

Reprint  
as at 29 October 2019



## Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018

Public Act     2016 No 90  
Date of assent     21 November 2016  
Commencement     see section 2

Act name: amended, on 26 October 2018, by section 4 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Foreign Affairs and Trade.**

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### The Parliament of New Zealand enacts as follows:

#### 1 Title

- (1) This Act is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.
- (2) Every reference in any enactment and in any document to the Trans-Pacific Partnership Agreement Amendment Act 2016 must, unless the context otherwise requires, be read as a reference to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

Section 1(1): amended, on 26 October 2018, by section 4 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 1(2): inserted, on 26 October 2018, by section 5 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### 2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council on the recommendation of the Minister for Trade and Export Growth.
- (2) One or more orders may be made bringing different provisions into force on different dates and appointing different dates for different purposes.
- (3) However, the date appointed for the following provisions to come into force must not be earlier than the date on which the Trans-Pacific Partnership Agree-

ment, done at Auckland on 4 February 2016, enters into force for New Zealand:

- (a) sections 4 to 8, 28, 38, 39, 40(3) and (4), and 41 to 43 (which amend the Copyright Act 1994):
- (b) sections 73 to 76 (which amend the Patents Act 2013).

Section 2: replaced, on 26 October 2018, by section 6 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 2(1): sections 3, 9–27, 29–37, 37A–37G, 40(1), (2), (5), (6), 44(1)–(4), (9), 71, 72, 77, 89, 90(2), 91(2), and Parts 4–6, 8, 10, 11 brought into force, on 30 December 2018, by clause 2 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 Commencement Order 2018 (LI 2018/227).

## Part 1 Amendments to Copyright Act 1994

### 3 Principal Act

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

### 4 Section 2 amended (Interpretation)

- (1) In section 2(1), repeal the definition of **CMI** or **copyright management information**.
- (2) In section 2(1), insert in its appropriate alphabetical order:  
**RMI** or **rights management information** has the meaning given to it in section 226P

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

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

#### **6 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:
  - (b) the end of the period of 70 years from the end of the calendar year in which the work is made.

#### **7 Section 28 amended (Copyright vesting in certain international organisations)**

(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:
  - (ii) the end of the period of 70 years from the end of the calendar year in which the work is made:
  - (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
- (b) an original work that is a film is made available to the public as specified in section 23(2).

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

- (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.

**9 Section 135 amended (Definitions)**

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

**exporter** has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

**importer** has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

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

Section 9(1): amended, on 26 October 2018, by section 7(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 9(1): amended, on 26 October 2018, by section 7(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**10 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 is a pirated copy.
- (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
  - (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).

**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
  - (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 proving delivery,—
  - (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, in the absence of proof to the contrary, 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.
- (4) A notice that is sent to a person by email must, in the absence of proof to the contrary, be treated as received by the person not later than 2 days after the date on which it is sent.

**135C Release of items**

- (1) The item is no longer detained under section 135A(1) if—
  - (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—
    - (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
  - (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.

- (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
  - (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.

**11 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.

**12 Section 140 amended (Detention of pirated copy)**

- (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
- (3) In section 140(1)(e), replace “consignee” with “exporter”.
- (4) In section 140(3)(a), after “importation”, insert “or exportation”.

**13 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.

**14 Section 141A amended (Forfeiture of goods by consent)**

In section 141A, replace “consignee” with “exporter”.

**15 Section 142 amended (Powers of court)**

- (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
    - (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.

## 16 Section 169 amended (Interpretation)

(1) In section 169, insert in their appropriate alphabetical order:

**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

**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:

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

## 17 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).

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

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

After section 170, insert:

### Subpart 1—Performers’ moral rights

#### *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—

(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.
- (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:
  - (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:
  - (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.
- (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.
- (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
  - (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
    - (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**

- (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.
- (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:

- (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,—
  - (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
  - (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.

*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—

- (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—
- (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
  - (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.

**170I Application to parts of performances**

- (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.

**Subpart 2—Consent required for recording, live transmission, or use of recording of performance****19 Cross-heading above section 171 repealed**

Repeal the cross-heading above section 171.

**20 Section 172 amended (Infringement by use of recording made without performer’s consent)**

- (1) In section 172, replace “if” with “if”.
- (2) Replace section 172(a) with:
  - (a) without the performer’s consent and by means—
    - (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

**21 New subpart 3 heading in Part 9 inserted**

After section 172, insert:

### Subpart 3—Performers’ rights relating to film

#### **22 Section 173 amended (Copying of recordings)**

- (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”.

#### **23 Section 174 amended (Infringement by importing, possessing, or dealing with illicit recording)**

In section 174(1), after “recording”, insert “that is a film and”.

#### **24 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**

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.

#### **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
  - (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
  - (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.

- (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**

- (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—
- (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:
    - (i) the property rights in that country had expired:
    - (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.
- (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.

#### Subpart 5—Acts permitted in relation to performances

#### **25 Cross-heading above section 175 repealed**

Repeal the cross-heading above section 175.

#### **26 Amendments to sections 175 to 189**

- (1) In the provisions specified in Schedule 1, replace “this Part” with “subparts 2 to 4” in each place.
- (2) In section 180(1)(a), replace “section 177 or section 179” with “section 177, 179, or 192A(2)”.

#### **27 New section 192A and subpart 6 heading in Part 9 inserted**

After section 192, insert:

#### **192A Other acts permitted in relation to performers' property rights**

- (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—
- (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
  - (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
  - (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.

#### Subpart 6—Miscellaneous provisions

### 28 Section 193 replaced (Duration of rights)

Replace section 193 with:

#### 193 Duration of rights

- (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;
  - (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—
- (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.
- (3) In this section, **authorised** means authorised by or with the licence of the performer.

**29 Section 194 replaced (Transmission of rights)**

Replace section 194 with:

**194 Transmission of performers' rights**

- (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.

**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,—
  - (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
  - (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
  - (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
  - (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.

**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**

- (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
  - (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.

**194E Transmission of performers' property rights**

- (1) A performer's property rights are transmissible, as personal or moveable property, by—
  - (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—
  - (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.

**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**

- (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.

- (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.

#### **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.
- (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—
  - (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.

#### *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—
  - (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).
- (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.

- (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.
- (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
  - (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.
- (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.
- (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—
    - (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
  - (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.

- (7) In this section, **licensee** means a licensee under an exclusive performer’s rights licence.

### **30 Cross-heading above section 195 replaced**

Replace the cross-heading above section 195 with:

*Consent and waiver*

### **31 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.

### **32 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”.
- (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.

### **33 New section 196A inserted (Proceedings against the Crown)**

After section 196, insert:

#### **196A Proceedings against the Crown**

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).

### **34 New section 197A and cross-heading inserted**

After section 197, insert:

*Presumptions*

#### **197A Presumptions relevant to performances**

- (1) This section applies to proceedings brought under this Act with respect to—
- (a) a recording that is a sound recording of a performance:
  - (b) a copy of a recording referred to in paragraph (a).

- (2) If a person has previously been identified as the performer of a performance in accordance with section 170B(1)(c) or (d), it is presumed, until the contrary is proved,—
- (a) that rights are conferred by this Part in relation to the performance; and
  - (b) that the person is the person entitled to exercise those rights.

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

- (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”.
- (3) After section 198(1), insert:
- (1A) In subsections (1) and (4), **specified recording** means—
- (a) an illicit recording, if the person referred to in subsection (1) knows that the recording is an illicit recording; or
  - (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”.
- (5) Replace section 198(4) with:
- (4) Every person who commits an offence against subsection (1), (2), or (3) is liable on conviction,—
- (a) in the case of an offence against subsection (1), to a fine not exceeding \$10,000 for every specified recording to which the offence relates, but not exceeding \$150,000 in respect of the same transaction, or to imprisonment for a term not exceeding 5 years;
  - (b) in the case of an offence against subsection (2), to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 5 years;
  - (c) in the case of an offence against subsection (3), to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 months.
- (6) After section 198(5), insert:
- (6) Section 197A (which relates to presumptions) does not apply to proceedings for an offence against this section.

**36 Section 199 amended (Order for delivery up in criminal proceedings)**

After section 199(3), insert:

- (4) Section 197A (which relates to presumptions) applies in proceedings for an order under this section.

### 37 New section 201A inserted (Evidence in proceedings)

After section 201, insert:

#### 201A Evidence in proceedings

- (1) In proceedings for an offence against section 198, whether by way of a hearing in the first instance or by way of appeal or otherwise, the court may receive an affidavit as evidence of—
- (a) the existence of rights conferred by this Part in relation to a performance; and
  - (b) a person being entitled to exercise those rights.
- (2) A party to the proceedings may apply to the court to require a person whose evidence has been given by affidavit to attend the proceedings for the purposes of cross-examination; and the court may make an order accordingly.

### 37A Section 226 amended (Definitions of TPM terms)

- (1) Replace the heading to section 226 with “**Interpretation for sections 226A to 226E**”.
- (2) In section 226, insert in their appropriate alphabetical order:

**issuer of the TPM work** or **issuer of a TPM work** means—

- (a) a copyright owner of a TPM work that—
  - (i) issued a copy of the TPM work to the public; or
  - (ii) communicated the TPM work to the public; or
- (b) a person that, under licence from the copyright owner,—
  - (i) issued a copy of the TPM work to the public; or
  - (ii) communicated the TPM work to the public

**permitted act** means an act that—

- (a) is permitted under Part 3 or otherwise does not infringe copyright in the TPM work; and
- (b) does not infringe any specified performers’ rights in the TPM work

**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

Section 37A: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37B Section 226D amended (When rights of issuer of TPM work do not apply)**

In section 226D(2)(a), replace “a permitted act under Part 3” with “a permitted act”.

Section 37B: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37C Section 226E amended (User’s options if prevented from exercising permitted act by TPM)**

- (1) In section 226E(1), replace “a permitted act under Part 3” with “a permitted act”.
- (2) In section 226E(2), replace “a permitted act under Part 3” with “a permitted act”.
- (3) In section 226E(2), replace “copyright owner or the exclusive licensee” with “issuer of the TPM work” in each place.
- (4) In section 226E(3), replace “if that person” with “if that research is a permitted act and if that person”.
- (5) In section 226E(3)(b)(i), replace “copyright owner or exclusive licensee of the copyright to the use of” with “issuer of the TPM work to use”.

Section 37C: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37D Section 226F replaced (Meaning of copyright management information)**

Replace section 226F with:

**226F Meaning of copyright management information**

In sections 226G, 226H, and 226J, **CMI** or **copyright management information** means information attached to, or appearing in connection with communicating or making available, a copy of a copyright work that—

- (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
- (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).

Section 37D: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37E Section 226G amended (Interference with CMI prohibited)**

In section 226G(1), replace “, or embodied in,” with “, or appearing in connection with communicating or making available,”.

Section 37E: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37F Section 226H amended (Commercial dealing in work subject to CMI interference)**

In section 226H(1) and (2)(c), replace “, or embodied in,” with “, or appearing in connection with communicating or making available,”.

Section 37F: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**37G Section 226I amended (Contravention of section 226G or 226H)**

In section 226I, insert as subsections (2) and (3):

- (2) If the copyright 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 either of sections 226G and 226H as an author, a director, or a performer has in respect of an infringement of the rights conferred by Part 4 or 9.
- (3) Subsection (2) does not limit subsection (1).

Section 37G: inserted, on 26 October 2018, by section 8 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**38 Section 226 replaced (Definitions of TPM terms)**

Replace section 226 with:

**226AAA Overview of provisions relating to technological protection measures**

- (1) This section is intended only as a guide to the general scheme and effect of sections 226 to 226O (the **TPM provisions**).
- (2) The content of the TPM provisions is as follows:
  - (a) section 226 defines terms used in the TPM provisions, including a definition of technological protection measure (TPM) and TPM circumvention device;
  - (b) sections 226A to 226AC contain prohibitions related to circumventing a TPM, including prohibitions against—
    - (i) dealing in TPM circumvention devices;
    - (ii) providing services to circumvent a TPM;
    - (iii) circumventing an access control TPM;
  - (c) section 226B relates to the rights of the issuer of a TPM work:



- (d) section 226C contains offence provisions related to a person contravening the prohibitions in sections 226A to 226AC:
- (e) section 226D provides that certain TPM provisions are to be construed independently:
- (f) sections 226E to 226L and 226O contain exceptions from the prohibitions in sections 226A to 226AC as follows:
  - (i) section 226E contains a general exception for acts that do not infringe copyright or specified performers' rights, but that exception may be modified by regulations made under section 234(1)(qa):
  - (ii) sections 226F to 226K contain specific exceptions, including exceptions related to geographic market segmentation and encryption research. However, section 226N provides that those exceptions may be modified by regulations made under section 234(1)(qb):
  - (iii) section 226L contains an exception for acts permitted by regulations made under section 234(1)(qb):
  - (iv) section 226O contains an exception for acts done by not-for-profit entities:
- (g) section 226M contains a provision about the relationship of certain TPM provisions with the Crimes Act 1961.
- (3) Regulations made for the purpose of section 226E, 226L, or 226N under section 234(1)(qa) or (qb) are subject to the provisions contained in section 234(2) to (6).

## 226 Definitions of TPM terms

- (1) In sections 226AAA to 226O and 234, 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—
      - (i) issued a copy of the TPM work to the public; or
      - (ii) communicated the TPM work to the public; or
    - (b) a person that, under licence from the copyright owner,—

- (i) issued a copy of the TPM work to the public; or
- (ii) communicated the TPM work to the public

**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** has the meaning given to it by subsection (2).

- (2) A work is a **TPM work** if—
  - (a) it is a copyright work; and
  - (b) it is protected by a technological protection measure; and
  - (c) the copyright owner, or a person under licence from the copyright owner, has—
    - (i) issued a copy of the work to the public; or
    - (ii) communicated the work to the public.

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

Replace section 226A with:

#### 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 226E to 226L; and
  - (b) without the authority of the issuer of the TPM work.

**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 226E to 226L; and
  - (b) without the authority of the issuer of the TPM work.

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

**40 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”.
- (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 226E to 226L.
- (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.
- (5) In section 226B(4), after “129”, insert “and 197A”.
- (6) 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—
- (a) the performance is fixed in a sound recording; and
  - (b) the TPM work is the sound recording; and
  - (c) A issued a copy of the TPM work to the public or communicated the TPM work to the public.

#### 41 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

- (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—
    - (i) otherwise than in a manner that is permitted under sections 226E to 226L; 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—
    - (i) otherwise than in a manner that is permitted under sections 226E to 226L; 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
    - (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 Provisions to be construed independently**

The provisions of sections 226E to 226L and 226O, and of any regulations made under section 234(1)(qa) or (qb), are to be construed independently of one another so that the fact that an act is not permitted by one provision does not mean that it is not permitted by another provision.

**226E Acts that do not infringe copyright or specified performers' rights**

- (1) Nothing in sections 226A to 226C 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.
- (2) This section does not apply in the prescribed circumstances.

**226F Geographic market segmentation**

- (1) Nothing in sections 226A to 226C 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.
- (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.

Compare: Copyright Act 1968 s 10(1) definition of access control technological protection measure (Aust)

**226G Law enforcement, national security, and performing or exercising other functions, powers, or duties**

- (1) Nothing in sections 226A to 226C prevents the Crown (or any person acting on its behalf) 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.
- (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
- (d) the Reserve Bank of New Zealand.

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

### 226H Encryption research

- (1) Nothing in sections 226A to 226C prevents any person from circumventing a technological protection measure to enable the person to undertake encryption research if—
  - (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
  - (b) that person has taken all reasonable steps to obtain permission from the issuer of the TPM work to circumvent the technological protection measure for the purpose of the research; 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

**encryption technology** means the scrambling and descrambling of information using mathematical formulae or algorithms.

### 226I 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.
- (2) Nothing in sections 226A to 226C 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—
  - (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)

**226J 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.
- (2) Nothing in sections 226A to 226C 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
  - (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.

**226K Other acts relating to computers**

- (1) Nothing in sections 226A to 226C 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).

*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
  - (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—
    - (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*

- (3) An act under this subsection—
- (a) must relate to a copy of a computer program that is not an infringing copy; and

- (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.

*Protecting privacy*

- (4) An act under this subsection—
  - (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).

Compare: Copyright Act 1968 s 116AN(3), (5), (6) (Aust)

**226L Non-infringing acts expressly permitted by regulations**

- (1) Nothing in sections 226A to 226C 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) *See* section 234(3) (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).

**226M Relationship with Crimes Act 1961**

Nothing in sections 226E to 226L or 226O, or in regulations made under section 234(1)(qa) or (qb), confers an authorisation on a person for the purposes of sections 248 to 252 of the Crimes Act 1961.

**226N Sections 226F to 226K apply subject to prescribed modifications**

- (1) Sections 226F to 226K 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 226F to 226K—
  - (a) do not apply; or
  - (b) apply with the modifications or additions (or both) that are specified in the regulations.



- (3) See section 234(3) (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).

#### **226O 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
  - (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).
- (3) The persons are—
- (a) an educational establishment:
  - (b) an archive:
  - (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
    - (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).

#### *Rights management information*

#### **226P Definitions of RMI terms**

- (1) In this section and in sections 226Q to 226U, 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
  - (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—

- (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
  - (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).
- (2) In sections 226R to 226U, 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.

#### **226Q 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.
- (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
  - (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.

#### **226R 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.
- (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
  - (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.

**226S 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.
- (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
  - (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.

**226T Rights and remedies for contravention of sections 226Q to 226S**

- (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 226Q to 226S 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 226Q to 226S as an author, a director, or a performer has in respect of an infringement of the rights conferred by Part 4 or 9.
- (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.

**226U Offence of contravening sections 226Q to 226S**

- (1) This section applies if a person (A) contravenes any of sections 226Q to 226S in the course of a business.
- (2) A commits an offence if,—
  - (a) in the case of section 226Q,—

- (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 226R,—
  - (i) A knowingly distributes or imports the rights management information; and
  - (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 226S,—
  - (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.
- (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*

**226V Definitions**

- (1) In this section and sections 226W to 226ZA, unless the context otherwise requires,—
  - cable signal** means an encrypted programme-carrying cable signal that has been broadcast
  - 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
    - (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

**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
    - (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
    - (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.
- (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.

**226W 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—
- (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.
- (2) In this section, the decoding of a satellite signal is **unauthorised** if the decoding is without the authorisation of the lawful distributor.

**226X Prohibited receipt and decoding of satellite signals or distribution of decoded satellite signals**

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.

**226Y 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.
- (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.

**226Z Civil remedies for contravention of sections 226W to 226Y**

- (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 226W to 226Y.
- (2) B—
  - (a) has the same rights and remedies in relation to a contravention of any of sections 226W to 226Y 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 226Y, as a copyright owner has in relation to an infringing copy.
- (3) Section 134 applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (2)(b).

**226ZA Offence for contravention of section 226W or 226X**

- (1) A person who contravenes section 226W 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 226W otherwise than in the course of a business commits an offence and is liable on conviction to a fine not exceeding \$5,000.
- (3) A person who contravenes section 226X commits an offence and is liable on conviction to a fine not exceeding \$5,000.

*Fraudulently receiving programmes and unauthorised reception of transmissions*

**42 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”.

**43 Section 234 amended (Regulations)**

(1) After section 234(q), insert:

(qa) prescribing circumstances for the purposes of section 226E(2) (whether by reference to classes of persons, acts, works, or technological protection measures or otherwise):

(qb) prescribing matters for the purposes of sections 226L and 226N:

(2) In section 234, insert as subsections (2) to (6):

(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

(b) has considered those comments; and

(c) has had regard to the effect of the regulations on—

(i) the issue to the public of copies of works or the communication to the public of works (in each case, particularly in digital form); and

(ii) the use of works that do not infringe copyright in the work or specified performers’ rights; and

(d) in the case of subsection (1)(qa), is satisfied that the regulations are necessary or desirable in order to prevent section 226E(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; and

(e) in the case of subsection (1)(qb), is satisfied that the regulations are necessary or desirable in order to—

(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

(ii) prevent any of sections 226F to 226K 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—
- (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).
- (6) The explanatory note of regulations made under subsection (1)(qa) or (qb) must indicate that—
- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
  - (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
  - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

(3) Subsection (4) consequentially amends the Legislation Act 2019.

(4) In Schedule 4, Part 1, insert in its appropriate alphabetical order:

Copyright Act 1994

234(qa) and (qb)

Section 43(3): inserted, on 29 October 2019, by section 4 of the Legislation (Repeals and Amendments) Act 2019 (2019 No 59).

Section 43(4): inserted, on 29 October 2019, by section 4 of the Legislation (Repeals and Amendments) Act 2019 (2019 No 59).

#### **44 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.
- (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.

(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
    - (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
- (8) In Schedule 1, clause 18(2)(d), replace “50” with “70”.
- (9) In Schedule 1, after clause 43, insert:

## Part 2

### Provisions relating to Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018

#### Subpart 1—Copyright

#### 44 Interpretation

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 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

#### 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

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).

**Example**

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.

**Example**

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
  - (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:
    - (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:

- (a) section 22(1) to (3):
- (b) section 23(1):

- (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.

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
- 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 WIPO performers’ rights provisions come into force

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

**WIPO performers’ rights provisions** means the provisions of Part 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

*Application*

**48 Application**

- (1) If a performance is given on or after commencement, Part 9 (as amended by the WIPO performers’ rights provisions) applies to any act done on or after commencement in relation to that performance.
- (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.
- (4) This clause is subject to clauses 49 and 50.

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

- (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 WIPO 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 WIPO performers' rights provisions).
- (3) If a performer's rights have expired before commencement, the WIPO 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—
  - (a) the performer's rights exist immediately before commencement; and
  - (b) the performer's rights would, but for the WIPO 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).

**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 WIPO performers' rights provisions) except that each reference to 70 years in that section must be read as a reference to 60 years.

Section 44(9): amended, on 26 October 2018, by section 9(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(3) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(4) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(5) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(6) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(7) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(8) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(9) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 44(9): amended, on 26 October 2018, by section 9(10) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Part 2

### Amendments to Customs and Excise Act 1996

*[Repealed]*

Part 2: repealed, on 26 October 2018, by section 10 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### 45 Principal Act

*[Repealed]*

Section 45: repealed, on 26 October 2018, by section 10 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### 46 Section 119 amended (Application for Customs ruling)

*[Repealed]*

Section 46: repealed, on 26 October 2018, by section 10 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### 47 Section 120 amended (Making of Customs ruling)

*[Repealed]*

Section 47: repealed, on 26 October 2018, by section 10 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### 48 Section 122 amended (Effect of Customs ruling)

*[Repealed]*

Section 48: repealed, on 26 October 2018, by section 10 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Part 3

### Amendments to Dairy Industry Restructuring Act 2001

#### 49 Principal Act

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

#### 50 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
- (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

**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

- (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—
- (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).

## **51 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.

## **52 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.
- (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)”.

## **53 Section 27A amended (Increases or reductions in rights to export to designated markets after initial period)**

- (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.

**54 New Schedule 1 inserted**

Insert the Schedule 1 set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act.

**55 Schedule 5A amended**

- (1) After the Schedule 5A heading, insert:

**Part 1**  
**Exports other than exports under Trans-Pacific Partnership Agreement**

- (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.

<b>Market</b>	<b>Product</b>	<b>Further product description</b>
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

Market	Product	Further product description
United States of America	Concentrated milk	United States of America after the Year 29 referred to in paragraph 30(b). 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 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 33(b) and (c).
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).

## 56 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 4

### Amendment to Hazardous Substances and New Organisms Act 1996

#### 57 Principal Act

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

#### 58 Section 59 amended (Time limits and waivers)

After section 59(5), insert:

- (6) If the relevant CPTPP or 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 CPTPP or TPP provision.
- (7) An extension given for the purposes of subsection (6) applies for all submissions.
- (8) In subsection (6), **relevant CPTPP or TPP provision** means—
  - (a) 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):
  - (b) that provision as incorporated into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile, on 8 March 2018, by Article 1.1 of that agreement.
- (9) Subsection (4) does not apply where the Authority is acting under subsection (5) for the purposes of subsection (6).

Section 58: amended, on 26 October 2018, by section 11(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 58: amended, on 26 October 2018, by section 11(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Part 5

### Amendments to Legislation Act 2012

#### 59 Principal Act

This Part amends the Legislation Act 2012 (the **principal Act**).

#### 60 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:

**61 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”.

**62 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”.

**63 New Part 2A inserted**

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
  - (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 maker’s website, if no other enactment requires that; and
  - (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 central website.
- (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
  - (b) that has, or a portion of which has, under section 39 (read with the related sections 37 and 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
  - (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,—

**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):

- (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);
- (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)

**central website** means an Internet site maintained by or on behalf of the New Zealand Government

**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

**international transparency obligations** means obligations—

- (a) 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; or
- (b) under that provision as incorporated into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile, on 8 March 2018, by Article 1.1 of that agreement

**links**, in relation to an instrument at any time, means all information necessary or desirable to enable a user at that time to access, using the central website, the instrument as published and made available on the maker's website

**maker**, in relation to an instrument, means the person empowered to make the instrument

**maker's website**, in relation to an instrument, means an Internet site (other than the central website) maintained by or on behalf of the maker

**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).

*Duty to publish and make available copies on maker's website*

**36D Maker must ensure instrument is published and made available**

- (1) This section applies to an instrument—
- (a) made after the commencement of Part 5 (amendments to Legislation Act 2012) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018; and
  - (b) unless an enactment other than this section requires a copy of the instrument to be published and made available on the maker's website.
- (2) The maker must ensure that a copy of the instrument is as soon as practicable published and made available on the maker's website.

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

**36E Maker must ensure details are in or with instrument**

- (1) This section applies to an instrument—
- (a) made after the commencement of Part 5 (amendments to Legislation Act 2012) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018; and
  - (b) a copy of which is published and made available on the maker's website.
- (2) The maker must ensure that the instrument's details are in or with a copy of the instrument as published and made available on the maker's website.
- (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 maker's website if—
- (a) the instrument amends (without also replacing wholly) a principal instrument; and
  - (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 maker's website.

- (4) The Chief Parliamentary Counsel must give all or any makers, 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.
- (5) A direction given under this section—
  - (a) must as soon as practicable be published and made available on the central website:
  - (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 maker must, if required to do so by a document given by the Chief Parliamentary Counsel, republish a copy of the instrument promptly on the maker's website in a form that complies with this section.

*Links to be forwarded and made available on central website*

**36F Links to be forwarded as directed**

- (1) This section applies to an instrument—
  - (a) made after the commencement of Part 5 (amendments to Legislation Act 2012) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018; and
  - (b) a copy of which is published and made available on the maker's website.
- (2) The maker must forward the instrument's links to the Chief Parliamentary Counsel, without delay and in line with all applicable directions given under this section.
- (3) The Chief Parliamentary Counsel must give all or any makers, 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—
  - (a) must as soon as practicable be published and made available on the central website:
  - (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.

**36G Links forwarded and other instruments must be published and made available**

The Chief Parliamentary Counsel must ensure that the following are as soon as practicable published and made available on the central website:

- (a) links forwarded under section 36F:

(b) legislative instruments published under section 6 (including instruments published under section 14).

Section 63: amended, on 26 October 2018, by section 12(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(3) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(4) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(5) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(6) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(7) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(8) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(9) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(10) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(11) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(12) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(13) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(14) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(15) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(16) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(17) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(18) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(19) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(20) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(21) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(22) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(23) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 63: amended, on 26 October 2018, by section 12(24) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**64 Section 59 amended (Functions of PCO)**

(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”.

**65 Schedule 2 amended**

In Schedule 2, insert in its appropriate alphabetical order:

Copyright Act 1994 234(1)(qa) and (qb)

**Part 6**

**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)**

*[Repealed]*

Section 67: repealed, on 22 October 2018, by section 51(2) of the Overseas Investment Amendment Act 2018 (2018 No 25).

**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 monetary threshold that applies in accordance with regulations made under section 61A”.

**68A Section 61 amended (Regulations)**

In section 61(1)(i) (as replaced by section 46(4) of the Overseas Investment Amendment Act 2018), replace “either or both of overseas investments in sensitive land and overseas investments in significant business assets” with “overseas investments in sensitive land”.

Section 68A: inserted, on 26 October 2018, by section 13 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

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

After section 61, insert:

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

- (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:
  - (aaa) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile, on 8 March 2018:
  - (a) the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016:
  - (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 on 10 July 2013:
  - (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:
  - (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:
  - (g) the Trans-Pacific Strategic Economic Partnership Agreement, done at Wellington on 18 July 2005.
- (2) Regulations made under subsection (1) may provide for alternative monetary thresholds under section 13 that apply, on terms and conditions (if any), to 1 or more classes of transactions, persons, interests, rights, and assets.
- (3) The Minister must be satisfied, before making a recommendation under this section, that the regulations do not provide for an alternative monetary 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.
- (4) Regulations made under subsection (1) may incorporate by reference any provisions of an international agreement referred to in that subsection.
- (5) Regulations made under subsection (1) may be made only to implement obligations in an international agreement that has entered into force for New Zealand.

Section 69: amended, on 26 October 2018, by section 14(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 69: amended, on 26 October 2018, by section 14(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).



Section 69: amended, on 26 October 2018, by section 14(3) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**70 Schedule 1AA amended**

In Schedule 1AA, after Part 1, insert the Part 2 set out in Schedule 3 of this Act.

Section 70: replaced, on 22 October 2018, by section 51(3) of the Overseas Investment Amendment Act 2018 (2018 No 25).

**Part 7  
Amendments to Patents Act 2013**

**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:
  - (i) the patentee or nominated person:
  - (ii) any person from whom the patentee or nominated person derives title:
  - (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:

- (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 111O(3)(b)”.

**75 New subpart 10A of Part 3 inserted**

In Part 3, after subpart 10, insert:

## 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—
- (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.

**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 opposes a proposed amendment to a complete specification after acceptance of the complete specification under section 87:
  - (iii) a person who makes an assertion under section 90:
  - (iv) a person who opposes the grant of a patent under section 92:
  - (v) a person who requests re-examination under section 94:
  - (vi) a person who opposes the restoration of a void or an abandoned patent application under section 127:
  - (vii) a person (other than the Commissioner) who initiates a hearing under section 208:
  - (viii) a person (other than the Commissioner) who makes an appeal to the court or the Court of Appeal or the Supreme Court:
  - (ix) an agent of any of the persons referred to in subparagraphs (i) to (viii); and
- (c) periods of time that are attributable to directions in force under section 132.
- (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 shortest of the following periods:
- (a) the period by which period A exceeds 5 years:
  - (b) the period by which period B exceeds 3 years:
  - (c) 2 years.

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**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.

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.

Six months of the process were attributable to the periods of time that are attributable to acts or omissions of the applicant in responding to examination reports under section 67.

One year of the process was taken up with opposition to the grant of the patent. Of this, 6 months were attributable to acts or omissions of a person opposing the grant (including the time taken by the opponent to file a notice of opposition and to file evidence) and to acts or omissions of the patent applicant (including the time taken by the applicant to file a counter-statement and to file evidence). The other 6

months of the opposition (including the time waiting for the opposition hearing and for the opposition decision) are not disregarded time.

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

- 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:
- 2 years.

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,—

**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

**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*

**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 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 a substance or biologic that is one of those referred to in paragraph (a) and marketing approval of that product has been granted; and
  - (c) that marketing approval is the first marketing approval for a product that contains or consists of any of the substances or biologics referred to in paragraph (a); and
  - (d) the term of the patent has not been previously extended under section 111E.

**Example**

Company D is the owner of a patent for an invention that is a pharmaceutical substance *per se* (not a product). The complete specification discloses and claims substances A, B, and C.

Company D makes 3 applications for marketing approval on the same date: 1 for a product that contains substance A, 1 for a product that contains substance B, and 1 for a product that consists of substance C. The Regulator grants marketing approval first for the product that contains substance B.

Company D can request an extension under this section for unreasonable curtailment of effective patent term as a result of the first marketing approval process for the invention, that is, for the product that contains substance B. The Commissioner cannot consider a request for extension of patent term that nominates substances A or C.

- (2) The request may be made only—
  - (a) during the term of the patent; and
  - (b) within the prescribed time limit; and
  - (c) if a certificate from the Regulator for the purpose of section 111F(2) is filed within the prescribed time limit.

Compare: Patents Act 1990 ss 70, 71 (Aust)

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

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.

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

**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.

**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 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.

- (4) The Commissioner must give the person who requested the extension and the opponent a reasonable opportunity to be heard before the Commissioner decides the case.

Compare: Patents Act 1990 s 75 (Aust)

#### **111I Exclusive rights of patentee are limited if extension granted on ground of unreasonable curtailment**

It is not an infringement of the patent for a person to do either or both of the following during the term of a patent extension under section 111E:

- (a) exploit any form of the invention for a purpose other than a therapeutic use:
- (b) exploit any form of the invention for a therapeutic use other than the use for which the marketing approval referred to in section 111D(1)(c) was granted.

Compare: Patents Act 1990 s 78 (Aust)

*General provisions about all extensions of term under this subpart*

#### **111J Notification and public inspection of request for extension**

If a patentee makes a request for an extension of the term of a patent under this subpart, the Commissioner must enter the request in the patents register and publish in the journal a notice stating that the request has been made and is open to public inspection.

Compare: Patents Act 1990 s 72 (Aust)

#### **111K Notification of grant or refusal of request for extension**

- (1) If the Commissioner grants an extension of the term of a patent under this subpart, the Commissioner must give notice of the grant to the person who made the request, enter the extension in the patents register, and publish a notice of the extension in the journal.
- (2) If the Commissioner refuses to grant an extension under this subpart, the Commissioner must give notice of the refusal to the person who made the request, enter the refusal in the patents register, and publish a notice of the refusal in the journal.

Compare: Patents Act 1990 s 74(2), (4) (Aust)

#### **111L Withdrawal of request for extension**

- (1) A patentee who has requested an extension of the term of a patent under this subpart may withdraw the request in the prescribed manner.
- (2) If a request is withdrawn, the Commissioner must enter the withdrawal in the patents register and publish in the journal a notice stating that the request has been withdrawn.

Compare: Patents Act 1990 s 73 (Aust)



**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.
- (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.

Compare: Patents Act 1990 s 79 (Aust)

**111N Commissioner not to make decision if certain proceedings pending**

- (1) This section applies if—
  - (a) a patentee of a patent applies for an extension of the term of the patent under this subpart; and
  - (b) any of the following applies in relation to the patent:
    - (i) relevant proceedings are pending; or
    - (ii) a re-examination has been requested, directed, or otherwise commenced under section 95; or
    - (iii) an application has been made to the Commissioner under section 112 to revoke the patent.
- (2) The Commissioner must not make any decision under this subpart in relation to the patent—
  - (a) without the leave of the court, if relevant proceedings are pending; or
  - (b) before the Commissioner has made a decision on whether to revoke the patent in whole or in part under section 99, if subsection (1)(b)(ii) applies; or
  - (c) before the Commissioner has made a decision on the application for revocation of the patent made under section 112, if subsection (1)(b)(iii) applies.

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.
- (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.
- (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,—
- 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:

**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 1AA amended**

In Schedule 1AA, after Part 1 (as inserted by section 6 of the Patents (Tasman Patent Attorneys and Other Matters) Amendment Act 2016), insert:

**Part 2**

**Transitional and savings provisions arising from Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018**

**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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

**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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

**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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

Section 77: amended, on 26 October 2018, by section 15(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 77: amended, on 26 October 2018, by section 15(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 77: amended, on 26 October 2018, by section 15(3) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 77: amended, on 26 October 2018, by section 15(4) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**Part 8  
Amendments to Tariff Act 1988**

**78 Principal Act**

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

**79 Section 2 amended (Interpretation)**

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

**CPTPP** means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile, on 8 March 2018

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

**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

Section 79: amended, on 26 October 2018, by section 16 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**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:

- (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:
- (baa) declare a country that is a party to the CPTPP to be a specified CPTPP party for the purposes of this Act:
- (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 CPTPP party, a specified TPP party.”

Section 81(1): amended, on 26 October 2018, by section 17(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Section 81(2): replaced, on 26 October 2018, by section 17(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

### 82 Section 15A amended (Interpretation)

- (1) In section 15A, definition of **free trade agreement**, replace paragraph (e) with:
- (e) the Republic of Korea FTA; or
- (f) the CPTPP; or
- (g) 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)
- 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)

Section 82(1): amended, on 26 October 2018, by section 18 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

### 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:
- (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 CPTPP or the TPP—

- (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 15B(2),—
- (a) after “safeguard investigation”, insert “or an emergency action investigation”; and
  - (b) after “safeguard measure”, insert “or an emergency action measure”.
- Section 83(2): amended, on 26 October 2018, by section 19 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**84 Section 15C amended (Investigative procedures)**

- (1) In section 15C(1),—
- (a) after “safeguard investigation”, insert “or emergency action investigation”; and
  - (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)**

- (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—
- (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
    - (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

- (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.

#### **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 CPTPP or TPP party, as the case may be, on the action.

Section 86(8): amended, on 26 October 2018, by section 20 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

#### **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 CPTPP or the TPP.

Section 88: amended, on 26 October 2018, by section 21 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Part 9 Amendments to the Tariff

### 89 Tariff amended

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

### 90 Tariff, note 2 amended

- (1) In the notes to the Tariff, note 2, penultimate paragraph, after “TPA”, insert “, TPP”.
- (2) In the notes to the Tariff, note 2, penultimate paragraph, after “CN”, insert “, CPT”.

Section 90(2): inserted, on 26 October 2018, by section 22 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

### 91 Tariff, note 3 amended

- (1) 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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- (2) In the notes to the Tariff, note 3, after the item relating to China, insert:

Country that is a specified CPTPP party	CPT
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Section 91(2): inserted, on 26 October 2018, by section 23 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Part 10 Amendments to Trade Marks Act 2002

### 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)

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.

**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—
- (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:

**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

**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

**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:

*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 are goods on or in physical relation to which an infringing sign is used.
- (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



- (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).

**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
  - (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
    - (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
  - (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 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
  - (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.

**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:
  - (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)**

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)**

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)**

- (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:
  - (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).
- (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.

**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”.

**Part 11**  
**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)**

After regulation 8, insert:

**8A Labelling of grape ice wine for export**

- (1) After the expiry of the 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.
- (2) In subclause (1), **transitional period** means the period of 3 years beginning with the date on which section 106 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (which inserts this regulation) comes into force.

Section 106: replaced, on 26 October 2018, by section 24 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

**107 Regulation 18 amended (Offences)**

- (1) In regulation 18(1), after “8(1),”, insert “8A,”.
- (2) In regulation 18(2), after “8,”, insert “8A,”.

**Schedule 1**  
**Replacing references in sections 175 to 179 and 181 to 189 of**  
**Copyright Act 1994**

s 26(1)

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

## **Schedule 2**

### **New Schedule 1 of Dairy Industry Restructuring Act 2001 inserted**

s 54

#### **Schedule 1**

#### **Transitional, savings, and related provisions**

s 5A

#### **Part 1**

#### **Provisions relating to Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018**

##### **1 Applying Article 2.30.2 of Trans-Pacific Partnership Agreement**

- (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).
- (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 2: amended, on 26 October 2018, by section 25 of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

## Schedule 3

### Schedule 1AA of Overseas Investment Act 2005 amended

s 70

Schedule 3 heading: replaced, on 22 October 2018, by section 51(4) of the Overseas Investment Amendment Act 2018 (2018 No 25).

#### Part 2

#### Provisions relating to Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018

##### 11 Application

The amendments to the Act made by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018, 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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

##### 12 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).

##### 13 Validation of exemptions for Australian investors

Nothing in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 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.

Schedule 3: amended, on 26 October 2018, by section 26(1) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Schedule 3: amended, on 26 October 2018, by section 26(2) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Schedule 3: amended, on 26 October 2018, by section 26(3) of the Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41).

Schedule 3: amended, on 22 October 2018, by section 51(5)(a) of the Overseas Investment Amendment Act 2018 (2018 No 25).

Schedule 3: amended, on 22 October 2018, by section 51(5)(c) of the Overseas Investment Amendment Act 2018 (2018 No 25).

## **Reprints notes**

### **1    *General***

This is a reprint of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Legislation (Repeals and Amendments) Act 2019 (2019 No 59): section 4

Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 Commencement Order 2018 (LI 2018/227)

Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018 (2018 No 41)

Overseas Investment Amendment Act 2018 (2018 No 25): section 51



# **Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 Commencement Order 2018**

Patsy Reddy, Governor-General

## **Order in Council**

At Wellington this 12th day of November 2018

Present:

Her Excellency the Governor-General in Council

This order is made under section 2 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Trade and Export Growth.

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## **Order**

### **1 Title**

This order is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 Commencement Order 2018.



## 2 Commencement of CPTPP-related provisions

The following provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 come into force on 30 December 2018:

- (a) sections 3, 9 to 27, 29 to 37, 37A to 37G, 40(1), (2), (5), and (6), and 44(1) to (4) (which relate to the Copyright Act 1994):
- (b) section 44(9) (but only for the purpose of bringing into force the Part 2 heading, the subpart 2 heading, clauses 47 and 48 of Schedule 1, and the cross-headings above those clauses) (which relate to the Copyright Act 1994):
- (c) Part 4 (which relates to the Hazardous Substances and New Organisms Act 1996):
- (d) Part 5 (which relates to the Legislation Act 2012):
- (e) Part 6 (which relates to the Overseas Investment Act 2005):
- (f) sections 71 and 72 (which relate to the Patents Act 2013):
- (g) section 77 (but only for the purpose of bringing into force the Part 2 heading and clause 4 of Schedule 1AA) (which relates to the Patents Act 2013):
- (h) Part 8 (which relates to the Tariff Act 1988):
- (i) sections 89, 90(2), and 91(2) (which relate to the Tariff):
- (j) Part 10 (which relates to the Trade Marks Act 2002):
- (k) Part 11 (which relates to the Wine Regulations 2006).

Rachel Hayward,  
for the Clerk of the Executive Council.

### Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order brings into force, on 30 December 2018, the provisions that implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the **CPTPP**).

There are other provisions in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 that are not brought into force by this order. Those provisions relate only to the Trans-Pacific Partnership Agreement (the **TPP**).

For an explanation of the differences between the CPTPP and the TPP, *see* <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/tpp-and-cptpp-the-differences-explained/>

### **Regulatory impact assessment**

The Ministry of Foreign Affairs and Trade produced a national interest analysis in March 2018 (which incorporated all elements of a regulatory impact assessment) to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the national interest analysis can be found at—

- <https://www.mfat.govt.nz/assets/Uploads/Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP-National-Interest-Analysis.pdf>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 15 November 2018.

This order is administered by the Ministry of Foreign Affairs and Trade.