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# GAZETTE

## ACCESSION TO THE 1978 ACT OF THE UPOV CONVENTION

### PORTUGAL

On September 14, 1995, the Government of Portugal deposited its instrument of accession to the 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, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Portugal on October 14, 1995. On that date, Portugal became the twenty-eighth member State of UPOV and

the twenty-sixth member State bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of the following botanical taxa (the Portuguese names appeared in the notification, whereas the English, French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Portugués	English	Français	Deutsch	Español
Ameixeira	Plum	Prunier	Pflaume	Ciruelo
Amendoeira	Almond	Amandier	Mandel	Almendro
Amora	Blackberry	Ronce fruitière	Brombeere	Zarzamora
Anona	Annona, Cherimoya	Anone, Chérimolier	Annone, "Cherimoya"	Chirimoyo
Arroz	Rice	Riz	Reis	Arroz
Aveia	Oats	Avoine	Hafer	Avena
Azevém	Ryegrass	Ray-grass	Weidelgrass	Ray-grass
Batata	Potato	Pomme de terre	Kartoffel	Patata
Cebola	Onion	Oignon	Zwiebel	Cebolla
Centeio	Rye	Seigle	Roggen	Centeno
Cerejeira	Cherry	Cerisier	Kirsche	Cerezo
Cevada	Barley	Orge	Gerste	Cebada
Craveiro	Carnation	Oeillet	Nelke	Clavel
Crisântemo	Chrysanthemum	Chrysanthème	Chrysantheme	Crisantemo
Damasqueiro	Apricot	Abricotier	Aprikose	Albaricoquero
Ervilhaca	Common Vetch	Vesce commune	Saatwicke	Veza común

Portugués	English	Français	Deutsch	Español
Fava	Broad Bean, Horse Bean, Field Bean, Tick Bean	Fève, Féverole	Dicke Bohne (Puffbohne), Ackerbohne	Haba, Haboncillo
Feijão	French Bean	Haricot	Gartenbohne	Judía común
Festuca	Fescue	Fétuque	Schwingel	Festuca
Framboesa	Raspberry	Framboisier	Himbeere	Frambueso
Girassol	Sunflower	Tournesol	Sonnenblume	Girasol
Groselha	Currants, Gooseberry	Cassis, Groseilliers	Johannisbeeren, Stachelbeere	Grosellero, Casis
Leucadendro	Leucadendron	Leucadendron	Leucadendron	Leucadendron
Leucospermo	Leucospermum	Leucospermum	Leucospermum	Leucospermum
Luzerna	Lucerne	Luzerne	Luzerne	Alfalfa
Macieira	Apple	Pommier	Apfel	Manzana
Melão	Melon	Melon	Melone	Melón
Milho	Maize	Maïs	Mais	Maíz
Mirtilo	Bilberry, Blueberry, Whortleberry	Myrtille	Heidelbeere	Arándano, Mirtilo
Morangueiro	Strawberry	Fraisier	Erdbeere	Fresa
Nabo	Turnip	Navet	Herbstrübe, Mairübe	Nabo
Pereira	Pear	Poirier	Birne	Peral
Pessegueiro	Peach	Pêcher	Pfirsich	Melocotonero
Pimento	Pepper	Poivron, Piment	Paprika	Pimiento
Prótea	Protea	Protea	Protea	Protea
Roseira	Rose	Rosier	Rose	Rosa
Soja	Soya Bean, Soybean	Soja	Sojabohne	Soja
Tomate	Tomato	Tomate	Tomate	Tomate
Tremoceira	Lupin	Lupin	Lupine	Altramuces
Trevo	Clover	Trèfle	Klee	Trébol
Trigo	Wheat	Blé	Weizen	Trigo
Triticale	Triticale	Triticale	Triticale	Triticale
Videira	Vine	Vigne	Rebe	Vid

## UKRAINE

On October 3, 1995, the Government of Ukraine deposited its instrument of accession to the 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, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Ukraine on November 3, 1995. On that date, Ukraine became the twenty-ninth member State of UPOV and the

twenty-seventh member State bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of the following botanical taxa (the Latin and English names appeared in the notification, whereas the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	English	Français	Deutsch	Español
<i>Helianthus annuus</i> L.	Sunflower	Tournesol	Sonnenblume	Girasol
<i>Hordeum vulgare</i> L.	Barley	Orge	Gerste	Cebada
<i>Secale cereale</i> L.	Rye	Seigle	Roggen	Centeno
<i>Triticum aestivum</i> L.	Soft Wheat	Blé tendre	Weichweizen	Trigo blando
<i>Triticum durum</i> Desf.	Durum Wheat	Blé dur	Hartweizen	Trigo duro

## CHILE

On December 5, 1995, the Government of Chile deposited its instrument of accession to the 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, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Chile on January 5,

1996. On that date, Chile became the thirtieth member State of UPOV and the twenty-eighth member State bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of all botanical genera and species.

## RATIFICATION OF THE 1991 ACT OF THE UPOV CONVENTION

### DENMARK

On April 26, 1996, the Government of Denmark deposited its instrument of ratification of the 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, with the Secretary-General of UPOV.

Denmark is the first State to ratify the 1991 Act of the Convention. From the point

of view of international treaty law, the 1991 Act will not enter into force in respect of Denmark until one month after four additional States have deposited instruments of adherence to the 1991 Act, of which at least two must be deposited by States party to an earlier Act of the Convention.

From the point of view of national law, Denmark has adapted its legislation to the 1991 Act.

### ISRAEL

On June 3, 1996, the Government of Israel deposited its instrument of ratification of the 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, with the Secretary-General of UPOV.

Israel is the second State to ratify the 1991 Act of the Convention. From the point of view of international treaty law, the 1991

Act will not enter into force in respect of Israel until one month after three additional States have deposited instruments of adherence to the 1991 Act, of which at least one must be deposited by a State party to an earlier Act of the Convention.

From the point of view of national law, Israel has adapted its legislation to the 1991 Act.

## EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

### AUSTRIA

By virtue of Ordinance No. 426 of the Federal Minister for Agriculture and Forestry Amending the Ordinance No. 455 on the Extension of the Material Scope of Application of the Variety Protection Law (*Bundesgesetzblatt* of June 30, 1995), protection was

extended to the following with effect from July 1, 1995 (the Latin and German names appear in the Ordinance, whereas the English, French and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	English	Français	Deutsch	Español
<i>Chaenomeles</i> Lindl.	Flowering Quince	Cognassier du Japon	Zierquitte	Membrillero japonés
<i>Clematis</i> L.	Clematis	Clématite	Waldrebe	Clemátide
<i>Cydonia</i> Mill.	Quince	Cognassier	Quitte	Membrillero
<i>Fragaria</i> L.	Strawberry	Fraisier	Erdbeere	Fresa, Frutilla
<i>Malus</i> Mill.	Apple	Pommier	Apfel	Manzano
<i>Prunus armeniaca</i> L.	Apricot	Abricotier	Marille, Aprikose	Albaricoquero
<i>Prunus avium</i> L.	Sweet Cherry	Cerisier (cerises douces: guignes bigarreaux)	Süßkirsche	Cerezo dulce
<i>Prunus cerasus</i> L.	Morello, Sour Cherry	Cerisier (cerises acides: griottes, amarelles)	Sauerkirsche, Weichsel	Cerezo ácido, Guindo
<i>Prunus domestica</i> L.	Plum	Prunier	Pflaume, Zwetschke	Ciruelo
<i>Prunus insititia</i> L.	Mirabelle	Mirabelle	Mirabelle	Ciruelo mirabel
<i>Prunus persica</i> (L.) Batsch	Peach, Nectarine	Pêcher, Nectarinier	Pfirsich, Nektarine	Durazno, Melocotonero, Nectarina
<i>Pyrus communis</i> L.	Pear	Poirier	Birne	Peral
<i>Ribes nigrum</i> L.	Black Currant	Cassis	Schwarze Johannisbeere	Grosellero negro (casis)
<i>Ribes niveum</i> Lindl.	White Currant	Groseillier blanc	Weiß Johannisbeere	Grosellero blanco
<i>Ribes sylvestre</i> (Lam.) Mert. et W.D.J. Koch	Red Currant	Groseillier rouge	Rote Johannisbeere	Grosellero rojo
<i>Ribes uva-crispa</i> L.	Gooseberry	Groseillier à maquereau	Stachelbeere	Grosellero sylvestre, Agrazón, Uva crespá
<i>Rosa</i> L.	Rose	Rosier	Rose	Rosal
<i>Rubus idaeus</i> L. et hybrides	Raspberry	Framboisier	Himbeere	Frambueso
<i>Rubus</i> L. subg. <i>Eubatus</i> Sect. <i>Moriferi</i> et <i>Ursini</i> et hybrides	Blackberry	Ronce fruitière	Brombeere	Zarza, Zarzamora
x <i>Triticosecale</i> Wittm.	Triticale	Triticale	Triticale	Triticale

**Consolidated List of Taxa Covered by Plant Variety Protection Legislation in Austria  
(with Effect from July 1, 1995)**

Latin	English	Français	Deutsch	Español
<i>Avena sativa</i>	Oats	Avoine	Hafer	Avena
<i>Beta vulgaris</i> ssp. <i>vulgaris</i> var. <i>altissima</i>	Sugar Beet	Betterave sucrière	Zuckerrübe	Remolacha azucarera
<i>Brassica napus</i> var. <i>napus</i>	Rapeseed	Colza	Raps	Colza
<i>Capsicum annuum</i>	Sweet Pepper, Capsicum, Chili	Poivron, Piment	Paprika	Pimiento
<i>Chaenomeles</i> Lindl.	Flowering Quince	Cognassier du Japon	Zierquitte	Membrillero japonés
<i>Clematis</i> L.	Clematis	Clématite	Waldrebe	Clemátide
<i>Cydonia</i> Mill.	Quince	Cognassier	Quitte	Membrillero
<i>Fragaria</i> L.	Strawberry	Fraisier	Erdbeere	Fresa, Frutilla
<i>Glycine max</i>	Soya Bean, Soy- bean	Soja	Sojabohne	Soja
<i>Helianthus annuus</i>	Common Sun- flower	Tournesol, Soleil	Sonnenblume	Girasol
<i>Hordeum vulgare</i>	Barley	Orge	Gerste	Cebada
<i>Malus</i> Mill.	Apple	Pommier	Apfel	Manzano
<i>Pisum sativum</i> partim	Peas (for use as grain peas for feeding purposes)	Pois (fourrager pour utilisation en grains)	Erbse (zur Nutzung als Körnererbse für Futterzwecke)	Guisante (en grano para utilización como forraje)
<i>Populus</i> sp.	Poplar	Peuplier	Pappel	Alamo, Chopo
<i>Prunus armeniaca</i> L.	Apricot	Abricotier	Marille, Aprikose	Albaricoquero
<i>Prunus avium</i> L.	Sweet Cherry	Cerisier (cerises douces : guignes bigarreaux)	Süßkirsche	Cerezo dulce
<i>Prunus cerasus</i> L.	Morello, Sour Cherry	Cerisier (cerises acides : griottes, amarelles)	Sauerkirsche, Weichsel	Cerezo ácido, Guindo
<i>Prunus domestica</i> L.	Plum	Prunier	Pflaume, Zwet- schke	Ciruelo
<i>Prunus insititia</i> L.	Mirabelle	Mirabelle	Mirabelle	Ciruelo mirabel
<i>Prunus persica</i> (L.) Batsch	Peach, Nectarine	Pêcher, Nectarinier	Pfirsich, Nektarine	Durazno, Meloco- tonero, Nectarina
<i>Pyrus communis</i> L.	Pear	Poirier	Birne	Peral
<i>Raphanus sativus</i>	Radish	Radis	Radies und Rettich	Rábano



Latin	English	Français	Deutsch	Español
<i>Ribes nigrum</i> L.	Black Currant	Cassis	Schwarze Johannisbeere	Grosellero negro (casis)
<i>Ribes niveum</i> Lindl.	White Currant	Groseillier blanc	Weiß Johannisbeere	Grosellero blanco
<i>Ribes sylvestre</i> (Lam.) Mert. et W.D.J. Koch	Red Currant	Groseillier rouge	Rote Johannisbeere	Grosellero rojo
<i>Ribes uva-crispa</i> L.	Gooseberry	Groseillier à maquereau	Stachelbeere	Grosellero sylvestre, Agradón, Uva crespá
<i>Rosa</i> L.	Rose	Rosier	Rose	Rosal
<i>Rubus idaeus</i> L. et hybrides	Raspberry	Framboisier	Himbeere	Frambueso
<i>Rubus</i> L. Subg. <i>Eubatus</i> Sect. Moriferi et Ursini et hybrides	Blackberry	Ronce fruitière	Brombeere	Zarza, Zarzamora
<i>Salix</i> sp.	Willow	Saule	Weide	Sauce
<i>Secale cereale</i>	Rye	Seigle	Roggen	Centeno
<i>Solanum tuberosum</i>	Potato	Pomme de terre	Kartoffel	Patata, Papa
<i>Triticum aestivum</i>	Wheat	Blé	Weizen	Trigo
<i>Triticum durum</i>	Durum Wheat	Blé dur	Durumweizen	Trigo duro
<i>Vicia faba</i>	Field Bean, Tick Bean	Féverole	Ackerbohne	Haboncillo
<i>Vitis</i> sp.	Grapevine	Vigne	Rebe	Vid
x <i>Triticosecale</i> Wittm.	Triticale	Triticale	Triticale	Triticale
<i>Zea mays</i>	Maize	Maïs	Mais	Maíz

## DENMARK

By virtue of Act No. 1086 of December 20, 1995, on the Amendment of the Plant Novelties Act, protection was extended to all

plant genera and species with effect from January 1, 1996.

## FINLAND

By virtue of Decree No. 962/1995 of July 17, 1995, on the Amendment of the Annex to the Decree on the Plant Genera and Species Under the Law on Breeders' Rights, protection was extended, with effect from July 20, 1995, to

the following (the Latin, Finnish and Swedish names appear in the Decree, whereas the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	Finnish	Swedish	English	Français	Deutsch	Español
<i>Aronia</i> spp.	Aronia	Aronia	Chokeberry	Aronia	Apfelbeere	Aronia
<i>Hippophaë rhamnoides</i> L.	Tymi	Havtorn	Common Sea Buckthorn	-	-	-
<i>Phalaris arundinacea</i> L.	Ruokohelpi	Rörflen	Reed Canary Grass	Alpiste roseau	Rohrglanzgras	Hierba cinta, Alpiste arundináceo
x <i>Triticosecale</i> Wittmack	Ruisvehnä	Rågvete	Triticale	Triticale	Triticale	Triticale
<i>Vaccinium</i> spp.	Pensasmustika	Amerikanskt Blåbär	Bilberry, Whortleberry, Cranberry, Cowberry	Airelle, Canneberge, Myrtille	Heidelbeere, Preiselbeere, Moosbeere	Arándano, Mirtillo

A list of the other taxa protected in Finland is reproduced in *Plant Variety Protection* No. 71, starting on page 18.

## ISRAEL

By virtue of the Law on the Rights of Breeders of Plant Varieties (Amendment No. 2) 1996-5766, protection was extended to

all botanical genera and species with effect from February 23, 1996.

## ITALY

By virtue of the Decree No. 467 of July 21, 1995—Regulation Making Provisions for the Extension of Patent Protection Under Decree No. 974 of August 12, 1975, to Further Botanical Genera and Species—protection was extended, with effect from November 10, 1995, to the fol-

lowing (the Latin and the underlined Italian names appear in the Decree, whereas the other Italian common names and the English, French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	Italiano	English	Français	Deutsch	Español
<i>Abutilon theophrasti</i> (syn.: <i>Abutilon avicennae</i> )	Céncio mólle	-	-	Chinesischer Hanf, Chinesische Jute, Samtpappel	-
<i>Abutilon mollis</i> Sweet (syn.: <i>Sida mollis</i> Ortega)	-	-	-	-	-
<i>Alocasia</i>	-	Alocasia	Alocasia	Alocasia, Pfeilwurz, Tropenwurz	Alocasia
<i>Alpinia</i>	-	Alpinia	Alpinia	Alpinie	Alpinia

Latin	Italiano	English	Français	Deutsch	Español
<i>Aristolochia</i>	-	Dutchman's Pipe, Birthwort	Aristolochie	Pfeifenblume, Osterluzei	Aristolochia
<i>Arundinaria</i>	-	-	-	Halbrohr, Rohrgras	-
<i>Bambusa</i>	-	Bamboo	Bambou	Bambus	Bambú
<i>Beta vulgaris</i> L. var. <i>esculenta</i> L.	<u>Biètola da òrto</u>	Garden Beet, Beetroot	Betterave rouge, Betterave potagère	Rote Bete, Rote Rübe	Remolacha roja, Remolacha de mesa
<i>Bougainvillea</i>	-	Bougainvillea	Bougainvillier	Bougainvillea	Buganvilla
<i>Brassica napus</i> L., var. <i>napobrassica</i> (L.) Peterm.	<u>Navone</u>	Swede	Chou-navet, Rutabaga	Kohlrübe	Colinabo
<i>Chenopodium album</i> L.	<u>Farinello</u>	Lamb's Quarters, Goosefoot	Chénopode blanc	Weißer Gänsefuß	Cenizo blanco
<i>Cocculus</i>	-	Snail Seed	Cocculus	Kokkelstrauch	-
<i>Colocasia</i>	-	Taro	Taro	Taro	Colocasia
<i>Curcuma</i>	-	Turmeric	Curcuma	Safranwurz	Cúrcuma
<i>Dendrocalamus</i>	-	Giant Bamboo	Dendrocalamus	Riesenbambus	Bambú gigante
<i>Eschscholzia</i> (genus)	-	Gold Poppy	Eschscholtzie	Goldmohn	-
<i>Eucalyptus</i>	-	Eucalyptus	Eucalyptus	Eukalyptus	Eucalipto
<i>Fortunella</i> o <i>Kumquat</i> ( <i>Fortunella</i> Swingle o <i>Citrus</i> Thunb.)	-	Kumquat	Kumquat	Kumquat	Kumquat
<i>Gigantochloa</i>	-	-	-	-	-
<i>Gypsophila</i>	-	Gyp, Gypsophila, Baby's Breath	Gypsophile	Gipskraut, Schleierkraut	Gipsófila
<i>Heliconia</i>	-	Heliconia	Héliconie	Helikonie, Tafelbanane	Heliconie
<i>Kochia scoparia</i>	Belvedere, Granata, Scoparia	Beldevere, Summer Cypress	Kochia	Besenkraut, Besensommerzypresse	Mirabel, Ciprés de verano
<i>Ligularia</i>	-	Golden Ray	Ligulaire	Goldkolben	Ligularia
<i>Limonium</i> (genus)	-	Sea Lavender, Statice	Limonium, Statice	Widerstoss, Meerlavendel	Statice
<i>Meryta</i>	-	Meryta	Meryta	Meryta	Meryta
<i>Musa</i>	Banana	Banana	Bananier	Banane	Banano, Plátano

Latin	Italiano	English	Français	Deutsch	Español
<i>Oreopanax</i>	-	-	-	Bergaralie	-
<i>Papaver</i> (genus)	Papavero	Poppy, Oriental Poppy	Oeillette, Pavot	Mohn	Adormidera, Amapola
<i>Philodendron</i>	-	Philodendron	Philodendron	Philodendron	Filodendron
<i>Phormium</i>	-	New Zealand Flax	Lin de Nouvelle-Zélande	Neuseeländer Flachs	Lino de Nueva Zelanda
<i>Phyllostachys</i>	-	Phyllostachys	Phyllostachys	Blattähre	Phyllostachys
<i>Polymnia sonchifolia</i> ( <i>edulis</i> )	-	Leaf Cup	Polymnie	Polymnie	Polymnia
<i>Simmondsia chinensis</i>	-	Jobba	Jobba	Jobbastrauch	Jobba
<i>Solanum muricatum</i>	-	Pepino, Melon-pear	Poire-melon	Pepino	Pepino, Pera-melón
<i>Trevesia</i>	-	Trevesia	Trevesia	Trevesia	Trevesia

A list of the other taxa protected in Italy is reproduced in *Plant Variety Protection* No. 76, starting on page 6.

## NEWSLETTER

### UPOV

#### THE TWENTY-NINTH ORDINARY SESSION OF THE COUNCIL

The Council held its twenty-ninth ordinary session in Geneva on October 16, 1995, under the chairmanship of Mr. Bill Whitmore (New Zealand). The session was attended by observers from the following 14 non-member States: Belarus, Bolivia, Colombia, Mexico, Panama, Philippines, Republic of Korea, Republic of Moldova, Romania, Saudi Arabia, Slovenia, Syria, Tunisia, Venezuela. Nine international organizations were also represented: Food and Agriculture Organization of the United Nations (FAO), World Trade Organization (WTO), European Community (EC), Organisation for Economic Co-operation and

Development (OECD), International Association for the Protection of Industrial Property (AIPPI), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Chamber of Commerce (ICC), International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), International Federation of the Seed Trade (FIS/ICC).

At that session, the Council took the following main decisions:

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## AUSTRALIA

## Plant Breeder's Rights Act 1994\*

No. 110 of 1994

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\* Long Title: 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]

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## SCHEDULE

## CONVENTION [Not reproduced]



## PART 1

## PRELIMINARY

Section 1Short Title

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

Section 2Commencement

- (1) Subject to subsection (2), the provisions of this Act commence on 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.

\*\* November 10, 1994.

Section 3Definitions

- (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 inter-governmental 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;

**“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;

**“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
- (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;

**“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;

**“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;

**“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
- (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 for being propagated unchanged;

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

**“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;

**“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;

**“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;

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

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

“**successor**” means:

- (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;

“**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.

#### Section 4

##### Definition of Essentially Derived Varieties

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
- (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.

#### Section 5

##### Definition of Breeding

(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.

(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.

#### Section 6

##### Genetic Modification

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.

#### Section 7

##### Approved Forms

(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*.

#### Section 8

##### Approved Persons

(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 or more species of plant.

(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*.

#### Section 9

##### Act to Bind Crown

(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.



Section 10Extent of Act

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
- (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**Section 11General Nature of PBR

Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is 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;
- (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).

Section 12Extension of PBR to Cover Essentially Derived Varieties

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
- (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.

Section 13Extension of PBR to Cover Certain Dependent Plant Varieties

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
  - (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
- (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);

whether or not that other plant variety was in existence at the time PBR was granted in the initial variety.

Section 14Extension of PBR to Harvested Material in Certain Circumstances

- (1) If:
  - (a) propagating material of a plant variety covered by PBR is produced or reproduced without the authorisation of the grantee; and
  - (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 circumstances set out in subsection 17(1) as is not itself required by the farmer, for the farmer's own use, for reproductive purposes.

Section 15Extension of PBR to Products Obtained from Harvested Material in Certain Circumstances

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 right in relation to the propagating material; and
- (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;

section 11 operates as if those products were propagating material.

#### Section 16

##### Certain Acts Done for Private, Experimental or Breeding Purposes Do not Infringe PBR

Any act done in relation to a plant variety covered by PBR that is done:

- (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.

#### Section 17

##### Conditioning and Use of Farm Saved Seed Does not Infringe PBR

- (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
- (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;

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.

- (2) The regulations may declare a particular taxon to be a taxon to which subsection (1) does not apply.

#### Section 18

##### Other Acts that Do not Infringe PBR

- (1) Despite the fact that a plant variety is covered by PBR, any act referred to in section 11:

- (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;

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.

#### Section 19

##### Reasonable Public Access to Plant Varieties Covered by PBR

- (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.

- (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.

- (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:

- (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 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
- (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:

- (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.
- (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:
    - (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):
- (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:
- (a) identifying the variety; and
  - (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:
- (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 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
  - (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 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.

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

## Section 20

### PBR is Personal Property

- (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.
- (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.

## Section 21

### Registrar Must Be Notified of an Assignment of PBR

- (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 which that right was acquired, within 7 days after acquiring that right.
- (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.
- (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:

- (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:
  - (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.

(5) A claimant must include, in the notice to the Registrar informing of the assignment or transmission, and 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.*

## Section 22

### Duration of PBR

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

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.

## Section 23

### Exhaustion of PBR

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

- (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:

- (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
  - (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;

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).

## **PART 3**

### **APPLICATION FOR PLANT BREEDER’S RIGHT**

#### *Division 1*

#### *The Making of the Application*

## Section 24

### Right to Apply for PBR

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

#### Section 25

##### Right to Apply for PBR is Personal Property

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

#### Section 26

##### Form of Application for PBR

- (1) An application for PBR in a plant variety must:
- be in writing; and
  - be in an approved form; and
  - be lodged in a manner set out in the approved form.
- (2) The application must contain:
- the name and address of the applicant; and
  - if the applicant is using an agent to make the application on the applicant's behalf—the name and address of the agent; and
  - if the applicant is the breeder of the variety—a statement of that effect; and
  - 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
  - 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
  - the name of the variety, having regard to the requirements of section 27, and any proposed synonym for that name; and
  - 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:

- particulars of the names (including synonyms) by which that variety is known and sold in Australia); and
  - 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
- (i) the name of an approved person who:
- will verify the particulars in the application; and
  - will supervise any test growing or further test growing of the variety required under section 37; and
  - 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.

(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.

#### Section 27

##### Names of New Plant Varieties

- (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).
- (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:
- 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
  - 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.
- (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:

- (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:

- (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
- (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.

(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.

(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
- (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.

## Section 28

### Applications to Be Given Priority Dates

- (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.
- (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.

## Section 29

### Priority Dates Arising from Foreign Application

(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:

- (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;

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.

(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.

(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.

## Section 30

### Acceptance or Rejection of Applications

(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:

- (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;

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:

- (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:

- (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 applicant—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.*

### Section 31

#### Requests for Variation of Application

(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;

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.

(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, a particular person, the Secretary must vary the application so that that person is shown as the applicant.

(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.

(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:

- (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.

(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.

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

### Section 32

#### Notification of Decisions on Requests to Vary Application

(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:

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

(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
- (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.

(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.

### Section 33

#### Withdrawal of Application

- (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.

### *Division 2*

#### *Dealing with the Application After its Acceptance*

### Section 34

#### Detailed Description in Support of Application to Be Given to Secretary

- (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.

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

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

- (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 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 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 end of that period—at the time when the description was given;

pay to the Commonwealth such examination fee as is prescribed.

### Section 35

#### Objection to Application for PBR

- (1) Any person who considers, in relation to an application for PBR in a plant variety that has been accepted:

- (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);

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:

- (a) particulars of the manner in which the person considers his or her commercial interests would be affected; and
- (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.

### Section 36

#### Inspection of Applications and Objections

- (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).
- (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.

### Section 37

#### Test Growing of Plant Varieties

- (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
  - (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
- (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.

- (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
    - (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 cer-

tify the records of observations so provided;  
whichever the Secretary considers appropriate.

- (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.
- (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:
- (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
  - (c) if it is conducted to deal with a request for a revocation of PBR—by the person making the request.

### Section 38

#### Characteristics of Plant Varieties Bred or Test Grown Outside Australia

- (1) If:
- (a) a plant variety (the “**subject variety**”):
    - (i) was bred outside Australia; or
    - (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;

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:
- (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 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:

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

*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

#### Section 39

#### Provisional Protection

(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;

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; 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.

*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.

(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) 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 right is finally granted to the person under section 44.

### Division 4

#### Essential Derivation

#### Section 40

#### Applications for Declarations of Essential Derivation

(1) If:

- (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
- (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.

(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:

- (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:

- (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:

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

(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
- (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.

(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.

(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.

(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.

*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.

(10) If, after considering:

- (a) the information presented by the grantee of PBR in the second variety; and
- (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:

- (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 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:

- (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.

(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
- (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
- (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.

*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.

#### Section 41

##### Test Growing Associated with Applications for Declarations of Essential Derivation

- (1) If:
  - (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
  - (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;

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:
  - (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;

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.

(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.

## PART 4

### THE GRANT AND REVOCATION OF PLANT BREEDER'S RIGHT

#### *Division 1*

#### *Grant of Plant Breeder's Right*

#### Section 42

##### PBR not to Be Granted in Excluded Varieties

(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.

(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.

(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.

#### Section 43

##### Registrable Plant Varieties

(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
- (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.

(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.

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

(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:

- (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.

(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.

(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.

(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.

#### Section 44

#### Grant of PBR

(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;

the Secretary must grant that right to the applicant.

(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.

(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);

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:

- (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;

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.

(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.

(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.

(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.

(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.

(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:

- (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.*

#### Section 45

##### Grant of PBR to Be Exclusive

(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:

- (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;

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

#### Section 46

##### Grant of PBR to Be Entered on Register

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

- (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
- (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.

(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
- (b) the day on which the declaration was made.

#### Section 47

##### Notice of Grant of PBR

(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*.

(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*.

Section 48Effect of Grant of PBR

- (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
    - (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
    - (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
  - (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
  - (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.

Section 49PBR May Be Subject to Conditions

- (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), 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

- (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 2Revocation of Plant Breeder's Right or Declaration of Essential DerivationSection 50Revocation of PBR

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

- (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
- (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.

(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
- (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.

(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.

(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.

*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.*

#### Section 51

##### Entry of Particulars of Revocation

(1) If:

- (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.

(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:

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

#### Section 52

##### Surrender of PBR

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**

#### Section 53

##### Infringement of PBR

(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
- (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
- (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.



(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.

#### Section 54

##### Actions for Infringement

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

(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
- (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.

(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;

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.

#### Section 55

##### Declarations as to Non-infringement

(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.

(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:
  - (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 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.

(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.

#### Section 56

##### Jurisdiction of Court

(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.

(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) 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.

#### Section 57

##### Innocent Infringement

(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.

(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.

## PART 6

### ADMINISTRATION

#### Section 58

##### Registrar of Plant Breeder's Rights

- (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:
  - (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.

#### Section 59

##### Delegation

- (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.
- (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.

#### Section 60

##### Certain Persons not to Acquire PBR

- (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.

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.

#### Section 61

##### Register of Plant Varieties

- (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 Secretary directs.

#### Section 62

##### Inspection of Register

- (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.

## PART 7

### PLANT BREEDER'S RIGHTS ADVISORY COMMITTEE

#### Section 63

##### Establishment of Advisory Committee

- (1) There is established by this section a Committee by the name of the Plant Breeder's Rights Advisory Committee.
- (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
    - (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; and
  - (b) to advise the Registrar on such technical matters arising under this Act, and such other matters re-

lating to the administration of this Act, as the Registrar refers to the Advisory Committee.

#### Section 64

##### Membership of Advisory Committee

- (1) The Advisory Committee consists of:
  - (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
  - (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.
- (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.
- (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 reappointment.
- (5) The Minister may terminate the appointment of a member, other than the Registrar, for misbehaviour or for physical or mental incapacity.
- (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
  - (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.
- (8) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.

#### Section 65

##### Remuneration and Allowances

- (1) The members referred to in paragraphs 64(1)(b), (c), (d) and (e) must 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 Tribunal Act 1973*.

#### Section 66

##### Disclosure of Interests

- (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:
  - (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.

#### Section 67

##### Meetings

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

**PART 8****MISCELLANEOUS**Section 68Public Notices

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

Section 69Notices Inviting Submissions in Respect of Certain Regulations

- (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
  - (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.
- (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.
- (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.

Section 70Genetic Resource Centres

- (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.
- (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.

Section 71The Herbarium

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.

Section 72Agents May Act in Matters Relating to PBR

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.

Section 73Service of Documents

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.

Section 74Infringement Offences

- (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.

- (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.

### Section 75

#### Offences Other than Infringement Offences

(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.

(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:

- (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.

(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.

### Section 76

#### Conduct by Directors, Servants and Agents

(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
- (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 pre-

cautions and exercised due diligence to avoid the conduct.

(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:

- (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 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.

(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) or (4) had not been enacted;

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; 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.

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

(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.

### Section 77

#### Applications for Review

(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
  - (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
  - (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 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
  - (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
  - (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 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.

(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).

(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.

(4) In this section:

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

## Section 78

### Repeal

The *Plant Variety Rights Act 1987* is repealed.

## Section 79

### Compensation for Acquisition of Property

(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.

(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.

(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.

## Section 80

### Regulations

(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.

(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
  - (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

- (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
- (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 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 1987* and the enactment of this Act.

## PART 9

### TRANSITIONAL

#### Section 81

##### Definitions

In this Part:

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

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

#### Section 82

##### Plant Variety Rights Under Old Act to Be Treated as PBR Under this Act

- (1) If:
  - (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;
 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.

(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.

(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.

(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.

#### Section 83

##### Applications for Plant Variety Rights Lodged and Criminal Proceedings Begun Before Commencing Day

- (1) If, before the commencing day:
  - (a) a person has made application for plant variety rights under the old Act; but
  - (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 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.

#### Section 84

##### Other Applications and Proceedings Under Old Act

- (1) Subject to the regulations, this Act applies, on and after the 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 variety rights, or to criminal proceedings, covered by section 83.

### Section 85

#### Transitional Arrangements for Membership and Functions of Advisory Committee

(1) The persons who, under the old Act, were members of the Plant Variety Rights Advisory Committee established under section 44 of that Act 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 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 Committee.

### Section 86

#### Register of Plant Varieties

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.

[End]



[Cont'd from page 12]

(a) It took a positive decision on the conformity of the Plant Variety Patent Law of Belarus with the provisions of the 1978 Act and noted that the law also conformed to the 1991 Act;

(b) It decided to advise the Government of Bolivia that the General Rules for the implementation of Supreme Decree No. 23069 provided a framework for legislation that, upon incorporation of suitable amendments, would conform to the 1978 Act;

(c) It approved the report of the Secretary-General on the activities of the Union in 1994 and noted his report on the first nine months of 1995;

(d) It approved the progress reports on the work of its various subsidiary bodies and either drew up or approved their work plans for the coming year.

(e) It examined and approved the program, as amended, and the budget of the Union for the 1996-97 biennium;

(f) It unanimously elected Mr. H. Dieter Hoinkes (United States of America) and Mr. John Carvill (Ireland) as Chairman and Vice-Chairman, respectively, of the Administrative and Legal Committee for a term of three years that will expire at the end of the thirty-second ordinary session of the Council, in 1998;

(g) It also unanimously elected Mr. Joël Guiard (France) and Mrs. Elise Buitendag (South Africa) Chairman and Vice-Chairman, respectively, of the Technical Committee for a term of three years that will expire at the end of the thirty-second ordinary session of the Council, in 1998.

### THE THIRTEENTH EXTRAORDINARY SESSION OF THE COUNCIL

The Council held its thirteenth extraordinary session in Rome (Italy) on April 18, 1996, under the chairmanship of Mr. Bill Whitmore (New Zealand).

At that session, the Council considered the legislation of Ecuador and decided to take a positive decision on its conformity with the provisions of the 1978 Act, and to note that it also conformed with the provisions of the 1991 Act. The Government of Ecuador was informed of this decision and was invited to deposit an instrument of accession to the 1991 Act also, if it so wished.

The Council also considered a Bill of Brazil on the Protection of Cultivars and Making Other Provisions. It decided to advise the Government of Brazil that the Bill, when supplemented by Regulations and with the incorporation of suitable amendments, provided the basis for a law conforming with the 1978 Act; it also specified the steps to be taken with a view to Brazil depositing its instrument of accession to the 1978 Act (provided that the said Act remained open to accession at the date of the proposed deposit).

**CALENDAR****UPOV MEETINGS IN 1996**

September 12 and 13 (New Delhi, India)	National Seminar on the Nature of and Rationale for the Protection of Plant Varieties Under the UPOV Convention
September 16 and 17 (Dhaka, Bangladesh)	National Seminar on the Nature of and Rationale for the Protection of Plant Varieties Under the UPOV Convention
September 19 and 20 (Hanoi, Viet Nam)	National Seminar on the Nature of and Rationale for the Protection of Plant Varieties Under the UPOV Convention
October 16 to 18	Technical Committee
October 21	Administrative and Legal Committee
October 22	Consultative Committee
October 23	Council

**OTHER MEETINGS IN 1996**

October 28 to 31 (Gramado, Brazil)	Pan-American Seed Seminar
November 10 to 18 (Cape Town, South Africa)	International Vine and Wine Office (OIV), International Congress