

Kiwifruit Industry Restructuring (Plant Variety Rights) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to encourage innovation and growth in the kiwifruit industry. The future of the industry depends on the development and exploitation of new varieties of kiwifruit. The Bill modifies the regulatory regime governing the export of kiwifruit so as to permit the export of fruit from new kiwifruit cultivars by the holders of plant variety rights and their licensees.

The current Kiwifruit Export Regulations 1999, made according to the Kiwifruit Industry Restructuring Act 1999 (the **principal Act**), inhibit the development or exploitation of new kiwifruit cultivars by giving Zespri Group Ltd (ZGL) substantial control over the choice of cultivars from which fruit will be exported (other than for consumption in Australia). The effect of the existing regulatory regime has been that any advance by other kiwifruit producers in new varieties must first be replicated or appropriated by ZGL before New Zealand growers can benefit from them in the international market. This discourages investment in the development of new varieties and discourages growers from planting new varieties. It is also inconsistent with the policy of the Plant Variety Rights Act 1987, which seek to encourage innovation by protecting the right of holders of Plant Variety Rights (PVRs) to commercialise fruit from those varieties, and with New Zealand's responsibilities as a member of the International Union for the Protection of New Varieties of Plants.

Clause by Clause Analysis

Clause 1 is the Title clause.

Clause 2 provides that the Act comes into force on 1 January 2011.

Clause 3 provides that the Act amends the Kiwifruit Industry Restructuring Act 1999.

Clause 4 sets out the purpose of the Act.

Clause 5 amends section 2.

Clause 6 amends section 26.

Clause 7 provides for the amendment of the Kiwifruit Export Regulations 1999.

Hon Sir Roger Douglas

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Contents

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Kiwifruit Industry Restructuring (Plant Variety Rights) Amendment Act **2010**.
- 2 Commencement**
This Act comes into force on 1 January 2011.
- 3 Principal Act amended**
This Act amends the Kiwifruit Industry Restructuring Act 1999.
- 4 Purpose**
The purpose of this Act is to permit the export of kiwifruit by the holders of plant variety rights and their licensees as of right.
- 5 Interpretation**
Section 2 is amended by inserting the following definitions in their appropriate order:

“**plant variety rights** means rights granted under sections 10(1) or 11 of the Plant Variety Rights Act 1987 or protected provisionally under section 9(1) of that Act

“**rights holder** means a holder of plant variety rights or any licensee or sub-licensee of such person in respect of such rights”

“**variety** has the same meaning as in section 2 of the Plant Variety Rights Act 1987”.
- 6 Regulations**
(1) Section 26(1)(b) is amended by adding “and otherwise than by rights holders exporting fruit of varieties in respect of which they hold plant variety rights”.

(2) Section 26 is amended by adding the following subsection:

“(4) Nothing in this Act, and no regulations made under subsection (1), shall have the effect of restricting the ability of a rights holder to export kiwifruit of the variety in respect of which he holds plant variety rights.”

7 Amendment of Kiwifruit Export Regulations 1999

Regulation 3(1) of the Kiwifruit Export Regulations 1999 (SR 1999/310) is revoked and following substituted:

“(1) Subject to **subclause (1A)**, no person may export kiwifruit otherwise than for consumption in Australia except as authorised or approved by the Board in accordance with these regulations.

(1A) A rights holder of plant variety rights may export kiwifruit of the variety in respect of which such rights are held.”