); and 20
- (e) in the case of **subsection (1)(qb)**, is satisfied that the regulations are necessary or desirable in order to— 25
- (i) provide more certainty about the circumstances in which a technological protection measure may be circumvented (without infringing copyright in the TPM work or any specified performers’ rights); or 30
- (ii) prevent any of **sections 226E to 226J** from applying in inappropriate circumstances, having regard to the matter specified in **paragraph (d)**.
- (3) Regulations made under **subsection (1)(qb)** must not have the effect of permitting a person to circumvent a technological protection measure to enable the person to do an act that— 35
- (a) infringes the copyright in the TPM work; or
- (b) infringes any specified performers’ rights.

- (4) If the Minister makes a recommendation under **subsection (2)**, the Minister's reasons for making the recommendation (including why the regulations are appropriate) must be published together with the regulations.
- (5) A failure to comply with **subsection (2)(a) or (b)** does not affect the validity of any regulations made under **subsection (1)(qa) or (qb)**.

5

45 Schedule 1 amended

- (1) In Schedule 1, above clause 1, insert:

Part 1
Provisions relating to Act as enacted

- (2) In Schedule 1, clause 1(1) to (4), replace “schedule” with “Part” in each place. 10
- (3) In Schedule 1, clause 3(3), replace “schedule” with “Part”.
- (4) In Schedule 1, clause 4(3), replace “schedule” with “Part”.
- (5) In Schedule 1, after the cross-heading above clause 17, insert:

16A Clauses 17 to 19 subject to Part 2

Clauses 17 to 19 are subject to Part 2 of this schedule.

15

- (6) In Schedule 1, repeal clause 17(2)(b).
- (7) In Schedule 1, replace clause 17(2)(d)(ii) with:
- (ii) if the work was made, but unpublished, before commencement, copyright exists until—
- (A) the end of the period of 70 years from the end of the calendar year in which the new copyright provisions come into force; or 20
- (B) if the work is first made available to the public (within the meaning of section 22(4)) during the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, the end of the period of 70 years from the end of the calendar year in which the work is first made available to the public; and 25
- (8) In Schedule 1, clause 18(2)(d), replace “50” with “70”.
- (9) In Schedule 1, after clause 43, insert: 30

Part 2		
Provisions relating to Trans-Pacific Partnership Agreement Amendment Act 2016		
Subpart 1—Copyright		
44	Interpretation	5
	In this subpart, unless the context otherwise requires,—	
	commencement means the date on which the TPP copyright duration provisions come into force	
	TPP copyright duration provisions means the provisions of Part 2 of the Trans-Pacific Partnership Agreement Amendment Act 2016 .	10
45	Duration of copyright in works generally	
(1)	If copyright exists in a work immediately before commencement, the duration of copyright in the work is determined in accordance with this Act (as amended by the TPP copyright duration provisions).	
	Example	15
	A literary work is created by person A on 1 February 1995, the work is published on 1 February 2000, and person A dies on 1 February 2010.	
	Copyright in the work expires from the end of 31 December 2080 (that is, 70 years from the end of the calendar year in which the author dies). See section 22.	
(2)	If copyright comes into existence in a work on or after commencement, the duration of copyright in the work is determined in accordance with this Act (as amended by the TPP copyright duration provisions).	20
	Example	25
	A sound recording is made on 1 June 2020 and is first made available to the public by an authorised act on 1 June 2025.	
	Copyright in the work expires from the end of 31 December 2095 (that is, 70 years from the end of the calendar year in which the work is first made available to the public by an authorised act). See section 23.	
(3)	If copyright has expired in a work before commencement, the provisions of this Act (as amended by the TPP copyright duration provisions) do not apply to revive copyright in the work.	30
	Example	35
	A literary work is created by person B on 1 September 1964, the work is published in October 1964, and person B dies in November 1964.	
	Copyright in the work expires from the end of 31 December 2014 (that is, 50 years from the end of the calendar year in which the author dies). See section 22 as in force before commencement.	

(4)	Despite subclause (1) , the duration of copyright in a work is determined in accordance with clause 46 if—	
(a)	copyright exists in the work immediately before commencement; and	
(b)	copyright in the work would, but for the TPP copyright duration provisions, have expired within 8 years of commencement; and	5
(c)	the duration of copyright in the work would, immediately before commencement, have been determined in accordance with any of the following provisions:	
(i)	section 22:	
(ii)	section 23:	10
(iii)	section 28(2)(b):	
(iv)	clause 17(2)(b) of this schedule:	
(v)	clause 17(2)(d) of this schedule.	
46	Duration of copyright in certain works	
	The duration of copyright in a work referred to in clause 45(4) is determined in accordance with this Act (as amended by the TPP copyright duration provisions) except that each reference to 70 years in each of the following provisions must be read as a reference to 60 years:	15
(a)	section 22(1) to (3) :	
(b)	section 23(1) :	20
(c)	section 28(2)(b) :	
(d)	clause 17(2)(d)(ii) of this schedule.	
	Example	
	A literary work is created by person C on 1 May 1961, the work is published on 1 May 1968, and person C dies on 1 May 1970.	25
	Copyright in the work expires from the end of 31 December 2030 (that is, 60 years from the end of the calendar year in which the author dies), because—	
•	copyright exists in the work immediately before commencement; and	
•	copyright in the work would, but for the TPP copyright duration provisions, have expired at the end of 31 December 2020 (that is, within 8 years of commencement); and	30
•	the duration of copyright in the work would, immediately before commencement, have been determined in accordance with section 22.	

Subpart 2—Performers' rights

*Interpretation***47 Interpretation**

In this subpart, unless the context otherwise requires,—

commencement means the date on which the TPP performers' rights provisions come into force 5

performer's rights means the rights of a performer conferred by Part 9 of this Act

TPP performers' rights provisions means the provisions of **Part 2** of the Trans-Pacific Partnership Agreement Amendment Act **2016**. 10

*Application***48 Application**

- (1) If a performance is given on or after commencement, Part 9 (as amended by the TPP performers' rights provisions) applies to any act done on or after commencement in relation to that performance. 15
- (2) If a performance is given before commencement, Part 9 (as in force immediately before commencement) continues to apply to any act done on or after commencement in relation to that performance.
- (3) Despite **subclause (2)**, if Part 9 (as in force immediately before commencement) would not have applied to an act done, or a performance given, before commencement, **subclause (2)** and Part 9 do not apply to the act or the performance. 20
- (4) This clause is subject to **clauses 49 and 50**.

*Duration***49 Duration of performers' rights generally** 25

- (1) If a performer's rights exist immediately before commencement, the duration of the rights is determined in accordance with **section 193** of this Act (as amended by the TPP performers' rights provisions).
- (2) If a performer's rights come into existence on or after commencement, the duration of the rights is determined in accordance with **section 193** of this Act (as amended by the TPP performers' rights provisions). 30
- (3) If a performer's rights have expired before commencement, the TPP performers' rights provisions do not apply to revive the rights.
- (4) Despite **subclause (1)**, the duration of a performer's rights is determined in accordance with **clause 50** if— 35
 - (a) the performer's rights exist immediately before commencement; and

- (b) the performer’s rights would, but for the TPP performers’ rights provisions, have expired within 8 years after commencement; and
- (c) the duration of the performer’s rights would, immediately before commencement, have been determined in accordance with **section 193** (as in force immediately before commencement). 5
- 50 Duration of certain performers’ rights**
- (1) If the conditions of **clause 49(4)** are satisfied in relation to a performer’s rights, this clause determines the duration of the rights.
- (2) The duration of the rights is determined in accordance with **section 193** (as amended by the TPP performers’ rights provisions) except that each reference to 70 years in that section must be read as a reference to 60 years. 10

Part 3

Amendments to Customs and Excise Act 1996

- 46 Principal Act**
- This Part amends the Customs and Excise Act 1996 (the **principal Act**). 15
- 47 Section 119 amended (Application for Customs ruling)**
- (1) After section 119(3), insert:
- (3A) A person may apply to the chief executive for a Customs ruling on the application of any provision of Schedule 2 (which concerns the valuation of goods for the purposes of the Tariff) to a particular set of facts and circumstances. 20
- (2) In section 119(4), replace “subsection (1) or subsection (3)” with “this section”.
- (3) After section 119(4)(b), insert:
- (ba) in the case of an application under **subsection (3A)**,—
- (i) contain, or have attached, sufficient information to allow the chief executive to make a ruling, including information about— 25
- (A) the nature and details of any transactions that are relevant to the application:
- (B) the relationship of the parties to those transactions; and
- (ii) specify the applicant’s opinion as to what the Customs ruling should be; and 30
- (4) **Subsection (5)** amends the Customs and Excise Regulations 1996.
- (5) After regulation 73(a), insert:
- (ab) in the case of an application made under **section 119(3A)** of the Act, 150 days; and

48 Section 120 amended (Making of Customs ruling)

- (1) In section 120(1)(b), after “the application”, insert “; or”.
- (2) After section 120(1)(b), insert:
- (c) in the case of an application under **section 119(3A)**, make a Customs ruling on the application of a provision of Schedule 2 in relation to the facts and circumstances specified in the application. 5

49 Section 122 amended (Effect of Customs ruling)

After section 122(2), insert:

- (3) Subject to section 125, if a Customs ruling is given on the application of a provision of Schedule 2, the ruling is conclusive evidence for the purposes of this Act and, where applicable, the Tariff Act 1988, of the application of that provision to goods imported in the circumstances specified in the ruling. 10

Part 4**Amendments to Dairy Industry Restructuring Act 2001****50 Principal Act 15**

This Part amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

51 Section 5 amended (Interpretation)

- (1) In section 5(1), definition of **designated market**, replace paragraph (b) with:
- (b) for all other export licences, a market listed in Schedule 5A 20
- (2) In section 5(1), definition of **eligible participant**, paragraph (b), after “period”, insert “(subject to **subsection (3)**)”.
- (3) In section 5(1), insert in their appropriate alphabetical order:
- Official Organic Assurance Programme** means the Ministry’s programme known as the Official Organic Assurance Programme as in effect from time to time 25
- US TPP organic butter exports** means exports to the United States of America of any product under the terms of the tariff-rate quota referred to in the item relating to organic butter in **Part 2** of Schedule 5A
- US TPP rights** means rights in respect of the United States of America given by the terms of any of the tariff-rate quotas referred to in **Part 2** of Schedule 5A 30
- (4) After section 5(2), insert:
- (3) In respect of US TPP organic butter exports, in paragraph (b) of the definition of eligible participant in subsection (1), references to milk solids are to be read as being limited to milk solids that are collected from a farmer who— 35

- (a) is a participant in the Official Organic Assurance Programme; and
- (b) has produced, and has at all times otherwise dealt with, the milk solids in accordance with the programme (whether or not the milk solids are intended for export, or for use in the production of other products for export, to a market covered by the programme). 5
- 52 New section 5A inserted (Transitional, savings, and related provisions)**
After section 5, insert:
- 5A Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10
- 53 Section 26 amended (Later allocation of export licences)**
- (1) In section 26(1)(b) to (d), before “Schedule 5A”, insert “**Part 1** of”.
- (2) After section 26(1)(d), insert:
- (e) any US TPP rights (or any increases in US TPP rights) that become available at any time, except anything to which section 27A(2) applies. 15
- (3) In section 26(2), replace “Following the expiry of the initial and interim licences, export licences” with “Export licences (other than initial or interim licences)”.
- 54 Section 27A amended (Increases or reductions in rights to export to designated markets after initial period)** 20
- (1) In the heading to section 27A, after “**period**”, insert “, **etc**”.
- (2) After section 27A(1), insert:
- (1A) This section also applies if there is an increase or reduction in US TPP rights that are not allocated in an existing export licence.
- 55 New Schedule 1 inserted** 25
Insert the **Schedule 1** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.
- 56 Schedule 5A amended**
- (1) After the Schedule 5A heading, insert:
- Part 1**
Exports other than exports under Trans-Pacific Partnership Agreement 30
- (2) In Schedule 5A, after the item relating to the Dominican Republic, insert:

Part 2

Exports under Trans-Pacific Partnership Agreement

In the following table, a reference to a numbered paragraph is to that numbered paragraph of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016), Annex 2–D, United States Appendix A, Tariff Rate Quotas of the United States as that numbered paragraph may be amended, modified, or replaced (wholly or partly and with or without modifications) from time to time.

5

Market	Product	Further product description
United States of America	Cheese	Product that falls within paragraph 28(e), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 28(b), and not including product that is destined for import into the United States of America under that tariff-rate quota but which will not count towards the quantities specified in paragraph 28(b) because of paragraph 28(d).
United States of America	Skim milk powder	Product that falls within paragraph 29(d), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 29(b), and not including product that is destined for import into the United States of America after the Year 19 referred to in paragraph 29(b).
United States of America	Whole milk powder	Product that falls within paragraph 30(d), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 30(b), and not including product that is destined for import into the United States of America after the Year 29 referred to in paragraph 30(b).
United States of America	Concentrated milk	Product that falls within paragraph 31(d), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 31(b).
United States of America	Creams	Product that falls within paragraph 32(d), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 32(b).
United States of America	Butter and butter substitutes	Product that falls within paragraph 33(e), only including those quantities for which designated importer import licences are issued in accordance with United States of

Market	Product	Further product description
United States of America	Organic butter	Product that falls within paragraph 34(e), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 34(b) and (c).
United States of America	Other dairy products	Product that falls within paragraph 35(d), only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product that is destined for import into the United States of America other than under the terms of the tariff-rate quota given by paragraph 35(b).

57 Schedule 5B amended

In Schedule 5B, after clause 3, insert:

- 3A In respect of US TPP organic butter exports,—
- (a) in clauses 1 and 2, references to milk solids are to be read as being limited to milk solids that are collected from a dairy farmer who—
 - (i) is a participant in the Official Organic Assurance Programme; and
 - (ii) has produced, and has at all times otherwise dealt with, the milk solids in accordance with the programme (whether or not the milk solids are intended for export, or for use in the production of other products for export, to a market covered by the programme); and
 - (b) the collection data required by clause 3 are limited accordingly.

Part 5

Amendment to Hazardous Substances and New Organisms Act 1996

58 Principal Act

This Part amends the Hazardous Substances and New Organisms Act 1996 (the **principal Act**). 15

59 Section 59 amended (Time limits and waivers)

After section 59(5), insert:

- (6) If the relevant TPP provision applies to an application to which subsection (1)(c) applies, the Authority must act under subsection (5) to extend (or further extend) the time limit given by subsection (1)(c) as the Authority considers appropriate to give effect to the relevant TPP provision. 20

- (7) An extension given for the purposes of **subsection (6)** applies for all submissions.
- (8) In **subsection (6)**, **relevant TPP provision** means Article 8.7.14 of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016) (technical barriers to trade: transparency: periods to comment on proposals). 5
- (9) Subsection (4) does not apply where the Authority is acting under subsection (5) for the purposes of **subsection (6)**.

Part 6

Amendments to Legislation Act 2012

- 60 Principal Act** 10
This Part amends the Legislation Act 2012 (the **principal Act**).
- 61 Section 3 amended (Purposes)**
After section 3(e), insert:
(ea) to provide for the publishing, to help meet international transparency obligations, of copies of and links to certain subordinate legislation: 15
- 62 Section 4 amended (Interpretation)**
(1) In section 4, definition of **legislative instrument**, paragraph (c), replace “this Act” with “Part 2”.
(2) In section 4, definition of **reprint**, paragraph (b), replace “this Act” with “Part 2”. 20
- 63 Section 13 amended (Complying with requirement to publish or notify in Gazette by publishing and notifying under this Act)**
(1) In the heading to section 13, replace “Act” with “Part”.
(2) In section 13(2), replace “Act” with “Part”.
- 64 New Part 2A inserted** 25
After Part 2, insert:

Part 2A

Publishing, for international transparency, of copies of and links to certain subordinate legislation

Purpose, overview, and definitions

36A Purpose of this Part

The purpose of this Part is to help New Zealand meet its international transparency obligations.

36B Overview of this Part

- (1) This Part applies to instruments if—
- (a) they are made under an enactment by a Minister of the Crown or a central government entity, and have a significant legislative effect; and
 - (b) they are not published (under Part 2) as, or as if they were, legislative instruments; and 5
 - (c) publication under this Part of copies of them, and links to them, would help New Zealand meet its international transparency obligations.
- (2) This Part—
- (a) requires copies of the instruments to be published on the administrator’s website, if no other enactment requires that; and 10
 - (b) requires to be in or with the copies, as so published, all the details necessary or desirable for meeting all applicable international transparency obligations; and
 - (c) requires links to them, as so published, to be forwarded to the Chief Parliamentary Counsel, and published on the legislation website. 15
- (3) This section is only a general guide to this Part.

36C Instrument, and other terms, defined

- (1) **Instrument**, in this Part, means an instrument—
- (a) that is made under an enactment by a Minister of the Crown or a central government entity (even if the Minister or entity is performing a statutorily independent function); and 20
 - (b) that has, or a portion of which has, under sections 37 to 40, a significant legislative effect; and
 - (c) that is related to international transparency obligations (because the publishing under this Part of copies of and links to the instrument would help meet those obligations); and 25
 - (d) that is not, and is not an instrument published (under section 14, or another enactment) as if it were, a legislative instrument.
- (2) In this Part, unless the context otherwise requires,— 30
- administrator**, for an instrument, means the administrator of the empowering enactment
- administrator’s website**, for an instrument, means an Internet site (other than the legislation website) maintained by or on behalf of the administrator
- central government entity** means any of the following (or a decision-making person or body in or related to, or acting through or for, any of the following): 35

- (a) a government department named in Schedule 1 of the State Sector Act 1988, including any departmental agency that, under section 27A and Schedule 1A of that Act, is part of that department:
- (b) a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004, but excluding a school board of trustees and a tertiary education institution): 5
- (c) the Reserve Bank of New Zealand:
- (d) any other instrument of the Crown prescribed, for the purposes of this paragraph, by an order made under **subsection (3)**
- details**, for an instrument at any time, means all information necessary or desirable for meeting, for that instrument at that time, all applicable international transparency obligations 10
- international transparency obligations** means obligations under paragraph 5 of Article 26.2 (publication) of Chapter 26 (transparency and anti-corruption) of the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016 15
- legislation website** means the Internet site required by section 9
- links**, for an instrument at any time, means all information necessary or desirable to enable a user at that time to access, using the legislation website, the instrument as published and made available on the administrator's website 20
- published and made available**, for copies of or links to an instrument and an Internet site, means that the copies or links are published electronically on, and so far as practicable able to accessed at, or downloaded from, the site.
- (3) The Governor-General may, by Order in Council, prescribe any other instrument of the Crown for the purposes of **paragraph (d)** of the definition of central government entity in **subsection (2)**. 25
- Duty to publish and make available copies on administrator's website*
- 36D Administrator must ensure instrument is published and made available**
- (1) This section applies to an instrument—
- (a) made after the commencement of **Part 6** (amendments to Legislation Act 2012) of the Trans-Pacific Partnership Agreement Amendment Act **2016**; and 30
- (b) unless an enactment other than this section requires a copy of the instrument to be published and made available on the administrator's website.
- (2) The administrator must ensure that a copy of the instrument is as soon as practicable published and made available on the administrator's website. 35

*Duty to ensure details are in or with copies as on administrator's website***36E Administrator must ensure details are in or with instrument**

- (1) This section applies to an instrument—
- (a) made after the commencement of **Part 6** (amendments to Legislation Act 2012) of the Trans-Pacific Partnership Agreement Amendment Act **2016**; and
 - (b) a copy of which is published and made available on the administrator's website.
- (2) The administrator must ensure that the instrument's details are in or with a copy of the instrument as published and made available on the administrator's website. 10
- (3) However, details of an instrument are taken to be in or with a copy of the instrument as published and made available on the administrator's website if—
- (a) the instrument amends (without also replacing wholly) a principal instrument; and 15
 - (b) the details relate to the amendments the instrument makes to the principal instrument; and
 - (c) the details are in or with a compilation of the principal instrument published and made available on the administrator's website.
- (4) The Chief Parliamentary Counsel must give all or any administrators, and ensure there is or are in force for all instruments, a direction or directions setting out, in general terms, the nature of their details. 20
- (5) A direction given under this section—
- (a) must as soon as practicable be published and made available on an Internet site maintained by or on behalf of the New Zealand Government: 25
 - (b) is not a legislative instrument, or a disallowable instrument, for the purposes of this Act, and does not have to be presented to the House of Representatives under section 41.
- (6) The administrator must, if required to do so by a document given by the Chief Parliamentary Counsel, republish a copy of the instrument promptly on the administrator's website in a form that complies with this section. 30

*Links to be forwarded and made available on legislation website***36F Links to be forwarded as directed**

- (1) This section applies to an instrument—
- (a) made after the commencement of **Part 6** (amendments to Legislation Act 2012) of the Trans-Pacific Partnership Agreement Amendment Act **2016**; and 35

- (b) a copy of which is published and made available on the administrator’s website.
- (2) The administrator must forward the instrument’s links to the Chief Parliamentary Counsel, without delay and in line with all applicable directions given under this section. 5
- (3) The Chief Parliamentary Counsel must give all or any administrators, and ensure there is or are in force for all instruments, a direction or directions setting out, in general terms, the nature of their links and the form and manner in which they are to be forwarded.
- (4) A direction given under this section— 10
- (a) must as soon as practicable be published and made available on an Internet site maintained by or on behalf of the New Zealand Government:
- (b) is not a legislative instrument, or a disallowable instrument, for the purposes of this Act, and does not have to be presented to the House of Representatives under section 41. 15
- 36G Links forwarded must be published and made available**
The Chief Parliamentary Counsel must ensure that links forwarded under **section 36F** are as soon as practicable published and made available on the legislation website.
- 65 Section 59 amended (Functions of PCO)** 20
- (1) After section 59(1)(f), insert:
- (fa) to arrange for the publication, to help meet international transparency obligations, of copies of and links to certain subordinate legislation (as provided in **Part 2A**):
- (2) In section 59(2)(c), replace “this Act” with “Part 2”. 25

Part 7

Amendments to Overseas Investment Act 2005

- 66 Principal Act**
This Part amends the Overseas Investment Act 2005 (the **principal Act**).
- 67 New section 8A inserted (Transitional, savings, and related provisions)** 30
After section 8, insert:
- 8A Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

68 Section 13 amended (What are overseas investments in significant business assets)

In section 13(1)(a)(ii), (b)(ii), and (c), after “\$100 million”, insert “or an alternative value threshold that applies in accordance with regulations made under **section 61A**”.

5

69 New section 61A inserted (Regulations regarding alternative value thresholds for overseas investments in significant business assets)

After section 61, insert:

61A Regulations regarding alternative value thresholds for overseas investments in significant business assets

10

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations in order to implement obligations in all or any of the following international agreements in respect of certain overseas investments in New Zealand in significant business assets by certain investors:

(a) the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016:

15

(b) the Free Trade Agreement between New Zealand and the Republic of Korea done at Seoul on 23 March 2015:

(c) the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation done at Wellington in July 2013:

20

(d) the Protocol on Investment to the New Zealand–Australia Closer Economic Relations Trade Agreement done at Wellington on 16 February 2011:

(e) the New Zealand–Hong Kong, China Closer Economic Partnership Agreement done at Hong Kong on 29 March 2010:

25

(f) the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008.

(2) Regulations under **subsection (1)** may provide for alternative value thresholds under section 13 that apply, on terms and conditions (if any), to 1 or more classes of transactions, persons, interests, rights, and assets.

30

(3) The Minister must be satisfied, before making a recommendation under this section, that the regulations do not provide for an alternative value threshold that is higher than the amount provided for in the relevant international agreement referred to in **subsection (1)**, but the text of the regulations may otherwise differ from the text of an agreement.

35

70 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 4** of this Act as the first schedule to appear after the last section of the principal Act.

Part 8**Amendments to Patents Act 2013**

5

71 Principal Act

This Part amends the Patents Act 2013 (the **principal Act**).

72 Section 9 amended (Disclosure to be disregarded in certain circumstances)

After section 9(1)(e), insert:

- (f) that disclosure occurred during the 1-year period immediately preceding the patent date and the disclosure was made by any of the following persons: 10
- (i) the patentee or nominated person:
 - (ii) any person from whom the patentee or nominated person derives title: 15
 - (iii) any person with the consent of the patentee or nominated person:
 - (iv) any person with the consent of any person from whom the patentee or nominated person derives title.

73 Section 20 amended (Term of patent)

After section 20(3), insert:

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- (4) *See subpart 10A* of Part 3 for extension of term.

74 Section 110 amended (Renewal fees for patents of addition)

In section 110(2), after “under section 109(2)”, insert “or **1110(3)(b)**”.

75 New subpart 10A of Part 3 inserted

In Part 3, after subpart 10, insert:

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Subpart 10A—Extension of term*Extension of term if unreasonable delay in granting patent***111A Requests for extension of patent if delay in granting patent**

- (1) A patentee may, in the prescribed manner, request an extension of the term of the patent if the patent is granted— 30
- (a) more than 5 years after the patent date; and

- (b) more than 3 years after the date on which the request for examination is made under section 64.

Example

A convention application is made on 1 December 2025, the request for examination is made on 1 April 2029, and the patent is granted on 1 October 2031 with a patent date of 1 December 2025.

No request for extension can be made because, although more than 5 years have passed since the patent date, the time between the request for examination and the grant of the patent is less than 3 years.

- (2) The request may be made only—
- (a) during the term of the patent; and
 - (b) within the prescribed time limit (if any).

111B Grant of extension of patent on ground of unreasonable delay in granting patent

- (1) The Commissioner must grant an extension of the term of a patent if the Commissioner is satisfied that—
- (a) period A exceeds 5 years, where **period A** is the period between the patent date and the date of grant of the patent minus the periods that must be disregarded under **subsection (2)**; and
 - (b) period B exceeds 3 years, where **period B** is the period between the date that the request for examination is made under section 64 and the date of grant of the patent minus the periods that must be disregarded under **subsection (2)**.
- (2) The Commissioner must disregard and subtract the following:
- (a) periods of time that are outside the direction or control of the Commissioner; and
 - (b) periods of time that are attributable to acts or omissions of all or any of the following:
 - (i) the applicant;
 - (ii) a person who makes an assertion under section 90;
 - (iii) a person who opposes the grant of a patent under section 92;
 - (iv) a person who requests re-examination under section 94;
 - (v) a person who opposes the restoration of a void or an abandoned patent application under section 127;
 - (vi) a person who makes an appeal to a court;
 - (vii) an agent of any of the persons referred to in **subparagraphs (i) to (vi)**.

- (3) The Governor-General may, by Order in Council, make regulations specifying periods of time, not inconsistent with **subsection (2)**, that must be disregarded for the purpose of this section.
- (4) The term of the extension granted must be equal to the period that the Commissioner determines to be the shorter of the following periods: 5
- (a) the period by which period A exceeds 5 years:
- (b) the period by which period B exceeds 3 years.

Example

A patent application is made on 1 December 2025, the complete specification is filed on 1 April 2026, the request for examination is made on 1 April 2029, and the patent is granted following opposition proceedings under section 92 on 1 October 2033 with a patent date of 1 April 2026. 10

A request for extension can be made because the time between the patent date and the grant of the patent is more than 5 years and the time between the request for examination and the grant of the patent is more than 3 years. 15

One year of the process was attributable to the time taken by the applicant to respond to examination reports under section 67 and to file a counter-statement to the notice of opposition, and to the time taken by an opponent to file evidence in support of the opponent's case.

The term of the extension is 0.5 years, calculated as the shorter of the following periods: 20

- 1.5 years, being the period by which 6.5 years (7.5-year interval between 1 April 2026 and 1 October 2033 minus 1 year) exceeds 5 years:
- 0.5 years, being the period by which 3.5 years (4.5-year interval between 1 April 2029 and 1 October 2033 minus 1 year) exceeds 3 years. 25

Compare: Patents Act 1994 s 36A (Singapore); Patents Rules 1995 r 51A (Singapore)

Extension of term of patents relating to pharmaceutical substances

111C Interpretation for sections 111C to 111O

In this section and **sections 111D to 111O**, unless the context otherwise requires,— 30

biologic means a pharmaceutical substance that is produced by a process that involves the use of recombinant DNA technology

marketing approval means a consent to the distribution of a medicine that is notified in the *Gazette* under section 20 of the Medicines Act 1981 or a provisional consent that is notified in the *Gazette* under section 23 of that Act 35

marketing approval application means an application that complies with the requirements of section 21 of the Medicines Act 1981

marketing approval process means the process under the Medicines Act 1981 beginning with the date on which a marketing approval application is made and ending with the date on which a marketing approval is notified in the *Gazette* 40

pharmaceutical substance means a substance (including a mixture or compound of substances) for therapeutic use whose application (or one of whose applications) involves—

- (a) a chemical interaction, or physico-chemical interaction, with a human physiological system; or
- (b) action on an infectious agent, or on a toxin or other poison, in a human body,—

but does not include a substance that is solely for use in *in vitro* diagnosis or *in vitro* testing

Regulator means any person or committee performing functions or exercising powers under the Medicines Act 1981 as part of the marketing approval process

therapeutic use means use for the purpose of—

- (a) preventing, diagnosing, curing, or alleviating a disease, ailment, defect, or injury in persons; or
- (b) influencing, inhibiting, or modifying a physiological process in persons; or
- (c) testing the susceptibility of persons to a disease or ailment

unreasonable curtailment has the meaning given in **section 111F(1)**.

Compare: Patents Act 1990 s 70, Schedule 1 (Aust)

111D Requests for extension of patent if unreasonable curtailment of effective patent term as result of marketing approval process

- (1) A patentee may, in the prescribed manner, request an extension of the term of the patent if—
 - (a) 1 or more pharmaceutical substances *per se* or biologics were disclosed in the complete specification relating to the patent application and were wholly within the scope of the claim or claims of that specification; and
 - (b) the patentee made a marketing approval application to distribute a product containing or consisting of that substance or biologic and marketing approval of the product has been granted; and
 - (c) that marketing approval is the first marketing approval for a product that contains or consists of that substance or biologic; and
 - (d) the term of the patent has not been previously extended under **section 111E**.
- (2) The request may be made only—
 - (a) during the term of the patent; and
 - (b) within the prescribed time limit (if any); and

- (c) if accompanied by a certificate from the Regulator for the purpose of **section 111F(2)**.

Compare: Patents Act 1990 s 70 (Aust)

111E Grant of extension of patent on ground of unreasonable curtailment of effective patent term as result of marketing approval process

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The Commissioner must grant an extension of the term of a patent if the Commissioner is satisfied, on the balance of probabilities, that—

- (a) there has been an unreasonable curtailment of the effective patent term as a result of the marketing approval process; and
- (b) the requirements of **section 111D** are satisfied in relation to the request; and
- (c) there is no opposition to the grant or, in spite of opposition, the Commissioner's decision, or the decision on appeal, is that the extension should be granted.

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Compare: Patents Act 1990 ss 74, 76 (Aust)

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111F What is unreasonable curtailment

- (1) In **sections 111D to 111I**, there is an **unreasonable curtailment** of the effective patent term as a result of the marketing approval process if—
- (a) the marketing approval is obtained after the date on which the patent is granted; and
- (b) period A exceeds 5 years in the case of a biologic and 3 years in the case of any other pharmaceutical substance, where **period A** is the period between the date on which the marketing approval application is made and the date on which the marketing approval is notified in the *Gazette* minus the periods that must be disregarded under **subsection (2)**.
- (2) In making calculations under **subsection (1)(b)** and **section 111G(b)**, the Commissioner must disregard and subtract periods that are stated in the certificate from the Regulator to be periods of time that were outside the direction or control of the Regulator.
- (3) The Commissioner must rely on, and must not inquire into the accuracy of, the statements contained in the certificate.

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Example

An application for marketing approval is made in respect of a higher risk medicine on 1 April 2030 and marketing approval is notified 783 days later. That 783-day period is made up of 280 days taken by the applicant in responding to requests for information by the Regulator plus 503 days taken by the Regulator to process the application. There is no unreasonable curtailment, and a request for extension of patent term cannot be made because, if the application relates to a biologic, 503

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days is less than 5 years and, if the application does not relate to a biologic, 503 days is less than 3 years.

Compare: Patents Act 1994 s 36A (Singapore); Patents Rules 1995 r 51A (Singapore)

111G Calculation of term of extension

The term of an extension granted under **section 111E** must be equal to the period that the Commissioner determines to be the shortest of the following periods:

- (a) the period equivalent to the interval between the date of grant of the patent and the date on which the marketing approval is notified in the *Gazette*:
- (b) the period by which period A in **section 111F(1)(b)** exceeds 5 years in the case of a biologic and 3 years in the case of any other pharmaceutical substance:
- (c) 2 years.

Example

A convention application for a pharmaceutical substance other than a biologic is made on 1 April 2026, the request for examination is made on 1 April 2029, the application for marketing approval is made on 1 April 2030, the patent is granted on 1 October 2030 with a patent date of 1 April 2026 (so the patent term will expire on 1 April 2046), and marketing approval is notified on 1 April 2036.

Two years of the marketing approval process is taken by the applicant in responding to requests for information by the Regulator.

The term of the extension is 1 year, calculated as the shortest of the following periods:

- 5.5 years, being 1 October 2030 to 1 April 2036:
- 1 year, being the period by which 4 years (6-year interval between 1 April 2030 and 1 April 2036 minus 2 years) exceeds 3 years:
- 2 years.

Compare: Patents Rules 1995 r 51A(8) (Singapore); Patents Act 1990 s 77 (Aust)

111H Opposition to extension on ground of unreasonable curtailment of effective patent term as result of marketing approval process

- (1) Any person may, in the prescribed manner (if any), oppose the extension of the term of a patent under **section 111E** on the ground that 1 or more of the requirements of **sections 111D to 111F** are not satisfied in relation to the request for the extension.
- (2) The Commissioner must notify the person who requested the extension if a person has given notice under **subsection (1)** and provide the person who requested the extension with a copy of that notice.
- (3) The Commissioner must publish in the journal that a person has given notice under **subsection (1)** and that the notice is open to public inspection.

111M Rights of patentee if extension granted after patent expires

- (1) This section applies if—
- (a) a patentee requests an extension of the term of a patent under this subpart; and
 - (b) the extension is granted after the term of the patent expires. 5
- (2) The patentee has, after the extension is granted, the same rights to start proceedings in respect of the doing of an act during the period specified in **subsection (3)** as if the extension had been granted at the time when the act was done.
- (3) The period is the period that commences on the expiry of the term of the patent and that ends on the day on which the extension was granted or the day on which the patent extension expires, whichever is the earlier. 10

Compare: Patents Act 1990 s 79 (Aust)

111N Commissioner not to make decision if court proceedings pending

- (1) This section applies if— 15
- (a) a patentee of a patent applies for an extension of the term of the patent under this subpart; and
 - (b) relevant proceedings in relation to the patent are pending.
- (2) The Commissioner must not make any decision under this subpart in relation to the patent without the leave of the court. 20

Compare: Patents Act 1990 s 79A (Aust)

111O Term of patent of addition

- (1) Despite section 109(1), the extension under this subpart of the term of a patent for the main invention does not automatically extend the term of a patent of addition. 25
- (2) The term of a patent of addition may be extended under this subpart, even if the patent for the main invention is not extended under this subpart.
- (3) If the term of a patent of addition is extended under this subpart,—
- (a) the extension begins at the end of the unextended term of the patent for the main invention; and
 - (b) when the extension begins, the patent of addition becomes an independent patent. 30
- (4) If—
- (a) the term of the patent for the main invention is extended under this subpart; and
 - (b) the term of the patent of addition is not extended under this subpart,— 35

the term of the patent of addition expires at the end of the unextended term of the patent for the main invention.

Compare: Patents Act 1990 s 83(2)–(4) (Aust)

76 New section 146A inserted (Other instances of no infringement)

After section 146, insert:

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146A Other instances of no infringement

See also section 111I (exclusive rights of patentee are limited if extension granted on ground of unreasonable curtailment).

77 Schedule 1 amended

In Schedule 1, after **Part 1** (as inserted by **section 7 of the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2015**), insert:

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Part 2

Transitional and savings provisions arising from Trans-Pacific Partnership Agreement Amendment Act 2016

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4 New 1-year grace period applies only to public disclosures that occur on or after commencement

Section 9(1)(f) applies only to disclosures that occur on or after the commencement of **section 72** of the Trans-Pacific Partnership Agreement Amendment Act **2016**.

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5 Sections 111A and 111B apply only if patent date is on or after commencement

Sections 111A and 111B (extension of term if unreasonable delay in granting patent) apply only to a patent with a patent date that is on or after the commencement of **section 75** of the Trans-Pacific Partnership Agreement Amendment Act **2016**.

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6 Sections 111C to 111G apply only if marketing approval application is made on or after commencement

Sections 111C to 111G (extension of term if unreasonable curtailment of effective patent term as result of marketing approval process) apply only if the marketing approval application is made on or after the commencement of **section 75** of the Trans-Pacific Partnership Agreement Amendment Act **2016**.

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Part 9 Amendments to Tariff Act 1988

78 Principal Act

This Part amends the Tariff Act 1988 (the **principal Act**).

79 Section 2 amended (Interpretation) 5

In section 2(1), insert in their appropriate alphabetical order:

specified TPP party means a country that is for the time being declared by Order in Council under **section 7A(1)(ba)** to be a specified TPP party for the purposes of this Act

TPP means the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016 10

80 Section 3 amended (The Tariff)

(1) In section 3(1), after “with a transitional safeguard measure”, insert “, an emergency action measure,”.

(2) After section 3(3), insert: 15

(4) In this section, **transitional safeguard measure**, **emergency action measure**, and **provisional transitional safeguard measure** have the same meanings as in **section 15A**.

81 Section 7A amended (Orders in Council about preferential countries)

(1) After section 7A(1)(b), insert: 20

(ba) declare a country that is a party to the TPP to be a specified TPP party for the purposes of this Act:

(2) In section 7A(3), after “specified TPA party”, insert “, a specified TPP party,”.

82 Section 15A amended (Interpretation)

(1) In section 15A, definition of **free trade agreement**, replace paragraph (e) with: 25

(e) the Republic of Korea FTA; or

(f) the TPP

(2) In section 15A, insert in their appropriate alphabetical order:

emergency action investigation means an emergency action investigation started under **section 15B(1A)** 30

emergency action measure means an emergency action measure applied under **section 15F**

transitional safeguard investigation means a transitional safeguard investigation started under section 15B(1)

- 83 Section 15B amended (Chief executive may undertake transitional safeguard investigation)**
- (1) In the heading to section 15B, after “**safeguard**”, insert “**or emergency action**”.
- (2) After section 15B(1), insert: 5
- (1A) The chief executive may undertake an emergency action investigation to ascertain whether textile or apparel goods that have been subject to tariff reduction or removal after the entry into force of the TPP—
- (a) are being imported in increased quantities (in absolute terms or relative to the domestic market); and 10
- (b) are causing, or threatening to cause, serious damage to an industry producing a like or directly competitive good.
- (3) In section 15B(2),—
- (a) after “safeguard investigation”, insert “or an emergency action investigation”; and 15
- (b) after “safeguard measure”, insert “or an emergency action measure”.
- 84 Section 15C amended (Investigative procedures)**
- (1) In section 15C(1),—
- (a) after “safeguard investigation”, insert “or emergency action investigation”; and 20
- (b) replace “transitional safeguard investigations” with “the investigation”.
- (2) In section 15C(1)(b)(i), after “the investigation”, insert “, which must, in the case of an emergency action investigation, include the criteria for a finding of serious damage or a threat of serious damage”.
- 85 Section 15D amended (Matters to be taken into account by chief executive)** 25
- (1) In section 15D, replace “section 15B” with “section 15B(1)”.
- (2) In section 15D, insert as subsection (2):
- (2) When the chief executive is investigating, for the purposes of **section 15B(1A)**, whether the importation of textile or apparel goods subject to tariff reduction or removal is causing or threatens to cause serious damage to an industry, he or she— 30
- (a) must evaluate the following matters:
- (i) the rate and amount of the increase in the volume of imports of the goods, in absolute terms or relative to the domestic market; and 35
- (ii) the economic impact of the increased importation of the goods on the industry, including changes in output, market share, profits,

productivity, employment, utilisation of capacity, inventories, exports, wages, domestic prices, and investment; and	
(iii) factors other than the imports that have damaged, or are damaging, the industry; and	
(iv) any other factors considered relevant to New Zealand's international obligations; but	5
(b) must not consider changes in technology or consumer preference in New Zealand as factors supporting a determination that importation of textile or apparel goods subject to tariff reduction or removal is causing or threatens to cause serious damage to an industry.	10

86 Section 15F amended (Application of transitional safeguard measure)

- (1) In the heading to section 15F, after “**safeguard**”, insert “**or emergency action**”.
- (2) After section 15F(1), insert:
 - (1A) The Minister may decide to apply an emergency action measure if he or she makes a determination, as a result of the investigation by the chief executive under section 15B, that textile or apparel goods—
 - (a) are being imported in increased quantities (in absolute terms or relative to the domestic market); and
 - (b) are causing, or threatening to cause, serious damage to an industry producing a like or directly competitive good.
- (3) In section 15F(2), after “transitional safeguard”, insert “or emergency action”.
- (4) In section 15F(2)(b), replace “subsection (1)” with “subsection (1) or **(1A)**”.
- (5) In section 15F(3), after “transitional safeguard”, insert “or emergency action”.
- (6) After section 15F(4)(a), insert:
 - (aa) any emergency action measure is applied only to the extent necessary to prevent or remedy serious damage and facilitate adjustment; and
- (7) In section 15F(4)(b) to (d), (5), and (6), after “transitional safeguard”, insert “or emergency action”.
- (8) After section 15F(6), insert:
 - (7) If the Minister applies an emergency action measure under this section, the chief executive must, in respect of each year or part of a year that the measure remains in force, provide a report to the affected TPP party on the action.

87 Section 15G amended (Extension of transitional safeguard measure)

- (1) In the heading to section 15G, after “**safeguard**”, insert “**or emergency action**”.
- (2) In section 15G, after “transitional safeguard”, insert “or emergency action”.

88 Section 15H amended (Provisional transitional safeguard measure)

After section 15H(7), insert:

- (8) No provisional transitional safeguard measure may be applied under the TPP.

Part 10**Amendments to the Tariff**

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89 Tariff amended

This Part, in accordance with section 9F(1) of the Tariff Act 1988, amends the Tariff.

90 Tariff, note 2 amended

In the notes to the Tariff, note 2, penultimate paragraph, after “TPA”, insert “, TPP”.

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91 Tariff, note 3 amended

In the notes to the Tariff, note 3, after the item relating to a country that is a specified TPA party, insert:

Country that is a specified TPP party	TPP
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Part 11**Amendments to Trade Marks Act 2002**

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92 Principal Act

This Part amends the Trade Marks Act 2002 (the **principal Act**).

93 Section 106 amended (Types of relief available for infringement of registered trade mark)

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In section 106, insert as subsection (2):

- (2) If an application is made to the court for relief, the court may grant such additional damages as the justice of the case requires, having regard to all the circumstances and, in particular, to—
- (a) the flagrancy of the infringement; and
 - (b) any benefit accruing to the defendant by reason of the infringement.

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94 Section 108 amended (Order for erasure, etc, of offending sign)

After section 108(2), insert:

- (3) Despite subsections (1) and (2), if any infringing goods are counterfeit goods (as defined in section 135), the court must, unless the court is satisfied that there are exceptional circumstances, make an order that requires the person who has infringed to—

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- (a) destroy the goods; or
- (b) deliver the goods to any person the court may direct (being a person who will destroy the goods).

95 Section 135 amended (Interpretation)

In section 135, insert in their appropriate alphabetical order: 5

counterfeit goods means, in relation to a registered trade mark, infringing goods that bear a sign—

- (a) that is identical with the registered trade mark and that is used in relation to any goods in respect of which the trade mark is registered; or
- (b) that is similar to the registered trade mark and that is used in relation to any goods in respect of which the trade mark is registered, if use of the sign would be likely to deceive 10

exporter has the same meaning as in section 2(1) of the Customs and Excise Act 1996

importer has the same meaning as in section 2(1) of the Customs and Excise Act 1996 15

specified goods means goods imported, or to be exported, other than for private and domestic use

96 New sections 135A and 135B and cross-heading inserted

After section 135, insert: 20

Detention of goods suspected of bearing infringing sign

135A Detention of goods suspected of bearing infringing sign

- (1) Any goods in the control of the Customs may be detained in the custody of the chief executive or a Customs officer if a Customs officer has reasonable cause to suspect that the goods may be goods on or in physical relation to which an infringing sign is used. 25
- (2) The chief executive must, as soon as is reasonably practicable after the goods are detained, take reasonable steps to notify the detention to—
 - (a) the owner of the trade mark (to enable that person to consider whether to give a notice under section 137); and 30
 - (b) the importer or exporter from whom the goods have been detained, if that person is identified but was not present when the detention took place.
- (3) The detention of any goods under **subsection (1)** is not rendered illegal by a failure to serve notice under **subsection (2)(a) or (b)**. 35

135B Release of goods

- (1) The goods are no longer detained under **section 135A(1)** if—
- (a) no notice under section 137 is given in respect of the goods within 3 working days after the date on which notice was given under **section 135A(2)(a)**; or 5
 - (b) a notice under section 137 is given in respect of the goods within 3 working days after the date on which notice was given under **section 135A(2)(a)** and—
 - (i) the notice given under section 137 is subsequently accepted under section 139 and the goods are subsequently detained under section 149; or 10
 - (ii) the notice given under section 137 is subsequently declined under section 139; or
 - (c) the chief executive considers that it is not reasonably practicable for notice to be given under **section 135A(2)(a)**; or 15
 - (d) the chief executive considers that there is no longer a reason to detain the goods.
- (2) The chief executive must release any goods no longer detained under **section 135A(1)** to the person entitled to them.
- (3) However, the chief executive may release goods under **subsection (2)** only if 20 the goods are not detained under section 149 and if—
- (a) every legal requirement as to the importation or exportation of the goods is satisfied; and
 - (b) every requirement made under any regulations that require the deposit of a security is satisfied; and 25
 - (c) the release of the goods is not contrary to law.

97 Section 142 replaced (Application of sections 143 to 146)

Replace section 142 with:

142 Application of sections 143 to 146

Sections 143 to 146 apply only to specified goods. 30

98 Section 143 amended (Determination to conduct investigation)

In section 143(b), delete “imported”.

99 Section 149 amended (Detention of goods bearing infringing sign)

- (1) In section 149(1), replace “any imported goods” with “any goods”.
- (2) Replace section 149(1)(c) with: 35

- (c) any proceedings under section 153 in respect of those goods (including any appeal) are determined by a decision that the goods are not specified goods on or in physical relation to which an infringing sign is used; or
- (3) In section 149(1)(e), replace “consignee” with “exporter”.
- 100 Section 150 amended (When detained goods may be released)** 5
In section 150(a), after “importation”, insert “or exportation”.
- 101 Section 151 amended (Forfeiture of goods by consent)**
In section 151(1), replace “consignee” with “exporter”.
- 102 Section 153 amended (Proceedings to determine whether goods bear infringing sign)** 10
Replace section 153(1) with:
- (1) The court may, on an application by any person, decide whether goods to which a determination under section 146 relates are specified goods on or in physical relation to which an infringing sign is used.
- 103 Section 154 amended (Powers of court)** 15
- (1) In section 154(1), replace “goods on or in physical relation to which an infringing sign is used, that have been imported other than for private and domestic use” with “specified goods on or in physical relation to which an infringing sign is used”.
- (2) After section 154(3), insert: 20
- (3A) Despite subsections (1) to (3), if the goods are counterfeit goods, the court must, unless the court is satisfied that there are exceptional circumstances, make an order that the goods be—
- (a) destroyed; or
- (b) delivered to any person the court may direct (being a person who will destroy the goods). 25
- (3) Replace section 154(4) with:
- (4) If, in proceedings under section 153, the court decides that goods to which a determination under section 146 relates are specified goods but that no infringing sign is used on or in physical relation to the goods, the court may make an order that a person who is a party to the proceedings pay compensation in such amount as the court thinks fit to the importer, exporter, or owner of the goods. 30
- 104 Section 157 amended (Protection of persons acting under authority of Act)**
In section 157(1), replace “sections 146 to 156” with “**sections 135A, 135B,** and 146 to 156”. 35

Part 12

Amendments to Wine Regulations 2006

105 Principal regulations

This Part amends the Wine Regulations 2006 (the **principal regulations**).

106 New regulation 8A inserted (Labelling of grape ice wine for export following entry into force of Trans-Pacific Partnership Agreement) 5

After regulation 8, insert:

8A Labelling of grape ice wine for export following entry into force of Trans-Pacific Partnership Agreement

(1) After the expiry of the TPP transitional period, no person may export grape wine that is labelled as Icewine, ice wine, ice-wine, or a similar variation of those terms unless the grape wine is made exclusively from grapes naturally frozen on the vine. 10

(2) In **subclause (1)**, **TPP transitional period** means the period of 3 years beginning with the date on which **section 106** of the Trans-Pacific Partnership Agreement Amendment Act **2016** (which inserts this regulation) comes into force. 15

107 Regulation 18 amended (Offences)

(1) In regulation 18(1), after “8(1),” insert “**8A**,”.

(2) In regulation 18(2), after “8,” insert “**8A**,”. 20

Schedule 1
New Schedule 1 of Agricultural Compounds and Veterinary
Medicines Act 1997 inserted

s 6

Schedule 1
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Trans-Pacific Partnership Agreement
Amendment Act 2016

10

1 Interpretation

In this Part,—

commencement means the commencement of this schedule

innovative agricultural compound application has the meaning given by section 72 (as in force before the commencement).

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2 Innovative agricultural compound applications made before commencement

Part 6, as in force before the commencement, continues to apply in relation to an innovative agricultural compound application made before the commencement as if the Trans-Pacific Partnership Agreement Amendment Act **2016** had not been enacted.

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Schedule 2
Replacing references in sections 175 to 179 and 181 to 189 of
Copyright Act 1994

s 30(1)

Section 175(1)	5
Section 175A	
Section 176	
Section 177(1) and (2)	
Section 178(1)	
Section 179	10
Section 181	
Section 182	
Section 183(1)	
Section 184(1)	
Section 185(1) and (3)	15
Section 186(1)	
Section 187(1) and (2)(a)	
Section 188(1)	
Section 188A(2)	
The heading to section 188B	20
Section 188B	

Schedule 3**New Schedule 1 of Dairy Industry Restructuring Act 2001 inserted****s 55****Schedule 1****Transitional, savings, and related provisions**

5

s 5A**Part 1****Provisions relating to Trans-Pacific Partnership Agreement
Amendment Act 2016**

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| 1 | Applying Article 2.30.2 of Trans-Pacific Partnership Agreement | 10 |
| (1) | This clause applies in relation to the first quota year for which US TPP rights are available if, in accordance with Article 2.30.2 of the Trans-Pacific Partnership Agreement (done at Auckland on 4 February 2016), the rights apply to part of the quota year only. | |
| (2) | Export licences in respect of the rights are to be allocated for the part of the quota year (despite clause 6 of Schedule 5B). | 15 |
| (3) | In this Act, references to an allocation period are to be read, in the case of those export licences, as references to the part of the quota year. | |

Schedule 4
New Schedule 1AA of Overseas Investment Act 2005 inserted

s 70

Schedule 1AA
Transitional, savings, and related provisions

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s 8A

Part 1
**Provisions relating to Trans-Pacific Partnership Agreement
Amendment Act 2016**

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| 1 | Application | 10 |
| | The amendments to the Act made by the Trans-Pacific Partnership Agreement Amendment Act 2016 , and the regulations made under section 61A , apply only to the acquisition of rights or interests in securities or of other property, or the establishment of any business, after the commencement of the Trans-Pacific Partnership Agreement Amendment Act 2016 . | 15 |
| 2 | No refunds | |
| | No person is entitled to a refund of any fee or charge paid to the regulator for a matter under Schedule 2 of the Overseas Investment Regulations 2005 on the ground that regulations made under section 61A mean that the matter is no longer relevant (for example, that a consent that had been applied for is no longer required). | 20 |
| 3 | Validation of exemptions for Australian investors | |
| | Nothing in the Trans-Pacific Partnership Agreement Amendment Act 2016 affects the validity of the Overseas Investment (Australia) Amendment Regulations 2013, which are also declared to have been lawfully made and to be and always have been valid. | 25 |