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**Council for Trade-Related Aspects  
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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS  
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

**Australia**

The present document reproduces<sup>1</sup> the Plant Breeder's Rights Act<sup>2</sup> as notified by Australia under Article 63.2 of the Agreement (see document IP/N/1/AUS/1/Rev.1).

**Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES  
A LA PROPRIETE INTELLECTUELLE NOTIFIEES  
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

**Australie**

Le présent document contient le texte<sup>1</sup> de la Loi sur les droits des obtenteurs<sup>2</sup>, notifiée par l'Australie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/AUS/1/Rev.1).

**Consejo de los Aspectos de los Derechos de Propiedad  
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD  
INTELLECTUAL NOTIFICADOS DE CONFORMIDAD CON EL  
PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

**Australia**

En el presente documento se reproduce<sup>1</sup> la Ley de Derechos de los Mejoradores de Plantas<sup>2</sup> notificada por Australia de conformidad con el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/AUS/1/Rev.1).

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<sup>1</sup>In English only/anglais seulement/inglés solamente.

<sup>2</sup>The present document also contains the text of the now repealed Plant Variety Rights Act 1987, and amendments thereto, which, as Australia notified by a communication dated 13 May 1997, is still relevant in some situations under the transitional Arrangements of the Plant Breeder's Rights Act 1994./Le présent document contient aussi le texte de la Loi de 1987 sur les droits concernant les variétés végétales, aujourd'hui abrogée, et de ses amendements qui, comme l'Australie l'a indiqué dans une communication datée du 13 mai 1997, est encore applicable dans certains cas en vertu des dispositions transitoires prévues dans la Loi de 1994 sur les droits des obtenteurs./El presente documento también contiene el texto de la ahora derogada Ley de Derechos relativos a las Variedades Vegetales de 1987, y sus modificaciones, la cual, según notificó Australia en una comunicación de fecha 13 de mayo de 1997, se aplica aún en algunas situaciones en el marco de las disposiciones de transición de la Ley de Derechos de los Mejoradores de Plantas de 1994.



# Plant Breeder's Rights Act 1994

No. 110 of 1994

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CONVENTION



# Plant Breeder's Rights Act 1994

No. 110 of 1994

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**An Act to provide for the granting of proprietary rights to breeders of certain new varieties of plants and fungi, to repeal the *Plant Variety Rights Act 1987*, and for related purposes**

[Assented to 5 September 1994]

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Plant Breeder's Rights Act 1994*.

### 5 Commencement

2.(1) Subject to subsection (2), the provisions of this Act commence on a day to be fixed by Proclamation.

(2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

## Definitions

3.(1) In this Act, unless the contrary intention appears:

“AAT” means the Administrative Appeals Tribunal;

“AAT Act” means the *Administrative Appeals Tribunal Act 1975*;

“Advisory Committee” means the Plant Breeder’s Rights Advisory Committee established by section 63;

“applicant”, in relation to an application, means the person currently shown in the application as the person making the application;

“application” means an application under section 24 for PBR in a plant variety to which this Act extends;

“breeder”, in relation to a new plant variety, means:

(a) subject to paragraph (c), if the variety was bred by one person only—the person; or

(b) subject to paragraph (c), if the variety was bred by 2 or more persons (whether jointly or independently and whether at the same time or different times)—each of those persons; or

(c) if the variety was bred:

(i) by a person in the course of performing duties or functions as a member or employee of a body (whether incorporate or unincorporate); or

(ii) by 2 or more persons in the course of performing duties as a member or employee of such a body;

the body of which that person or each of those persons is a member or employee;

and includes any person or body that is the successor in title to the person referred to in paragraph (a), to any of the persons referred to in paragraph (b) or the body referred to in paragraph (c);

“conditioning”, in relation to propagating material of a plant variety, means:

(a) cleaning, coating, sorting, packaging or grading of the material; or

(b) any other similar treatment;

undertaken for the purpose of preparing the material for propagation or sale;

“contracting party” means a State, or an intergovernmental organisation, that is a party to the Convention;

“Convention” means the International Convention for the Protection of New Varieties of Plants, a copy of the English text of which is set out in the Schedule;

- “Court”** means the Federal Court of Australia;
- “dependent plant variety”**, in relation to another plant variety in which a person holds PBR in Australia, means a plant variety over which PBR in the other plant variety extends under section 13;
- 5 **“essential characteristics”**, in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal features, performance or value of the variety;
- 10 **“genetic resource centre”** means a place that the Secretary declares to be a genetic resource centre under subsection 70(1);
- “grantee”**:
- (a) in relation to PBR in a plant variety—means the person currently entered on the Register as the holder of that right in that variety; and
- 15 (b) in relation to PBR in a plant variety declared to be an essentially derived variety of another plant variety—includes the person currently entered on the Register as the holder of that right in relation to that other plant variety;
- “herbarium”** means the organisation that the Secretary declares to be the herbarium under section 71;
- 20 **“hybrid”** means a plant that is a combination of 2 or more genotypes of the same or different taxa but excluding a combination comprising a scion grafted on to a root stock;
- “member”** means a member of the Advisory Committee and includes the Registrar;
- 25 **“PBR”**, in a plant variety, means the plant breeder’s right specified in section 11;
- “PBR”**, in respect of a plant variety registered in another contracting party, means a plant breeder’s right corresponding to the right specified in section 11 conferred under the law of that contracting party;
- 30 **“plant”** includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;
- “plant variety”** means a plant grouping (including a hybrid):
- (a) that is contained within a single botanical taxon of the lowest known rank; and
- 35 (b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that plant grouping; and
- (c) that can be distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (d) that can be considered as a functional unit because of its suitability
- 40 for being propagated unchanged;

Note: Plant groupings for the purposes of this definition include genetically modified plant groupings.  
See section 6.



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**“process”**, in relation to the reproduction of propagating material, of a plant variety does not include:

- (a) the development of a cell or tissue or a plant part into a plant of that variety; or
- (b) the growth of a plant into a larger plant of that variety; 5

**“propagating material”**, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced;

**“propagation”**, in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component, whether by sexual or asexual means; 10

**“Register”** means the Register of Plant Varieties kept under section 61;

**“Registrar”** means the Registrar of Plant Breeder's Rights;

**“reproduction”**, in relation to propagating material of a plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent plants is multiplied; 15

**“Secretary”** means the Secretary of the Department;

**“sell”** includes letting on hire and exchanging by way of barter;

**“successor”** means: 20

- (a) in relation to a breeder of a plant variety—a person to whom the right of the breeder to make application for PBR in that variety has been assigned, or transmitted by will or by operation of law; and
- (b) in relation to a grantee of PBR—a person to whom that right has been assigned, or transmitted by will or by operation of law; 25

**“synonym”**, in relation to the name of a plant variety in which PBR has been granted in another contracting party, means a name, additional to the name of the variety, by which the variety will be known and sold in Australia;

**“will”** includes a codicil.

(2) If a provision of this Act requires or authorises the Secretary or the Registrar to give written notice of any matter to a particular person and does not specify the means of giving that notice, that provision is to be taken, for the purposes of section 29 of the *Acts Interpretation Act 1901* to authorise or require the Secretary or Registrar to serve the notice on the person personally or by post. 30 35

**Definition of essentially derived varieties**

4. A plant variety is taken to be an essentially derived variety of another plant variety if:

- (a) it is predominantly derived from that other plant variety; and

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- (b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and
- (c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

5     **Definition of breeding**

5.1) A reference in this Act to breeding, in relation to a new plant variety, includes a reference to the discovery of a plant together with its use in selective propagation so as to enable the development of the new plant variety.

- 10     (2) If a plant is discovered by one person but used in selective propagation by another so as to enable the development of a new plant variety, those persons are together taken to be the joint breeders of the new plant variety.

**Genetic modification**

- 15     6. For the purposes of this Act, an organism may be treated as constituting a plant grouping within a single botanical taxon despite the fact that the genome of the plants in that plant grouping has been altered by the introduction of genetic material that is not from plants.

**Approved forms**

- 20     7.1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the Secretary.

(2) The instrument by which a form is approved under subsection (1) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

25     **Approved persons**

8.1) In this Act, a reference to an approved person is a reference to a person who, on the basis of the person's qualifications and experience, the Secretary has designated, by instrument in writing, to be such a person in relation to one of more species of plant.

- 30     (2) The Registrar must, from time to time, cause lists of all persons who are approved persons in relation to particular species of plant to be published in the *Plant Varieties Journal*.

**Act to bind Crown**

- 35     9.1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) Nothing in this Act renders the Crown, in any of its capacities, liable to be prosecuted for an offence.

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**Extent of Act**

**10.** Nothing in this Act requires or permits the granting of PBR in a plant variety unless:

- (a) if Australia is a party to the Convention—the grant is appropriate to give effect to the obligations of Australia under the Convention; or 5
- (b) the breeding of the plant variety constitutes an invention for the purpose of paragraph 51(xviii) of the Constitution.

**PART 2—PLANT BREEDER'S RIGHT**

**General nature of PBR**

**11.** Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is 10  
the exclusive right, subject to this Act, to do, or to license another person to do, the following acts in relation to propagating material of the variety:

- (a) produce or reproduce the material;
- (b) condition the material for the purpose of propagation;
- (c) offer the material for sale; 15
- (d) sell the material;
- (e) import the material;
- (f) export the material;
- (g) stock the material for the purposes described in paragraph (a), (b), (c), (d), (e) or (f). 20

**Extension of PBR to cover essentially derived varieties**

**12.** Subject to section 23, if:

- (a) PBR is granted to a person in a plant variety (the “initial variety”); and
- (b) PBR is granted to another person in another plant variety; and 25
- (c) the Secretary makes a declaration, on application by the first-mentioned person, that the other plant variety is an essentially derived variety from the initial variety;

the right granted in the initial variety extends, with effect from the date of the declaration, to that other plant variety. 30

**Extension of PBR to cover certain dependent plant varieties**

**13.** Subject to section 23, if PBR is granted in a plant variety (the “initial variety”), the right extends to:

- (a) any other plant variety that:
  - (i) is not clearly distinguishable from the initial variety; and 35
  - (ii) is clearly distinguishable from any plant variety that was a matter of common knowledge at the time of the grant of PBR in the initial variety; and

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- (b) any other plant variety that cannot be reproduced except by the repeated use of the initial variety or of a variety referred to in paragraph (a);
- 5 whether or not that other plant variety was in existence at the time PBR was granted in the initial variety.

**Extension of PBR to harvested material in certain circumstances**

**14.(1) If:**

- (a) propagating material of a plant variety covered by PBR is produced or reproduced without the authorisation of the grantee; and
- 10 (b) the grantee does not have a reasonable opportunity to exercise the grantee's right in relation to the propagating material; and
- (c) material is harvested from the propagating material;
- section 11 operates as if the harvested material were propagating material.

- (2) Subsection (1) applies to so much of the material harvested by a farmer from propagating material conditioned and reproduced in the
- 15 circumstances set out in subsection 17(1) as is not itself required by the farmer, for the farmer's own use, for reproductive purposes.

**Extension of PBR to products obtained from harvested material in certain circumstances**

20 **15. If:**

- (a) propagating material of a plant variety covered by PBR is produced or reproduced without authorisation of the grantee; and
- (b) the grantee does not have a reasonable opportunity to exercise the grantee's rights in relation to the propagating material; and
- 25 (c) material is harvested from plants grown from the propagating material but the grantee does not have, in the circumstances set out in section 14, a reasonable opportunity of exercising the grantee's rights in the harvested material; and
- (d) products are made from the harvested material;
- 30 section 11 operates as if those products were propagating material.

**Certain acts done for private, experimental or breeding purposes do not infringe PBR**

- 16.** Any act done in relation to a plant variety covered by PBR that is done:
- 35 (a) privately and for non-commercial purposes; or
- (b) for experimental purposes; or
- (c) for the purpose of breeding other plant varieties;
- does not infringe the PBR.

**Conditioning and use of farm saved seed does not infringe PBR**

**17.(1)** If:

- (a) a person engaged in farming activities legitimately obtains propagating material of a plant variety covered by PBR either by purchase or by previous operation of this section, for use in such activities; and 5
  - (b) the plant variety is not included within a taxon declared under subsection (2) to be a taxon to which this subsection does not apply; and
  - (c) the person subsequently harvests further propagating material from plants grown from that first-mentioned propagating material; 10
- the PBR is not infringed by:
- (d) the conditioning of so much of that further propagating material as is required for the person's use for reproductive purposes; or
  - (e) the reproduction of that further propagating material. 15
- (2) The regulations may declare a particular taxon to be a taxon to which subsection (1) does not apply.

**Other acts that do not infringe PBR**

- 18.(1)** Despite the fact that a plant variety is covered by PBR, any act referred to in section 11: 20
- (a) that is done in relation to the propagating material of plants of that variety; and
  - (b) that enables the use of that propagating material:
    - (i) as a food, food ingredient or fuel; or
    - (ii) for any other purpose that does not involve the production or reproduction of the propagating material; 25
- does not infringe the PBR.

(2) Without limiting the generality of subsection (1), for the purpose of that subsection, the use of propagating material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of food, before it has developed further, is not taken to be a use that involves the production or reproduction of propagating material. 30

**Reasonable public access to plant varieties covered by PBR**

- 19.(1)** Subject to subsection (11), the grantee of PBR in a plant variety must take all reasonable steps to ensure reasonable public access to that plant variety. 35
- (2) Reasonable public access to a plant variety covered by PBR is taken to be satisfied if propagating material of reasonable quality is available to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand. 40

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(3) For the purpose of ensuring reasonable public access to a plant variety covered by PBR, the Secretary may, on behalf of the grantee, in accordance with subsections (4) to (10), license a person whom the Secretary considers appropriate:

- 5       (a) to sell propagating material of plants of that variety; or  
      (b) to produce propagating material of plants of that variety for sale;  
during such period as the Secretary considers appropriate and on such terms and conditions (including the provision of reasonable remuneration to the grantee) as the Secretary considers would be granted by the grantee in the  
10      normal course of business.

(4) If, at any time more than 2 years after the grant of PBR in a plant variety, a person considers:

- (a) that the grantee is failing to comply with subsection (1) in relation to the variety; and  
15      (b) that the failure affects the person's interests;  
the person may make a written request to the Secretary to exercise a power under subsection (3) in relation to the variety.

(5) A request must:

- 20      (a) set out the reasons why the person considers that the grantee is failing to comply with subsection (1); and  
      (b) give particulars of the way in which the person considers that the failure affects the person's interests; and  
      (c) give an address of the person for the purposes of notifications under this section.

25      (6) The Secretary must give the grantee:

- (a) a copy of the request; and  
      (b) a written invitation to give the Secretary, within 30 days after giving the request, a written statement of the reasons the Secretary should be satisfied that the grantee:  
30       (i) is complying with subsection (1) in relation to the variety; or  
      (ii) will so comply within a reasonable time.

(7) The Secretary must, after considering the request and any statement given by the grantee in response to the invitation under paragraph (6)(b):

- 35      (a) decide whether or not to exercise the power concerned; and  
      (b) within 30 days after so deciding, give written notice of the decision to the grantee and to the person making the request.

Note: A decision under this subsection is reviewable by the AAT under section 77.

(8) If the Secretary proposes to exercise a power under subsection (3) in relation to a plant variety, the Secretary must give public notice:

- 40      (a) identifying the variety; and

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- (b) setting out particulars of any licence the Secretary proposes to grant; and
- (c) inviting persons to apply in writing to the Secretary, within 30 days of the publication of the notice, to be granted that licence.
- (9) The Secretary must not grant any such licence unless: 5
  - (a) the Secretary has considered all applications made in response to the invitation; and
  - (b) at least one month before granting any such licence, the Secretary has:
    - (i) given written notice to each such applicant of the name of the 10 proposed licensee; and
    - (ii) given public notice of the name of the proposed licensee.
- (10) If the Secretary:
  - (a) has granted a person a licence to produce propagating material of plants of a particular variety; and 15
  - (b) is satisfied that the person will be unable to obtain such propagating material at a reasonable price or without charge;the Secretary may, on behalf of the grantee, make that propagating material available to the person from material stored at a genetic resource centre.
- Note: A decision under this subsection to make propagating material available is reviewable by the AAT 20 under section 77.
- (11) This section does not apply in relation to a plant variety in respect of which the Secretary certifies, in writing, at the time of the grant of PBR, that he or she is satisfied that plants of that variety have no direct use as a consumer product. 25
- Note: A decision under this subsection is reviewable by the AAT under section 77.

**PBR is personal property**

**20.(1)** PBR is personal property and, subject to any conditions imposed under section 49, is capable of assignment, or of transmission by will or by operation of law. 30

(2) An assignment of PBR (otherwise than because of the order of a court) does not have effect unless it is in writing signed by, or on behalf of, the assignor and assignee.

(3) If a grantee of PBR in a plant variety gives another person a licence in that right, the licence binds every successor in title to the interest of that grantee to the same extent as it was binding on that grantee of the PBR. 35

**Registrar must be notified of an assignment of PBR**

**21.(1)** If a person (the “claimant”) claims that PBR was assigned or transmitted to the claimant, the claimant must inform the Registrar in writing that the claimant has acquired that right, giving particulars of the manner in 40 which that right was acquired, within 7 days after acquiring that right.

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(2) If the Registrar is satisfied that the right has been so assigned or transmitted, the Registrar must amend the Register by entering the name of the claimant as the holder of that right.

5 (3) If the Registrar enters the name of the claimant on the Register as the holder of PBR, the Registrar must, within 7 days after entering the name, give written notice to the claimant and to the person who was the holder before the entry was made, stating that the entry has been made.

(4) If the Registrar is not satisfied that PBR has been assigned or transmitted to the claimant, the Registrar must, as soon as possible:

10 (a) give written notice to the claimant:

(i) telling the claimant that the Registrar is not so satisfied; and

(ii) setting out the reasons why the Registrar is not so satisfied; and

(b) give written notice to the person entered on the Register as the holder of the right:

15 (i) setting out particulars of the information given by the claimant; and

(ii) telling the claimant that the Registrar is not so satisfied; and

(iii) setting out the reasons why the Registrar is not so satisfied.

20 (5) A claimant must include, in the notice to the Registrar informing of the assignment or transmission, an address in Australia for the service of documents in accordance with this Act.

Note: A decision under this section to amend or to refuse to amend the Register is reviewable by the AAT under section 77.

**Duration of PBR**

25 **22.(1)** Subject to subsections (4) and (5), PBR in a plant variety begins on the day that the grant of PBR in the variety is made.

(2) Subject to subsections (3), (4) and (5), PBR in a plant variety lasts for:

(a) in the case of trees and vines—25 years; and

(b) for any other variety—20 years.

30 (3) The regulations may provide that PBR in a plant variety included within a specified taxon lasts for a longer period than is specified in subsection (2).

(4) PBR in a plant variety that is a dependent plant variety of another plant variety begins on:

35 (a) the day that the grant of PBR in the other plant variety is made; or

(b) the day that dependent variety comes into existence;

whichever occurs last, and ends when PBR in the other variety ceases.

(5) If:

(a) PBR is held in a plant variety (the “initial variety”); and

40 (b) another plant variety is declared under section 40 to be an essentially derived variety of the initial variety;



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PBR in the initial variety extends to the essentially derived variety from the day on which that declaration is made until the day on which PBR in the initial variety ends.

**Exhaustion of PBR**

**23.(1)** PBR granted in a plant variety does not extend to any act referred to in section 11: 5

- (a) in relation to propagating material of the variety; or
- (b) in relation to propagating material of any essentially derived variety or dependent plant variety;

that takes place after the propagating material has been sold by the grantee or with the grantee's consent unless that act: 10

- (c) involves further production or reproduction of the material; or
- (d) involves the export of the material:
  - (i) to a country that does not provide PBR in relation to the variety; and 15
  - (ii) for a purpose other than final consumption.

(2) If:

- (a) a plant variety is declared to be an essentially derived variety of another plant variety (the "**initial variety**"); and
- (b) PBR in the essentially derived variety is held both by the grantee of PBR in the essentially derived variety and by the grantee of PBR in the initial variety; 20

the reference in subsection (1) to propagating material sold by the grantee or with the grantee's consent is a reference to propagating material sold by, or with the consent of, both of the grantees referred to in paragraph (b). 25

**PART 3—APPLICATION FOR PLANT BREEDER'S RIGHT**

*Division 1—The making of the application*

**Right to apply for PBR**

**24.(1)** A breeder of a plant variety may make application to the Secretary for the grant of a PBR in the variety. 30

(2) The breeder can make the application whether or not:

- (a) the breeder is an Australian citizen; and
- (b) the breeder is resident in Australia; and
- (c) the variety was bred in Australia.

(3) Subject to subsection (4), if 2 or more persons bred a plant variety jointly, those persons or some of them may make a joint application for that right. 35

(4) If 2 or more persons bred a plant variety jointly, one of those persons is not entitled to apply for PBR in the variety otherwise than jointly with, or with the consent in writing of, each other of those persons. 40

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**Right to apply for PBR is personal property**

25.(1) The right of a breeder of a plant variety to apply for PBR is personal property and is capable of assignment and of transmission by will or by operation of law.

- 5       (2) An assignment of a right to apply for PBR must be in writing signed by or on behalf of the assignor.

**Form of application for PBR**

- 10       26.(1) An application for PBR in a plant variety must:
- (a) be in writing; and
  - (b) be in an approved form; and
  - (c) be lodged in a manner set out in the approved form.
- 15       (2) The application must contain:
- (a) the name and address of the applicant; and
  - (b) if the applicant is using an agent to make the application on the applicant's behalf—the name and address of the agent; and
  - (c) if the applicant is the breeder of the variety—a statement of that effect; and
  - (d) if the applicant is not the breeder of the variety—the name and address of the breeder and particulars of the assignment, or transmission by will or by operation of law, of the right to make the application; and
  - (e) a brief description, or a brief description and photograph, of a plant of the variety sufficient to establish a *prima facie* case that the variety is distinct from other varieties of common knowledge; and
  - 25       (f) the name of the variety, having regard to the requirements of section 27, and any proposed synonym for that name; and
  - (g) particulars of the location at which, and the manner by which, the variety was bred including, in respect of each variety used in the breeding program:
    - 30           (i) particulars of the names (including synonyms) by which that variety is known and sold in Australia); and
    - (ii) particulars of any PBR granted in Australia or in a contracting party other than Australia; and
  - (h) particulars of any application for, or grant of, rights of any kind in the variety in any other country; and
  - 35       (i) the name of an approved person who:
    - (i) will verify the particulars in the application; and
    - (ii) will supervise any test growing or further test growing of the variety required under section 37; and
  - 40       (iii) will verify a detailed description of the variety when such a description is supplied to the Secretary;
  - (j) such other particulars (if any) as are required by the approved form.

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(3) If an applicant is resident overseas, the applicant must, unless the applicant has appointed an agent resident in Australia to act on the applicant's behalf in the application, specify, in addition to any address overseas, a postal address in Australia for the service of notices on the applicant.

(4) An applicant must, before, or at the time of, lodging an application under this section, pay to the Commonwealth such application fee (if any) as is prescribed. 5

**Names of new plant varieties**

27.(1) If PBR has not been granted in another contracting party in a plant variety before an application for that right in that variety is made in Australia, the name set out in the application must comply with subsections (4), (5), (6) and (7). 10

(2) If, before making an application in Australia for PBR in a plant variety, PBR has been granted in that variety in another contracting party:

(a) the name of the variety set out in the Australian application must be the name under which PBR was first granted in another contracting party; but 15

(b) there may, and, if the name referred to in paragraph (a) does not comply with subsections (4), (5), (6) and (7) there must, also be included in the application a synonym, additional to the name of the variety, by which the variety will also be known and sold in Australia. 20

(3) The synonym must be a name determined in accordance with subsections (4), (5), (6) and (7) as if the variety had not been the subject of a grant of PBR in another contracting party.

(4) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety, must be a word or words (whether invented or not) with or without the addition of either or both of the following: 25

(a) a letter or letters that do not constitute a word;

(b) a figure or figures.

(5) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must not: 30

(a) be likely to deceive or cause confusion, including confusion with the name of another plant variety; or

(b) be contrary to law; or

(c) contain scandalous or offensive matter; or 35

(d) be prohibited by regulations in force at the time of the application; or

(e) be or include a trade mark that is registered, or whose registration is being sought, under the *Trade Marks Act 1955*, in respect of live plants, plant cells and plant tissues. 40

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(6) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must comply with the International Code of Botanical Nomenclature and subsidiary codes.

5 (7) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must not consist of, or include:

- (a) the name of a natural person living at the time of the application unless the person has given written consent to the name of the variety; or
- 10 (b) the name of a natural person who died within the period of 10 years before the application unless the legal personal representative of the person has given written consent to the name of the variety; or
- (c) the name of a corporation or other organisation, unless the corporation or other organisation has given its written consent to the name of the variety.

15 **Applications to be given priority dates**

**28.(1)** The Secretary must ensure that each application for PBR is given a priority date.

(2) The priority date is, unless section 29 applies in relation to the application, the date on which the application was lodged with the Secretary.

20 (3) If 2 or more applications are made for PBR in the same plant variety, the Secretary must first consider the application having the earlier priority date.

**Priority dates arising from foreign application**

25 **29.(1)** A person who lodges an application (the “**foreign application**”) for PBR in a plant variety in a contracting party other than Australia may, in accordance with this section, claim the date of that foreign application as the priority date for the purposes of a subsequent application in Australia for those rights in that variety.

(2) If:

- 30 (a) during that period of 12 months after the date of the foreign application, the person lodges an application in Australia (the “**local application**”) for PBR in the variety; and
- (b) the person accompanies the local application with a claim to have the date of the foreign application treated as the priority date for the purposes of the local application;

35 the person is, if the local application is accepted and subject to subsections (3) and (4), entitled to have the date referred to in paragraph (b) treated as the priority date for the purposes of the local application.

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(3) The entitlement of the person to the priority date referred to in subsection (2) is conditional on the person lodging with the Secretary, within 3 months of making the local application, a copy of the documents that constituted the foreign application, certified by the Authority that received the foreign application to be a true copy of the documents. 5

(4) The entitlement of the person to the priority date referred to in subsection (2) is conditional on the person providing to the Secretary, within a period of 3 years after the making of the foreign application, such further particulars in relation to the plant variety as are required to complete the consideration of the local application. 10

**Acceptance or rejection of applications**

**30.(1)** The Secretary must, as soon as practicable after an application for PBR is lodged in a plant variety, decide whether to accept or reject the application.

(2) If the Secretary is satisfied that: 15

(a) no other application has, or, if the application were to meet the requirements of paragraphs (b) and (c), would have, an earlier priority date in the variety; and

(b) the application complies with the requirements of section 26; and

(c) the application establishes a *prima facie* case for treating the plant variety as distinct from other varieties; 20

the Secretary must accept the application.

(3) If the Secretary is not satisfied of all of the matters referred to in subsection (2), the Secretary must reject the application.

(4) If the Secretary decides to accept the application, the Secretary must: 25

(a) give written notice to the applicant telling the applicant that the application has been accepted; and

(b) as soon as possible after notifying the applicant—give public notice of the acceptance of the application.

(5) If the Secretary decides to reject an application, the Secretary must: 30

(a) give written notice to the applicant telling the applicant of the rejection and setting out the reasons for the rejection; and

(b) as soon as possible after notifying the application—give public notice of the rejection of the application.

Note: A decision under this section to accept or reject an application is reviewable by the AAT under section 77. 35

**Requests for variation of application**

**31.(1)** If:

(a) after an application for PBR in a plant variety has been accepted; but

(b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application; 40

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the right of the applicant to apply for PBR in a particular plant variety is assigned to, or has been transmitted by will or operation of law to, another person, that other person may request the Secretary, in writing, to vary the application so that that other person is shown as the applicant.

5       (2) If the Secretary is satisfied that the right to apply for PBR in a particular plant variety has been assigned to, or has been transmitted by will or operation of law to, to a particular person, the Secretary must vary the application so that that person is shown as the applicant.

10       (3) A request by a person under subsection (1) must give an address in Australia for the service of notices on the person for the purposes of this Act.

15       (4) If the Secretary complies with a request under subsection (1) and the address for the service of notices that is given in connection with that request is different from the address contained in the application as the address for service of documents on the applicant, the Secretary must vary the application so that the address so given is shown as the address for service of documents on the applicant.

(5) If:

20       (a) after an application for PBR in a plant variety has been accepted; but  
      (b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the applicant requests the Secretary, in writing, to vary the application in any other respect other than that referred to in subsection (1), the Secretary may, in his or her discretion, vary the application in accordance with the request.

25       (6) Despite the previous provisions of this section, the Secretary is not obliged or permitted to vary an application in response to a request under this section unless the person making the application for the variation has paid to the Commonwealth the application variation fee that is prescribed for the purposes of this section.

30       Note: A decision under this section to vary or to refuse to vary an application is reviewable by the AAT under section 77.

**Notification of decisions on requests to vary application**

35       32.(1) If the Secretary varies an application in accordance with a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request telling the person that the application has been so varied.

(2) If the Secretary rejects a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request:

40       (a) telling the person that the request has been rejected; and  
      (b) setting out the reasons for the rejection.

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(3) If the Secretary rejects a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice to the applicant:

- (a) setting out particulars of the request; and
- (b) telling the applicant that the request has been rejected; and 5
- (c) setting out the reasons for the rejection.

(4) If the Secretary varies an application in accordance with a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice of particulars of the variation to the person who was the applicant before the variation was made. 10

(5) If an application:

- (a) is varied because of a request under subsection 31(1); or
- (b) is varied because of a request under subsection 31(5) in a significant respect;

the Secretary must, as soon as practicable, give public notice of particulars of the variation. 15

**Withdrawal of application**

33.(1) An application may be withdrawn by the applicant at any time.

(2) If an application is withdrawn after public notice of acceptance of the application is given, the Secretary must, as soon as practicable, give public notice of the withdrawal. 20

***Division 2—Dealing with the application after its acceptance***

**Detailed description in support of application to be given to Secretary**

34.(1) As soon as practicable after, but not later than 12 months after, an application has been accepted, or within such further period as the Secretary allows for the purpose, the applicant must, if the applicant has not already done so, give the Secretary a detailed description of the plant variety to which the application relates. 25

Note: A decision under this subsection to refuse to extend the 12 months period is reviewable by the AAT under section 77. 30

(2) If the applicant fails to give the Secretary the detailed description required under this section within the required period, the application is taken to have been withdrawn.

(3) The detailed description must:

- (a) be in writing; and 35
- (b) be in an approved form; and
- (c) be lodged with the Secretary in a manner set out in the approved form.

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- (4) The detailed description must contain:
- (a) particulars of the characteristics that distinguish the variety from other plant varieties the existence of which is a matter of common knowledge; and
  - 5 (b) particulars of:
    - (i) any test growing carried out, including a test growing carried out as required under section 37, to establish that the variety is distinct, uniform and stable; and
    - (ii) any test growing carried out as required under section 41; and
  - 10 (c) if the variety was bred outside Australia—particulars of any test growing outside Australia that tend to establish that the variety will, if grown in Australia, be distinct, uniform and stable; and
  - (d) such other particulars (if any) as are required by the approved form; and must be accompanied by a certificate, in the approved form, verifying
  - 15 the particulars of the detailed description, completed by the approved person nominated in the application as the approved person in relation to that application.
- (5) The Secretary must, as soon as practicable after receiving a detailed description of a plant variety to which an application for PBR relates, give
- 20 public notice of that description.
- (6) The applicant must:
- (a) unless paragraph (b) applies—within 12 months after the application has been accepted; and
  - (b) if the detailed description has been given to the Secretary before the
  - 25 end of that period—at the time when the description was given; pay to the Commonwealth such examination fee as is prescribed.

**Objection to application for PBR**

35. (1) Any person who considers, in relation to an application for PBR in a plant variety that has been accepted:
- 30 (a) that his or her commercial interests would be affected by the grant of that PBR to the applicant; and
  - (b) that the Secretary cannot be satisfied, in relation to that application, of a matter referred to in a paragraph of subsection 26(2) or in subparagraph 44(1)(b)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii);
- 35 may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.
- (2) An objection must set out:
- 40 (a) particulars of the manner in which the person considers his or her commercial interests would be affected; and



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- (b) the reasons why the person considers that the Secretary cannot be satisfied of a matter referred to in paragraph (1)(b).
- (3) The Registrar must give a copy of the objection to the applicant.

**Inspection of applications and objections**

**36.(1)** A person may, at any reasonable time, inspect an application for PBR in a plant variety (including any detailed description of the plant variety given in support of the application) or an objection lodged in respect of that application (including that detailed description). 5

(2) A person is entitled, on payment of such fee as is prescribed, to be given a copy of an application for PBR in a plant variety, of an objection to such an application, or of a detailed description of the plant variety. 10

**Test growing of plant varieties**

**37.(1)** If, in dealing with:

- (a) an application for PBR that has been accepted; or
- (b) an objection to such an application for PBR; or 15
- (c) a request for revocation of PBR;

the Secretary decides that there should be a test growing or a further test growing of the variety to which the application, objection or request relates, the Secretary must give written notice of that decision:

- (d) to the person who made the application, objection or request; and 20
- (e) in the case of an objection to an application for PBR—also to the applicant; and
- (f) in the case of a request for revocation of PBR—also to the grantee.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77. 25

(2) The notice, in addition to telling the person of the Secretary's decision:

- (a) must specify the purpose of the test growing; and
- (b) may require the person:
  - (i) to supply the Secretary with sufficient plants or sufficient propagating material of plants of the variety, and with any necessary information, to enable the Secretary to arrange a test growing; or 30
  - (ii) to make arrangements for an approved person to supervise the test growing, to supply the approved person with sufficient plants or propagating material to enable the test growing, to give the Secretary a copy of the records of observations made during the test growing and to certify the records of observations so provided; 35

whichever the Secretary considers appropriate. 40

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(3) If a notice under this section contains the requirement referred to in subparagraph (2)(b)(i) and the applicant complies with the request, the Secretary must arrange to have the variety concerned test grown.

5 (4) After completion of a test growing arranged by the Secretary, any propagating material of the variety used in, or resulting from, the test growing, that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purposes of the test growing.

(5) All of the costs associated with a test growing must be paid:  
10 (a) if it is conducted to deal with an application for PBR—by the applicant for PBR; or  
(b) if it is conducted to deal with an objection to an application for PBR—by the objector; or  
15 (c) if it is conducted to deal with a request for a revocation of PBR—by the person making the request.

**Characteristics of plant varieties bred or test grown outside Australia**

**38.(1) If:**

(a) a plant variety (the “**subject variety**”):  
    (i) was bred outside Australia; or  
20      (ii) was bred in Australia but, before an application for PBR was made in Australia, an application for PBR was made in a contracting party other than Australia; and  
(b) an application under this Act for PBR in the variety has been accepted;  
25 the variety is not to be taken to have a particular characteristic unless subsection (2), (3), (4) or (5) applies to the variety.

(2) This subsection applies to the subject variety if a test growing in Australia has demonstrated that the variety has the particular characteristic.

(3) This subsection applies to the subject variety if:  
30 (a) a test growing of the variety has been carried out outside Australia; and  
(b) that test growing has demonstrated that the variety has the particular characteristic; and  
(c) under an agreement between Australia and the country in which the  
35 test growing was carried out, Australia is required to accept that the variety has that particular characteristic.

(4) This subsection applies to the subject variety if the Secretary is satisfied that:

40 (a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

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- (b) that test growing of the variety is equivalent to a test growing of the variety in Australia.

(5) This subsection applies to the subject variety if the Secretary is satisfied that:

- (a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and 5  
(b) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and  
(c) if a test growing of the variety in Australia sufficient to demonstrate whether the variety has that characteristic were to be carried out, it would take longer than 2 years. 10

Note: A decision to the effect that the Secretary is, or is not, satisfied of the matters referred to in subsection (4) or (5) is reviewable by the AAT under section 77.

***Division 3—Provisional protection***

**Provisional protection**

39.(1) When an application for PBR in a plant variety is accepted, the applicant is taken to be the grantee of that right for the purposes of Part 5 from the day the application is accepted until:

- (a) the application is disposed of; or  
(b) if the Secretary gives the applicant a notice under subsection (2)—the notice is disposed of; 20

whichever occurs first.

(2) If the Secretary is satisfied in relation to an application for PBR in a plant variety, that:

- (a) PBR will not be granted or is unlikely to be granted to the applicant; 25  
or  
(b) the applicant has given an undertaking to a person (whether or not for consideration) not to commence proceedings for infringement of the right of which the applicant is deemed to be the grantee;

the Secretary may notify the applicant, in writing, that this section will cease to apply to that variety on a day specified in the notice unless, before that time the applicant has made a submission to the Secretary providing reasons why this section should not cease to apply. 30

Note: A decision under this subsection to notify an applicant is reviewable by the AAT under section 77.

(3) For the purposes of paragraph (1)(b) a notice referred to in that paragraph is not taken to be disposed of until:

- (a) the end of the period within which application may be made to the AAT for a review of the giving of the notice; or  
(b) if such an application is made to the AAT—the application is withdrawn or finally determined, whether by the AAT or a court. 40

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(4) As soon as practicable after a person ceases to be taken to be the grantee of PBR under this section, the Secretary must give public notice that the person has ceased to be so taken.

5 (5) Nothing in this section affects the powers of the Federal Court under subsection 44A(2) of the AAT Act where an appeal is begun in that Court from a decision of the AAT.

(6) A person who is taken to be the grantee of PBR in a plant variety is not entitled to begin an action or proceeding for an infringement of that right occurring during the period when the person is so taken unless and until that  
10 right is finally granted to the person under section 44.

*Division 4—Essential derivation*

**Applications for declarations of essential derivation**

**40.(1) If:**

- 15 (a) a person is the grantee of PBR in a particular plant variety—  
(the “**initial variety**”); and
- (b) another person is the grantee of, or has applied for, PBR in another plant variety (the “**second variety**”); and
- 20 (c) the grantee of PBR in the initial variety is satisfied that the second variety is, within the meaning of section 4, an essentially derived variety of the initial variety; and
- (d) the initial variety has not itself been declared to be an essentially derived variety of another variety in which PBR has been granted;
- the grantee of PBR in the initial variety may make written application to the Secretary for a declaration that the second variety is so derived.

25 (2) Nothing in this section implies that a person who is the grantee of PBR in the initial variety may not, in relation to an application by another person for PBR in the second variety that has been accepted but not finally determined:

- 30 (a) make an objection, under section 35, to the granting of PBR in the second variety; and
- (b) in the alternative, if PBR is granted to another person in the second variety—apply under subsection (1) for a declaration that the second variety is essentially derived from the initial variety.

(3) If the second variety:

- 35 (a) is the subject of an application for PBR; and
- (b) is also the subject of an application for a declaration of essential derivation;

then, unless and until the Secretary decides to grant the application for PBR:

- 40 (c) the Secretary must not make the declaration of essential derivation; but

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- (d) the Secretary may, in his or her discretion:
- (i) examine both the application for PBR and the application for a declaration of essential derivation at the same time; and
  - (ii) for the purpose only of examining the application for a declaration of essential derivation—treat the applicant for PBR as the grantee of PBR in the variety. 5

(4) An application for a declaration of essential derivation must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged with the Secretary in a manner set out in the approved form; and 10
- (d) be accompanied by the prescribed fee in respect of the application.

(5) An application must contain such information relevant to establishing a *prima facie* case that the second variety is an essentially derived variety of the initial variety as is required by the form. 15

(6) If the initial variety has itself been declared to be essentially derived from another variety, the Secretary must refuse to declare the second variety essentially derived from:

- (a) the initial variety; and
- (b) inform the applicant for the declaration in writing, to that effect, and give the applicant reasons for the decision. 20

(7) If the initial variety has not been so declared, the Secretary must determine, on the basis of the application, whether the Secretary is satisfied that there is a *prima facie* case that the second variety is an essentially derived variety of the initial variety. 25

(8) If the Secretary is satisfied of that *prima facie* case, the Secretary must:

- (a) inform the applicant and the grantee of PBR in the second variety that the Secretary is so satisfied; and
- (b) inform the grantee of PBR in the second variety that, unless the grantee establishes, within 30 days after being so informed or such longer period as the Secretary allows, that the second variety is not an essentially derived variety of the initial variety, the Secretary will, at the end of that period, declare the second variety to be such an essentially derived variety. 30 35

Note: A decision under this subsection to refuse to extend the period of 30 days is reviewable by the AAT under section 77.

(9) If the Secretary is not satisfied of that *prima facie* case, the Secretary must inform the applicant, in writing, to that effect, and give the applicant reasons for the decision. 40

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(10) If, after considering:

- (a) the information presented by the grantee of PBR in the second variety; and
  - 5 (b) any information obtained from a test growing conducted in accordance with section 41; and
  - (c) any other relevant information obtained by the Secretary;
- the Secretary is not satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:
- 10 (d) declare, in writing, that the second variety is an essentially derived variety of the initial variety; and
  - (e) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee of the declaration; and
  - (f) by notice in writing given to the grantee of PBR in the second variety, tell that grantee of the declaration and set out the reasons for not being
  - 15 satisfied that the *prima facie* case has been rebutted.

(11) If, after considering the information referred to in paragraph (10)(a), (b) or (c), the Secretary is satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:

- 20 (a) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee that he or she is so satisfied and set out the reasons for being so satisfied; and
- (b) by notice in writing given to the grantee of PBR in the second variety, tell that grantee that he or she is so satisfied.

25 (12) While a declaration that the second variety is essentially derived from the initial variety remains in force, section 19 applies in relation to the second variety as if:

- (a) the references in that section to the grantee, in relation to that variety were references both to the person holding PBR in that variety and to the person holding PBR in the initial variety; and
- 30 (b) the reference in subsection 19(4) to 2 years after the grant of PBR were a reference to 2 years after the grant of PBR in the second variety whether or not the declaration of essential derivation was made at the same time or a later time; and
- 35 (c) a failure by the other person holding PBR in the initial variety or the person holding PBR in the second variety to co-operate in making the second variety available to the public in accordance with the requirements of subsection 19(1) was a failure of the grantee to comply with the requirements of that subsection.

40 Note: A decision under this section to declare, or not to declare, a plant variety essentially derived is reviewable by the AAT under section 77.

**Test growing associated with applications for declarations of essential derivation**

**41.(1) If:**

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- (a) the grantee of PBR in a plant variety (the “**initial variety**”) applies for a declaration that another variety (the “**second variety**”) is an essentially derived variety of the initial variety; and
  - (b) in the course of that application the grantee of PBR in the initial variety establishes a *prima facie* case that the second variety is essentially derived; and 5
  - (c) on the basis of information supplied by the grantees of PBR in the initial variety and in the second variety, the Secretary comes to the view that a test growing or further test growing is necessary to determine whether the *prima facie* case has been rebutted; 10
- the Secretary must give notice of that decision both to the grantee of PBR in the initial variety and in the second variety.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

- (2) The notice must require: 15
    - (a) the grantee of PBR in the initial variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that variety and with any necessary information; and
    - (b) the grantee of PBR in the second variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that second variety and with any necessary information; 20
- to enable the Secretary to arrange a test growing.

(3) After completion of the test growing, any propagating material of a variety used in, or resulting from, the test growing that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purpose of the test growing. 25

(4) All costs associated with the test growing must be paid by the person who, without the test growing, failed to rebut the *prima facie* case of essential derivation, whether or not the test growing led to rebuttal of that case.

(5) If the Secretary requires a test growing or further test growing, subsection 40(8) has effect as if the reference in that subsection to 30 days after being so informed were a reference to 30 days after being informed of the results of the test growing. 30

**PART 4—THE GRANT AND REVOCATION OF PLANT BREEDER’S RIGHT** 35

*Division 1—Grant of Plant Breeder’s Right*

**PBR not to be granted in excluded varieties**

42.(1) PBR must not be granted in any variety of plant in a taxon that the regulations declare to be a taxon to which this Act does not apply.

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(2) The Governor-General must not make a regulation for the purposes of subsection (1) unless the Governor-General has been informed by the Minister that the Minister has considered advice given by the Advisory Committee in relation to the desirability of making the regulation.

- 5       (3) If:
- (a) a plant variety is a hybrid; and
  - (b) each of the plant varieties from which it is derived is a plant variety included in a taxon to which this Act does not apply;
- PBR must not be granted in the hybrid.

10    **Registrable plant varieties**

43.(1) For the purposes of this Act, a plant variety in which an application for PBR is made is registrable if:

- (a) the variety has a breeder; and
- (b) the variety is distinct; and
- 15       (c) the variety is uniform; and
- (d) the variety is stable; and
- (e) the variety has not been exploited or has been only recently exploited.

20       (2) For the purposes of this section, a plant variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge.

(3) For the purposes of this section, a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is uniform in its relevant characteristics on propagation.

25       (4) For the purposes of this section, a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation.

30       (5) For the purposes of this section, a plant variety is taken not to have been exploited if, at the date of lodging the application for PBR in the variety, propagating or harvested material of the variety has not been sold to another person by, or with the consent of, the breeder.

(6) For the purposes of this section, a plant variety is taken to have been only recently exploited if, at the date of lodging the application for PBR in the variety, propagating or harvested material of the variety has not been sold to another person by, or with the consent of, the breeder:

- 35       (a) in Australia—more than one year before that date; or
- (b) in the territory of another contracting party:
  - (i) in the case of trees or vines—more than 6 years before that date; or
  - (ii) in any other case—more than 4 years before that date.



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(7) Subsection (6) does not apply to a sale by the breeder of a plant variety of propagating or harvested material of the variety to another person if that sale is a part of, or related to, another transaction under which the right of the breeder to make application for PBR in that plant variety is sold to that other person.

5

(8) In addition to any other reason for treating a plant variety as a variety of common knowledge, a variety is to be treated as a variety of common knowledge if:

- (a) an application for PBR in the variety has been lodged in a contracting party; and
- (b) the application is not subsequently refused.

10

(9) A plant variety that is to be treated as a variety of common knowledge under subsection (8) because of an application for PBR in the variety is to be so treated from the time of the application.

**Grant of PBR**

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**44.(1) If:**

- (a) an application for PBR in a plant variety is accepted; and
- (b) after examining the application (including the subsequent detailed description) and any objection to the application, the Secretary is, or continues to be, satisfied that:
  - (i) there is such a variety; and
  - (ii) the variety is a registrable plant variety within the meaning of section 43; and
  - (iii) the applicant is entitled to make the application; and
  - (iv) the grant of that right is not prohibited by this Act; and
  - (v) that right has not been granted to another person; and
  - (vi) the name of the variety complies with section 27; and
  - (vii) propagating material of that variety has been deposited for storage, at the expense of the applicant, in a genetic resource centre approved by the Secretary; and
  - (viii) if the Secretary so requires, a satisfactory specimen plant of the variety has been supplied to the herbarium; and
  - (ix) all fees payable under this Act in respect of the application, examination and grant have been paid;

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the Secretary must grant that right to the applicant.

35

**(2) If:**

- (a) an application for PBR in a plant variety is accepted; and
  - (b) the plant variety is a variety of a species indigenous to Australia;
- the Secretary must require supply of a satisfactory specimen plant of the variety to the herbarium.

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(3) If:

- (a) an application for PBR in a plant variety is accepted; and
- (b) the Secretary is not satisfied of all of the matters referred to in paragraph (1)(b);

5 the Secretary must refuse to grant that right to the applicant.

(4) The Secretary must not grant or refuse to grant PBR in a plant variety until at least 6 months after the giving of public notice of the detailed description of the variety.

(5) If:

- 10 (a) an application for PBR in a plant variety has been varied under section 31; and
- (b) the variation relates to the detailed description of the variety that has been given to the Secretary; and
- (c) the Secretary has given public notice of the variation;

15 the Secretary must not grant, or refuse to grant, PBR in the variety until 6 months after giving public notice of the variation or of the last such variation.

20 (6) If an objection to an application for PBR is made under section 35, the Secretary must give the applicant 30 days, starting when a copy of the objection is given to the applicant, or such longer period as the Secretary considers to be reasonable in the circumstances, to provide an answer to the objection.

25 (7) A quantity of propagating material of a plant variety that is lodged with a genetic resource centre must be sufficient to enable that variety to be kept in existence if there were no other propagating material of plants of that variety.

(8) The delivery and storage of propagating material of a plant variety does not affect the ownership of the material but the material must not be dealt with otherwise than for the purposes of this Act.

30 (9) The propagating material of a plant stored at a genetic resource centre may be used by the Secretary for the purposes of this Act, including the purposes of section 19.

35 (10) PBR is granted to a person by the issue to that person by the Secretary of a certificate in an approved form, signed by the Secretary or the Registrar, containing such particulars of the plant variety concerned as the Secretary considers appropriate.

(11) If the PBR is granted to persons who make a joint application for the right, the right is to be granted to those persons jointly.

40 (12) If the Secretary refuses to grant PBR in a plant variety, the Secretary must, within 30 days of so refusing, give written notice to the applicant:

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- (a) telling the applicant of the refusal; and
- (b) setting out the reasons for the refusal.

Note: A decision under this section to grant, or refuse to grant, PBR in a plant variety is reviewable by the AAT under section 77.

**Grant of PBR to be exclusive** 5

**45.(1)** Subject to subsections (2) and (3), only one grant of PBR may be made under this Act in relation to a plant variety.

(2) If 2 breeders lodge a joint application for PBR, the Registrar may grant PBR to them jointly.

- (3) If: 10
  - (a) a person is the grantee of PBR in a plant variety (the “**initial variety**”); and
  - (b) another person is the grantee of PBR in another plant variety; and
  - (c) the Secretary declares the other variety to be an essentially derived variety of the initial variety; 15

subsection (1) does not prevent PBR in the initial variety extending to the other variety.

**Grant of PBR to be entered on Register**

**46.(1)** When the Secretary grants PBR in a plant variety, the Registrar must enter in the Register: 20

- (a) a description, or description and photograph, of a plant of that variety; and
- (b) the name of the variety and any proposed synonym; and
- (c) the name of the grantee; and
- (d) the name and address of the breeder; and 25
- (e) the address for the service of documents on the grantee for the purposes of this Act as shown on the application for the right; and
- (f) the day on which the right is granted; and
- (g) such other particulars relating to the granting as the Registrar considers appropriate. 30

(2) When the Secretary makes a declaration that a variety (the “**derived variety**”) is essentially derived from another variety (the “**initial variety**”), the Registrar must enter in the Register both in respect of the derived variety and the initial variety:

- (a) the fact that the declaration has been made; and 35
- (b) the day on which the declaration was made.

**Notice of grant of PBR**

**47.(1)** The Secretary must, as soon as possible after granting PBR to a person, give public notice of the grant in the *Plant Varieties Journal*.

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(2) The Secretary must, as soon as possible after the making of a declaration that a plant variety is an essentially derived variety of another plant variety, give public notice of the making of the declaration in the *Plant Varieties Journal*.

5 **Effect of grant of PBR**

48.(1) If a person is granted PBR in a plant variety:

- (a) any other person who was entitled to make, but had not made, application for the right in the variety:
  - (i) ceases to be entitled to make such application; and
  - 10 (ii) is not entitled to any interest in the right; and
- (b) any other person who had made application for the right in the variety:
  - (i) ceases to be entitled to have his or her application considered or further considered; and
  - 15 (ii) is not entitled to any interest in the right.

(2) Subsection (1) does not prevent a person:

- (a) from applying for a revocation of the rights under section 50; or
- (b) from instituting proceedings before a court or the AAT in relation to the right; or
- 20 (c) from requesting the Secretary to make a declaration under section 39 that the plant variety in which the right was granted is essentially derived from another plant variety in which the person holds PBR.

(3) If:

- (a) PBR in a particular plant variety is granted to a person; and
  - 25 (b) another person (the “**eligible person**”) was entitled, at law or equity, to an assignment of the right to make an application for the PBR;
- the eligible person is entitled to an assignment of the PBR.

**PBR may be subject to conditions**

30 49.(1) The Minister may, if the Minister thinks it necessary, in the public interest, refer to the Plant Breeder's Rights Advisory Committee the question whether a grant of PBR that the Minister proposes to make, or an existing grant of PBR, should be subject to conditions.

(2) The Minister may, having regard to the views of the Plant Breeder's Rights Advisory Committee on a matter referred under subsection (1),  
35 impose such conditions on PBR that is to be granted or that has been granted as the Minister considers appropriate.

(3) If the Minister imposes conditions on PBR:

- (a) the Secretary must give public notice of those conditions and give the grantee a copy of the instrument setting them out; and

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(b) the Registrar must enter details of those conditions in the Register.

Note: A decision under this section by the Minister to make a grant subject to conditions is reviewable by the AAT under section 77.

*Division 2—Revocation of Plant Breeder's Right or declaration of essential derivation*

5

**Revocation of PBR**

**50.(1)** The Secretary must revoke PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety if:

- (a) the Secretary becomes satisfied that facts existed that, if known before the grant of that right or the making of that declaration, would have resulted in the refusal to grant that right or make that declaration; or 10
- (b) the grantee has failed to pay a fee payable in respect of that right or of that declaration within 30 days after having been given notice that the fee has become payable. 15

(2) The Secretary may revoke PBR in a plant variety if:

- (a) the Secretary is satisfied that a person to whom that right has been assigned or transmitted has failed to comply with section 21; or
- (b) the Secretary is satisfied that the grantee has failed to comply with a condition imposed under section 49. 20

(3) If the Secretary revokes PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety, the Secretary must, within 7 days after the decision to revoke was taken, by notice given to the grantee of the right that has been revoked or of the right that is affected by the giving of the declaration of essential derivation, tell that grantee of the decision and set out the reasons for the revocation. 25

(4) The Secretary must not revoke PBR under this section unless:

- (a) the Secretary has given the grantee, or any person to whom the Secretary believes that right has been assigned or transmitted, particulars of the grounds of the proposed revocation; and 30
- (b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

(5) The Secretary must not under this section, revoke a declaration that a plant variety (the “**initial variety**”) is essentially derived from another plant variety unless: 35

- (a) the Secretary has given the grantee of PBR in the initial variety, or any person to whom the Secretary believes that that PBR has been assigned or transmitted, particulars of the grounds of the proposed revocation of that declaration of essential derivation; and 40

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(b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

5 (6) The revocation of PBR in a plant variety or of a declaration that a plant variety is essentially derived from another plant variety takes effect:

(a) if no application for review of the revocation is made to the AAT—at the end of the period within which such an application might be made; or

10 (b) if such an application is made—at the time when the application is withdrawn, or finally determined, whether by the Tribunal or by a court.

(7) Nothing in this section affects the power of the Court under subsection 44A(2) of the AAT Act.

15 (8) A person whose interests are affected by the grant of PBR in a plant variety may apply to the Secretary, in writing, for the revocation of the right.

(9) A person whose interests are affected by the making of a declaration that a plant variety is essentially derived from another plant variety may apply to the Secretary, in writing, for a revocation of that declaration.

20 (10) If the Secretary decides not to revoke PBR in a plant variety in accordance with an application under subsection (8) or not to revoke a declaration of essential derivation in accordance with subsection (9), the Secretary must, within 7 days of making that decision, by notice in writing to the person who applied for the revocation, tell the person of the decision and set out the reasons for the decision.

25 Note: A decision under this section to revoke, or refuse to revoke, PBR or a declaration of essential derivation is reviewable by the AAT under section 77.

**Entry of particulars of revocation**

**51.(1) If:**

30 (a) PBR in a plant variety is revoked in accordance with section 50; or  
(b) the Secretary is served with a copy of an order of a court given under section 55 revoking that right;

the Secretary must:

(c) enter particulars of the revocation in the Register; and  
(d) give public notice of the revocation.

35 (2) If the holder of PBR in a plant variety fails to pay the prescribed annual fee for the renewal of the right by the last day for payment of that fee, the holder is taken to have surrendered the right.

(3) The Secretary must:

40 (a) enter particulars of the surrender in the Register; and  
(b) give public notice of the surrender.

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**Surrender of PBR**

52. The holder of PBR in a plant variety may, at any time, by written notice to the Secretary, offer to surrender that right.

**PART 5—ENFORCEMENT OF PLANT BREEDER'S RIGHT**

**Infringement of PBR**

5

53.(1) Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is infringed by:

- (a) a person doing, without, or otherwise than in accordance with, authorisation from the grantee of the right, an act referred to in a paragraph of section 11 in respect of the variety or of a dependent variety; or 10
- (b) a person claiming, without, or otherwise than in accordance with, authorisation from the grantee of that right, the right to do an act referred to in a paragraph of section 11 in respect of that variety or of a dependent variety; or 15
- (c) a person using a name of the variety that is entered in the Register in relation to:
  - (i) any other plant variety; or
  - (ii) a plant of any other plant variety.

(2) If a plant variety (the “**derived variety**”) has been declared to be an essentially derived variety of another plant variety (the “**initial variety**”), the reference in paragraphs (1)(a) and (b) to authorisation from the grantee of the right means, in relation to the derived variety, authorisation from both the grantee of PBR in the derived variety and from the grantee of PBR in the initial variety. 20 25

(3) In this section, a reference to the grantee of PBR in a plant variety includes a reference to a person who has, by assignment or transmission, become the holder of that right.

**Actions for infringement**

54.(1) An action for infringement of PBR in a plant variety may be begun in the Court. 30

(2) A defendant in an action for infringement of PBR in a plant variety may apply, by way of counterclaim, for revocation of that right on the ground that:

- (a) the variety was not a new plant variety; or 35
- (b) facts exist that would have resulted in the refusal of the grant of that right if they had been known to the Secretary before the grant of that right.

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- (3) If, in an action for infringement of PBR in a plant variety:  
(a) the defendant applies, by way of counterclaim, for the revocation of that right; and  
(b) the Court is satisfied that a ground for revocation of that right exists;  
5 the Court may make an order revoking that right.
- (4) If the Court revoked PBR in a plant variety on the counterclaim of a defendant, the Court may order the defendant to serve on the Registrar a copy of the order revoking that right.

**Declarations as to non-infringement**

- 10 **55.(1)** A person who proposes to perform an act described in a paragraph of section 11 in relation to the propagating material of a plant variety may, by an action in the Court against the grantee of PBR in a plant variety, apply for a declaration that the performance of that act would not constitute an infringement of that right.
- 15 (2) A person may apply for a declaration whether or not there has been an assertion of an infringement of PBR by the grantee of that right.
- (3) The Court must not make such a declaration unless:  
(a) the person proposing to perform the act:  
20 (i) has applied in writing to the grantee of the PBR concerned for an admission that the proposed performance of the act would not infringe that right; and  
(ii) has given the grantee full written particulars of the propagating material concerned; and  
(iii) has undertaken to repay all expenses reasonably incurred by  
25 the grantee in obtaining advice in the declaration; and  
(b) the grantee has refused or failed to make such an admission.
- (4) The costs of all parties in proceedings for a declaration under this section are to be paid by the person seeking the declaration unless the Court otherwise orders.
- 30 (5) The validity of a grant of PBR in a plant variety is not to be called in question in proceedings for a declaration under this section.
- (6) The making of, or the refusal to make, a declaration under this section does not imply that a grant of PBR in a plant variety is, or is not, valid.

**Jurisdiction of Court**

- 35 **56.(1)** The Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Court.
- (2) That jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.



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(3) The relief that the Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(4) The regulations may make provision in relation to the practice and procedure of the Court in actions under this Act, including provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time. 5

(5) Subsection (4) does not limit the power of the Judges of the Court or a majority of them to make rules of Court under section 59 of the *Federal Court of Australia Act 1976* that are consistent with the regulations referred to in that subsection. 10

**Innocent infringement**

**57.(1)** The Court may refuse to award damages, or to make an order for an account of profits, against a person in an action for infringement of PBR in a plant variety, if the person satisfies the Court that, at the time of the infringement, the person was not aware of, and had no reasonable grounds for suspecting, the existence of that right. 15

(2) If the propagating material of plants of the plant variety, labelled so as to indicate that PBR is held in the variety in Australia, has been sold to a substantial extent before the date of the infringement, the person against whom the action for infringement is brought is taken to have been aware of the existence of PBR in the variety, unless the contrary is established. 20

**PART 6—ADMINISTRATION**

**Registrar of Plant Breeder's Rights** 25

**58.(1)** There is established by this section a Registrar of Plant Breeder's Rights.

(2) The office of the Registrar of Plant Breeder's Rights is an office in the Department.

(3) The Registrar has the functions and powers: 30

(a) that are conferred on the Registrar by this Act or by the regulations; or

(b) that are delegated to the Registrar by the Secretary under section 59.

**Delegation**

**59.(1)** The Minister may, by signed instrument, delegate to the Registrar, or to another officer of the Department within the Senior Executive Service, any of the powers or functions of the Minister under this Act. 35

(2) The Secretary may, by signed instrument, delegate to the Registrar, or to another officer of the Department within the Senior Executive Service, any of the powers or functions of the Secretary under this Act. 40

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**Certain persons not to acquire PBR**

- 5     **60.(1)** A person must not apply for, or otherwise acquire, except than by will or by operation of law, PBR in a plant variety or an interest in such right if the person has during the 12 months before the application, held, or performed the duties of:
- (a) the office of Secretary; or
  - (b) the office of Registrar of Plant Breeder's Rights; or
  - (c) an office in the Department the duties of which involve providing assistance to the Registrar.

- 10    Penalty: 60 penalty units.

(2) A grant of PBR applied for in contravention of subsection (1) or an acquisition of PBR in contravention of that subsection is void.

**Register of Plant Varieties**

- 15    **61.(1)** The Registrar must keep a register, to be known as the Register of Plant Varieties, at a place approved by the Secretary.

- (2) The Registrar must cause a copy of the Register to be maintained in each State or Territory (other than the State or Territory where the Register is required to be kept) at the principal office of the Department in that State or Territory and at such other place (if any) in that State or Territory as the
- 20    Secretary directs.

**Inspection of Register**

**62.(1)** A person may inspect the Register at any reasonable time.

(2) A person is entitled, on payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.

25                   **PART 7—PLANT BREEDER'S RIGHTS ADVISORY COMMITTEE**

**Establishment of Advisory Committee**

- 63.(1)** There is established by this section a Committee by the name of the Plant Breeder's Rights Advisory Committee.
- 30    **(2)** The functions of the Advisory Committee are:
- (a) at the request of the Minister, to advise the Minister on the desirability of declaring:
    - (i) in regulations made for the purpose of subsection 17(2)—that subsection 17(1) does not apply to a particular taxon; or
    - 35       (ii) in regulations made for the purpose of subsection 22(3)—that the duration of PBR in a particular taxon will be longer than provided in subsection 22(2); or
    - (iii) in regulations made for the purpose of subsection 42(1)—that a particular taxon is a taxon to which this Act does not apply;
- 40       and

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- (b) to advise the Registrar on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Registrar refers to the Advisory Committee.

**Membership of Advisory Committee**

**64.(1)** The Advisory Committee consists of: 5

- (a) the Registrar; and
- (b) 2 members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties; and
- (c) one member who, in the opinion of the Minister, is an appropriate person to represent users, and likely users, of new plant varieties; and 10
- (d) one member who, in the opinion of the Minister, is an appropriate person to represent the interests of consumers, and likely consumers, of new plant varieties or of the products of new plant varieties; and
- (e) 2 other members who, in the opinion of the Minister, possess qualifications or experience that are appropriate for a member of the Advisory Committee. 15

(2) The members, other than the Registrar, must be appointed by the Minister.

(3) The members, other than the Registrar, hold office as part-time members. 20

(4) Each member, other than the Registrar, holds office for the period, not exceeding 2 years, that is specified in the instrument of appointment, but is eligible for re-appointment.

(5) The Minister may terminate the appointment of a member, other than the Registrar, for misbehaviour or for physical or mental incapacity. 25

(6) The Minister must terminate the appointment of a member, other than the Registrar, if the member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 30
- (b) fails, without reasonable excuse, to disclose any interest in a matter required to be disclosed under section 66.

(7) If a person's appointment as a member is terminated under subsection (6), the Minister must give the person a written notice informing the person of the termination and setting out the reasons for the termination. 35

(8) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.

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**Remuneration and allowances**

65.(1) The members referred to in paragraphs 64(1)(b), (c), (d) and (e) must be paid:

- 5       (a) such remuneration as is determined by the Remuneration Tribunal;  
      and  
      (b) such allowances as are prescribed.

(2) Subsection (1) has effect subject to the *Remuneration Tribunal Act 1973*.

**Disclosure of interests**

10       66.(1) A member who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting.

(2) A disclosure must:

- 15       (a) be recorded in the minutes of the meeting of the Advisory Committee; and  
      (b) be made known in any advice given by the Committee in relation to that matter.

**Meetings**

20       67.(1) The Registrar may convene such meetings of the Advisory Committee as are necessary for the purposes of the performance of the functions of the Advisory Committee.

(2) At a meeting of the Advisory Committee, 4 members constitute a quorum.

25       (3) The Registrar presides at a meeting of the Advisory Committee at which the Registrar is present.

(4) If the Registrar is not present, the members present must elect one of their number to preside at the meeting.

30       (5) Subject to subsection (2), the Advisory Committee may determine the procedure to be followed at a meeting of the Committee.

**PART 8—MISCELLANEOUS**

**Public notices**

68.(1) The Secretary must issue a journal, to be called the *Plant Varieties Journal*, at least 4 times each year.

35       (2) Any public notice that the Secretary is required to make under this Act must be published in the Journal.

(3) Public notice of any matter additional to the matters referred to in subsection (2) that the Secretary considers it necessary or desirable to publicise may also be published in the Journal.

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(4) If the Secretary considers it desirable to give additional public notice of matters by publishing notices of those matters in a periodical other than the Journal, the Secretary may arrange for, or consent to, the giving of additional public notice of those matters in the periodical.

**Notices inviting submissions in respect of certain regulations** 5

**69.(1)** Regulations must not be made for the purposes of subsection 17(2), 22(3) or 42(1) unless, before the making of the regulations and before the Minister seeks any advice from the Advisory Committee concerning those regulations:

- (a) the Minister has, in accordance with section 68, given public notice of the Minister's intention to make a regulation for the purposes of that subsection in relation to a particular taxon that is specified in the notice; and 10
- (b) the notice has given a broad indication of the objectives of the intended regulations and invited persons to make submissions to the Minister concerning it within a period of 30 days after the publication of the notice. 15

(2) If the Minister receives, in accordance with an invitation in a public notice under subsection (1), a submission concerning an intended regulation, the Minister must have regard to the submission so made. 20

(3) If the Minister seeks advice of the Advisory Committee concerning an intended regulation, the Minister may comply with subsection (2):

- (a) by providing to the Committee, at the time of requesting the advice of that Committee, a copy of all submissions received; and
- (b) requesting the Advisory Committee to have regard to those submissions in preparing its advice to the Minister. 25

**Genetic resource centres**

**70.(1)** If, in the opinion of the Secretary, a place is suitable for the storage and maintenance of germplasm material, the Secretary may, by notice in writing, declare that place to be a genetic resource centre for the purposes of this Act. 30

(2) The person in charge of a genetic resource centre may do all things necessary to maintain the viability of propagating material stored at that centre.

**The herbarium** 35

**71.** If, in the opinion of the Secretary, an organisation has facilities suitable for the storage of plant specimens, the Secretary may, by notice in writing, declare the organisation to be the herbarium for the purposes of this Act.

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**Agents may act in matters relating to PBR**

5       72. Subject to any other law of the Commonwealth, including the High Court Rules and the Federal Court Rules, an application, a written submission or any other document may be prepared or lodged, and any business may be transacted, for the purposes of this Act, by one person on behalf of another person.

**Service of documents**

10       73. If the Secretary or the Registrar is required by this Act to give a written notice or other document to an applicant for, or a grantee of, PBR, that notice or other document may be given by being posted by pre-paid post as a letter addressed to the applicant or the grantee at the address for service shown on the application or entered in the Register, as the case requires.

**Infringement offences**

15       74.(1) A person must not, in relation to propagating material of a plant variety in which PBR has been granted, intentionally or recklessly do any of the acts referred to in a paragraph of section 11 if such an act would, under section 53, infringe the PBR in the variety.  
Penalty: 500 penalty units.

20       (2) The fact that an action for infringement has been brought against a person under section 54 in respect of a particular act does not prevent a prosecution under this section in respect of the same act.

**Offences other than infringement offences**

25       75.(1) A person must not intentionally or recklessly make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act.  
Penalty: 6 months imprisonment.

30       (2) A person who is not the grantee of PBR in a plant variety must not intentionally or recklessly represent to another person that he or she is the grantee of PBR in that variety.  
Penalty: 60 penalty units.

      (3) A person must not intentionally or recklessly represent to another person that PBR granted to that first-mentioned person in a plant variety extends to cover another plant variety that is not:  
35       (a) a dependent variety of the first-mentioned variety; or  
      (b) a variety that has been declared to be an essentially derived variety of the first-mentioned variety.  
Penalty: 60 penalty units.

40       (4) A person must not intentionally or recklessly represent to another person that a plant of a variety in which PBR has not been granted is a plant of a variety in which PBR has been granted.  
Penalty: 60 penalty units.

**Conduct by directors, servants and agents**

**76.(1)** If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate, within the scope of his or her actual or apparent authority; and 5
- (b) that the director, servant or agent had the state of mind.

**(2)** Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct. 10

**(3)** If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show: 15

- (a) that the conduct was engaged in by a servant or agent of the person, within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind. 20

**(4)** Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct. 25

**(5)** If:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted for the offence if subsections (3) and (4) had not been enacted; 30

the person is not liable to be punished by imprisonment for that offence.

**(6)** A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; 35
- and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**(7)** A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory. 40

**(8)** A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

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(9) A reference in this section to an offence against section 74 or 75 includes a reference to an offence against section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*, that relates to section 74 or 75 of this Act.

**Applications for review.**

- 5       **77.(1)** Applications may be made to the AAT for review of:
- (a) a decision by the Minister under subsection 49(1); or
  - (b) a decision by the Secretary:
    - (i) under subsection 19(7) to exercise a power under subsection 19(3); or
    - 10       (ii) under subsection 19(3) to license, or refuse to license, a person who applied to be so licensed in response to an invitation under paragraph 19(8)(c); or
    - (iii) under subsection 19(10) to make propagating material available; or
    - 15       (iv) under subsection 19(11) to certify, or to refuse to certify, a plant variety; or
    - (v) under section 30 to accept or reject an application; or
    - (vi) under section 31 to vary, or refuse to vary, an application; or
    - (vii) under subsection 34(1) refusing to extend the period for giving
    - 20       a detailed description; or
    - (viii) under section 37 to require a test growing; or
    - (ix) under subsection 38(4) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or
    - (x) under subsection 38(5) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or
    - 25       (xi) under subsection 39(2) to issue a notice to an applicant; or
    - (xii) under paragraph 40(8)(b) refusing to extend the period for rebutting the *prima facie* case of essential derivation; or
    - (xiii) under section 40 in respect of an application for a declaration of essential derivation; or
    - 30       (xiv) under section 41 to require a test growing; or
    - (xv) under section 44 to grant, or refuse to grant, PBR in a plant variety; or
    - (xvi) under section 50 to revoke, or not to revoke, PBR in a plant
    - 35       variety or a declaration that a plant variety is essentially derived from another plant variety; or
  - (c) a decision of the Registrar under section 21 to amend, or refuse to amend, the Register.
- 40       **(2)** The AAT does not have power under subsection 29(7) of the AAT Act to extend the time for making an application to that Tribunal for a review of a decision referred to in subsection (1).



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- (3) The Secretary must give public notice of:
- (a) any application made under subsection (1); and
  - (b) any decision of the AAT on such an application; and
  - (c) any decision of a court in relation to, or arising out of:
    - (i) such an application; or
    - (ii) a decision of the AAT on such an application.

5

- (4) In this section:

“decision” has the same meaning as in the AAT Act.

**Repeal**

78. The *Plant Variety Rights Act 1987* is repealed.

10

**Compensation for acquisition of property**

79.(1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is to pay the person such reasonable amount of compensation as is agreed on between the person and the Commonwealth, or failing agreement, as is determined by a court of competent jurisdiction.

15

(2) Any damages or compensation recovered, or other remedy given, in proceedings that are begun otherwise than under this section must be taken into account in assessing compensation payable in proceedings begun under this section and arising out of the same event or circumstance.

20

- (3) In this section:

“acquisition of property” has the same meaning as in paragraph 51(xxxi) of the Constitution;

“just terms” has the same meaning as in paragraph 51(xxxi) of the Constitution.

25

**Regulations**

80.(1) The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

30

(2) Without limiting subsection (1), that subsection includes the power to make regulations:

- (a) prescribing fees including:

- (i) fees payable in respect of the making of applications for PBR, the examination of those applications and the issue of certificates in respect of the grant of PBR; and

35

- (ii) fees payable in respect of the making of applications for declarations of essential derivation, the examination of those applications and the making of those declarations; and

40

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- (iii) fees payable by grantees of PBR at specified intervals or on specified dates; and
- (iv) fees payable in respect of costs incurred by the Secretary in respect of the conduct or supervision of the test growing of plants; and
- 5 (b) making provision in relation to the refund, in specified circumstances, of the whole or part of a fee paid under this Act; and
- (c) making provision in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or a part
- 10 of a fee; and
- (d) making provision in relation to the amendment of an entry in the Register to correct a clerical error or an obvious mistake; and
- (e) making such transitional and saving provisions as are necessary or convenient as a result of the repeal of the *Plant Variety Rights Act*
- 15 *1987* and the enactment of this Act.

**PART 9—TRANSITIONAL**

**Definitions**

81. In this Part:

20 “commencing day” means the day on which, in accordance with section 2, this Act commences;

“old Act” means the *Plant Variety Rights Act 1987*.

**Plant variety rights under old Act to be treated as PBR under this Act**

82.(1) If:

- 25 (a) a person was granted plant variety rights in respect of a plant variety under the old Act; and
- (b) those rights were still in force immediately before the commencing day;

30 then, subject to the regulations, those rights have effect, despite the repeal of the old Act, on and after that day, as if:

(c) this Act had been in force at the time when those rights were granted; and

(d) they had been granted at that time as PBR in that variety.

35 (2) Despite subsection (1), rights treated as if they had been granted as PBR under this Act continue in force for so long only as they would have continued in force if the old Act had not been repealed.

40 (3) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to claim PBR in respect of plant varieties that would, under this Act, be dependent plant varieties in relation to that particular plant variety.

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(4) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to seek a declaration that another plant variety is an essentially derived variety of the particular plant variety unless PBR in that other plant variety was given only on or after the commencing day. 5

**Applications for plant variety rights lodged and criminal proceedings begun before commencing day**

83.(1) If, before the commencing day:

- (a) a person has made application for plant variety rights under the old Act; but 10
- (b) the application has not been finally disposed of under that Act; the provisions of the old Act are taken to continue in force, for the purpose of dealing with the application, and any objection that has been made before that day, or is made after that day, in relation to the application.

(2) If before the commencing day, criminal proceedings had been begun 15 under the old Act but those proceedings had not been finally determined before that day, the provisions of the old Act are taken to continue in force, for the purposes of those proceedings.

**Other applications and proceedings under old Act**

84.(1) Subject to the regulations, this Act applies, on and after the 20 commencing day, to any application, request, action or proceeding made or started under the old Act and not finally dealt with or determined under that Act before that day as if the application, request, action or proceeding had been made or started under a corresponding provision of this Act.

(2) Subsection (1) does not apply in relation to an application for plant 25 variety rights, or to criminal proceedings, covered by section 83.

**Transitional arrangements for membership and functions of Advisory Committee**

85.(1) The persons who, under the old Act, were members of the Plant Variety Rights Advisory Committee established under section 44 of that Act 30 are to be taken, with effect from the commencing day, to be members of the Plant Breeder's Rights Advisory Committee established by section 63 of this Act.

(2) Those members who were appointed by the Minister under section 45 of the old Act continue to hold office as if they had been appointed 35 by the Minister under section 64 of the new Act on the same terms and conditions for the balance of the term of their respective appointments.

(3) Any advice given to the Minister or to the Secretary by the Plant Variety Rights Advisory Committee has effect, on and after the commencing day, as if it had been given by the Plant Breeder's Rights Advisory 40 Committee.

**Register of Plant Varieties**

86. On and after the commencing day, the Register of Plant Varieties under the old Act is taken to form part of the Register of Plant Varieties under this Act.

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*Plant Breeder's Rights* No. 110, 1994**SCHEDULE**  
**CONVENTION**Subsection 3(1)  
(definition of "Convention")

**International Convention for the Protection  
of New Varieties of Plants of December 2, 1961,  
as revised at Geneva on November 10, 1972,  
on October 23, 1978, and on March 19, 1991**

**List of Articles****Chapter I: Definitions***Article 1:* Definitions**Chapter II: General Obligations of the Contracting Parties***Article 2:* Basic Obligation of the Contracting Parties*Article 3:* Genera and Species to be Protected*Article 4:* National Treatment**Chapter III: Conditions for the Grant of the Breeder's Right***Article 5:* Conditions of Protection*Article 6:* Novelty*Article 7:* Distinctness*Article 8:* Uniformity*Article 9:* Stability**Chapter IV: Application for the Grant of the Breeder's Right***Article 10:* Filing of Applications*Article 11:* Right of Priority*Article 12:* Examination of the Application*Article 13:* Provisional Protection**Chapter V: The Rights of the Breeder***Article 14:* Scope of the Breeder's Right*Article 15:* Exceptions to the Breeder's Right*Article 16:* Exhaustion of the Breeder's Right*Article 17:* Restrictions on the Exercise of the Breeder's Right*Article 18:* Measures Regulating Commerce*Article 19:* Duration of the Breeder's Right

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**SCHEDULE—continued**

**Chapter VI: Variety Denomination**

*Article 20:* Variety Denomination

**Chapter VII: Nullity and Cancellation of the Breeder's Right**

*Article 21:* Nullity of the Breeder's Right

*Article 22:* Cancellation of the Breeder's Right

**Chapter VIII: The Union**

*Article 23:* Members

*Article 24:* Legal Status and Seat

*Article 25:* Organs

*Article 26:* The Council

*Article 27:* The Office of the Union

*Article 28:* Languages

*Article 29:* Finances

**Chapter IX: Implementation of the Convention; Other Agreements**

*Article 30:* Implementation of the Convention

*Article 31:* Relations Between Contracting Parties and States Bound by Earlier Acts

*Article 32:* Special Agreements

**Chapter X: Final Provisions**

*Article 33:* Signature

*Article 34:* Ratification, Acceptance or Approval; Accession

*Article 35:* Reservations

*Article 36:* Communications Concerning Legislation and the Genera and Species Protected; Information to be Published

*Article 37:* Entry into Force; Closing of Earlier Acts

*Article 38:* Revision of the Convention

*Article 39:* Denunciation

*Article 40:* Preservation of Existing Rights

*Article 41:* Original and Official Texts of the Convention

*Article 42:* Depositary Functions

**SCHEDULE—continued****CHAPTER I****DEFINITIONS****Article 1****Definitions**

For the purposes of this Act:

(i) “this Convention” means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;

(ii) “Act of 1961/1972” means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;

(iii) “Act of 1978” means the Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants;

(iv) “breeder” means

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be;

(v) “breeder's right” means the right of the breeder provided for in this Convention;

(vi) “variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

(vii) “Contracting Party” means a State or an intergovernmental organization party to this Convention;

(viii) “territory,” in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

(ix) “authority” means the authority referred to in Article 30(1)(ii);

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**SCHEDULE—continued**

(x) “Union” means the Union for the Protection of New Varieties of Plants founded by the Act of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in this Convention;

(xi) “member of the Union” means a State party to the Act of 1961/1972 or the Act of 1978, or a Contracting Party.

**CHAPTER II**

**GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES**

**Article 2**

**Basic Obligation of the Contracting Parties**

Each Contracting Party shall grant and protect breeders' rights.

**Article 3**

**Genera and Species to be Protected**

(1) [*States already members of the Union*] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

(2) [*New members of the Union*] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

**Article 4**

**National Treatment**

(1) [*Treatment*] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting



**SCHEDULE—continued**

Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

(2) [*“Nationals”*] For the purposes of the preceding paragraph, “nationals” means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

**CHAPTER III**

**CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT**

**Article 5**

**Conditions of Protection**

(1) [*Criteria to be satisfied*] The breeder's right shall be granted where the variety is

- (i) new,
- (ii) distinct,
- (iii) uniform and
- (iv) stable.

(2) [*Other conditions*] The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

**Article 6**

**Novelty**

(1) [*Criteria*] The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

(i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date and

(ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

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**SCHEDULE—continued**

(2) [*Varieties of recent creation*] Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.

(3) [*“Territory” in certain cases*] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

**Article 7**

**Distinctness**

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

**Article 8**

**Uniformity**

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

**Article 9**

**Stability**

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

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**SCHEDULE—continued**

**CHAPTER IV**

**APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT**

**Article 10**

**Filing of Applications**

(1) [*Place of first application*] The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.

(2) [*Time of subsequent applications*] The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.

(3) [*Independence of protection*] No Contracting Party shall refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

**Article 11**

**Right of Priority**

(1) [*The right; its period*] Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the "subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) [*Claiming the right*] In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) [*Documents and material*] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection

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**SCHEDULE—continued**

or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.

(4) [*Events occurring during the period*] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

**Article 12**

**Examination of the Application**

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

**Article 13**

**Provisional Protection**

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

**CHAPTER V**

**THE RIGHTS OF THE BREEDER**

**Article 14**

**Scope of the Breeder's Right**

(1) [*Acts in respect of the propagating material*] (a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

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**SCHEDULE—continued**

- (i) production or reproduction (multiplication),
- (ii) for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (iv) above.

(b) The breeder may make his authorization subject to conditions and limitations.

(2) [*Acts in respect of the harvested material*] Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(3) [*Acts in respect of certain products*] Each Contracting Party may provide that, subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(4) [*Possible additional acts*] Each Contracting Party may provide that, subject to Articles 15 and 16, acts other than those referred to in items (i) to (vii) of paragraph (1)(a) shall also require the authorization of the breeder.

(5) [*Essentially derived and certain other varieties*] (a) The provisions of paragraphs (1) to (4) shall also apply in relation to

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

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**SCHEDULE—continued**

- (ii) it is clearly distinguishable from the initial variety and
  - (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

**Article 15**

**Exceptions to the Breeder's Right**

- (1) [*Compulsory exceptions*] The breeder's right shall not extend to
- (i) acts done privately and for non-commercial purposes,
  - (ii) acts done for experimental purposes and
  - (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.
- (2) [*Optional exception*] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).

**Article 16**

**Exhaustion of the Breeder's Right**

- (1) [*Exhaustion of right*] The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts
- (i) involve further propagation of the variety in question or
  - (ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (2) [*Meaning of "material"*] For the purposes of paragraph (1), "material" means, in relation to a variety,

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**SCHEDULE—continued**

- (i) propagating material of any kind,
- (ii) harvested material, including entire plants and parts of plants, and
- (iii) any product made directly from the harvested material.

(3) [*“Territory” in certain cases*] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

**Article 17**

**Restrictions on the Exercise of the Breeder's Right**

(1) [*Public interest*] Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest.

(2) [*Equitable remuneration*] When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

**Article 18**

**Measures Regulating Commerce**

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

**Article 19**

**Duration of the Breeder's Right**

(1) [*Period of protection*] The breeder's right shall be granted for a fixed period.

(2) [*Minimum period*] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

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**SCHEDULE—continued**

**CHAPTER VI**

**VARIETY DENOMINATION**

**Article 20**

**Variety Denomination**

(1) [*Designation of varieties by denominations; use of the denomination*]

(a) The variety shall be designated by a denomination which will be its generic designation.

(b) Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(2) [*Characteristics of the denomination*] The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.

(3) [*Registration of the denomination*] The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

(4) [*Prior rights of third persons*] Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

(5) [*Same denomination in all Contracting Parties*] A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

(6) [*Information among the authorities of Contracting Parties*] The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety



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**SCHEDULE—continued**

denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) [*Obligation to use the denomination*] Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) [*Indications used in association with denominations*] When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

**CHAPTER VII**

**NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT**

**Article 21**

**Nullity of the Breeder's Right**

(1) [*Reasons of nullity*] Each Contracting Party shall declare a breeder's right granted by it null and void when it is established

(i) that the conditions laid down in Articles 6 or 7 were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) [*Exclusion of other reasons*] No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

**Article 22**

**Cancellation of the Breeder's Right**

(1) [*Reasons for cancellation*] (a) Each Contracting Party may cancel a breeder's right granted by it if it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled.

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**SCHEDULE—continued**

(b) Furthermore, each Contracting Party may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period,

(i) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) [*Exclusion of other reasons*] No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

**CHAPTER VIII**

**THE UNION**

**Article 23**

**Members**

The Contracting Parties shall be members of the Union.

**Article 24**

**Legal Status and Seat**

(1) [*Legal personality*] The Union has legal personality.

(2) [*Legal capacity*] The Union enjoys on the territory of each Contracting Party, in conformity with the laws applicable in the said territory, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.

(3) [*Seat*] The seat of the Union and its permanent organs are at Geneva.

(4) [*Headquarters agreement*] The Union has a headquarters agreement with the Swiss Confederation.

**Article 25**

**Organs**

The permanent organs of the Union are the Council and the Office of the Union.

**Article 26**

**The Council**

(1) [*Composition*] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.

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**SCHEDULE—continued**

(2) [*Officers*] The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate. The President shall hold office for three years.

(3) [*Sessions*] The Council shall meet upon convocation by its President. An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the members of the Union so request.

(4) [*Observers*] States not members of the Union may be invited as observers to meetings of the Council. Other observers, as well as experts, may also be invited to such meetings.

(5) [*Tasks*] The tasks of the Council shall be to:

(i) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(ii) establish its rules of procedure;

(iii) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;

(iv) examine an annual report on the activities of the Union and lay down the program for its future work;

(v) give to the Secretary-General all necessary directions for the accomplishment of the tasks of the Union;

(vi) establish the administrative and financial regulations of the Union;

(vii) examine and approve the budget of the Union and fix the contribution of each member of the Union;

(viii) examine and approve the accounts presented by the Secretary-General;

(ix) fix the date and place of the conferences referred to in Article 38 and take the measures necessary for their preparation; and

(x) in general, take all necessary decisions to ensure the efficient functioning of the Union.

(6) [*Votes*] (a) Each member of the Union that is a State shall have one vote in the Council.

(b) Any Contracting Party that is an intergovernmental organization may, in matters within its competence, exercise the rights to vote of its member States that are members of the Union. Such an intergovernmental organization shall not exercise the rights to vote of its member States if its member States exercise their right to vote, and vice versa.

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**SCHEDULE—continued**

(7) [*Majorities*] Any decision of the Council shall require a simple majority of the votes cast, provided that any decision of the Council under paragraphs (5)(ii), (vi) and (vii) and under Articles 28(3), 29(5)(b) and 38(1) shall require three fourths of the votes cast. Abstentions shall not be considered as votes.

**Article 27**

**The Office of the Union**

(1) [*Tasks and direction of the Office*] The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) [*Duties of the Secretary-General*] The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.

(3) [*Staff*] Subject to the provisions of Article 26(5)(iii), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations.

**Article 28**

**Languages**

(1) [*Languages of the Office*] The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.

(2) [*Languages in certain meetings*] Meetings of the Council and of revision conferences shall be held in the four languages.

(3) [*Further languages*] The Council may decide that further languages shall be used.

**Article 29**

**Finances**

(1) [*Income*] The expenses of the Union shall be met from

- (i) the annual contributions of the States members of the Union,
- (ii) payments received for services rendered,
- (iii) miscellaneous receipts.

(2) [*Contributions: units*] (a) The share of each State member of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the

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**SCHEDULE—continued**

States members of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one-fifth.

(3) [*Contributions: share of each member*] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.

(b) Any other State member of the Union shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any State member of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise, it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

(4) [*Contributions: computation of shares*] (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the States members of the Union by the total number of units applicable to those States members of the Union.

(b) The amount of the contribution of each State member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State member of the Union.

(5) [*Arrears in contributions*] (a) A State member of the Union which is in arrears in the payment of its contributions may not, subject to subparagraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding full year. The suspension of the right to vote shall not relieve such State member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder.

(b) The Council may allow the said State member of the Union to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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**SCHEDULE—continued**

(6) [*Auditing of the accounts*] The auditing of the accounts of the Union shall be effected by a State member of the Union as provided in the administrative and financial regulations. Such State member of the Union shall be designated, with its agreement, by the Council.

(7) [*Contributions of intergovernmental organizations*] Any Contracting Party which is an intergovernmental organization shall not be obliged to pay contributions. If, nevertheless, it chooses to pay contributions, the provisions of paragraphs (1) to (4) shall be applied accordingly.

**CHAPTER IX**

**IMPLEMENTATION OF THE CONVENTION;  
OTHER AGREEMENTS**

**Article 30**

**Implementation of the Convention**

(1) [*Measures of implementation*] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;

(ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;

(iii) ensure that the public is informed through the regular publication of information concerning

— applications for and grants of breeders' rights, and

— proposed and approved denominations.

(2) [*Conformity of laws*] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.

**Article 31**

**Relations Between Contracting Parties  
and States Bound by Earlier Acts**

(1) [*Relations between States bound by this Convention*] Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.

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**SCHEDULE—continued**

(2) [*Possible relations with States not bound by this Convention*] Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary-General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

**Article 32**

**Special Agreements**

Members of the Union reserve the right to conclude among themselves special agreements for the protection of varieties, insofar as such agreements do not contravene the provisions of this Convention.

**CHAPTER X**

**FINAL PROVISIONS**

**Article 33**

**Signature**

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature until March 31, 1992.

**Article 34**

**Ratification, Acceptance or Approval; Accession**

(1) [*States and certain intergovernmental organizations*] (a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it

(i) has competence in respect of matters governed by this Convention,

(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and

(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention.

(2) [*Instrument of adherence*] Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any

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**SCHEDULE—continued**

State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) [*Advice Of the Council*] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

**Article 35  
Reservations**

(1) [*Principle*] Subject to paragraph (2), no reservations to this Convention are permitted.

(2) [*Possible exception*] (a) Notwithstanding the provisions of Article 3(1), any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties.

(b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

**Article 36  
Communications Concerning Legislation and the Genera and Species  
Protected; Information to be Published**

(1) [*Initial notification*] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of

(i) its legislation governing breeders' rights and  
(ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.

(2) [*Notification of changes*] Each Contracting Party shall promptly notify the Secretary-General of



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**SCHEDULE—continued**

- (i) any changes in its legislation governing breeders' rights and
- (ii) any extension of the application of this Convention to additional plant genera and species.

(3) [*Publication of the information*] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

- (i) the legislation governing breeders' rights and any changes in that legislation, and
- (ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

**Article 37**

**Entry into Force; Closing of Earlier Acts**

(1) [*Initial entry into force*] This Convention shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

(2) [*Subsequent entry into force*] Any State not covered by paragraph (1) or any intergovernmental organization shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.

(3) [*Closing of the 1978 Act*] No instrument of accession to the Act of 1978 may be deposited after the entry into force of this Convention according to paragraph (1), except that any State that, in conformity with the established practice of the General Assembly of the United Nations, is regarded as a developing country may deposit such an instrument until December 31, 1995, and that any other State may deposit such an instrument until December 31, 1993, even if this Convention enters into force before that date.

**Article 38**

**Revision of the Convention**

(1) [*Conference*] This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.

(2) [*Quorum and majority*] The proceedings of a conference shall be effective only if at least half of the States members of the Union are represented at it. A majority of three quarters of the States members of the Union present and voting at the conference shall be required for the adoption of any revision.

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**SCHEDULE—continued**

**Article 39**

**Denunciation**

(1) [*Notifications*] Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.

(2) [*Earlier Acts*] Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.

(3) [*Effective date*] The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) [*Acquired rights*] The denunciation shall not affect any rights acquired in a variety by reason of this Convention or any earlier Act prior to the date on which the denunciation becomes effective.

**Article 40**

**Preservation of Existing Rights**

This Convention shall not limit existing breeders' rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other than this Convention concluded between members of the Union.

**Article 41**

**Original and Official Texts of the Convention**

(1) [*Original*] This Convention shall be signed in a single original in the English, French and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) [*Official texts*] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

**Article 42**

**Depositary Functions**

(1) [*Transmittal of copies*] The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organization.

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**SCHEDULE—continued**

(2) [*Registration*] The Secretary-General shall register this Convention with the Secretariat of the United Nations.

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[*Minister's second reading speech made in—*

*Senate on 24 March 1994*

*House of Representatives on 24 August 1994]*



# Plant Variety Rights Act 1987

No. 2 of 1987

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**SCHEDULE**

**CONVENTION**



## Plant Variety Rights Act 1987

No. 2 of 1987

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**An Act to provide for the granting of proprietary rights to persons originating certain new plant varieties, and for related purposes**

*[Assented to 13 March 1987]*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART I—PRELIMINARY

#### Short title

- 5       1. This Act may be cited as the *Plant Variety Rights Act 1987*.

#### Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

#### Interpretation

- 10       3. (1) In this Act, unless the contrary intention appears—  
“accepted”, in relation to an application, means accepted by the Secretary under section 18;

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- “Advisory Committee” means the Plant Variety Rights Advisory Committee established by section 44;
- “applicant”, in relation to an application, means the person for the time being shown in the application as the person making the application; 5
- “application” means an application under section 15 for plant variety rights in respect of a new plant variety to which this Act applies;
- “breeder”, in relation to a new plant variety, means—
- (a) subject to paragraph (c), in the case of a variety originated by one person only—that person; 10
  - (b) subject to paragraph (c), in the case of a variety originated by 2 or more persons (whether jointly, independently at the same time, independently at different times or otherwise)—each of those persons; or
  - (c) in the case of a variety originated— 15
    - (i) by a person in the course of performing duties or functions as a member or employee of a body (whether incorporate or unincorporate); or
    - (ii) by 2 or more persons in the course of performing duties as members or employees of such a body, 20
      - the body of which that person is a member or employee, or of which those persons are members or employees, as the case may be;
- “Convention” means the International Convention for the Protection of New Varieties of Plants, a copy of the English text of which is set out in the Schedule; 25
- “Court” means the Federal Court of Australia;
- “genetic resources centre” means—
- (a) a place known as a Plant Genetic Resources Centre; or
  - (b) a place that is a genetic resources centre because of a declaration in force under sub-section 10 (1); 30
- “grantee”, in relation to plant variety rights, means the person for the time being entered on the Register as the grantee of those rights;
- “member” means a member of the Advisory Committee, and includes the Registrar; 35
- “new plant variety” means a plant variety that—
- (a) was originated by a person;
  - (b) is homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation;
  - (c) is stable; and 40

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5 (d) is distinguishable by one or more important morphological, physiological or other characteristics from all other plant varieties whose existence was a matter of public knowledge at the time when the application in respect of the variety was made;

“plant” does not include fungus, alga or bacterium;

“plant variety” includes cultivar, clone, hybrid and strain;

“plant variety rights” means the rights specified in section 12;

10 “Register” means the Register of Plant Variety Rights kept in pursuance of section 9;

“Registrar” means the Registrar of Plant Variety Rights;

“reproductive material”, in relation to a plant, means—

(a) a seed of that plant;

(b) a cutting from that plant; or

15 (c) any other part, or product, of that plant, from which another plant can be produced;

“Secretary” means the Secretary to the Department;

“sell”, in relation to a plant or reproductive material of a plant, includes let on hire and exchange by way of barter;

20 “successor”, in relation to a breeder of a new plant variety, means a person to whom the right of the breeder to make an application for plant variety rights in respect of that plant variety has been assigned or transmitted;

“will” includes a codicil.

25 (2) For the purpose of this Act, a plant variety in respect of which an application has been made shall be taken to be stable if, and only if, plants of the variety remain true to the description of a plant of the variety given in the application—

30 (a) except where paragraph (b) applies—after repeated reproduction or propagation of plants of the variety; or

(b) where the application specifies a particular cycle of reproduction or multiplication—at the end of each of those cycles.

35 (3) For the purposes of this Act, where a plant variety is originated by the selective breeding of plants, the person who carried out that breeding shall be taken to have originated that variety.

(4) For the purposes of this Act, where a plant variety is originated by a humanly induced genetic mutation, the person who induced that mutation shall be taken to have originated that variety.

(5) Where—

40 (a) a person carries on activities in relation to particular plants or particular reproductive material of plants in the hope that a plant variety derived from those plants or that material will originate by natural processes; and



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- (b) a plant variety so derived, or apparently so derived, originates by natural processes,  
that person shall be taken to have originated the plant variety referred to in paragraph (b).
- (6) A reference in this Act to a test growing of a plant variety is a reference to a test involving— 5
- (a) the growing, or the production and growing, of plants, or of 2 or more generations of plants, of that variety at a place that is, and under conditions that are, appropriate for the growing of plants of that variety; 10
  - (b) the observation of the characteristics, and the condition, of the plants grown at the various stages in their growth; and
  - (c) the recording of those observations.
- (7) Where, for the purposes of this Act, the Secretary or another person (including a court and the Administrative Appeals Tribunal) is required to be satisfied that a plant variety in respect of which an application has been made is a new plant variety, that person shall, for the purpose of deciding whether the person is so satisfied, assume— 15
- (a) that all the plant varieties whose existence was a matter of public knowledge when the application was made were constituted by, and constituted only by, the plant varieties that were in existence at the time when the application was made; and 20
  - (b) that the only plant varieties that were in existence at the time when the application was made were the plant varieties of the existence of which at that time that person is aware after making such inquiries, and consulting such publications readily available in Australia, as that person considers appropriate. 25

**Act to bind Crown**

4. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island. 30

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

**Extent of Act**

5. Nothing in this Act requires or permits the grant of plant variety rights in respect of a new plant variety unless— 35

- (a) the origination of that new plant variety constituted an invention for the purposes of paragraph 51 (xviii) of the Constitution; or
- (b) where Australia is a party to the Convention—the grant is appropriate to give effect to the obligations of Australia under the Convention. 40

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**PART II—ADMINISTRATION**

**Registrar of Plant Variety Rights**

6. (1) There shall be a Registrar of Plant Variety Rights.

5 (2) The office of Registrar of Plant Variety Rights shall be an office in the Department.

(3) The Registrar has such functions and powers as are conferred on the Registrar by this Act or by the regulations or are delegated to the Registrar by the Secretary under section 7.

**Delegation**

10 7. (1) The Secretary may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Secretary, delegate to the Registrar or to another officer of the Department all or any of the powers of the Secretary under this Act, other than this power of delegation.

15 (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Secretary.

(3) A delegation under this section does not prevent the exercise of a power by the Secretary.

**Certain persons not to acquire plant variety rights**

20 8. (1) The Secretary, the Registrar or a person who, during the preceding 12 months has held, or performed the duties of, the office of Secretary or Registrar of Plant Variety Rights shall not apply for plant variety rights or acquire, otherwise than by will or by operation of law, any such rights or an interest in any such rights.

Penalty: \$2,000.

25 (2) A grant of plant variety rights applied for in contravention of sub-section (1) or an acquisition of plant variety rights in contravention of that sub-section is void.

**Register of Plant Variety Rights**

30 9. (1) The Registrar shall keep, at a place approved by the Secretary, a register, to be known as the Register of Plant Variety Rights, in which shall be entered particulars required to be entered by this Act or the regulations.

35 (2) The Registrar shall cause a copy of, or copies of, the Register to be kept and maintained in each State or Territory (other than the State or Territory where the place at which the Register is required to be kept is located) at the principal office of the Department in that State or Territory and at such other place or places (if any) in that State or Territory as the Secretary may direct.

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**Genetic resources centres**

10. (1) The Secretary may, by writing signed by the Secretary, declare a specified place that, in the opinion of the Secretary, is suitable for the storage and maintenance of germ plasm material to be a genetic resources centre for the purposes of this Act.

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(2) The person in charge of a genetic resources centre may do all things necessary or desirable to maintain the viability of the reproductive material of plants stored at that centre in accordance with section 33.

**Public notice**

11. (1) In addition to giving public notice of matters of which the Secretary is required to give notice by this Act or by the regulations, the Secretary may give public notice of other matters relating to this Act where the Secretary considers it necessary or desirable to do so.

10

(2) Subject to sub-sections (3) and (5), where the Secretary is required or permitted to give public notice of a matter for the purposes of this Act, the Secretary shall do so by publishing notice in writing of the matter in the *Gazette*.

15

(3) Subject to sub-section (4), where the Secretary considers that the volume of public notices of matters to be given for the purposes of this Act justifies the issue from time to time of a journal, to be called the Plant Varieties Journal, and the publication of notices of those matters in that journal instead of in the *Gazette*, the Secretary may issue that journal and, during the period in which the journal is being issued, shall give public notice of those matters by publishing notice in writing of them in that journal.

20

25

(4) The Secretary—

(a) shall not issue the Plant Varieties Journal unless and until he or she has given public notice of the intention to do so; and

(b) shall not cease to issue that journal unless and until he or she has given public notice of the intention to cease to issue the journal.

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(5) Subject to sub-section (6), where the Secretary considers that it is desirable to give public notices of matters for the purposes of this Act by publishing notice of those matters in a particular periodical other than the *Gazette* or the Plant Varieties Journal, the Secretary shall, unless it has become impossible to publish notice of those matters in that particular periodical, give public notice of those matters by publishing notice in writing of them in that particular periodical.

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(6) The Secretary—

(a) shall not publish notices of matters in a particular periodical in accordance with sub-section (5) unless and until he or she has given public notice of the intention to do so specifying the publication;

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(b) where the Secretary wishes to discontinue publishing notices of matters in a particular periodical in accordance with sub-section

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- (5), the Secretary shall give public notice of his or her intention to so discontinue and, after giving that notice, shall so discontinue; and
- 5 (c) if it becomes impossible to publish notices of matters in accordance with sub-section (5) in a particular journal because the journal has ceased publication or otherwise, the Secretary shall publish a notice in writing in the *Gazette* of the discontinuance of the publication of those notices in that publication.

**PART III—PLANT VARIETY RIGHTS**

***Division 1—Preliminary***

10 **Plant variety rights**

12. (1) Plant variety rights, in respect of a new plant variety, are—
- (a) the exclusive right to sell, including the right to license other persons to sell, plants of that variety;
- 15 (b) the exclusive right to sell, including the right to license other persons to sell, reproductive material of plants of that variety;
- (c) the exclusive right to produce, including the right to license other persons to produce, plants of that variety for sale; and
- 20 (d) the exclusive right to produce, including the right to license other persons to produce, reproductive material of plants of that variety for sale.

(2) Plant variety rights in respect of a plant variety are subject to conditions imposed in respect of those rights by section 33 or under section 34.

**Plant variety rights to be granted in relation to certain varieties only**

- 25 13. (1) Plant variety rights shall not be granted in respect of a plant variety unless the plants of that variety are plants of a genus or species declared by the regulations to be a genus or species to which this Act applies.

30 (2) The Governor-General shall not make a regulation declaring a genus or species to be a genus or species to which this Act applies unless the Governor-General has been informed by the Minister that the Minister has considered advice given by the Advisory Committee in relation to the desirability of the genus or species being declared to be a genus or species to which this Act applies.

35 (3) For the purposes of this section, a plant that is a hybrid derived from plants of different genera or species may be taken to be a plant of either of those genera or species.

**Plant variety rights not to be granted in respect of varieties previously sold**

- 40 14. Where an application is made for plant variety rights in respect of a plant variety, those rights shall not be granted if there has been a sale of a plant, or reproductive material of a plant, of that variety by, or with the

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consent of, the breeder or a breeder, or a successor of the breeder or of a breeder, of the variety, and—

- (a) the sale took place in Australia before the making of the application; or
- (b) the sale took place in another country earlier than 6 years before the making of the application. 5

***Division 2—Applications for Plant Variety Rights***

**Application for plant variety rights**

15. (1) Subject to this Act, a breeder of a new plant variety may make an application to the Secretary for plant variety rights in respect of the variety. 10

(2) A breeder of a new plant variety has the right under sub-section (1) to make an application for plant variety rights in respect of that variety whether or not the breeder is an Australian citizen, whether or not the breeder is resident in Australia and whether the breeder originated the variety in Australia or in another country. 15

(3) The right under sub-section (1) of a breeder of a new plant variety to make an application for plant variety rights is personal property and is capable of assignment or of transmission by will or by operation of law (whether before or after the application has been made). 20

(4) An assignment of a right to make an application for plant variety rights does not have effect unless it is in writing signed by or on behalf of the assignor.

(5) Subject to sub-section (6), where 2 or more persons are entitled to make applications for plant variety rights in respect of a new plant variety, whether by reason that they originated the variety jointly or independently or otherwise, those persons or some of those persons may make a joint application for those rights. 25

(6) Where 2 or more persons (in this sub-section referred to as the “breeders”) originate a new plant variety jointly, one of those breeders or a successor of one of those breeders shall not make an application for plant variety rights in respect of that variety otherwise than jointly with, or with the consent in writing of, the other person, or each other person, entitled to make an application for those rights. 30

**Form of application 35**

16. An application for plant variety rights in respect of a plant variety shall be in writing in a form approved by the Secretary, shall be lodged with the Secretary in the prescribed manner and shall contain—

- (a) the name of the person making the application;
- (b) where the applicant is the breeder of the variety, a statement that the applicant is the breeder of the variety; 40

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- (c) where the applicant is not the breeder of the variety, the name and address of the breeder from whom the applicant derived the right to make an application and particulars of all relevant assignments and transmissions of the right to make the relevant application;
- 5 (d) a description, or a description and photograph, of a plant of the variety sufficient to identify plants of that variety;
- (e) particulars of the characteristics that distinguish the variety from other varieties;
- (f) particulars of the manner in which the variety was originated;
- 10 (g) the name of the variety;
- (h) particulars of any application for, or approval of a grant of, rights of any kind in respect of the variety in any other country;
- (j) particulars of any tests carried out to establish that the variety is homogeneous and stable (including particulars of any cycle of reproduction or multiplication for the purposes of paragraph 3 (2) (b));
- 15 (k) in the case of a plant variety originated outside Australia, particulars of any test growing of that variety carried out for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic;
- 20 (m) an address in Australia for the service of documents on the applicant for the purposes of this Act; and
- (n) such other particulars (if any) as are prescribed.

**Names of new plant varieties**

- 25 **17. (1)** The name of a new plant variety shall consist of a word or words (which may be an invented word or words) with or without the addition of—
  - (a) a letter or letters not constituting a word;
  - (b) a figure or figures; or
  - 30 (c) both a letter or letters not constituting a word and a figure or figures.
- (2)** A new plant variety shall not have—
  - (a) a name the use of which would be likely to deceive or cause confusion, including a name that is the same as, or is likely to be mistaken for, the name of another plant variety;
  - 35 (b) a name the use of which would be contrary to law;
  - (c) a name that comprises or contains scandalous or offensive matter; or
  - (d) a name, or name of a kind, that is, at the time when the application is made, prohibited by the regulations.
  - 40
- (3)** The name of a new plant variety in respect of which an application is made shall comply with any recommendations of the International Code of Nomenclature for Cultivated Plants, as in force when the application is

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made, formulated and adopted by the International Commission for Nomenclature of Cultivated Plants of the International Union of Biological Sciences that are accepted by Australia.

- (4) The name of a new plant variety in respect of which an application is made shall not consist of, or include— 5
- (a) the name of a natural person living at the time of the application, other than a person who has given written consent to the name of the plant variety;
  - (b) the name of a natural person who died within the period of 10 years immediately preceding the application, other than a person who has given, or whose legal personal representative has given, written consent to the name of the plant variety; or 10
  - (c) the name of a corporation, organisation or institution, other than a corporation, organisation or institution that has given its written consent to the name of the plant variety. 15

**Lodging of applications**

18. (1) Where an application is lodged in respect of a new plant variety—

- (a) if the Secretary is satisfied that—
  - (i) the application complies with the requirement of section 16; and 20
  - (ii) the name of the variety complies with section 17, the Secretary shall accept the application; or
- (b) if the Secretary is not so satisfied—the Secretary shall reject the application. 25

(2) Where the Secretary accepts an application, the Secretary shall, within 30 days after accepting the application, give written notice to the applicant stating that the application has been accepted and give public notice of the application.

(3) Where the Secretary rejects an application, the Secretary shall, within 30 days after rejecting the application, give written notice to the applicant stating that the application has been rejected and setting out the grounds for the rejection. 30

**Variation of application**

19. (1) Where, after an application has been accepted and before it is disposed of, the applicant requests the Secretary in writing to vary the application, the Secretary may, in his or her discretion, vary the application in accordance with the request. 35

(2) Where, after an application has been accepted and before it is disposed of, the right of the applicant to make the application is assigned or transmitted to another person, that person shall forthwith request the Secretary, in writing, to vary the application so that that person is shown as 40

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the person making the application and the Secretary, if he or she is satisfied that that right has been so assigned or transmitted, shall so vary the application.

5 (3) Where the Secretary complies with a request under sub-section (1) or (2) to vary an application, the Secretary shall forthwith give written notice to the person who made the request stating that the application has been varied in accordance with the request.

10 (4) Where the Secretary rejects a request under sub-section (1) or (2) to vary an application, the Secretary shall forthwith give written notice to the person who made the request stating that the request has been rejected and setting out the grounds for the rejection.

15 (5) Where the Secretary complies with a request under sub-section (2) to vary an application so that a person who claims to have been assigned the right to make the application is shown as the person making the application, the Secretary shall forthwith give written notice of particulars of the variation to the person who was the applicant before the variation was made.

20 (6) Where the Secretary rejects a request under sub-section (2) to vary an application so that a person who claims to have been assigned the right to make the application would be shown as the person making the application, the Secretary shall forthwith give written notice to the applicant—

- 25 (a) setting out particulars of the request;  
(b) stating that the request has been rejected; and  
(c) setting out the grounds for the rejection.

(7) Where an application is varied in pursuance of a request under sub-section (1) in a manner that the Secretary considers to be significant, or is varied under sub-section (2), the Secretary shall forthwith give public notice of particulars of the variation.

30 (8) A request by a person under sub-section (2) shall give an address in Australia for the service of documents on the person for the purposes of this Act and—

- 35 (a) where the Secretary complies with the request and the address so given is different from the address contained in the application in accordance with paragraph 16 (m)—the Secretary shall vary the application so that the address so given is shown as the address for the service of documents on the applicant for the purposes of this Act; or  
40 (b) where the Secretary rejects the request—the notice to that person under sub-section (4) shall be given by being posted by pre-paid post as a letter addressed to the person at the address so given.



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**Objections to grant of plant variety rights**

**20. (1)** Where public notice of an application for plant variety rights in respect of a plant variety or of the variation of such an application is given, any person who considers—

- (a) that the commercial interests of the person would be affected by the grant of those rights to the applicant; and 5
- (b) that the Secretary cannot be satisfied, in relation to that variety, of a matter referred to in paragraph 26 (1) (a) (other than a matter referred to in sub-paragraph 26 (1) (a) (viii)),

may, within 6 months after the giving of public notice of the application or any further time before the application is disposed of that is allowed by the Registrar, lodge with the Registrar written objection to the grant of those rights setting out particulars of the manner in which the person considers that the interests of the person would be affected and of the reasons why the person considers that the Secretary cannot be satisfied of that matter. 10 15

(2) Where an objection to the grant of plant variety rights is lodged under sub-section (1), the Registrar shall cause a copy of that objection to be given to the applicant for those rights.

**Inspection of applications and objections**

**21.** A person may inspect an application, or an objection lodged under sub-section 20 (1), at any reasonable time and is entitled, upon payment of such fee (if any) as is prescribed, to be given a copy of the application or of the objection. 20

**Provisional protection**

**22. (1)** Where an application for plant variety rights in respect of a plant variety has been accepted, the applicant shall, for the purpose of sections 40 and 41, be deemed to be the grantee of plant variety rights in respect of that plant variety during the period commencing on the acceptance of the application and ending— 25

- (a) when the application is disposed of; or 30
- (b) if the Secretary has given the applicant a notice under sub-section (2)—at the expiration of the prescribed period after the notice is given,

whichever occurs first.

(2) Subject to sub-section (3), where the Secretary is satisfied, in relation to an application for plant variety rights in respect of a plant variety, that— 35

- (a) plant variety rights will not be granted, or are unlikely to be granted, to the applicant in respect of that plant variety;
- (b) after the application was made, the applicant sold a plant, or reproductive material of a plant, of that variety in Australia otherwise than for— 40
  - (i) scientific purposes;

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(ii) the purpose of creating a stock of plants, or reproductive material of plants, of that variety for supply to the applicant; or

(iii) another prescribed purpose; or

5 (c) the applicant has given an undertaking to a person, whether or not for consideration, not to institute proceedings for the infringement of the rights of which the applicant is deemed to be the grantee by virtue of sub-section (1),

10 the Secretary may give the applicant notice, in writing, that this section shall cease to apply to that variety.

(3) The Secretary shall not give notice under sub-section (2) in relation to an application unless and until the Secretary has given the applicant particulars of the grounds for the proposed notice and a reasonable opportunity to make a written submission to the Secretary in relation to the proposed notice.

(4) Where a person ceases to be deemed to be the grantee of plant variety rights by virtue of a notice under sub-section (2), the Secretary shall give public notice that the person has ceased to be so deemed.

20 (5) For the purposes of paragraph (1) (b), the prescribed period is the period commencing on the day on which the notice referred to in that paragraph is given and ending—

(a) subject to paragraph (b), at the expiration of the period within which an application may be made to the Administrative Appeals Tribunal for a review of the giving of the notice; or

25 (b) if such an application is made to the Administrative Appeals Tribunal—at the time at which the application is withdrawn or finally determined, whether by the Tribunal or by a court.

30 (6) Nothing in this section shall be taken to affect the powers of the Federal Court under sub-section 44A (2) of the *Administrative Appeals Tribunal Act 1975* where an appeal is instituted in that court from a decision of the Administrative Appeals Tribunal in respect of an application referred to in paragraph (5) (b).

35 (7) A person who is deemed by sub-section (1) to be the grantee of plant variety rights in respect of a plant variety is not entitled to institute an action or proceeding for an infringement of those rights occurring during the period in respect of which the person is deemed by that sub-section to be the grantee of those rights unless and until plant variety rights in respect of that plant variety are granted to the person under section 26.

**Characteristics of plant varieties originated outside Australia**

40 23. For the purposes of this Act, where a plant variety in respect of which an application has been accepted was originated outside Australia, the variety shall not be taken to have a particular characteristic unless—

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- (a) a test growing of the variety carried out in Australia has demonstrated that the variety has that characteristic;
- (b) the Secretary is satisfied that—
  - (i) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic; and 5
  - (ii) the test growing of the variety carried out at that place is equivalent to a test growing of the variety carried out in Australia; or
- (c) the Secretary is satisfied that— 10
  - (i) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic;
  - (ii) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and 15
  - (iii) if a test growing of the variety in Australia that would be sufficient to demonstrate whether the variety has that characteristic were to be carried out, the test growing would take longer than 2 years. 20

**Test growing of plant varieties**

**24. (1)** Where, in dealing with an application in respect of a plant variety, the Secretary considers it necessary that there should be a test growing, or a further test growing, of the variety—

- (a) for the purpose of determining whether the plant variety is homogeneous or stable; or 25
  - (b) for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic,
- the Secretary shall give written notice to the applicant—
- (c) stating that the Secretary considers that a test growing, or a further test growing, as the case may be, of the variety is necessary; 30
  - (d) specifying the purpose of the test growing; and
  - (e) requiring the applicant—
    - (i) to supply the Secretary with sufficient plants, or sufficient reproductive material of plants, of the variety, as the case requires, and with any necessary information, to enable the variety to be test grown for the purpose so specified; or 35
    - (ii) to have the variety test grown for the purpose so specified and to give the Secretary a copy of the records of observations made during the test growing, 40

whichever the Secretary deems appropriate,

and, if the notice contains the requirement referred to in sub-paragraph (e) (i) and the applicant complies with the requirement, the Secretary shall arrange to have the variety test grown.

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- 5       (2) After the completion of the test growing of a plant variety arranged by the Secretary, any plants or reproductive material of plants used in, or resulting from, the test growing which are or is capable of being transported shall be delivered to the applicant for plant variety rights in respect of that plant variety.

**Withdrawal of application**

25. (1) An application may be withdrawn by the applicant.
- 10       (2) Where an application is withdrawn after public notice of the application has been given, the Secretary shall forthwith give public notice of that withdrawal.

***Division 3—Grant of Plant Variety Rights***

**Grant of plant variety rights**

26. (1) Subject to this section, where an application for plant variety rights in respect of a plant variety is accepted—
- 15       (a) if the Secretary is satisfied that—
- (i) there is such a plant variety;
  - (ii) the plant variety is a new plant variety;
  - (iii) the applicant is entitled to make the application;
  - 20       (iv) the grant of those rights to the applicant is not prohibited by this Act;
  - (v) those rights have not been granted to another person;
  - (vi) there has been no earlier application for those rights that has not been withdrawn or otherwise disposed of;
  - (vii) the name of the variety would comply with section 17; and
  - 25       (viii) all fees payable under this Act in relation to the application and the grant have been paid,
- the Secretary shall grant those rights to the applicant; or
- (b) if the Secretary is not so satisfied—the Secretary shall refuse to grant those rights to the applicant.
- 30       (2) The Secretary shall not grant, or refuse to grant, plant variety rights in respect of a plant variety unless a period of at least 6 months has elapsed since the giving of public notice of the application, or, if the application has been varied in pursuance of a request under sub-section 19 (1) in a manner that the Secretary considers to be significant, a period of 6 months has
- 35       elapsed since the giving of public notice of particulars of the variation, or of the last such variation, as the case requires.
- (3) The Secretary shall not refuse to grant plant variety rights unless the Secretary has given the applicant for the rights a reasonable opportunity to make a written submission to the Secretary in relation to the application.

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(4) Where an objection to the grant of plant variety rights has been lodged under section 20, the Secretary shall not grant the rights unless the Secretary has given the person who lodged the objection a reasonable opportunity to make a written submission to the Secretary in relation to the objection.

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(5) Plant variety rights shall be granted to a person by the issue to that person by the Secretary of a certificate, signed by the Secretary or by the Registrar, in a form approved by the Secretary and containing such particulars of the plant variety to which the rights relate as the Secretary considers appropriate.

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(6) Where plant variety rights are granted to persons who made a joint application for those rights, those rights shall be granted to those persons jointly.

(7) Where the Secretary refuses to grant plant variety rights in respect of a plant variety, the Secretary shall, within 30 days after refusing, give written notice of the refusal to the applicant for the rights setting out the grounds for the refusal.

15

**Entry of grant of plant variety rights**

27. When the Secretary grants plant variety rights in respect of a plant variety, the Registrar shall enter in the Register—

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(a) a description, or a description and photograph, of a plant of that variety;

(b) the name of the variety;

(c) the name of the grantee;

(d) the name and address of the breeder;

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(e) the address for the service of documents on the grantee for the purposes of this Act which is shown on the application for the rights;

(f) the day on which the rights were granted; and

(g) such other particulars relating to the grant as the Secretary considers appropriate.

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**Notice of grant of plant variety rights**

28. Where the Secretary grants plant variety rights, the Secretary shall, within 7 days after granting those rights, give public notice of the grant.

**Effect of grant on certain persons**

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29. (1) Where plant variety rights in respect of a plant variety are granted to a person, another person who was entitled to make an application for those rights (whether or not a person who originated that variety independently of the breeder), or the successor of such another person, is not entitled to any interest in those rights because of the entitlement to make the application or because of the grounds of the entitlement, but nothing in this sub-section prevents a person from applying to the Secretary

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for the revocation of those rights or from instituting proceedings before a court or the Administrative Appeals Tribunal in respect of those rights.

(2) Where—

5 (a) plant variety rights in respect of a new plant variety are granted to a person; and

(b) another person (in this sub-section referred to as the “eligible person”) was entitled, at law or in equity, to have the right to make an application for those plant variety rights assigned to the eligible person,

10 then the eligible person is entitled to have those plant variety rights assigned to the eligible person.

***Division 4—Miscellaneous***

**Nature of plant variety rights**

15 30. (1) Plant variety rights are personal property and, subject to any conditions imposed under section 34, are capable of assignment or of transmission by will or by operation of law.

(2) An assignment of plant variety rights (otherwise than because of the order of a court) does not have effect unless it is in writing signed by or on behalf of the assignor.

20 (3) Where the grantee of plant variety rights gives another person a licence in respect of those rights, the licence binds every successor in title to the interest of the grantee in those rights to the same extent as it was binding on the grantee of those rights.

**Assignment of plant variety rights**

25 31. (1) Where plant variety rights are assigned or transmitted to a person, the person shall, within 7 days after acquiring those rights, inform the Registrar in writing that the person has acquired those rights, giving particulars of the manner in which those rights were acquired, and the Registrar, if satisfied that the rights have been so assigned or transmitted,  
30 shall amend the Register and enter the name of that person on the Register as the grantee of those rights.

(2) Where, in accordance with sub-section (1), the Registrar enters on the Register as the grantee of plant variety rights the name of a person who claims to have acquired those rights, the Registrar shall, within 7 days after  
35 entering the name on the Register, give written notice to that person and to the person who was the grantee before the entry was made stating that the entry has been made.

(3) Where the Registrar is not satisfied that plant variety rights have been assigned or transmitted to a person (in this sub-section referred to as  
40 the “claimant”) who has informed the Registrar in accordance with sub-

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section (1) that those rights have been assigned or transmitted to the claimant, the Registrar shall forthwith—

(a) give written notice to the claimant—

(i) stating that the Registrar is not so satisfied; and

(ii) setting out the grounds on which the Registrar is not so satisfied; and 5

(b) give written notice to the grantee of those rights—

(i) setting out particulars of the information given by the claimant;

(ii) stating that the Registrar is not so satisfied; and 10

(iii) setting out the grounds on which the Registrar is not so satisfied.

(4) A person who informs the Registrar in accordance with sub-section (1) that plant variety rights have been assigned or transmitted to the person shall give written notice to the Registrar of an address in Australia for the service of documents on him or her in accordance with this Act and— 15

(a) where the Registrar enters the name of that person on the Register in accordance with sub-section (1) and that address is different from the address entered in the Register in accordance with paragraph 27 (e)—the Registrar shall amend the Register so that the address so given is entered in the Register as the address for service of documents on the grantee for the purposes of this Act; or 20

(b) where the Registrar is not satisfied that those rights have been assigned or transmitted to that person—the notice to that person under paragraph (3) (a) shall be given by being posted by pre-paid post as a letter addressed to the person at that address. 25

**Duration of plant variety rights**

32. Subject to this Act, plant variety rights in respect of a plant variety subsist for a period of 20 years commencing on the day on which the successful application for plant variety rights in respect of the plant variety was accepted. 30

**Supply of reproductive material, &c.**

33. (1) Plant variety rights in respect of a plant variety are subject to the condition that the grantee of the rights shall comply with any notice given to the grantee by the Secretary under sub-section (2) or (8). 35

(2) Where plant variety rights are granted in respect of a plant variety, the Secretary may give the grantee of the rights written notice requiring the grantee, within 14 days of the giving of the notice or any further time that is allowed by the Secretary, to cause a specified quantity of reproductive material of plants of that variety to be delivered, at the expense of the grantee, to a specified genetic resources centre. 40

(3) The quantity of reproductive material of plants of a variety specified in a notice under sub-section (2) shall be the quantity that the

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Secretary considers would be sufficient to enable that variety to be kept in existence if there were no other reproductive material of plants of that variety.

5 (4) Where the reproductive material of plants is delivered to a genetic resources centre in accordance with the condition imposed on plant variety rights by sub-section (1), the Secretary shall, subject to sub-section (6), cause that material to be stored at a genetic resources centre.

10 (5) The delivery and storing of the reproductive material of plants in accordance with this section does not affect the ownership of the material but that material shall not be dealt with otherwise than for the purposes of this Act.

(6) The reproductive material of plants stored at a genetic resources centre may be used by the Secretary for the purposes of this Act, including the purposes of section 39.

15 (7) Without limiting sub-sections (5) and (6), where, in accordance with this section, the reproductive material of plants is stored at a genetic resources centre that is a place known as a National Plant Genetic Resources Centre, the material shall not form part of the collection known as the national gene bank collection and shall not be used for the purposes of that  
20 collection.

(8) Where plant variety rights are granted in respect of a plant variety, the Secretary may give the grantee of the rights written notice requiring the grantee, within 14 days of the giving of the notice or any further time that is allowed by the Secretary, to cause to be delivered to the Secretary a  
25 specimen of a plant of the variety suitable for deposition by the Secretary in a herbarium.

(9) Where a specimen of a plant is delivered in accordance with the condition imposed on plant variety rights by sub-section (1), the Secretary shall cause the specimen to be deposited in a herbarium.

30 **Plant variety rights subject to conditions**

34. (1) Where the Minister considers it necessary, in the public interest, that plant variety rights in respect of a new plant variety should be subject to conditions restricting the assignment of those rights, to conditions requiring, or relating to, the licensing of persons to sell, or produce for sale,  
35 plants, or reproductive material of plants, of that variety or to other conditions, the Minister may, at the time when those rights are granted or at any time while those rights subsist, by instrument under his or her hand, impose those conditions.

40 (2) Where the Minister imposes conditions on plant variety rights under sub-section (1)—

(a) the Secretary shall give to the grantee a copy of the instrument setting out those conditions;

(b) the Secretary shall give public notice of those conditions; and



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- (c) the Registrar shall enter particulars of those conditions in the Register.

**Revocation of plant variety rights**

35. (1) The Secretary shall revoke the plant variety rights in respect of a plant variety if— 5
- (a) the Secretary becomes satisfied that the plant variety was not a new plant variety or that facts exist which, if known before the grant of those rights, would have resulted in the refusal of the grant; or
  - (b) the grantee has failed to pay a prescribed fee payable in respect of those rights within one month after having been given notice, as prescribed, that that fee has become payable. 10
- (2) The Secretary may revoke the plant variety rights in respect of a plant variety if the Secretary is satisfied that—
- (a) the grantee has failed to comply, in relation to those rights, with the condition imposed by section 33 or with any condition imposed under section 34; or 15
  - (b) a person to whom those rights have been assigned or transmitted has failed to comply with section 31.
- (3) Where the Secretary revokes plant variety rights in respect of a plant variety in accordance with this section, the Secretary shall, within 7 days after the decision was taken, give written notice of the revocation to the grantee setting out the grounds for the revocation. 20
- (4) The Secretary shall not revoke plant variety rights in accordance with this section unless and until the Secretary has given the grantee and any person to whom, the Secretary believes, those rights have been assigned or transmitted particulars of the grounds for the proposed revocation and given the grantee and any such person a reasonable opportunity to make a written submission to the Secretary in relation to the proposed revocation. 25
- (5) The revocation of plant variety rights in respect of a plant variety in accordance with this section takes effect— 30
- (a) subject to paragraph (b), at the expiration of the period within which an application may be made to the Administrative Appeals Tribunal for a review of the revocation; or
  - (b) if such an application is made to the Administrative Appeals Tribunal—at the time when the application is withdrawn or finally determined, whether by the Tribunal or by a court. 35
- (6) Nothing in this section shall be taken to affect the powers of the Federal Court under sub-section 44A (2) of the *Administrative Appeals Tribunal Act 1975* where an appeal is instituted in that court from a decision of the Administrative Appeals Tribunal in respect of an application referred to in paragraph (5) (b). 40

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(7) Any person whose interests are affected by the grant of plant variety rights in respect of a plant variety may apply to the Secretary for the revocation of those rights in accordance with this section.

- 5 (8) The Secretary shall consider any application made under sub-section (7) for the revocation of plant variety rights and, if the Secretary decides not to revoke the rights, the Secretary shall, within 7 days after the decision was taken, give written notice of the decision to the applicant setting out the grounds for the decision.

**Surrender of plant variety rights**

- 10 36. (1) Subject to sub-section (2), a grantee of plant variety rights may at any time, by giving notice to the Registrar, offer to surrender those rights, and the Registrar, after giving public notice of the offer and giving all parties interested an opportunity to make a written submission to the Registrar in relation to the offer, may, if the Registrar thinks fit, accept the offer and  
15 revoke those rights.

(2) Where an action or proceeding under section 41 or 42 in respect of plant variety rights is pending in a court, the Registrar shall not accept an offer for the surrender of, or revoke, those rights, except by leave of the court or by consent of the parties to the action or proceeding.

20 **Entry of particulars of revocation, &c.**

37. Where—

- (a) the revocation of plant variety rights in respect of a plant variety in accordance with section 35 takes effect;  
(b) plant variety rights are revoked in accordance with section 36; or  
25 (c) the Registrar is served with an office copy of an order of a court given under sub-section 41 (3) revoking plant variety rights,

then—

- (d) the Registrar shall enter particulars of the revocation in the Register;  
and  
30 (e) the Secretary shall give public notice of the revocation.

**Plant variety rights not to restrict sales for food, fibre, fuel, &c.**

38. (1) Notwithstanding that plant variety rights subsist in respect of a plant variety, any person may—

- 35 (a) propagate, grow and use plants of that variety for purposes other than commercial purposes;  
(b) sell plants of that variety for use as food or for another use that does not involve the growing of the plants or the production of plants of that variety;  
40 (c) sell reproductive material of plants of that variety for use as food or for another use that does not involve the production of plants of that variety;

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- (d) sell with a farm or other place at which plants of that variety are grown any plants or reproductive material of plants of that variety at that place; or
  - (e) use, and do anything necessary or desirable for the purpose of using, plants or reproductive material of plants of the variety as an initial source of variation for the purpose of originating another new plant variety except where the person makes repeated use of plants or reproductive material of plants of the first-mentioned variety for the commercial production of the other variety. 5
- (2) The right of a person under paragraph (1) (b) to sell plants of a plant variety in respect of which plant variety rights subsist includes— 10
- (a) the right of the person to use plants, or reproductive material of plants, of that variety purchased or otherwise acquired by the person without any infringement of those plant variety rights to—
    - (i) produce plants for the sale; or 15
    - (ii) produce plants, or reproductive material of plants, from which plants for the sale may be derived; and
  - (b) the right of the person to use plants, or reproductive material of plants derived by the person from plants, or reproductive material of plants, of that variety, purchased or otherwise acquired by the person without any infringement of those plant variety rights to— 20
    - (i) produce plants for the sale; or
    - (ii) produce plants, or reproductive material of plants, from which plants for the sale may be derived.
- (3) The right of a person under paragraph (1) (c) to sell reproductive material of plants of a plant variety in respect of which plant variety rights subsist includes— 25
- (a) the right of the person to use plants, or reproductive material of plants, of that variety purchased or otherwise acquired by the person without any infringement of those plant variety rights to— 30
    - (i) produce reproductive material of plants for the sale; or
    - (ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived; and
  - (b) the right of the person to use plants, or reproductive material of plants derived by the person from plants, or reproductive material of plants, of that variety, purchased or otherwise acquired by the person without any infringement of those plant variety rights to— 35
    - (i) produce reproductive material of plants for the sale; or
    - (ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived. 40
- (4) Without limiting the generality of paragraph (1) (c), for the purposes of that paragraph, the use of reproductive material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of

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food, before it has developed further shall not be taken to be a use that involves the production of a plant.

**Protection of public interest in new plant varieties**

5 39. (1) For the purposes of this Act, the reasonable requirements of the public with respect to a plant variety in respect of which plant variety rights subsist shall be deemed to be satisfied if—

10 (a) where there is no demand or no significant demand for plants of that variety but there is a demand or a significant demand for reproductive material of plants of that variety—reproductive material of plants of that variety of reasonable quality is available for sale to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand; or

15 (b) in any other case—plants, or reproductive material of plants, of that variety of reasonable quality are available for sale to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand.

20 (2) The grantee of plant variety rights in respect of a plant variety shall, subject to any conditions imposed under section 34, take all reasonable steps to ensure that the reasonable requirements of the public with respect to that plant variety are satisfied.

(3) For the purpose of ensuring that the reasonable requirements of the public with respect to a plant variety in respect of which plant variety rights subsist are satisfied, the Secretary, in accordance with sub-sections (4) to (10), inclusive, may, on behalf of the grantee of those rights—

25 (a) license a person or persons whom the Secretary considers appropriate to sell plants of that variety;  
(b) license a person or persons whom the Secretary considers appropriate to sell reproductive material of plants of that variety;  
30 (c) license a person or persons whom the Secretary considers appropriate to produce plants of that variety for sale; or  
(d) license a person or persons whom the Secretary considers appropriate to produce reproductive material of plants of that variety for sale, during such period as the Secretary considers appropriate.

35 (4) Where, at any time later than 2 years after the grant of plant variety rights in respect of a plant variety, a person considers that the grantee of those rights is failing to comply with sub-section (2) in relation to that variety and that the failure affects the interests of that person, that person may, in writing, request the Secretary to exercise a relevant power or powers under sub-section (3) in relation to that variety.

40 (5) A request by a person under sub-section (4) in relation to a plant variety shall—

(a) set out the reasons why that person considers that the grantee of plant variety rights in respect of that variety is failing to comply with sub-section (2);

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- (b) give particulars of the way in which the person considers that the failure affects the interests of the person; and
  - (c) give an address for the purpose of a notice to the person under sub-section (7).
- (6) Where a request under sub-section (4) is made to the Secretary in relation to a plant variety, the Secretary shall give the grantee of plant variety rights in respect of that variety— 5
- (a) a copy of the request; and
  - (b) a written invitation to furnish to the Secretary, within one month after the day on which the invitation is given, a written statement setting out reasons why the Secretary should be satisfied that the grantee— 10
    - (i) is complying with sub-section (2) in relation to that variety; or
    - (ii) will so comply within a reasonable time. 15
- (7) Where a request is made to the Secretary under sub-section (4) to exercise a power or powers under sub-section (3) in relation to a plant variety, the Secretary shall, after considering the request and any statement furnished by the grantee of plant variety rights in respect of that variety in response to the invitation under paragraph (6) (b), decide whether or not to exercise the power or powers concerned and shall, within 30 days after the decision was taken— 20
- (a) give written notice of his or her decision to the grantee of plant variety rights in respect of that plant variety setting out the grounds for the decision; and 25
  - (b) cause written notice of his or her decision to be posted by pre-paid post as a letter addressed to the person who made the request at the address given by that person in accordance with paragraph (5) (c) setting out the grounds for the decision.
- (8) Where the Secretary proposes to exercise a power under sub-section (3) in relation to a plant variety, the Secretary shall give public notice— 30
- (a) identifying the variety;
  - (b) setting out particulars of the thing or things that the Secretary proposes to license persons to do and of the periods for which the Secretary proposes to license them; and 35
  - (c) inviting persons to apply in writing to the Secretary, within one month after the giving of public notice, to be licensed to do that thing, or to do any of those things, as the case requires, in relation to that variety,
- and the Secretary shall not exercise that power without considering all applications in response to the invitation. 40
- (9) The Secretary shall not license a person under sub-section (3) in relation to a plant variety unless, at least one month before so doing, the Secretary—

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- (a) gave written notice to each person who applied to be licensed in response to the relevant invitation given under sub-section (8); and  
(b) gave public notice,  
of the name or names of the person or persons whom the Secretary proposes to license.

(10) A licence granted to a person by the Secretary under sub-section (3) on behalf of the grantee of plant variety rights in respect of a plant variety shall be granted on such terms and conditions as the Secretary determines, being terms and conditions that the Secretary considers would be the terms and conditions of the licence if it were being granted by the grantee in the normal course of business.

(11) Where—

- (a) a licence has been granted to a person under sub-section (3) to produce plants, or reproductive material of plants, of a plant variety; and  
(b) the Secretary is satisfied that, unless the powers of the Secretary under this sub-section are exercised, that person will be unable to obtain reproductive material of plants of that variety at a reasonable price or without charge,  
the Secretary may, on behalf of the grantee of those rights, make available to that person reproductive material of plants of that variety stored at a genetic resources centre under sub-section 33 (4).

**Infringement of plant variety rights**

40. Subject to sections 38 and 39, the plant variety rights of a grantee in respect of a plant variety are infringed by—

- (a) a person who, not being licensed by the grantee to sell plants of that variety, sells, or holds himself, herself or itself out as being willing to sell, plants of that variety;  
(b) a person who, not being licensed by the grantee to sell reproductive material of plants of that variety, sells, or holds himself, herself or itself out as being willing to sell, reproductive material of plants of that variety;  
(c) a person who, not being licensed by the grantee to produce plants of that variety for sale, produces plants of that variety for sale;  
(d) a person who, not being licensed by the grantee to produce reproductive material of plants of that variety for sale, produces reproductive material of plants of that variety for sale;  
(e) a person who, being a person to whom a licence has been granted in respect of that plant variety, does not comply with a term or condition of the licence; or  
(f) a person who uses the name of that plant variety, being the name entered in the Register, in relation to any other plant variety or in relation to any plant other than a plant of the first-mentioned variety.

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**Actions for infringement of plant variety rights**

**41. (1)** An action or proceeding for an infringement of plant variety rights may be instituted in the Court.

(2) A defendant in an action or proceeding for an infringement of plant variety rights in respect of a plant variety may apply by way of counter-claim in the action or proceeding for the revocation of the plant variety rights—

(a) on the ground that the plant variety was not a new plant variety;  
or

(b) on the ground that facts exist which, if known to the Secretary before the grant of those rights, would have resulted in the refusal of the grant.

(3) If, in an action or proceeding for an infringement of plant variety rights in respect of a plant variety in which a defendant has applied by way of counter-claim for the revocation of those rights on a ground referred to in paragraph (2) (a) or (b), the court is satisfied that the ground exists, the court may revoke those rights.

(4) Where, in an action or proceeding for an infringement of plant variety rights, the court, on an application by the defendant by way of counter-claim, revokes the plant variety rights, the court shall order the defendant to serve on the Registrar an office copy of the order revoking the plant variety rights.

**Declaration as to non-infringement**

**42. (1)** A person who desires to sell a plant or reproductive material of a plant, or to produce a plant or reproductive material of a plant for sale, may, by action in the Court against the grantee of plant variety rights in respect of a new plant variety, claim a declaration that the sale or production of the plant or reproductive material, as the case requires, would not constitute an infringement of those plant variety rights and may do so although no assertion of the infringement has been made by the grantee of the plant variety rights.

(2) The Court shall not make a declaration sought in an action under sub-section (1) in relation to a plant or reproductive material of a plant unless—

(a) the plaintiff—

(i) has applied in writing to the defendant for an admission in writing to the effect of the declaration sought;

(ii) has furnished the defendant with full particulars in writing of the plant or reproductive material, as the case may be; and

(iii) has undertaken to pay a reasonable sum for the expenses of the defendant in obtaining advice in respect of the declaration sought; and

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(b) the defendant has refused or failed to make such an admission.

(3) The costs of all parties in proceedings for a declaration under this section shall, unless the prescribed court otherwise orders, be paid by the person seeking the declaration.

5       (4) The validity of a grant of plant variety rights shall not be called in question in proceedings for a declaration under this section and the making of, or refusal to make, the declaration does not imply that the grant of plant variety rights is, or is not, valid.

**Jurisdiction of Court**

10       **43.** (1) The Court has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in that court and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

15       (2) The relief that the Court may grant in an action or proceeding for infringement of plant variety rights includes an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

20       (3) The Court may refuse to award damages, or to make an order for an account of profits, against a person in respect of an infringement of plant variety rights in relation to a plant variety if the person satisfies the court that, at the time of the infringement, the person was not aware, and had no reasonable grounds for suspecting, that plant variety rights existed in relation to that plant variety.

25       (4) The regulations may make provision for and in relation to the practice and procedure of the Court in actions or proceedings under this Act, including provision prescribing the time within which any action or proceeding may be instituted, or any other act or thing may be done, and providing for the extension of any such time.

30       (5) Sub-section (4) shall not be read as limiting the power of the Judges of the Court or a majority of them to make rules of Court under section 59 of the *Federal Court of Australia Act 1976* not inconsistent with the regulations referred to in that sub-section.

**PART IV—PLANT VARIETY RIGHTS ADVISORY COMMITTEE**

35       **Establishment of Advisory Committee**

**44.** (1) There is established by this Act a Committee by the name of the Plant Variety Rights Advisory Committee.

      (2) The functions of the Advisory Committee are—

40       (a) at the request of the Minister, to advise the Minister on the desirability of a genus or species being declared by the regulations to be a genus or species to which this Act applies; and



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- (b) to advise the Secretary on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Secretary refers to the Advisory Committee.

**Membership of Advisory Committee**

- 45. (1)** The Advisory Committee shall consist of— 5
- (a) the Registrar;
  - (b) 2 members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties;
  - (c) one member who, in the opinion of the Minister, is an appropriate person to represent producers, and likely producers, of new plant varieties; 10
  - (d) one member who, in the opinion of the Minister, is an appropriate person to represent the interests of consumers, and likely consumers, of new plant varieties or of the products of new plant varieties; and 15
  - (e) 2 other members who, in the opinion of the Minister, possess qualifications or experience that are appropriate for a member of the Advisory Committee.
- (2) The members, other than the Registrar, shall be appointed by the Minister. 20
- (3) The members hold office as part-time members.
- (4) The members, other than the Registrar, hold office during the pleasure of the Minister.
- (5) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister. 25

**Remuneration and allowances**

- 46. (1)** A member referred to in paragraph 45 (1) (b), (c) or (d) shall not be paid any remuneration in respect of the performance of the duties of the member but is entitled, in the appropriate circumstances, to payment of allowances as if the member were a Senior Executive Service officer within the meaning of the *Public Service Act 1922*. 30
- (2) The members referred to in paragraph (1) (e) shall be paid—
- (a) such remuneration as is determined by the Remuneration Tribunal; and
  - (b) such allowances as are prescribed. 35
- (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

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**Disclosure of interests**

5     **47. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting.

**(2)** A disclosure under sub-section (1) in relation to a matter shall—

**(a)** be recorded in the minutes of the meeting of the Advisory Committee; and

10          **(b)** be made known in any advice given by the Committee in relation to that matter.

**Meetings**

**48. (1)** The Registrar may convene such meetings of the Advisory Committee as are necessary for the purposes of the performance of the functions of the Advisory Committee.

15          **(2)** At a meeting of the Advisory Committee, 4 members constitute a quorum.

**(3)** The Registrar shall preside at a meeting of the Advisory Committee at which the Registrar is present, but, if the Registrar is not present, the members present shall elect one of their number to preside at the meeting.

20          **(4)** Subject to sub-section (2), the procedure to be followed at a meeting of the Advisory Committee shall be as determined by the Advisory Committee.

**PART V—MISCELLANEOUS**

**Inspection of Register**

25          **49.** A person may inspect the Register at any reasonable time and is entitled, upon payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.

**Agents may act in plant variety rights matters**

30          **50.** Subject to any other law of the Commonwealth, including the High Court Rules and the Federal Court Rules, an application, a written submission or any other document may be prepared or lodged, and any business may be transacted, for the purposes of this Act, on behalf of a person by another person.

**Service of documents**

35          **51. (1)** Where the Secretary or the Registrar is required by this Act to give a written notice or other document to an applicant for, or a grantee of, plant variety rights, that document shall be given by being posted by pre-paid post as a letter addressed to the applicant or the grantee at the address for service shown on the application or entered in the Register, as  
40          the case requires.

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(2) Where the Secretary or the Registrar is required by this Act to give a written notice or other document to a person who has been an applicant for, or a grantee of, plant variety rights, that document shall be given by being posted by pre-paid post as a letter addressed to that person at the address for service of that person that was formerly shown on the application for those rights or entered in the Register in respect of those rights, as the case may be. 5

**Offences**

52. (1) A person shall not knowingly make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act. 10

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000. 15

(2) A person shall not—

- (a) falsely represent to another person that he, she or it is the grantee of plant variety rights in respect of a plant variety;
- (b) falsely represent to another person that he, she or it is deemed to be the grantee of plant variety rights in respect of a plant variety by virtue of section 21; or 20
- (c) falsely represent that a plant is a plant of a variety in respect of which plant variety rights have been granted.

Penalty for contravention of this sub-section:

- (a) in the case of a natural person—\$1,000; or 25
- (b) in the case of a body corporate—\$5,000.

(3) Where, in proceedings for an offence against sub-section (1) or (2) in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind. 30

(4) Any conduct engaged in on behalf of a corporation—

- (a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or 35
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent, 40

shall be deemed, for the purposes of a provision of this Act that creates an offence, to have been engaged in by the corporation.

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(5) A reference in sub-section (3) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

**5 Applications for review**

**53. (1)** Applications may be made to the Administrative Appeals Tribunal for review of—

- (a) a decision of the Secretary under paragraph 18 (1) (b) rejecting an application;
- 10 (b) a decision of the Secretary to refuse to vary an application upon a request made under sub-section 19 (1) or (2);
- (c) a decision of the Registrar under sub-section 20 (1) to allow, or refuse to allow, further time for the lodging of an objection;
- (d) a decision of the Secretary to give a notice under sub-section 22 (2);
- 15 (e) a decision of the Secretary that the Secretary is satisfied, or not satisfied, of a matter for the purposes of paragraph 23 (b);
- (f) a decision of the Secretary that the Secretary is satisfied, or not satisfied, of a matter for the purposes of paragraph 23 (c);
- (g) a requirement by the Secretary under section 24;
- 20 (h) a decision of the Secretary to grant, or refuse to grant, plant variety rights under section 26;
- (j) a decision of the Registrar to amend, or refuse to amend, the Register under section 31;
- 25 (k) a decision of the Secretary under sub-section 33 (2) or (8) to allow, or refuse to allow, further time for a delivery;
- (m) a decision by the Minister to impose conditions under sub-section 34 (1);
- (n) a decision by the Secretary to revoke plant variety rights under section 35;
- 30 (p) a decision by the Secretary under sub-section 35 (8) not to revoke plant variety rights;
- (q) a decision of the Secretary under sub-section 39 (7) to exercise a power under sub-section 39 (3);
- 35 (r) a decision of the Secretary to license a person under sub-section 39 (3) or the refusal of the Secretary to license under that sub-section a person who applied to be so licensed in response to an invitation under paragraph 39 (8) (c);
- (s) the determination by the Secretary of the terms and conditions of a licence in accordance with sub-section 39 (10); or
- 40 (t) a decision of the Secretary to make reproductive material of plants available under sub-section 39 (11).

(2) The Administrative Appeals Tribunal does not have power under sub-section 29 (7) of the *Administrative Appeals Tribunal Act 1975* to

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extend the time for making an application to that Tribunal for a review of a decision referred to in paragraph (1) (q).

- (3) The Secretary shall give public notice of—
- (a) any application made under sub-section (1);
  - (b) any decision of the Administrative Appeals Tribunal on such an application; and 5
  - (c) any decision of a court in relation to, or arising out of—
    - (i) such an application; or
    - (ii) a decision of the Administrative Appeals Tribunal on such an application. 10

(4) In sub-sections (1) and (2), “decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**Statement to accompany notice of decisions**

54. (1) Where the Minister, the Secretary, a delegate of the Secretary or the Registrar makes a determination, decision or requirement of a kind referred to in sub-section 53 (1) and gives to the person or persons whose interests are affected by the determination, decision or requirement, notice in writing of the making of the determination, decision or requirement, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the determination, decision or requirement to which the notice relates by or on behalf of the person or persons whose interests are affected by the determination, decision or requirement. 15 20

(2) Any failure to comply with the requirements of sub-section (1) in relation to a determination, decision or requirement does not affect the validity of the determination, decision or requirement. 25

**Regulations**

55. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing fees, including— 30

- (a) fees on applications for plant variety rights;
- (b) fees payable by grantees of plant variety rights at specified intervals or on specified dates; and 35
- (c) fees to meet costs incurred in the test growing of plants under section 24.

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**SCHEDULE**

Sub-section 3 (1) (definition  
of "Convention")

**CONVENTION**

**International Convention for the Protection  
of New Varieties of Plants**

**of December 2, 1961, as revised at Geneva  
on November 10, 1972, and on October 23, 1978**

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**SCHEDULE—continued**

**THE CONTRACTING PARTIES,**

*Considering* that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders.

*Reaffirming* the principles contained in the Preamble to the Convention to the effect that:

- (a) They are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- (c) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

*Considering* that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention,

*Considering* that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,

*Considering* that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

*Considering* that these objectives may be best achieved by a new revision of the Convention,

*Have agreed* as follows:

**Article 1**

**Purpose of the Convention; Constitution of a Union; Seat of the Union**

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined.

(2) The States parties to this Convention (hereinafter referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

**Article 2**

**Forms of Protection**

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

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**SCHEDULE—continued**

**Article 3**

**National Treatment; Reciprocity**

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be checked.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

**Article 4**

**Botanical Genera and Species Which Must or May be Protected**

(1) This Convention may be applied to all botanical genera species.

(2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.

(3) (a) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.

(b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:

(i) within three years, to at least ten genera or species in all;

(ii) within six years, to at least eighteen genera or species in all;

(iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of Article 2 (2), that genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b), be considered as one genus or species.

(4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under paragraph (3) (b), decide, for the purposes of that State, to extend the periods referred to in paragraph (3) (b).



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**SCHEDULE—continued**

**Article 5**

**Rights Protected; Scope of Protection**

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

**Article 6**

**Conditions Required for Protection**

(1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

- (a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.
- (b) At the date on which the application for protection in a member State of the Union is filed, the variety
  - (i) must not—or, where the law of that State so provides, must not for longer than one year—have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and
  - (ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of all other plants.

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**SCHEDULE—continued**

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

- (c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
- (d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.
- (e) The variety shall be given a denomination as provided in Article 13.

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the member State of the Union in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

**Article 7**

**Official Examination of Varieties; Provisional Protection**

(1) Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species.

(2) For the purposes of such examination, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) Any member State of the Union may provide measures to protect the breeder against abusive acts of third parties committed during the period between the filing of the application for protection and the decision thereon.

**Article 8**

**Period of Protection**

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection may not be less than eighteen years, computed from the said date.

**Article 9**

**Restrictions in the Exercise of Rights Protected**

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

**Article 10**

**Nullity and Forfeiture of the Rights Protected**

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in Article 6 (1) (a) and (b) were not effectively complied with at the time when the title of protection was issued.

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**SCHEDULE—continued**

(2) The right of the breeder shall become forfeit when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its characteristics as defined when the protection was granted.

(3) The right of the breeder may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

**Article 11**

**Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States**

(1) The breeder may choose the member State of the Union in which he wishes to file his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he filed his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

**Article 12**

**Right of Priority**

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of paragraph (1), the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

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**SCHEDULE—continued**

**Article 13**

**Variety Denomination**

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30 (1) (b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to in Article 30 (1) (b) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30 (1) (b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in Article 30 (1) (b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30 (1) (b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

**Article 14**

**Protection Independent of Measures Regulating Production, Certification and Marketing**

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

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**SCHEDULE—continued**

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

**Article 15**

**Organs of the Union**

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

**Article 16**

**Composition of the Council; Votes**

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.

- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

**Article 17**

**Observers in Meetings of the Council**

- (1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.
- (2) Other observers or experts may also be invited to such meetings.

**Article 18**

**President and Vice-Presidents of the Council**

- (1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.
- (2) The President shall hold office for three years.

**Article 19**

**Sessions of the Council**

- (1) The Council shall meet upon convocation by its President.
- (2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

**Article 20**

**Rules of Procedure of the Council; Administrative and Financial Regulations of the Union**

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

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**SCHEDULE—continued**

**Article 21**

**Tasks of the Council**

The tasks of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) appoint the Secretary-General and, if it finds it necessary, a vice Secretary-General and determine the terms of appointment of each;
- (c) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (d) give to the Secretary-General, whose functions are set out in Article 23, all the necessary directions for the accomplishment of the tasks of the Union;
- (e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of Article 26;
- (f) examine and approve the accounts presented by the Secretary-General;
- (g) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that article and take the measures necessary for their preparation; and
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

**Article 22**

**Majorities Required for Decisions of the Council**

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4 (4), 20, 21 (e), 26 (5) (b), 27 (1), 28 (3) or 32 (3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

**Article 23**

**Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff**

(1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of Article 21(b), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

**Article 24**

**Legal Status**

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.

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**SCHEDULE—continued**

- (3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

**Article 25**

**Auditing of the Accounts**

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

**Article 26**

**Finances**

- (1) The expenses of the Union shall be met from:
- the annual contributions of the member States of the Union;
  - payments received for services rendered;
  - miscellaneous receipts.
- (2) (a) The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).
- (b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.
- (3) (a) As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.
- (b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.
- (c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.
- (4) (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.
- (b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.
- (5) (a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.

*Plant Variety Rights No. 2, 1987*

**SCHEDULE—continued**

- (b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

**Article 27**

**Revision of the Convention**

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

**Article 28**

**Languages Used by the Office and in Meetings of the Council**

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

(2) Meetings of the Council and of revision conferences shall be held in the three languages.

(3) If the need arises, the Council may decide that further languages shall be used.

**Article 29**

**Special Agreement for the Protection of New Varieties of Plants**

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

**Article 30**

**Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services**

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

- (a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;
- (b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;
- (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.



*Plant Variety Rights No. 2, 1987*

**SCHEDULE—continued**

**Article 31**

**Signature**

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

**Article 32**

**Ratification, Acceptance or Approval; Accession**

- (1) Any State shall express its consent to be bound by this Act by the deposit of:
  - (a) its instrument of ratification, acceptance or approval, if it has signed this Act; or
  - (b) its instrument of accession, if it has not signed this Act.

(2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of the Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

**Article 33**

**Entry Into Force; Closing of Earlier Texts**

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

- (a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and
- (b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.

(2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in paragraph (1) (a) and (b) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

**Article 34**

**Relations Between States Bound by Different Texts**

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

(2) Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union through ratification, acceptance or approval of or accession to this Act ("the latter State"). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to

*Plant Variety Rights No. 2, 1987*

**SCHEDULE—continued**

the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

**Article 35**

**Communications Concerning the Genera and Species Protected; Information to be Published**

- (1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.
- (2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:
- (a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;
  - (b) any use of the faculty provided for in Article 3 (3);
  - (c) the use of any faculty granted by the Council pursuant to Article 4 (4) or (5);
  - (d) any use of the faculty provided for in Article 5 (4), first sentence, with an indication of the nature of the more extensive rights and with specification of the genera and species to which such rights apply;
  - (e) any use of the faculty provided for in Article 5 (4), second sentence;
  - (f) the fact that the law of the said State contains a provision as permitted under Article 6 (1) (b) (i), and the length of the period permitted;
  - (g) the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

**Article 36**

**Territories**

- (1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.
- (2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.
- (3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification, acceptance, approval, or accession in the instrument of which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Secretary-General.
- (b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

**Article 37**

**Exceptional Rules for Protection Under Two Forms**

- (1) Notwithstanding the provisions of Article 2 (1), any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in Article 2 (1) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of

*Plant Variety Rights No. 2, 1987*

**SCHEDULE—continued**

ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.

(2) Where, in a member State of the Union to which paragraph (1) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Article 6 (1) (a) and (b) and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

**Article 38**

**Transitional Limitation of the Requirement of Novelty**

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

**Article 39**

**Preservation of Existing Rights**

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

**Article 40**

**Reservations**

No reservations to this Convention are permitted.

**Article 41**

**Duration and Denunciation of the Convention**

(1) This Convention is of unlimited duration.

(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.

(3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

**Article 42**

**Languages; Depositary Functions**

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.

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**SCHEDULE—continued**

(3) The Secretary-General shall, after consultation with the Governments of the interested States which were represented in the said Conference, establish official texts in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of the instruments of ratification, acceptance, approval and accession, any notification received under Articles 34 (2), 36 (1) and (2), 37 (1) and (3) or 41 (2) and any declaration made under Article 36 (1).

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*[Minister's second reading speech made in—  
House of Representatives on 8 October 1986  
Senate on 1 December 1986]*



# **Primary Industries and Energy Legislation Amendment Act 1988**

**No. 111 of 1988**

## **TABLE OF PROVISIONS PART I—PRELIMINARY**

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## **SCHEDULE AMENDMENTS OF ACTS**



# **Primary Industries and Energy Legislation Amendment Act 1988**

**No. 111 of 1988**

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**An Act to amend and repeal various Acts relating to  
matters dealt with by the Department of Primary Industries  
and Energy, and for related purposes**

*[Assented to 12 December 1988]*

**BE IT ENACTED** by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

## **PART I—PRELIMINARY**

### **Short title**

- 5      1. This Act may be cited as the *Primary Industries and Energy  
Legislation Amendment Act 1988*.

### **Commencement**

2. (1) Subject to this section, this Act commences on the day on which  
it receives the Royal Assent.
- 10      (2) Subsection 6 (1) and section 7 commence on 1 December 1988.

*Primary Industries and Energy Legislation Amendment  
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(3) The remaining provisions of Part III, and the amendments of the *Administrative Decisions (Judicial Review) Act 1977*, commence on 1 January 1989.

**PART II—AMENDMENTS AND REPEAL OF VARIOUS ACTS**

**Amendment of Acts** 5

3. The Acts specified in the Schedule are amended as set out in the Schedule.

**Repeal**

4. The *Dairying Industry Act 1967* is repealed.

**PART III—REPEAL OF CANNED FRUITS LEGISLATION** 10

**Interpretation**

5. In this Part:

“Corporation” means the Australian Canned Fruits Corporation;

“repealed Marketing Act” means the *Canned Fruits Marketing Act 1979* (as amended and in force immediately before the commencement of this section). 15

**Repeal**

6. (1) The following Acts are repealed:

*Canned Fruits Levy Act 1979*

*Canned Fruits Levy Amendment Act 1982* 20

*Canned Fruits Levy Amendment Act 1984*

*Canned Fruits Levy Collection Act 1979*

*Canned Fruits Levy Collection Amendment Act 1984.*

(2) The following Acts are also repealed:

*Canned Fruits Marketing Act 1979* 25

*Canned Fruits Marketing Legislation Repeal and Amendment Act 1982*

*Canned Fruits Marketing Amendment Act 1984.*

**Continued application of Levy and Levy Collection Acts**

7. In spite of the repeals effected by subsection 6 (1), the *Canned Fruits Levy Act 1979*, and the *Canned Fruits Levy Collection Act 1979*, (as amended and in force immediately before the commencement of this section) continue to apply in relation to canned fruits, within the meaning of those Acts, produced before that commencement. 30

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**Corporation to continue in existence for certain purposes**

8. In spite of the repeals effected by subsection 6 (2):

- 5 (a) the Corporation continues in existence, by force of this section, for the purpose of complying with this Part, until a notice is published in the *Gazette* under section 14; and
- 10 (b) section 3, Part III, sections 14, 17, 17A, 18, 19, 20 and 21, subsections 22 (1), (6) and (7) and 23 (2) and sections 24 to 34 (inclusive), 44, 46, 47, 48, 49, 50 and 51 of the repealed Marketing Act continue, subject to this Part, to have effect while the Corporation continues in existence.

**Re-appointment of existing members of Corporation**

15 9. The persons who were, on 31 December 1988, members and deputies of members of the Corporation are, by force of this section, re-appointed to the respective offices that they held under the repealed Marketing Act on that day.

**Corporation to prepare final report**

20 10. (1) The Corporation shall, as soon as practicable after the commencement of this section, and, in any event, before 1 July 1989, prepare and submit to the Minister a report of the operation of the repealed Marketing Act during the period that commenced at the end of the last period in relation to which a report of the operations of the Corporation was furnished to the Minister under that Act and ended on 31 December 1988, together with financial statements in relation to the period in such form as the Minister for Finance approves.

25 (2) Before submitting the financial statements to the Minister, the Corporation shall submit them to the Auditor-General, who shall report to the Minister:

- 30 (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the Corporation;
- 35 (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Corporation during the period were in accordance with the repealed Marketing Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

40 (3) The Minister shall cause a copy of the report and financial statements, together with a copy of the Auditor-General's report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.



*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**Discharge of obligations of Corporation**

**11.** The Corporation shall, as soon as practicable after the commencement of this section, pay or discharge all of its debts, liabilities and obligations, including its obligations under contracts and arrangements to which it is or becomes a party.

5

**Corporation to prepare final financial statements**

**12. (1)** The Corporation shall, as soon as practicable after the commencement of this section, prepare and submit to the Minister financial statements, in such form as the Minister for Finance approves, in relation to its operations during the period that commenced on 1 January 1989 and ended when it complied with sections 10, 11 and 13.

10

**(2)** Before submitting the financial statements to the Minister, the Corporation shall submit them to the Auditor-General, who shall report to the Minister:

**(a)** whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;

15

**(b)** whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the Corporation;

**(c)** whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Corporation during the period have been in accordance with the continued provisions of the repealed Marketing Act and this Part; and

20

**(d)** as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

25

**(3)** The Minister shall cause a copy of the financial statements, together with a copy of the Auditor-General's report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

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**Disposal of Corporation's assets**

**13. (1)** The Corporation shall, as soon as practicable after the commencement of this section, make written recommendations to the Minister in relation to the disposal of the assets of the Corporation remaining after this section and sections 10, 11 and 12 have been given effect to.

35

**(2)** The Minister may, in writing, approve, or refuse to approve, the recommendations.

**(3)** The assets of the Corporation referred to in subsection (1) shall be disposed of by the Corporation in accordance with recommendations made under that subsection that have been approved by the Minister.

40

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**Dissolution of Corporation**

**14. When the Minister:**

- (a) has approved recommendations made under subsection 13 (1); and
- 5 (b) is satisfied that the Corporation has complied with sections 10 to 13 (inclusive);

the Minister shall, by notice published in the *Gazette*, declare that, on the publication of the notice, the Corporation is to cease to exist.

**Exemption of certain instruments from taxation**

- 10 **15. (1)** Where the Secretary to the Department, or an officer of the Department authorised in writing by the Secretary for the purpose, certifies, in writing, that an instrument specified or described in the certificate is made or given because of, or for a purpose connected with or arising out of, the operation of this Part, the instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or
- 15 Territory.

(2) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been duly given.

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*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE**

Section 3

**AMENDMENTS OF ACTS**

***Administrative Decisions (Judicial Review) Act 1977***

**Schedule 2 (paragraph (k)):**

- (a) Omit "Australian Canned Fruits Corporation".
- (b) Omit "Australian Meat and Livestock Corporation", substitute "Australian Meat and Live-stock Corporation".

***Australian Meat and Live-stock Corporation Act 1977***

**Subsection 50B (3):**

Omit the subsection, substitute the following subsection:

"(3) A person (other than the Corporation) shall not make a contract for the carriage of meat, by sea, to a country or place outside Australia unless:

- (a) the person is the holder of a meat export licence;
- (b) the person makes the contract as the agent of the holder of a meat export licence; or
- (c) the person makes the contract with the holder of a meat export licence and, under the contract, the person is to carry the meat, by sea, to the country or place outside Australia."

**Subsection 50B (6):**

Omit the subsection, substitute the following subsection:

"(6) A person (other than the Corporation) shall not make a contract for the carriage of live-stock, by sea, to a country or place outside Australia unless:

- (a) the person is the holder of a live-stock export licence;
- (b) the person makes the contract as the agent of the holder of a live-stock export licence; or
- (c) the person makes the contract with the holder of a live-stock export licence and, under the contract, the person is to carry the live-stock, by sea, to the country or place outside Australia."

***Dairy Produce Act 1986***

**Subsections 82 (4), (5) and (6):**

Omit "on Public Accounts", substitute "of Public Accounts".

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE—continued**  
***Export Control Act 1982***

**Section 3 (definition of “authorized officer”):**

Omit the definition, substitute the following definition:

“‘authorized officer’ means a person appointed under section 20 to be an authorized officer;”.

**Paragraph 10 (3) (g):**

Omit “and examine”, substitute “, examine, photograph or make other visual recordings of”.

**After paragraph 25 (2) (d):**

Insert the following paragraph:

“(daa) the imposition of penalties for the non-payment or late payment of fees, and the remission of penalties so imposed;”.

**Subsection 25 (3):**

Add at the end “for an offence”.

***Fishing Industry Research and Development Act 1987***

**Section 7:**

Add at the end “and, in particular, may enter into an arrangement with the Minister for the provision of administrative and clerical services to the Council by the Commonwealth.”.

**Paragraph 35 (1) (b):**

Omit “and” (last occurring).

**After paragraph 35 (1) (b):**

Insert the following paragraph:

“(ba) in payment of any fee payable to the Commonwealth under an arrangement for the provision of administrative and clerical services to the Council by the Commonwealth; and”.

***Meat Inspection Act 1983***

**After paragraph 20 (2) (b):**

Insert the following paragraph:

“(ba) the imposition of penalties for the non-payment or late payment of fees, and the remission of penalties so imposed;”.

**Paragraph 25 (3) (g):**

Omit “or examine”, substitute “, examine, photograph or make other visual recordings of”.

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE—continued**

**Subsection 37 (2):**

Add at the end “for an offence”.

***Minerals (Submerged Lands) Act 1981***

**Subsection 3 (1) (definitions of “Northern Territory Minister” and “State Minister”):**

Omit “under the law of”, substitute “by”.

***Pig Industry Act 1986***

**Paragraph 30 (8) (b):**

Omit “makes,”, substitute “makes, or”.

**Paragraph 46 (5) (a):**

Omit “remuneration of”, substitute “remuneration for”.

***Plant Variety Rights Act 1987***

**Subsection 3 (1) (paragraph (d) of definition of “new plant variety”):**

Omit “public”, substitute “common”.

**Paragraph 3 (7) (a):**

Omit “public”, substitute “common”.

**Section 46:**

Repeal the section, substitute the following section:

**Remuneration and allowances**

“46. (1) The members referred to in paragraphs 45 (1) (b), (c), (d) and (e) shall be paid:

(a) such remuneration as is determined by the Remuneration Tribunal;  
and

(b) such allowances as are prescribed.

“(2) Subsection (1) has effect subject to the *Remuneration Tribunals Act 1973*.”.

***Rural Industries Research Act 1985***

**Paragraph 61 (8) (a):**

Omit “established by section 50 of the *Wool Industry Act 1972*”, substitute “continued in existence by section 90 of the *Wool Marketing Act 1987*”.

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE—continued**

***Wool Marketing Act 1987***

**Subsection 3 (1) (definitions of “export auction” and “wool stores strategic plan”):**

Omit the definitions.

**Subsection 3 (1):**

Insert the following definitions:

“‘sale for export’, in relation to wool, means sale (at auction or otherwise) as a result of which the wool may be exported;.

‘wool stores strategic plan’ means a wool stores strategic plan developed by the Wool Stores Board under section 117;”.

**Paragraph 12 (3) (g):**

Omit “opportunity employment”, substitute “employment opportunity”.

**Subsection 19 (2):**

Omit “variation to”, substitute “variation of”.

**Paragraph 49 (3) (a):**

Omit “, manufacturing and selling wool”, substitute “and selling wool, and manufacturing wool products,”.

**After section 51:**

Insert the following sections:

**Copy of registers under Administration Act to be given to Corporation**

“51A. (1) The Commissioner of Taxation shall, as soon as practicable after the commencement of this section, give to the Corporation a copy of the registers kept, at that commencement, under sections 13, 14, 15 and 16 of the Administration Act.

“(2) The Commissioner of Taxation shall, as soon as practicable after an alteration is made to one of those registers, give to the Corporation a copy of the alteration.

**Information relating to wool tax to be given to Corporation**

“51B. The Commissioner of Taxation shall, as soon as practicable after each financial year, give to the Corporation, from returns lodged with the Commissioner under the Administration Act, such information as the Corporation requires in relation to:

- (a) wool that was participating wool in that year; and
- (b) tax payable under section 5 of a Wool Tax Act.”.

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE—continued**

**Subsection 71 (2):**

Omit “sections 67 and”, substitute “67 or”.

**Paragraph 74 (1) (a):**

Omit “at any export auction”, substitute “for export”.

**Paragraph 74 (1) (c):**

Omit “any export auction”, substitute “sale for export”.

**Paragraph 74 (1) (e):**

Omit “at any export auction”, substitute “for export”.

**Paragraph 74 (2) (a):**

Omit “an export auction”, substitute “sale for export”.

**Paragraph 74 (2) (d):**

Omit “at an export auction”, substitute “for export”.

**Subsection 119 (4):**

Omit the subsection.

**After section 126:**

Insert the following section:

**Conduct of directors, servants and agents**

“126A. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by:

(a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

“(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

*Primary Industries and Energy Legislation Amendment  
No. 111, 1988*

**SCHEDULE—continued**

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate by:

- (a) a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person.

“(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.”.

**Paragraphs 127 (2) (c) and (d):**

After “registration” insert “and inspection”.

**Paragraph 137 (d):**

Omit “repealed Act”, substitute “*Wool Industry Act 1972*”.

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[*Minister's second reading speech made in—  
House of Representatives on 13 April 1988  
Senate on 29 August 1988*]





## Primary Industries and Energy Legislation Amendment Act (No. 2) 1989

No. 15 of 1990

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### An Act to amend and repeal legislation relating to Primary Industries and Energy

[Assented to 17 January 1990]

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

#### Short title

- 5     1. This Act may be cited as the *Primary Industries and Energy  
Legislation Amendment Act (No. 2) 1989*.

#### Commencement

- 10     2. (1) Subject to this section, this Act commences on the day on which  
it receives the Royal Assent.
- (2) Subject to subsection (3), the amendments of:
- (a) the *Petroleum (Submerged Lands) Act 1967*;
- (b) the *Petroleum (Submerged Lands) (Exploration Permit Fees) Act  
1967*;

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- (c) the *Petroleum (Submerged Lands) (Pipeline Licence Fees) Act 1967*;
- (d) the *Petroleum (Submerged Lands) (Production Licence Fees) Act 1967*;
- (e) the *Petroleum (Submerged Lands) (Registration Fees) Act 1967*; 5
- (f) the *Petroleum (Submerged Lands) (Retention Lease Fees) Act 1985*; and
- (g) the *Tobacco Marketing Act 1965*;

made by this Act commence on a day or days to be fixed by Proclamation.

(3) If an amendment of an Act referred to in subsection (2) does not 10  
commence under that section within the period of 6 months beginning on  
the day on which this Act receives the Royal Assent, it commences on the  
first day after the end of that period.

**Amendment of Acts**

3. The Acts specified in Schedule 1 are amended as set out in that 15  
Schedule.

**Repeal**

4. The Acts specified in Schedule 2 are repealed.

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*Primary Industries and Energy Legislation  
Amendment (No. 2) No. 15, 1990*

**SCHEDULE 1**

Section 3

**AMENDMENTS OF ACTS**

***Dairy Produce Act 1986***

**After subsection 62 (3):**

Insert the following subsection:

“(3A) Notwithstanding any law of a State or Territory or any contract entered into before or after the commencement of this subsection, a person who purchases relevant dairy produce from its producer may, for the purpose of obtaining the funds necessary for the due payment by the person, on behalf of the producer, of a milk fat levy on the produce, deduct from any money payable by the person to the producer for that produce, an amount equal to, or that may reasonably be expected to be equal to, an unpaid milk fat levy on the produce.”.

**Subsection 62 (4):**

Insert “or deducted by the other person under subsection (3A)” after “other person” (second occurring).

**After subsection 62 (5):**

Insert the following subsection:

“(5A) Where a person deducts an amount under subsection (3A), the producer is, upon the levy becoming payable, discharged from liability to pay the levy to the extent of the amount so deducted, but the liability of that person under subsection (1) is not affected.”.

**Subsection 62 (7):**

Add at the end “or (5A)”.

**After subsection 63 (2):**

Insert the following subsection:

“(2A) Where:

- (a) a person deducts an amount under subsection 62 (3A) in respect of a milk fat levy on relevant dairy produce; and
- (b) the person does not, at or before the time when that levy becomes due and payable, pay to the Commonwealth the whole or any part of the amount so deducted;

there is payable by the person to the Commonwealth by way of penalty, in addition to the amount payable by the person under subsection 62 (1), an amount calculated at the rate of 20% per annum upon so much of the amount so deducted as is not paid to the Commonwealth, to be computed from the time when that levy becomes due and payable.”.

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**SCHEDULE 1—continued**

***Live-stock Slaughter Levy Collection Act 1964***

**Paragraph 10C (a):**

Omit “and” (last occurring).

**After paragraph 10C (a):**

Insert the following paragraph:

“(aa) in payment to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth in relation to:

- (i) the collection or recovery of amounts of levy or charge referred to in paragraph 10B (1) (a) or (aa); or
- (ii) the administration of paragraph 10B (1) (a) or (aa); and”.

***Plant Variety Rights Act 1987***

**Paragraph 12 (1) (c):**

Omit “and”.

**Subsection 12 (1):**

Add at the end the following word and paragraph:

“; and (e) if the plants of that variety are plants of a prescribed genus or prescribed species:

- (i) the exclusive right to produce asexually, including the right to license other persons to produce asexually, plants of that variety for the commercial production of the fruit, flowers, or any other product, of those plants; and
- (ii) the exclusive right to produce asexually, including the right to license other persons to produce asexually, reproductive material of plants of that variety for the commercial production of the fruit, flowers, or any other product, of those plants.”.

**Section 12:**

Add at the end the following subsection:

“(3) Plant variety rights referred to in subparagraph (1) (e) (i) or (ii) are subject to the condition that the grantee of those rights in respect of a plant variety shall license a person:

- (a) to produce asexually plants of that variety; or
  - (b) to produce asexually reproductive material of plants of that variety;
- (as the case may be) unless the person refuses or fails to comply with any condition to which the licence may reasonably be, and is, subject.”.

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**SCHEDULE 1—continued**

**Subsection 18 (2):**

Omit “give public notice of the application”, substitute “, as soon as possible after notifying the applicant, give public notice of the acceptance of the application”.

**Section 28:**

Omit “within 7 days”, substitute “as soon as possible”.

**After subsection 38 (1):**

Insert the following subsection:

“(1A) In paragraph (1) (a), ‘commercial purpose’, in relation to plants of a plant variety in respect of which plant variety rights referred to in subparagraph 12 (1) (e) (i) or (ii) subsist, includes the commercial production of the fruit, flowers, or any other product, of those plants.”.

**Subparagraphs 38 (2) (a) (i) and (b) (i):**

Insert “, otherwise than by asexual means,” after “produce”.

**Subparagraphs 38 (2) (a) (ii) and (b) (ii):**

Insert “otherwise than by asexual means” after “derived”.

**Subparagraphs 38 (3) (a) (i) and (b) (i):**

Insert “, otherwise than by asexual means,” after “produce”.

**Subparagraphs 38 (3) (a) (ii) and (b) (ii):**

Insert “otherwise than by asexual means” after “derived”.

**Section 40:**

After paragraph (d) insert the following paragraphs:

- “(da) a person who, not being licensed by the grantee to produce asexually plants of that variety for the commercial production of the fruit, flowers, or any other product, of those plants, so produces plants of that variety for the commercial production of such fruit, flowers or other product;
- (db) a person who, not being licensed by the grantee to produce asexually reproductive material of plants of that variety for the commercial production of the fruit, flowers, or any other product, of those plants, so produces reproductive material of plants of that variety for the commercial production of such fruit, flowers or other product;”.

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**SCHEDULE 1—continued**

***Petroleum (Submerged Lands) Act 1967***

**Paragraph 21 (1) (f):**

Omit “a fee of \$3,000”, substitute “the prescribed fee”.

**Subsection 21 (5):**

Omit the subsection.

**Subsection 22A (1):**

Omit “be”, substitute “by”.

**Paragraph 22A (5) (h):**

Omit “a fee of \$3,000”, substitute “the prescribed fee”.

**Subsection 22A (7):**

Omit the subsection.

**Paragraph 24 (1) (a):**

Omit “a fee of \$3,000”, substitute “the prescribed fee”.

**Subsection 24 (2):**

Omit the subsection, substitute the following subsection:

“(2) Where a permit is not granted on the application, the amount of the deposit shall, subject to subsection (3), be refunded to the applicant.”.

**Paragraph 30 (2) (c):**

Omit “a fee of \$300”, substitute “the prescribed fee”.

**Subsection 32 (1):**

Omit all words and paragraphs preceding paragraph (c), substitute the following words and paragraphs:

“(1) Where an application has been made under section 30 for the renewal of a permit, the Joint Authority:

- (a) shall, if the conditions to which the permit is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or
- (b) may, if:
  - (i) any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
  - (ii) the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the permit;

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**SCHEDULE 1—continued**

by instrument in writing served on the person who is then the permittee inform the person:".

**Paragraph 32 (1) (d):**

Omit "permittee", substitute "person".

**Subsection 32 (2):**

- (a) Omit all words to and including "regulations", substitute "If any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with".
- (b) Insert "person who is then the" before "permittee" (second occurring).

**Paragraph 38A (2) (e):**

Omit "a fee of \$600", substitute "the prescribed fee".

**After section 38B:**

Insert the following section:

**Application of sections 38A and 38B where permit is transferred**

"38BA. Where:

- (a) after an application has been made under subsection 38A (1) in relation to a block or blocks in respect of which a permit is in force; and
  - (b) before a decision has been made by the Joint Authority under subsection 38B (1) or (2) in relation to the application;
- a transfer of the permit is registered under section 78, sections 38A and 38B have effect, after the time of the transfer, as if any reference in those sections to the applicant were a reference to the transferee."

**Paragraph 38F (2) (d):**

Omit "a fee of \$600", substitute "the prescribed fee".

**Subsection 38F (4):**

Omit "a lessee makes an application", substitute "an application has been made".

**Paragraphs 38G (1) (a) and (b):**

Omit the paragraphs, substitute the following paragraphs:

- "(a) an application for the renewal of a lease has been made under section 38F;
- (b) any further information required by the Designated Authority under subsection 38F (4) has been furnished in accordance with that subsection;"

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**SCHEDULE 1—continued**

**Paragraphs 38G (1) (d) and (e):**

Omit the paragraphs, substitute the following paragraphs:

“(d) shall, if the conditions to which the lease is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or

(e) may, if:

- (i) any of the conditions to which the lease is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
- (ii) the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the lease;”.

**Subsection 38G (1):**

Omit “inform the lessee, by instrument in writing served on the lessee, that it is prepared to grant to the lessee the renewal of the lease and that the lessee”, substitute “by instrument in writing served on the person who is then the lessee, inform the person that it is prepared to grant to the person the renewal of the lease and that the person”.

**Subsection 38G (2):**

Omit the subsection, substitute the following subsection:

“(2) Subject to subsection (3), where an application for the renewal of a lease has been made under section 38F and:

- (a) any further information required by the Designated Authority under subsection 38F (4) has not been furnished in accordance with that subsection;
- (b) the Joint Authority is not satisfied as to the matters referred to in paragraph (1) (c); or
- (c) any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with and the Joint Authority is not satisfied that special circumstances exist that justify the granting of the renewal of the lease;

the Joint Authority shall, by instrument in writing served on the person who is then the lessee, refuse to grant the renewal of the lease.”.

**Paragraph 40 (2) (b):**

Insert “being the holder of a licence referred to in paragraph (a),” before “may”.

**Paragraph 40 (3) (b):**

Omit “to whom a licence has been granted”, substitute “who is the holder of a licence”.



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**SCHEDULE 1—continued**

**Subsection 40B (4):**

Omit “a lessee makes an application”, substitute “an application has been made”.

**Paragraph 41 (1) (e):**

Omit “a fee of \$600”, substitute “the prescribed fee”.

**After section 44:**

Insert the following section:

**Application of sections 39A and 41 to 44 where permit etc. transferred**

“44A. Where:

(a) after an application has been made:

- (i) under section 39A or 40 for the grant of a licence in respect of a block in respect of which a permit is in force; or
- (ii) under section 40A or 40B for the grant of a licence in respect of a block in respect of which a lease is in force; and

(b) before a decision has been made by the Joint Authority under subsection 43 (1) in relation to the application;

a transfer of the permit or lease (as the case may be) is registered under section 78, then, after the time of the transfer:

- (c) in the case of an application under section 39A—that section has effect in relation to the application as if any reference in subsection (3) to the applicant were a reference to the transferee; and
- (d) in all cases—sections 41 to 44 (inclusive) have effect in relation to the application as if any reference in those sections to the applicant were a reference to the transferee.”.

**Subsection 47 (2):**

Omit “Designated”, substitute “Joint”.

**Paragraph 48 (1) (a):**

Omit “a fee of \$3,000”, substitute “the prescribed fee”.

**Subsection 48 (2):**

Omit the subsection, substitute the following subsection:

“(2) Where a licence is not granted on the application, the amount of the deposit shall, subject to subsection (3), be refunded to the applicant.”.

**Paragraph 51 (2) (e):**

Omit “a fee of \$300”, substitute “the prescribed fee”.

**Paragraph 54 (2) (d):**

Omit “a fee of \$600”, substitute “the prescribed fee”.

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**SCHEDULE 1—continued**

**Subsections 55 (1) and (2):**

Omit the subsections, substitute the following subsections:

“(1) Where:

- (a) an application for the renewal of a licence has been made under section 54; and
- (b) the conditions to which the licence is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with;

the Joint Authority:

- (c) shall, if the application is in respect of the first renewal of the licence; or
- (d) may, if the application is in respect of a renewal other than the first renewal of the licence;

by instrument in writing served on the person who is then the licensee, inform the person that it is prepared to grant to the person the renewal of the licence.

“(2) Where:

- (a) an application for the renewal of a licence has been made under section 54; and
- (b) any of the conditions to which the licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with, but the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the licence;

the Joint Authority may, by instrument in writing served on the person who is then the licensee, inform the person that it is prepared to grant to the person the renewal of the licence.”.

**Subsection 55 (3):**

- (a) Omit all words to and including “regulations”, substitute “If any of the conditions to which the licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with”.
- (b) Insert “person who is then the” before “licensee” (second occurring).

**Subsection 55 (5):**

- (a) Omit “a licensee makes an application”, substitute “an application has been made”.
- (b) Insert “person who is then the” before “licensee” (second occurring).

**Section 57:**

Repeal the section.

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**SCHEDULE 1—continued**

**Paragraph 64 (1) (f):**

Omit “a fee of \$3,000”, substitute “the prescribed fee”.

**Subsection 65 (1):**

Omit all words from and including “the Joint Authority” to and including “inform”, substitute “the Joint Authority may, if that person is not the licensee and the application has not been rejected under subsection 64 (3), inform”.

**Subsections 65 (2) and (3):**

Omit the subsections, substitute the following subsections:

“(2) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the licensee, the Joint Authority:

- (a) shall, if the conditions to which the licence is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or
- (b) may, if:
  - (i) any of the conditions to which the licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
  - (ii) the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of a pipeline licence;

by instrument in writing served on the person who is then the licensee, inform the person that it is prepared to grant to the person a pipeline licence.

“(3) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the licensee, the Joint Authority shall, if:

- (a) any of the conditions to which the licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
- (b) the Joint Authority is not satisfied that special circumstances exist that justify the granting of a pipeline licence;

by instrument in writing served on the person who is then the licensee, refuse to grant a pipeline licence.”.

**Subsection 65 (12):**

Omit the subsection.

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**SCHEDULE 1—continued**

**Paragraph 68 (2) (c):**

Omit “a fee of \$600”, substitute “the prescribed fee”.

**Subsection 69 (1):**

Omit all words and paragraphs preceding paragraph (c), substitute the following words and paragraphs:

“(1) Where an application has been made under section 68 for the renewal of a pipeline licence, the Joint Authority:

(a) shall, if the conditions to which the pipeline licence is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or

(b) may, if:

(i) any of the conditions to which the pipeline licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and

(ii) the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the pipeline licence;

by instrument in writing served on the person who is then the pipeline licensee, inform the person:”.

**Subsection 69 (2):**

Omit the subsection, substitute the following subsection:

“(2) Where an application has been made under section 68 for the renewal of a pipeline licence, the Joint Authority shall, if:

(a) any of the conditions to which the pipeline licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and

(b) the Joint Authority is not satisfied that special circumstances exist that justify the granting of the renewal of the pipeline licence;

by instrument in writing served on the person who is then the pipeline licensee, refuse to grant the renewal of the pipeline licence.”.

**Paragraph 71 (2) (e):**

Omit “a fee of \$300”, substitute “the prescribed fee”.

**Section 79:**

Omit “a fee of \$30” (twice occurring), substitute “the prescribed fee”.

**Subsection 86 (1):**

Omit “of \$6”, substitute “calculated in accordance with the regulations”.

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Amendment (No. 2) No. 15, 1990*

**SCHEDULE 1—continued**

**Subsection 87 (2):**

Omit “at the rate of \$1.50 per page”, substitute “in accordance with the regulations”.

**Subsection 87 (3):**

Omit “of \$15”, substitute “calculated in accordance with the regulations”.

**Paragraph 111 (2) (b):**

Omit “and”.

**After paragraph 111 (2) (c):**

Insert the following word and paragraph:

“and (d) shall be accompanied by the prescribed fee.”.

**After subsection 112 (1A):**

Insert the following subsections:

“(1B) The holder of a special prospecting authority may make an application to the Designated Authority for the grant of an access authority to enable the applicant to carry on petroleum exploration operations in an area, being part of the adjacent area not included in any block that is the subject of the special prospecting authority.

“(1C) The holder of a permit, lease, licence or special prospecting authority in respect of a block or blocks within an adjacent area may make an application to the Designated Authority for that adjacent area for the grant of an access authority to enable the applicant to carry on, in a block or blocks in an adjacent area adjoining the first-mentioned adjacent area:

- (a) petroleum exploration operations; or
- (b) where the applicant is the holder of a permit, lease or licence, operations related to the recovery of petroleum in or from any block that is the subject of the permit, lease or licence.”.

**Paragraph 112 (3) (a):**

After “licensee” insert “, holder of a special prospecting authority”.

**Subsection 112 (4):**

- (a) Omit “this section”, substitute “a provision of this section other than subsection (1C)”.
- (b) Omit “or licence” (wherever occurring), substitute “licence or special prospecting authority”.
- (c) Insert “such” after “vary” (first occurring).

**After subsection 112 (4):**

Insert the following subsections:

“(4A) The Designated Authority shall not grant or vary an access authority on an application under subsection (1C) without the approval of

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**SCHEDULE 1—continued**

the Designated Authority for the adjacent area within which the block or blocks to be specified in the access authority are situated.

“(4B) Where:

- (a) an application under subsection (1C) for the grant of an access authority is in respect of the block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the applicant; or
- (b) a proposal to vary an access authority granted on an application under that subsection is in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the registered holder of the access authority;

the Designated Authority for the adjacent area within which the block is situated shall not approve the grant or the variation unless:

- (c) the Designated Authority has, by instrument in writing served on that person, given not less than one month’s notice of the intention to grant, or vary, as the case may be, the access authority;
- (d) a copy of the instrument has been served:
  - (i) on such other persons, if any, as the Designated Authority thinks fit; and
  - (ii) where it is proposed to vary an access authority—on the registered holder of the access authority;
- (e) the instrument gives:
  - (i) particulars of the access authority that it is proposed to grant or vary, as the case may be; and
  - (ii) notice that a person on whom the instrument, or a copy of the instrument, has been served may, by instrument in writing served on the Designated Authority on or before the date specified in the instrument, submit any matters that the person wishes the Designated Authority to consider; and
- (f) the Designated Authority has taken into account any matters submitted in accordance with the notice referred to in subparagraph (e) (ii).”.

**Paragraph 114 (1) (a):**

Omit the paragraph, substitute the following paragraph:

“(a) shall be in such amount as is prescribed;”.

**Subsections 118 (1B), (2), (3), (5) and (5A):**

Omit “of \$15 per day” (wherever occurring), substitute “calculated in accordance with the regulations”.

***Petroleum (Submerged Lands) (Exploration Permit Fees) Act 1967***

**Subsection 4 (1):**

Omit all words from and including “permit” (first occurring), substitute “permit, a fee calculated in accordance with the regulations”.

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**SCHEDULE 1—continued**

**After section 6:**

Add the following section:

**Regulations**

“7. The Governor-General may make regulations for the purposes of section 4.”.

***Petroleum (Submerged Lands) (Pipeline Licence Fees) Act 1967***

**Subsection 4 (1):**

Omit all words from and including “fee”, substitute “fee calculated in accordance with the regulations”.

**After section 6:**

Add the following section:

**Regulations**

“7. The Governor-General may make regulations for the purposes of section 4.”.

***Petroleum (Submerged Lands) (Production Licence Fees) Act 1967***

**Subsection 4 (1):**

Omit all words from and including “calculated”, substitute “calculated in accordance with the regulations”.

**After section 7:**

Add the following section:

**Regulations**

“8. The Governor-General may make regulations for the purposes of section 4.”.

***Petroleum (Submerged Lands) (Registration Fees) Act 1967***

**Subsection 4 (2):**

Omit “\$300” (wherever occurring), substitute “the prescribed amount”.

**Subsection 4 (3):**

Omit “\$300” (wherever occurring), substitute “the prescribed amount”.

**Subsection 4 (4):**

Omit “\$3,000” (wherever occurring), substitute “the prescribed amount”.

**Subsection 4 (6):**

Omit “\$300” (wherever occurring), substitute “the prescribed amount”.

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**SCHEDULE 1—continued**

**Subsection 4 (6A):**

Omit “\$3,000” (wherever occurring), substitute “the prescribed amount”.

**After section 4:**

Add the following section:

**Regulations**

“5. The Governor-General may make regulations for the purposes of section 4.”.

***Petroleum (Submerged Lands) (Retention Lease Fees) Act 1985***

**Subsection 4 (1):**

Omit all words from and including “fee”, substitute “fee calculated in accordance with the regulations”.

**After section 6:**

Add the following section:

**Regulations**

“7. The Governor-General may make regulations for the purposes of section 4.”.

***Tobacco Marketing Act 1965***

**Section 4 (definitions of “member”, “the Chairman” and “the Deputy Chairman”):**

Omit “Board”, substitute “Committee”.

**Section 4 (definition of “the Board”):**

Omit the definition.

**Section 4:**

Insert the following definition:

“‘the Committee’ means the Australian Tobacco Marketing Advisory Committee established by subsection 5 (1);”.

**Heading to Part II:**

Omit the heading, substitute the following heading:

**“PART II—AUSTRALIAN TOBACCO MARKETING ADVISORY  
COMMITTEE”.**

**Subsection 5 (1):**

Omit “Board”, substitute “Marketing Advisory Committee”.



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**SCHEDULE 1—continued**

**Subsections 5 (2) and (3) and 6 (1) and (10):**

Omit “Board” (wherever occurring), substitute “Committee”.

**Sections 7, 8, 9, 10, 11, 13 and 14:**

Omit “Board” (wherever occurring), substitute “Committee”.

**Heading to Part III:**

Omit “BOARD”, substitute “COMMITTEE”.

**Section 15:**

Omit “the Board” (wherever occurring), substitute “the Committee”.

**Section 16:**

Omit “Board” (wherever occurring), substitute “Committee”.

**Subsection 17 (1):**

Omit “Board” (wherever occurring), substitute “Committee”.

**Subsection 17 (2):**

Omit “Public Service Board” and “the Board”, substitute “Minister” and “the Committee” respectively.

**Sections 18, 19, 20, 21, 22, 23, 24, 25, 26 and 28:**

Omit “Board” (wherever occurring), substitute “Committee”.

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**SCHEDULE 2**

Section 4

**ACTS REPEALED**

*Derby Jetty Agreement Act 1962*  
*Oil Companies (Stock Loss Reimbursement) Act 1986*  
*Pipeline Construction (Dalton to Canberra) Act 1980*  
*Pipeline Construction (Young to Wagga Wagga) Act 1980*  
*South Australia Grant (Fruit Canneries) Act 1971*  
*States and Northern Territory Grants (Bluetongue Virus Control) Act 1978*  
*States Grants (Fruit Canneries) Act 1976*  
*States Grants (Fruit-growing Reconstruction) Act 1972*  
*States Grants (Fruit-growing Reconstruction) Act 1973*  
*States Grants (Fruit-growing Reconstruction) Act 1974*  
*States Grants (Fruit-growing Reconstruction) Act 1976*  
*Victoria Grant (Shepparton Preserving Company Limited) Act 1971*  
*Wheat Industry Stabilization Fund (Disposal) Act 1962*

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**NOTE**

On the commencement of the amendments of the *Tobacco Marketing Act 1965* made by this Act, the headings to sections 5, 6, 10, 19, 21, 22 and 26 of that Act are altered by omitting "Board" and substituting "Committee".

[Minister's second reading speech made in—  
House of Representatives on 12 April 1989  
Senate on 19 December 1989]



# Primary Industries and Energy Legislation Amendment Act 1990

No. 134 of 1990

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# Primary Industries and Energy Legislation Amendment Act 1990

No. 134 of 1990

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**An Act to amend various Acts relating to matters dealt  
with by the Department of Primary Industries and Energy,  
and for related purposes**

*[Assented to 28 December 1990]*

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

## PART 1—PRELIMINARY

### Short title

- 5     1. This Act may be cited as the *Primary Industries and Energy  
Legislation Amendment Act 1990*.

### Commencement

2. (1) Except for Part 7, this Act commences on the day on which  
it receives the Royal Assent.
- 10     (2) Part 7 is to be taken to have commenced on 1 October 1990.

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**PART 2—AMENDMENT OF THE EXOTIC ANIMAL DISEASE  
CONTROL ACT 1989**

**Principal Act**

3. In this Part, “Principal Act” means the *Exotic Animal Disease Control Act 1989*<sup>1</sup>.

5

**Substitution of the Schedule**

4. The Schedule to the Principal Act is repealed and the Schedule set out in Schedule 1 to this Act is substituted.

**PART 3—AMENDMENTS OF THE EXPORT CONTROL  
ACT 1982**

10

**Principal Act**

5. In this Part, “Principal Act” means the *Export Control Act 1982*<sup>2</sup>.

**False trade descriptions**

6. Section 15 of the Principal Act is amended by inserting in paragraph (2) (c) “, or stated in,” after “applied to”.

15

7. Section 23 of the Principal Act is repealed and the following section is substituted:

**Certificates with respect to goods**

“23. The regulations may provide for the issue by the Secretary of certificates as to matters in relation to which a country requires certification before goods from Australia may be imported into that country.”.

20

8. After section 24 of the Principal Act the following sections are inserted:

**Electronic transmission of information and documents**

25

“24A. (1) The regulations may prescribe specifications (in this section called ‘the specifications’) for the transmission of information and documents:

(a) to the Secretary; and

(b) from the Secretary to a person who has given notice of intention to export goods;

30

by means of a process that includes the use of data processing devices.

“(2) The specifications may include codes to be used in the transmission of information or documents and may specify what the components of such codes are to signify when so used.

35

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“(3) A person may give information or a document to the Secretary by transmitting the information or document to the Secretary in accordance with the specifications.

5     “(4) The Secretary may give information or a document to a person by transmitting the information or document to the person in accordance with the specifications.

“(5) A document is transmitted in accordance with the specifications if the information required to be included in the document is transmitted in the form and manner required by the specifications.

10     “(6) Information or a document transmitted to a person (including the Secretary) in accordance with the specifications is to be taken to have been given to the person for the purposes of any provision of this Act or the regulations that requires the information or document to be given to the person.

15     “(7) In this section:  
‘information’ includes a declaration as to the existence of a fact or belief or as to compliance by a person with a requirement of this Act or the regulations.

**Evidence of transmission of information or document**

20     “24B. (1) In this section:  
‘print-out’ means a copy of information or a document produced by a data processing device to which the information or document was transmitted by means of another data processing device or other data processing devices.

25     “(2) In any proceedings in a court for an offence against this Act, a print-out is *prima facie* evidence:

- (a) that information or a document in the terms set out in the print-out was transmitted to the Secretary on the day, and at the time, specified in the print-out; and  
30     (b) that the information or document was transmitted by the person specified in the print-out as the person who transmitted the information or document.

35     “(3) A paper certified, in writing, by an officer of the Department to have been produced by a specified data processing device in an office of the Secretary is to be taken to be a print-out for the purposes of this section unless the contrary is proved.”.

**PART 4—AMENDMENTS OF THE HORTICULTURAL  
RESEARCH AND DEVELOPMENT CORPORATION ACT 1987**

**Principal Act**

40     9. In this Part, “Principal Act” means the *Horticultural Research and Development Corporation Act 1987*<sup>3</sup>.



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**Interpretation**

**10.** Section 3 of the Principal Act is amended:

(a) by omitting paragraph (b) of the definition of “member” in subsection (1) and substituting the following paragraph:

“(b) in relation to a Selection Committee—the Presiding Member;”;

(b) by omitting paragraph (b) of the definition of “nominated member” in subsection (1) and substituting the following paragraph:

“(b) in relation to a Selection Committee—a member of the Selection Committee appointed on the nomination of an eligible industry body or bodies, or a member appointed under subsection 67 (3A);”;

(c) by omitting from subsection (1) the definitions of “Chairperson” and “Selection Committee” and substituting the following definitions:

“ ‘Chairperson’ means the Chairperson of the Corporation;  
‘Selection Committee’ means a Selection Committee established under section 67;”;

(d) by omitting from subsection (1) the definition of “Research Councils Selection Committee”;

(e) by inserting in subsection (1) the following definition:

“ ‘Presiding Member’ means a person appointed as the Presiding Member of Selection Committees under section 57;”.

**11.** Section 57 of the Principal Act is repealed and the following sections are substituted:

**Presiding Member**

“57. (1) the Minister must appoint a person as the Presiding Member of Selection Committees for the Corporation.

“(2) The Presiding Member is to be appointed on a part-time basis.

“(3) The Presiding Member holds office for the period, not longer than 3 years, specified in the instrument of appointment, but is eligible for re-appointment.

**Minister may request the establishment of a Selection Committee**

“57A. (1) For the purpose of:

(a) appointing the nominated members of the Corporation; or

(b) filling a vacancy caused by the resignation, or the termination of the appointment, of such a member;

the Minister must give written notice to the Presiding Member:

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- (c) asking the Presiding Member to establish a Selection Committee; and
- (d) specifying the period within which the Selection Committee must nominate a person or persons (as the case requires) for appointment.

“(2) If the Minister believes on reasonable grounds that a vacancy of the kind mentioned in paragraph (1)(b) is about to occur, the Minister may give a notice before the vacancy occurs.”.

12. After section 59 of the Principal Act the following section is inserted in Division 1 of Part III:

**Abolition**

“59A. (1) Where:

- (a) the Minister has appointed to the Corporation a person nominated by a Selection Committee; and
  - (b) the Selection Committee has not made any other nomination that has yet to be accepted or rejected by the Minister; and
  - (c) there are no outstanding matters in a request by the Minister under section 57A or 64 that are yet to be dealt with by the Selection Committee;
- the Presiding Member must abolish the Selection Committee.”.

**Nominations**

13. Section 61 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) Where the Minister makes a request under section 57A, the Selection Committee established in accordance with the request must, within the period specified in the request, nominate in writing to the Minister a person or persons, as the case requires.

“(1A) For the purpose of enabling it to make a nomination, the Selection Committee:

- (a) must invite nomination of persons for appointment by advertising in a newspaper that circulates throughout Australia; and
- (b) must invite nomination of persons for appointment from the eligible industry bodies; and
- (c) may invite nomination of persons for appointment in any other way it considers appropriate.

“(1B) The Selection Committee need not comply with paragraph (1A) (a) if:

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- (a) it is less than 12 months since the last appointment of a nominated member of the Corporation; and
- (b) the member's nomination was made following an advertisement under that paragraph; and
- (c) the Selection Committee considers that compliance with the paragraph is unlikely to result in a significantly improved field of candidates for nomination to the Minister.”; 5
- (b) by adding at the end of subsection (2) after paragraph (2) (b):  
“; and specifying how, in the Selection Committee's opinion, the nomination or nominations will best ensure that the members of the Corporation collectively possess an appropriate balance of expertise in accordance with section 62”; 10
- (c) by omitting from subsection (3) “The” and substituting “Subject to section 64, a”; 15
- (d) by omitting from subsection (4) “The Selection Committee” and “the Selection Committee” and substituting “A Selection Committee” and “a Selection Committee”, respectively.

**Selection of persons by Selection Committee**

- 14. Section 62 of the Principal Act is amended: 20
  - (a) by omitting from subsection (1) “The Selection Committee” and substituting “A Selection Committee”;
  - (b) by inserting after paragraph (1) (e) the following paragraphs:
    - “(ea) technology transfer;
    - (eb) conservation and management of natural resources; 25
    - (ec) environmental and ecological matters;”;
  - (c) by omitting from subsection (2) “The Selection Committee” and substituting “A Selection Committee”;
  - (d) by omitting from subsection (3) “the Selection Committee” and substituting “a Selection Committee”. 30

**Minister may request further information**

- 15. Section 63 of the Principal Act is amended:
  - (a) by omitting “the Selection Committee” (first occurring) and substituting “a Selection Committee”;
  - (b) by omitting “Chairperson of the Selection Committee” and substituting “Presiding Member”. 35

**Minister may reject nomination**

- 16. Section 64 of the Principal Act is amended:
  - (a) by omitting “by the Selection Committee” and substituting “by a Selection Committee”; 40

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- (b) by omitting "Chairperson of the Selection Committee" and substituting "Presiding Member";
- (c) by inserting ", within a specified period," after "request the nomination";
- 5 (d) by adding at the end the following subsection:
- “(2) For the purposes of this Part, other than section 67:
- (a) a notice under subsection (1) is taken to be a notice under section 57A; and
- (b) the period specified in a notice under subsection (1) is
- 10 taken to be a period specified in a notice under section 57A.”.

**Establishment of Selection Committees**

17. Section 67 of the Principal Act is amended:
- 15 (a) by omitting subsections (1) and (2) and substituting the following subsections:
- “(1) Where the Presiding Member receives a request under section 57A, the Presiding Member must establish a Selection Committee to nominate a person or persons for appointment to the Corporation.
- 20 “(1A) The Selection Committee so established comprises the following members:
- (a) the Presiding Member;
- (b) 4, 5 or 6 nominated members appointed by the Minister.
- 25 “(1B) For the purpose of establishing a Selection Committee, the Presiding Member must, as soon as practicable after receiving a request under section 57A, by written notice to each eligible industry body, ask the body to nominate to the Minister persons for appointment to the Selection Committee.
- 30 “(1C) Where there are, in a particular case, 2 or more eligible industry bodies, the Presiding Member’s notice must ask each of those bodies to act jointly with all of the other bodies in making the nomination.
- “(2) Subject to this section, the Minister must appoint the persons nominated by the eligible industry body or bodies.”;
- 35 (b) by omitting from subsection (3) “of the Selection Committee”;
- (c) by inserting after subsection (3) the following subsection:
- “(3A) Where the Minister is satisfied that nominations for membership of a Selection Committee will not be made as provided under this section within a reasonable time, the
- 40 Minister may appoint persons to be members of the Selection Committee as if they had been so nominated.”;

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- (d) by omitting from subsection (4) "the Selection Committee" and substituting "a Selection Committee";
- (e) by omitting subsection (5);
- (f) by omitting from subsection (6) "as a member of the" and substituting "as a nominated member of a"; 5
- (g) by adding at the end the following subsection:

"(7) The performance of the function, and the exercise of the powers, of a Selection Committee are not affected merely because of a vacancy in its membership."

18. Section 74 of the Principal Act is repealed and the following section is substituted: 10

**Termination of appointment**

"74. (1) The Minister may terminate the appointment of the Presiding Member or a nominated member of a Selection Committee:

- (a) for misbehaviour or physical or mental incapacity; or 15
- (b) if the Presiding Member or nominated member:
  - (i) becomes bankrupt; or
  - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or 20
  - (iv) makes an assignment of his or her remuneration for the benefit of such creditors; or
- (c) if the Presiding Member or nominated member, without reasonable excuse, contravenes section 73.

"(2) The Minister may terminate the appointment of the Presiding Member if the Presiding Member is absent, except with the Minister's leave, from 3 consecutive meetings of a Selection Committee. 25

"(3) The Minister may terminate the appointment of a nominated member of a Selection Committee if the member is absent, except with the Presiding Member's leave, from 3 consecutive meetings of the Selection Committee." 30

**Employees**

19. Section 77 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsection: 35

"(1) The Presiding Member may, on behalf of a Selection Committee, employ persons to perform administrative and clerical services in connection with the performance of the Selection Committee's function and the exercise of its powers.";

- (b) by omitting subsection (4). 40

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**Consultants**

20. Section 78 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- 5 “(1) The Presiding Member may, on behalf of a Selection Committee, engage persons having suitable qualifications and experience as consultants to the Selection Committee to assist it in performing its function.”.

21. Section 79 of the Principal Act is repealed and the following section is substituted:

10 **Annual reports**

- “79. (1) The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other  
15 Presiding Member.

“(2) Where the first appointment of a Presiding Member does not begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:

- 20 (a) if the period is less than 3 months—the period were included in the next financial year; or  
(b) in any other case—the period were a financial year.

- “(3) A report for a financial year may, subject to agreement between the Presiding Member and the Chairperson of the Corporation, be  
25 included, as a discrete part, in the annual report of the Corporation for that financial year.

- “(4) If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the  
30 Minister receives the report.”.

**PART 5—AMENDMENTS OF THE MURRAY-DARLING BASIN  
ACT 1983**

**Principal Act**

- 35 22. In this Part, “Principal Act” means the *Murray-Darling Basin Act 1983*⁴.

**Approval of amending agreement**

23. The agreement, a copy of which is set out in Schedule 3, is approved.

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**Interpretation**

24. Section 3 of the Principal Act is amended by omitting “agreement, a copy of which is set out in Schedule 2” from the definition of “Agreement” and substituting “agreements, copies of which are set out in Schedules 2 and 3”.

5

**Schedule 3**

25. The Principal Act is amended by adding at the end the Schedule set out in Schedule 3 to this Act.

**PART 6—AMENDMENTS OF THE PLANT VARIETY RIGHTS  
ACT 1987**

10

**Principal Act**

26. In this Part; “Principal Act” means the *Plant Variety Rights Act 1987*.

**Interpretation**

27. Section 3 of the Principal Act is amended by inserting after subsection (3) the following subsection:

15

“(3A) For the purposes of this Act, a person who selects a plant variety from a plant population that the person has grown, being a plant variety that is distinguishable by one or more important morphological, physiological or other characteristics from all other plant varieties whose existence at the time is a matter of common knowledge, is taken to have originated that variety.”.

20

**Plant variety rights not to be granted in relation to certain varieties**

28. Section 13 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

25

“(1) Plant variety rights must not be granted in respect of a plant variety if the plants of that variety are plants of a genus or species declared by the regulations to be a genus or species to which this Act does not apply.”;

30

(b) by omitting from subsection (2) “applies” (wherever occurring) and substituting “does not apply”.

29. After section 17 of the Principal Act the following section is inserted:

**Priority of certain breeders**

35

“17A. (1) A person who:

(a) is the breeder of a new plant variety; and

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- (b) in a member State of the Union (other than Australia) within the meaning of the Convention, makes an application (in this section called the 'foreign application') for all or any plant variety rights in respect of that variety;
- 5 has priority for the purposes of this Act in respect of that variety during the period of 12 months commencing on the day after the day on which that application is made.

"(2) If:

- 10 (a) during that period of 12 months the person makes an application to the Secretary for protection under this Act in respect of that plant variety accompanied by a claim for priority in respect of the foreign application; and
- 15 (b) during that period but within 3 months of making that application, the person lodges with the Secretary a copy of the documents that constituted the foreign application certified to be a true copy of those documents by the authority that received the foreign application;

20 the person has priority in respect of that plant variety during such additional period, commencing at the end of that period of 12 months, as is prescribed.

"(3) If, during that additional period, the person provides the Secretary with such particulars in relation to the plant variety as would be required if the person were making an application under section 16, the person is taken to have made an application under this Act for  
25 plant variety rights in respect of that variety."

**Lodging of applications**

30. Section 18 of the Principal Act is amended by omitting subparagraph (1) (a) (ii) and substituting the following subparagraphs:

- "(ii) the name of the variety complies with section 17; and
- 30 (iii) no other person has priority for the purposes of this Act in respect of that variety;"

**Provisional protection**

31. Section 22 of the Principal Act is amended by omitting paragraph (2) (b).

35 **Characteristics of plant varieties originated outside Australia**

32. Section 23 of the Principal Act is amended:

- (a) by adding at the end of paragraph (a) "or";
- (b) by inserting after paragraph (a) the following paragraph:
- 40 "(aa) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic and Australia is required, under an



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agreement between Australia and the country in which the test growing was carried out, to accept that the variety has that characteristic; or”.

**Offences**

33. Section 52 of the Principal Act is amended by omitting from paragraph (2) (b) “section 21” and substituting “subsection 22 (1)”. 5

**PART 7—AMENDMENTS OF THE PRIMARY INDUSTRIES  
AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989**

**Principal Act**

34. In this Part, “Principal Act” means the *Primary Industries and Energy Research and Development Act 1989*<sup>6</sup>. 10

**Definitions**

35. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “research component” and substituting the following definition: 15

“ ‘research component’ means:

- (a) in relation to the levy imposed by the *Wheat Industry Fund Levy Act 1989*—the proportion of the levy referred to in subsection 5 (5); and
- (b) in relation to any other levy—so much of the levy as the regulations declare to be the research component of the levy under paragraph 5 (3) (a);” 20

**Levies attached to R&D Corporations or R&D Funds**

36. (1) Section 5 of the Principal Act is amended:

- (a) by omitting from subsection (3) “Where a levy” and substituting “Subject to subsection (4), where a levy”; 25
- (b) by adding at the end the following subsections:

“(4) Paragraph (3) (a) does not apply to the levy imposed by the *Wheat Industry Fund Levy Act 1989*.

“(5) If the levy imposed by the *Wheat Industry Fund Levy Act 1989* is declared by the regulations to be attached to an R&D Corporation or an R&D Fund, the research component of the levy, in relation to each season, is the proportion of the levy that represents the percentage of the value of leviable wheat on which levy is imposed during that season determined by the Grains Council under subsection 85 (3) of the *Wheat Marketing Act 1989*. 30 35

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“(6) In subsection (5), the expressions ‘Grains Council’, ‘leviable wheat’ and ‘season’ have the same meaning as in Part 7 of the *Wheat Marketing Act 1989*.”.

5       (2) Regulations made before the commencement of this Part for the purposes of paragraph 5 (3) (a) of the Principal Act continue to have effect, in relation to a levy other than the levy imposed by the *Wheat Industry Fund Levy Act 1989*, as if they had been made under the Principal Act, as amended by this Act.

10       **Government matching payments not to exceed levy and certain other payments**

37. Section 31 of the Principal Act is amended by inserting in paragraph (1) (c) “research components of” after “in relation to”.

**PART 8—AMENDMENT OF THE SNOWY MOUNTAINS  
HYDRO-ELECTRIC POWER ACT 1949**

15       **Principal Act**

38. In this Part, “Principal Act” means the *Snowy Mountains Hydro-electric Power Act 1949*.

39. Section 31 of the Principal Act is repealed and the following section is substituted:

20       **Contracts**

“31. (1) The Authority must not enter into any contract involving the payment or receipt of an amount exceeding \$500,000.

“(2) Subsection (1) does not apply if:

25       (a) the Minister has approved of the Authority entering into the contract; or

(b) the contract relates to the investment of money not immediately required for the purposes of the Authority:

(i) in securities of, or guaranteed by, the Commonwealth; or

(ii) on deposit with an approved bank; or

30       (iii) in any other manner approved by the Treasurer.

“(3) For the purposes of subsection (2):

35       ‘approved bank’, in relation to the Authority, means a bank as defined in subsection 5 (1) of the *Banking Act 1959* or another bank declared by the Treasurer or a person authorised by the Treasurer to give approvals under this subsection to be an approved bank in relation to the Authority.”.

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**PART 9—AMENDMENT OF THE WHEAT INDUSTRY FUND  
LEVY COLLECTION ACT 1989**

**Principal Act**

40. In this Part, “Principal Act” means the *Wheat Industry Fund Levy Collection Act 1989*<sup>8</sup>.

5

**Payment of levy**

41. Section 5 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to subsections (2) and (3) and to the regulations, levy imposed on wheat because the wheat has been delivered by the grower to another person is due for payment at the end of 28 days, or such longer period as is prescribed, immediately following the end of the quarter in which the wheat was delivered.

10

“(1A) Subject to subsections (2) and (3) and to the regulations, levy imposed on wheat because the wheat has been processed by or for the grower is due for payment at the end of 28 days, or such longer period as is prescribed, immediately following the end of the quarter in which the processed wheat was delivered by the grower or was used by the grower for a commercial purpose.”.

15

**PART 10—AMENDMENTS OF THE WHEAT MARKETING ACT  
1989**

20

**Principal Act**

42. In this Part, “Principal Act” means the *Wheat Marketing Act 1989*<sup>9</sup>.

43. (1) Section 83 of the Principal Act is repealed and the following section is substituted:

25

**Management of the Fund**

“83. Subject to any provisions of the regulations referred to in subsection 94 (3), the Board must manage the Fund in each financial year according to the business plan for that year approved by the Grains Council.”.

30

(2) The annual business plan for the Wheat Industry Fund for the financial year that commenced on 1 July 1990 approved by the Grains Council for the purposes of regulation 6 of the Wheat Industry Fund Regulations made on 7 February 1990 has effect in relation to that financial year as if it were the business plan for that financial year approved for the purposes of section 83 of the Principal Act, as amended by this Act.

35

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**Interpretation**

44. Section 84 of the Principal Act is amended by omitting the definition of "Research Fund".

**Determination of apportionment of wheat industry fund levy**

- 5      45. Section 85 of the Principal Act is amended by omitting from subsection (3) "paid into the Research Fund" and substituting "the research component of the levy in relation to that season".

**Repeal**

46. Section 87 of the Principal Act is repealed.

10    **Regulations**

47. (1) Section 94 of the Principal Act is amended by adding at the end the following subsections:

"(3) Without limiting subsection (1), the regulations may make provision regarding:

- 15      (a) the preparation and approval of business plans for the purposes of section 83; and  
         (b) the conditions subject to which money of the Wheat Industry Fund may be used by the Board; and  
         (c) the replacement in the Fund of money used by the Board; and  
20      (d) the giving by the Treasurer of guarantees in relation to borrowings made by the Board for the purposes of activities involving the use of money of the Fund; and  
         (e) the making of payments to wheat growers out of, or in relation to, money of the Fund; and  
25      (f) the issue to wheatgrowers of certificates of equity in the Fund; and  
         (g) the rights of the holder of a certificate of equity, including rights relating to the transfer of the certificate; and  
         (h) the manner in which accounting records relating to the Fund  
30      are to be kept by the Board.

"(4) Regulations relating to a matter referred to in subsection (3) may not be made except after consideration by the Minister of a report by the Grains Council made after consultation with the Board."

- 35      (2) Regulations made before the commencement of this Part for the purposes of subsection 83 (2) of the Principal Act have effect, after that

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commencement, as if they had been made for the purposes of subsection 94 (3) of the Principal Act, as amended by this Act.

**PART 11—MINOR AMENDMENTS OF ACTS**

**Amendments of Acts**

**48.** The Acts specified in Schedule 2 are amended as set out in that Schedule. 5

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**SCHEDULE 1**

Section 4

**NEW SCHEDULE TO THE EXOTIC ANIMAL DISEASE CONTROL  
ACT 1989**

**SCHEDULE**

Sections 3 and 22

**ACTS IMPOSING CERTAIN LEVIES**

Column 1 Item No.	Column 2 Act	Column 3 Provision of Act
1.	<i>Dairy Produce Levy (No. 1) Act 1986</i>	Subsection 5(1)
2.	<i>Laying Chicken Levy Act 1988</i>	Paragraph 7(b)
3.	<i>Live-stock Slaughter Levy Act 1964</i>	Paragraphs 6(1)(c), 6A (1) (c), 6B (1) (c), 6C (1) (c), 6D (1) (c), 6E (1) (c) and 6F (1) (c)
4.	<i>Meat Chicken Levy Act 1969</i>	Paragraph 7(1)(b)
5.	<i>Pig Slaughter Levy Act 1971</i>	Paragraph 6(1)(c)

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**SCHEDULE 2**

Section 48

**MINOR AMENDMENTS OF ACTS**

***Horticultural Research and Development Corporation Act 1987***

**Paragraph 47 (1) (a):**

Omit the paragraph, substitute the following paragraph:

“(a) in payment or discharge of the expenses and liabilities incurred by or on behalf of the Corporation or a Selection Committee;”.

**Subsection 47 (2):**

Omit the subsection, substitute the following subsection:

“(2) The Corporation is liable to pay the expenses, and discharge the liabilities, incurred by a Selection Committee in connection with the performance of its function, and the exercise of its powers, under this Act.”.

**Heading to Part III:**

Omit the heading, substitute the following heading:

**“PART III—SELECTION COMMITTEES”.**

**Heading to Division 1 of Part III:**

Omit the heading, substitute the following heading:

***“Division 1—Presiding Member and Selection Committees”.***

**Section 58:**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Section 59:**

Omit “The”, substitute “A”.

**Section 60:**

Repeal the section.

**Heading to Division 3 of Part III:**

Omit the heading, substitute the following heading:

***“Division 3—Establishment and meetings of Selection Committees”.***

**Section 65:**

Repeal the section.

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**SCHEDULE 2—continued**

**Section 66:**

Repeal the section.

**Section 68:**

Repeal the section.

**Section 69:**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Subsection 70 (1):**

Omit the subsection, substitute the following subsection:

“(1) A member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, is to be paid such remuneration as is prescribed.”.

**Subsection 70 (2):**

Omit “the”, substitute “a”.

**Paragraph 70 (3) (a):**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Subsection 70 (4):**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Subsection 70 (7):**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Subsection 71 (1):**

Omit “Chairperson of the Selection Committee”, substitute “Presiding Member”.

**Subsection 71 (2):**

- (a) Omit “Chairperson” (wherever occurring), substitute “Presiding Member”.
- (b) Omit “the Selection Committee”, substitute “a Selection Committee”.



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**SCHEDULE 2—continued**

**Section 72:**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Paragraph 73 (1) (a):**

Omit “the Selection Committee” (first occurring), substitute “a Selection Committee”.

**Section 75:**

Omit “the Selection Committee”, substitute “a Selection Committee”.

**Subsection 76 (1):**

Omit “the Selection Committee” (first occurring), substitute “a Selection Committee”.

**Subsections 76 (2) and (3):**

Omit the subsections, substitute the following subsections:

“(2) The Presiding Member may at any time convene a meeting of a Selection Committee.

“(3) The Presiding Member must preside at all meetings of a Selection Committee at which he or she is present.”.

**Subsection 76 (4):**

Omit “Chairperson of the Selection Committees is not present at a meeting of the”, substitute “Presiding Member is not present at a meeting of a”.

**Subsection 76 (5):**

(a) Omit “the Selection Committee”, substitute “a Selection Committee”.

(b) Omit paragraph (a), substitute the following paragraph:

“(a) a majority of the members constitutes a quorum;”.

**Subsection 76 (6):**

Omit “The”, substitute “A”.

**Subsection 76 (7):**

Omit “The”, substitute “A”.

*Nuclear Non-Proliferation (Safeguards) Act 1987*

**Section 15:**

After “nuclear material or” (first occurring) insert “an”.

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**SCHEDULE 2—continued**

**Section 49:**

Omit “in” (last occurring), substitute “any”.

*Rural Industries Research Act 1985*

**Paragraph 41(b):**

Omit “Research Councils”, substitute “Councils”.

**Paragraph 41(c):**

Omit “Research Councils”, substitute “Councils”.

*Rural Industries Research Amendment Act 1988*

**Section 42:**

Omit “41(b) and (c)”.

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**SCHEDULE 3**

Section 25

**NEW SCHEDULE 3 TO THE MURRAY-DARLING BASIN ACT  
1983**

**SCHEDULE 3**

Section 3

AN AGREEMENT made this 4th day of October One thousand nine hundred and ninety

BETWEEN

THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth")  
of the first part,  
THE STATE OF NEW SOUTH WALES of the second part,  
THE STATE OF VICTORIA of the third part, and  
THE STATE OF SOUTH AUSTRALIA of the fourth part.

WHEREAS the Commonwealth, New South Wales, Victorian and South Australian Governments wish to amend the Agreement made between the parties on 1 October 1982, as amended by the Murray-Darling Basin Agreement made on 30 October 1987 (which Agreement as so amended is herein called "the principal agreement"), in order to enable the Ministerial Council established thereunder to make decisions otherwise than at duly convened meetings.

NOW IT IS HEREBY AGREED by and between the parties to this Agreement as follows:

1. Unless the contrary intention appears, expressions used in this Agreement have the same meanings as in the principal agreement.
2. (1) This Agreement, other than this clause, is subject to approval by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria and South Australia and comes into effect when so approved.  
(2) The Commonwealth, New South Wales, Victorian and South Australian Governments will submit this Agreement for approval to their respective Parliaments as soon as practicable after the Agreement is made.  
(3) A further approval of the Parliaments is not required if another State becomes a party to the Agreement in accordance with Clause 117A of the principal agreement.
3. The following clause shall be inserted before clause 7F of the principal agreement—

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**SCHEDULE 3—continued**

- “7EA. (1) A decision of the Ministerial Council may be made other than at a meeting of the Ministerial Council if made in accordance with this clause.
- (2) If—
- (a) the text of a proposed resolution is sent or given in writing by facsimile or other transmission by an officer of the Commission authorised by the Ministerial Council to a Minister nominated under clause 7G or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by the Minister so nominated; and
- (b) such Minister approves the proposed resolution and notifies that officer in writing sent or given by facsimile or other transmission,
- the proposed resolution is approved, by the Minister.
- (3) When a Minister from each Contracting Government has approved a resolution in accordance with sub-clause (2) the resolution shall be deemed to have become a decision of the Ministerial Council at the date and time the last of those Ministers has approved the resolution.
- (4) Any decision of the Ministerial Council made in accordance with this clause, must be recorded by an officer of the Commission authorised by the Ministerial Council and a copy of the decision sent to each member of the Ministerial Council within 21 days after the decision is made.
- (5) The record made pursuant to sub-clause (4) shall be confirmed at the next meeting of the Ministerial Council.”

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties hereto on the day and year first above-written.

SIGNED by the Honourable ROBERT JAMES LEE HAWKE,  
Prime Minister of the Commonwealth of Australia,  
in the presence of—ROBERT DAVID HANNA

SIGNED by the Honourable NICHOLAS FRANK GREINER,  
Premier of the State of New South Wales,  
in the presence of—RICHARD GEORGE HUMPHRY

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**SCHEDULE 3—continued**

SIGNED by the Honourable JOAN ELIZABETH KIRNER,  
Premier of the State of Victoria,  
in the presence of—DAVID ROBERT ESSINGTON LEWIS

SIGNED by the Honourable DONALD JACK HOPGOOD,  
Acting Premier of the State of South Australia,  
in the presence of—ANN LAMBERT

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**NOTES**

1. No. 130, 1989.
2. No. 47, 1982, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; No. 141, 1987; and Nos. 99 and 111, 1988.
3. No. 166, 1987, as amended. For previous amendments, see Nos. 51 and 99, 1988; and No. 46, 1989.
4. No. 86, 1983, as amended. For previous amendments, see No. 154, 1987.
5. No. 2, 1987, as amended. For previous amendments, see No. 111, 1988.
6. No. 17, 1990.
7. No. 25, 1949, as amended. For previous amendments, see No. 47, 1951; No. 35, 1952; No. 69, 1955; No. 45, 1956; No. 31, 1958; No. 93, 1966; No. 216, 1973; No. 29, 1975; No. 36, 1978; No. 156, 1979; No. 65, 1985; No. 76, 1986; and No. 21, 1989.
8. No. 35, 1989, as amended. For previous amendments, see No. 17, 1990.
9. No. 58, 1989, as amended. For previous amendments, see No. 16, 1990.

[Minister's second reading speech made in—  
*House of Representatives on 18 October 1990*  
*Senate on 13 November 1990*]