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UPOV

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INTERNATIONALER VERBAND ZUM SCHUTZ VON PFLANZENZÜCHTUNGEN

GENEVE

DER RAT

Zweihundzwanzigste Ordentliche Tagung

Genf, 18. und 19. Oktober 1988

UEBEREINSTIMMUNG DER GESETZE DES COMMONWEALTH AUSTRALIEN
MIT DEN BESTIMMUNGEN DES UEBEREINKOMMENSvom Verbandsbüro ausgearbeitetes Dokument

I. EINLEITUNG

1. Mit einer Note vom 19. August 1988, die in Anlage I wiedergegeben ist, hat die Ständige Vertretung Australiens bei dem Büro der Vereinten Nationen in Genf den Rat der UPOV unter anderem davon in Kenntnis gesetzt, dass Australien einen Beitritt zur UPOV in Erwägung zieht.

2. Die Note nimmt auf Artikel 32 Absatz 3 des Uebereinkommens Bezug. Da Australien kein Verbandsstaat der UPOV ist und den Revidierten Wortlaut des Uebereinkommens vom 23. Oktober 1978 nicht unterzeichnet hat, ist es aufgrund von Artikel 32 Absatz 3 des Uebereinkommens erforderlich, dass Australien vor Hinterlegung seiner Beitrittsurkunde den Rat um Stellungnahme ersucht, ob seine Gesetze mit den Bestimmungen des Uebereinkommens vereinbar sind. Infolgedessen wird der Rat in der Note ersucht, diese Stellungnahme auf der Basis des Sortenschutzgesetzes von 1987 abzugeben.

3. Um dem Rat bei seinen Diskussionen über die Uebereinstimmung der australischen Gesetze mit den Bestimmungen des Uebereinkommens dienlich zu sein, hat das Verbandsbüro eine Untersuchung über diese Frage ausgearbeitet, die nachfolgend in Abschnitt II wiedergegeben ist.

II. UEBEREINSTIMMUNG DER GESETZE DES COMMONWEALTH AUSTRALIEN MIT DEN BESTIMMUNGEN DES UEBEREINKOMMENS

4. Die Untersuchung, die das Verbandsbüro über die Uebereinstimmung der Gesetzgebung des Commonwealth Australien (nachfolgend "Australien" genannt) mit dem Uebereinkommen durchgeführt hat, stützt sich auf folgendes:

i) das Sortenschutzgesetz von 1987 (nachfolgend das "Gesetz" genannt), das in Anlage II in englischer Sprache enthalten ist,

ii) den vorgeschlagenen Plan für die Erstreckung des Sortenschutzes auf Gattungen/Arten, der in Anlage III wiedergegeben ist.

Allgemeine Anmerkungen

5. Die australische Verfassung befähigt das Parlament gemäss verschiedenen ausdrücklichen Vollmachten, Gesetze zu erlassen. Die Vollmachten, gemäss denen das Sortenschutzgesetz von 1987 verabschiedet wurde, sind aus seinem Artikel V ersichtlich, der folgendes festsetzt:

"Dieses Gesetz erfordert oder erlaubt keinesfalls die Erteilung des Sortenschutzes für neue Pflanzensorten, ausser wenn

a) der Ursprung dieser neuen Pflanzensorte eine Erfindung im Sinne von Paragraph 51 Punkt xviii der Verfassung ist, oder

b) Australien dem Uebereinkommen angehört und die Erteilung geeignet ist, den Verpflichtungen Australiens im Rahmen des Uebereinkommens zu entsprechen."

6. Buchstabe a bezieht sich auf die Kapitel der gesetzgeberischen Vollmacht des Bundes, die in Paragraph 51 der Verfassung festgesetzt sind. Genauer gesagt verleiht Paragraph 51 Punkt xviii die Vollmacht, Gesetze über das Urheberrecht, Erfindungspatente, Gebrauchsmuster und Warenzeichen zu erlassen. Absatz b betrifft die Fähigkeit des Parlaments, Gesetze aufgrund der Vollmacht für auswärtige Angelegenheiten zu erlassen. Das "Uebereinkommen", auf das Buchstabe b Bezug nimmt, ist das UPOV-Uebereinkommen (gemäss Artikel 3 Absatz 1 des Gesetzes), das dem Gesetz als Anlage beigefügt ist. Dies ist die einzige Bezugnahme auf das Uebereinkommen in den materiellen Bestimmungen des Gesetzes, und infolgedessen ist die Beziehung zwischen dem Uebereinkommen und dem Gesetz aufgrund des Wortlauts von Artikel 5 Buchstabe b des Gesetzes zu bestimmen.

7. Der Wortlaut von Artikel 5 Buchstabe b des Gesetzes ist sorgfältig zur Kenntnis zu nehmen. Sollte Australien dem Uebereinkommen beitreten, dann wäre der verfügbare Wortlaut wie folgt:

"Dieses Gesetz erfordert oder erlaubt keinesfalls die Erteilung des Sortenschutzes, ausser wenn die Erteilung geeignet ist, den Verpflichtungen Australiens im Rahmen des Uebereinkommens zu entsprechen."

8. Dies bedeutet, dass der Sortenschutz in all denjenigen Fällen und nur in diesen Fällen erteilt würde, in denen das Uebereinkommen diese Erteilung erforderlich macht. Infolgedessen stimmt das Gesetz in allen die Erteilung des Sortenschutzes betreffenden Fragen mit dem Uebereinkommen überein. Nur in Fragen, die nicht die Erteilung des Sortenschutzes betreffen, ist es erforderlich zu prüfen, ob das Gesetz mit dem Uebereinkommen vereinbar ist. Desungeachtet werden in den nachstehenden Untersuchungen die Bestimmungen des Gesetzes betreffend die Erteilung des Sortenschutzes im Hinblick auf die Vereinbarkeit mit dem Uebereinkommen ebenfalls geprüft.

9. Es sei darauf verwiesen, dass die Möglichkeit vorhanden ist, unter Artikel 55 des Gesetzes Verordnungen zu erlassen, soweit sie mit dem Gesetz nicht unvereinbar sind, die alle in den Bestimmungen des Gesetzes nur unzureichend behandelten Forderungen des Uebereinkommens abdecken würden.

Artikel 2 Absatz 1 des Uebereinkommens (Schutzrechtsformen)

10. Das Gesetz erkennt das Züchterrecht durch die Gewährung eines besonderen Schutzrechts anstelle eines Patentes zu. Jedoch enthalten das Gesetz oder das

Patentgesetz von 1952, wie 1982 abgeändert, Australiens keine Bestimmungen, die verfügen, dass Patente für Pflanzensorten nicht erteilt werden können. Die Stellung Australiens unterscheidet sich in dieser Hinsicht nicht von derjenigen gewisser anderer Verbandsstaaten zum Zeitpunkt ihres Beitritts zum Uebereinkommen.

Artikel 3 des Uebereinkommens (Inländerbehandlung; Gegenseitigkeit)

11. Artikel 15 Absatz 2 des Gesetzes sieht vor, dass der Züchter einer neuen Pflanzensorte das Recht hat, eine Sortenschutzanmeldung für diese Sorte zu hinterlegen, und zwar ungeachtet der Tatsache, ob er australischer Staatsangehöriger ist oder nicht, ob er in Australien wohnhaft ist oder nicht und ob die Sorte durch den Züchter in Australien oder in einem anderen Land entstanden ist. Diese Bestimmung entspricht der Inländerbehandlung im Sinne von Artikel 3 des Uebereinkommens und geht in der Tat noch weiter als diese Bestimmung, weil alle ausländischen Züchter auf die gleiche Weise wie australische Züchter behandelt werden.

12. Diskriminierungen gegen Angehörige anderer Verbandsstaaten oder Personen, die ihren Wohnsitz in einem dieser Staaten haben, sind in keiner der anderen Bestimmungen dieses Gesetzes festzustellen.

Artikel 4 des Uebereinkommens (schutzfähige Gattungen und Arten)

13. Mit Wirkung vom 1. Juli 1988 ist gemäss Artikel 13 des Gesetzes der Schutz auf 62 Taxa anwendbar, die in Anlage III aufgeführt sind. Somit sind die Bestimmungen von Artikel 4 des Uebereinkommens erfüllt.

Artikel 5 des Uebereinkommens (Inhalt des Schutzrechts, Schutzzumfang)

14. Die dem Züchter im Hinblick auf eine neue Pflanzensorte gewährten Rechte sind in Artikel 12 und Artikel 40 des Gesetzes aufgeführt. Einschränkungen dieser Rechte sind in Artikel 38 des Gesetzes enthalten. Diese Rechte unterliegen den Bedingungen, die durch die Artikel 33 und 34 des Gesetzes auferlegt werden und die mit dem Uebereinkommen vereinbar sind - siehe nachfolgend unter Artikel 10 und Artikel 9 des Uebereinkommens.

15. Artikel 12 Absatz 1 des Gesetzes verleiht dem Züchter das ausschliessliche Recht i) Pflanzen der Sorte (Buchstaben a und c) und ii) Vermehrungsmaterial (Buchstaben b und d) zu verkaufen oder für den Verkauf zu erzeugen. "Vermehrungsmaterial" wird in Artikel 3 Absatz 1 des Gesetzes breit definiert und erstreckt sich auf Saatgut sowie jede andere Art vegetativen Vermehrungsmaterials; "verkaufen" wird in Artikel 3 Absatz 1 definiert und umfasst "vermieten" und "Tauschhandel".

16. Absatz 40 des Gesetzes betrifft Verletzungen und legt fest, dass es sich im Falle des Feilhaltens (wozu auch Vertrieb gehören kann) von i) Pflanzen der Sorte (Buchstabe a) oder ii) Vermehrungsmaterial (Buchstabe e) um eine Verletzung handelt.

17. Die obigen Bestimmungen entsprechen den Anforderungen des ersten und zweiten Satzes von Artikel 5 Absatz 1 des Uebereinkommens.

18. In Uebereinstimmung mit Artikel 5 Absatz 2 des Uebereinkommens erlaubt Artikel 40 Buchstaben a bis e des Gesetzes dem Züchter, seine Genehmigung für

die ihm überlassenen Handlungen von den Bedingungen abhängig zu machen, die er festlegen kann.

19. Artikel 38 Absatz 1 Buchstabe e des Gesetzes enthält den Züchternvorbehalt, der in Artikel 5 Absatz 3 des Übereinkommens vorgesehen ist. Man kann sich jedoch fragen, ob die durch das Gesetz zuerkannten ausschliesslichen Rechte sich auch auf die Verwendung der geschützten Sorte als Komponente einer Hybride entsprechend dem letzten Satz von Artikel 5 Absatz 3 des Übereinkommens erstrecken.

20. Artikel 38 Absatz 1 Buchstabe a des Gesetzes enthält eine Ausnahme für die Verwendung der Sorte für nichtgewerbliche Zwecke, die mit dem Übereinkommen vereinbar ist. Artikel 38 Absatz 1 Buchstabe b enthält eine Ausnahme für den Verkauf von "Endprodukten", die mit dem Übereinkommen vereinbar ist. Artikel 38 Absatz 1 Buchstabe d des Gesetzes enthält eine Ausnahme für den Verkauf von Land, auf dem Pflanzen oder Vermehrungsmaterial der Sorte wachsen, und scheint ebenfalls mit dem Übereinkommen vereinbar zu sein. Wachsende Pflanzenbestände können als Teil des Grundstücks betrachtet werden, und erst, wenn sie dem Boden entnommen sind, haben sie eine unabhängige Existenz und werden "bewegliches Eigentum", auf das die Sortenschutzrechte Anwendung finden können.

21. Artikel 38 Absätze 2 und 3 des Gesetzes behandelt ausdrücklich die Rechte von Personen, Vermehrungsmaterial für den Eigenbedarf zu erzeugen, das heisst also, nicht für den gewerbsmässigen Vertrieb von Vermehrungsmaterial. Der begrenzte Schutzzumfang der Züchterrechte im Übereinkommen überlässt Einzelpersonen die freie Ausübung von Rechten, die denjenigen im Gesetz entsprechen. Insofern als das Gesetz Sortenschutz für Zierpflanzen gewährt, darf man sich fragen, ob das Gesetz die zusätzlichen Rechte vorsieht, die im letzten Satz von Artikel 5 Absatz 1 des Übereinkommens enthalten sind. Artikel 5 Buchstabe b des Gesetzes und die Verordnungen unter Artikel 55 des Gesetzes könnten vielleicht in bezug auf diese Situation verwendet werden. Die australischen Behörden haben das Verbandsbüro darüber informiert, dass sie beabsichtigen, das Gesetz abzuändern, damit es 1989 eindeutiger mit dem Übereinkommen vereinbar ist.

Artikel 6 des Übereinkommens (Schutzvoraussetzungen)

22. Artikel 26 Absatz 1 Buchstabe a Ziffer ii des Gesetzes legt fest, dass Schutz für eine "neue Pflanzensorte" gewährt wird, die in Artikel 3 Absatz 1 des Gesetzes als eine Pflanzensorte definiert wird, die homogen, beständig und unterscheidbar ist. Die im Gesetz angegebene Begriffsbestimmungen von Homogenität, Beständigkeit und Unterscheidbarkeit sind mit Artikel 6 Absatz 1 des Übereinkommens vereinbar. Demgegenüber sieht Artikel 3 Absatz 1 des Gesetzes ferner vor, dass eine "neue Pflanzensorte" von einer Person "stammen muss" ("originate") und Artikel 3 Absatz 5 des Gesetzes definiert, wann eine derartige Herkunft vorliegt. Die Folge scheint zu sein, dass rein zufällige Entdeckungen einer neuen Pflanzensorte ausgeschlossen sind, obwohl Artikel 6 Absatz 1 Buchstabe a des Übereinkommens ihren Schutz vorsieht. Nichtsdestoweniger sollte - wie zuvor in Punkt 8 erläutert - Artikel 5 Buchstabe b des Gesetzes diesen Unterschied vom Übereinkommen abdecken.

23. Artikel 14 des Gesetzes legt fest, dass der Sortenschutz nicht für zuvor verkaufte Sorten gewährt werden kann. Genauer gesagt wird in diesem Artikel erklärt, dass die Sorte nicht mit der Zustimmung des Züchters in Australien zum Zeitpunkt der Sortenschutzanmeldung oder in einem anderen Land

mehr als sechs Jahre vor diesem Zeitpunkt verkauft worden sein darf. Diese Bestimmung unterscheidet sich etwas von derjenigen in Artikel 6 Absatz 1 Buchstabe b des Uebereinkommens. Das Uebereinkommen erklärt, dass die Sorte nicht feilgehalten oder gewerbsmässig vertrieben werden durfte, wogegen das australische Gesetz festlegt, dass Vermehrungsmaterial der Sorte nicht verkauft werden durfte; dies dürfte eine zulässige Abweichung innerhalb der Interpretationsgrenzen sein. Ferner sieht das Uebereinkommen eine Sechs-Jahres-Frist für den Verkauf im Ausland nur für Reben, Waldbäume, Obstbäume und Zierbäume sowie deren Unterlagen vor und für alle anderen Pflanzen eine Frist von vier Jahren. Das australische Gesetz dagegen würde allen Pflanzen eine entsprechende Schonfrist von sechs Jahren gewähren. Desungeachtet scheinen diese Unterschiede zwischen dem australischen Gesetz und dem Uebereinkommen durch Artikel 5 Buchstabe b des Gesetzes abgedeckt zu sein, wie zuvor in Punkt 8 erläutert.

24. Die Vorschrift in Artikel 6 Absatz 1 Buchstabe e des Uebereinkommens, dass die Sorte eine Bezeichnung erhalten muss, ist in Artikel 26 Absatz 1 Buchstabe a Ziffer vii des Gesetzes vorgesehen.

25. Die einzigen anderen Schutzvoraussetzungen betreffen die Förmlichkeiten in Artikel 16 des Gesetzes und die Zahlung von Gebühren (Artikel 26 Absatz 1 Buchstabe a Ziffer viii des Gesetzes). Infolgedessen ist das Gesetz mit Artikel 6 Absatz 2 des Uebereinkommens vereinbar.

Artikel 7 des Uebereinkommens (Amtliche Prüfung von Sorten; Vorläufiger Schutz)

26. Aufgrund von Artikel 24 des Gesetzes kann der zuständige Minister ("Secretary of the Department") verlangen, dass die Anbauversuche der Sorte durchgeführt werden, die er für erforderlich hält, um zu bestimmen, dass die Sorte unterscheidbar, homogen und beständig ist. Infolgedessen ist das Gesetz mit Artikel 7 des Uebereinkommens vereinbar.

27. Artikel 22 des Gesetzes legt einen vorläufigen Schutz in Uebereinstimmung mit Artikel 7 Absatz 3 des Uebereinkommens fest, obwohl dieser Artikel keine zwingende Verpflichtung des Uebereinkommens enthält, die eingehalten werden müsste.

Artikel 8 des Uebereinkommens (Schutzdauer)

28. Artikel 32 des Gesetzes sieht eine Schutzdauer von 20 Jahren vom Datum der Annahme der Anmeldung an vor. Dies ist mit Artikel 8 des Uebereinkommens vereinbar.

Artikel 9 des Uebereinkommens (Beschränkungen in der Ausübung des Züchterrechts)

29. Artikel 34 des Gesetzes sieht Beschränkungen der dem Züchter gewährten ausschliesslichen Rechte sowie Zwangslizenzen im öffentlichen Interesse vor und Artikel 39 des Gesetzes definiert, wann ein öffentliches Interesse existiert. Die Bedingungen dieser Artikel sind mit Artikel 9 Absatz 1 des Uebereinkommens vereinbar. Artikel 39 Absatz 10 des Gesetzes legt fest, dass Zwangslizenzen im öffentlichen Interesse unter den Geschäftsbedingungen gewährt werden müssen, die existiert hätten, wenn die Lizenz im normalen Geschäftsverlauf erteilt worden wäre. Dies bedeutet, dass diese Zwangslizenzen sicherstellen, dass der Züchter gemäss Artikel 9 Absatz 2 des Uebereinkommens eine angemessene Vergütung erhält.

Artikel 10 des Uebereinkommens (Nichtigkeit und Aufhebung des Züchterrechts)

30. Artikel 35 Absatz 1 Buchstabe a des Gesetzes entspricht Artikel 10 Absatz 1 des Uebereinkommens, obwohl das Gesetz eine Aufhebung des Rechts vorsieht, wenn die Sorte zum Zeitpunkt der Erteilung im Sinne von Artikel 3 Absatz 1 des Gesetzes keine "neue Pflanzensorte" war. Das Uebereinkommen hingegen sieht die Nichtigkeitserklärung des Rechts in etwas anderen Umständen vor, nämlich wenn die in Artikel 6 Absatz 1 Buchstaben a und b festgelegten Bedingungen zum Zeitpunkt der Gewährung des Rechts nicht erfüllt waren.

31. Artikel 35 Absatz 1 Buchstabe b des Gesetzes entspricht Artikel 10 Absatz 3 Buchstabe b des Uebereinkommens.

32. Artikel 33 des Gesetzes sieht Massnahmen vor, um die fortbestehende Existenz der Sorte sicherzustellen, und Artikel 35 Absatz 2 des Gesetzes sieht die Aufhebung des Sortenschutzes vor, falls diese Massnahmen nicht erfüllt werden. Die Kombination dieser beiden Artikel entspricht Artikel 10 Absätze 2 und 3 Buchstabe a des Uebereinkommens.

33. Artikel 10 Absatz 4 des Uebereinkommens legt fest, dass das Züchterrecht weder für nichtig erklärt noch aufgehoben werden kann, ausser aus den Gründen, die in den Absätzen 1 bis 3 dieses Artikels aufgeführt sind. Artikel 35 Absatz 2 des Gesetzes sieht jedoch die Aufhebung des Rechts unter Umständen vor, die nicht in den in den Absätzen 1 bis 3 des Artikels 10 des Uebereinkommens angegebenen Gründen enthalten sind.

Artikel 11 des Uebereinkommens (Schutz in verschiedenen Verbandsstaaten)

34. Das Gesetz enthält keine Bestimmung betreffend den Staat, in dem die erste Anmeldung eingereicht werden muss, und es wurde keine Bestimmung festgestellt, die in Widerspruch zu Artikel 11 des Uebereinkommens stünde.

Artikel 12 des Uebereinkommens (Priorität)

35. Das Gesetz schliesst keine ausdrücklichen Bestimmungen ein, die das Prioritätsrecht gemäss Artikel 12 des Uebereinkommens behandeln. Jedoch, wie vorgehend bereits unter Punkt 8 erläutert, sollte Artikel 5 Buchstabe b des Gesetzes den Anforderungen von Artikel 12 entsprechen.

Artikel 13 des Uebereinkommens (Sortenbezeichnung)

36. Die Anforderungen der Absätze 1 bis 3 von Artikel 13 des Uebereinkommens sind durch die Artikel 16 Buchstabe g, 17 und 27 Buchstabe b des Gesetzes erfüllt. Da Absatz 4 betreffend die Erteilung des Sortenschutzes entsprochen werden muss, würde er, wie zuvor unter Punkt 8 oben erläutert, durch Artikel 5 Buchstabe b des Gesetzes gedeckt. Die Vorschrift von Absatz 5, dass die Sorte in den Verbandsstaaten nur unter derselben Sortenbezeichnung angemeldet werden darf, ist durch die Bestimmung von Artikel 17 Absatz 3 des Gesetzes gedeckt, und zwar dadurch, dass die Bezeichnung mit allen Empfehlungen des Internationalen Codes der Nomenklatur der Kulturpflanzen (und zwar besonders denjenigen in Artikeln 32 und 35 des Codes) übereinstimmen muss. Absatz 6 betrifft das Verfahren und ist nicht in dem Gesetz zu behandeln. Absatz 7 könnte in anderen Gesetzen betreffend den Saatguthandel behandelt werden. Wenn dies nicht der Fall ist, könnte er durch eine Verordnung gemäss Artikel 55 des Gesetzes ausgeführt werden. Absatz 8 ist nicht ausdrücklich zu behandeln und es gibt keine Bestimmungen in dem Gesetz, die mit diesem Absatz im Widerspruch stünden.

Artikel 14 des Uebereinkommens (Unabhängigkeit des Schutzes von Massnahmen zur Regelung der Erzeugung, der Ueberwachung und des gewerbsmässigen Vertriebs)

37. Im Gesetz weist nichts darauf hin, dass der Sortenschutz in irgendeiner Weise mit Vorschriften für die Erzeugung, Zertifizierung und den Vertrieb von Saatgut oder Vermehrungsmaterial verknüpft sind.

Artikel 30 des Uebereinkommens (Anwendung des Uebereinkommens im innerstaatlichen Bereich)

38. Artikel 41, 42 und 43 des Gesetzes enthalten Bestimmungen betreffend Rechtsverfahren in Sortenschutzfällen. Sie sehen in Uebereinstimmung mit Artikel 30 Absatz 1 Buchstabe a des Uebereinkommens gesetzliche Mittel für die wirksame Wahrung der Rechte vor.

39. Wie in Artikel 30 Absatz 1 Buchstabe b des Uebereinkommens festgesetzt, sieht Artikel 6 des Gesetzes die Einrichtung einer besonderen Behörde für den Schutz neuer Pflanzensorten vor, und es wurde bereits ein "Registrar" für Sortenschutz ernannt, und das Sortenschutzamt hat seine Arbeit aufgenommen.

40. Artikel 11 des Gesetzes befähigt den zuständigen Minister ("Secretary of the Department"), den Sortenschutz betreffende Fragen öffentlich bekanntzugeben, wenn er dies für erforderlich oder wünschenswert hält. Artikel 28 des Gesetzes enthält eine Vorschrift für die Bekanntmachung der Erteilung des Sortenschutzes. Gemäss Artikel 11 des Gesetzes hat eine derartige Bekanntmachung als Veröffentlichung im Amtsblatt oder in der Sortenzeitung zu erfolgen. Der Vorschrift von Artikel 30 Absatz 1 Buchstabe c des Uebereinkommens ist somit entsprochen.

III. SCHLUSSFOLGERUNG

41. Nach Auffassung des Verbandsbüros stimmen die Gesetze des Commonwealth Australien im wesentlichen mit den Bestimmungen des Uebereinkommens überein.

42. Der Rat wird gebeten:

i) gemäss Artikel 32 Absatz 3 des Uebereinkommens eine Entscheidung betreffend die Uebereinstimmung der australischen Gesetze mit den Bestimmungen des Uebereinkommens zu treffen, und

ii) den Generalsekretär zu bevollmächtigen, die Regierung Australiens über seine Entscheidung in Kenntnis zu setzen.

[Anlagen folgen]

NOTE DER STÄNDIGEN VERTRETUNG AUSTRALIENS BEIM BÜRO DER
VEREINTEN NATIONEN IN GENÈVE AN DEN RAT DER UPOV VOM
19. AUGUST 1988

File No. 226/7/10/2

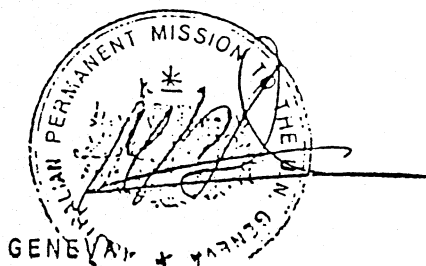
Note No. 67/88

- The Australian Permanent Mission to the United Nations Office at Geneva presents its compliments to the Council of the Union for the Protection of New Varieties of Plants and has the honour to refer to the International Convention for the Protection of New Varieties of Plants done at Geneva on 23 October 1978.

The Australian Permanent Mission has the honour to refer to Article 32(3) of the said Convention, according to which, "Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provision of this Act..."

The Australian Permanent Mission advises the Council that Australia is considering becoming a Member of the Union and encloses for the Council's consideration a copy of the Australian Plant Variety Rights Act, 1987 and asks the Council to advise it in respect of conformity of the said Act with the provisions of the Convention.

The Australian Permanent Mission avails itself of this opportunity to renew to the Council of the Union for the Protection of New Varieties of Plants the assurances of its highest consideration.



19 AUGUST 1988

[Anlage II folgt]

AUSTRALIA

Plant Variety Rights Act 1987*

Number 2 of 1987

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* Full title: An Act to provide for the granting of proprietary rights to persons originating certain new plant varieties, and for related purposes. [Assented to 13 March 1987]

Part I

PRELIMINARYSection 1

Short Title

This Act may be cited as the Plant Variety Rights Act 1987.

Section 2

Commencement

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

Section 3

Interpretation

(1) In this Act, unless the contrary intention appears--

"accepted," in relation to an application, means accepted by the Secretary under section 18;

"Advisory Committee" means the Plant Variety Rights Advisory Committee established by section 44;

"applicant," in relation to an application, means the person for the time being shown in the application as the person making the application;

"application" means an application under section 15 for plant variety rights in respect of a new plant variety to which this Act applies;

"breeder," in relation to a new plant variety, means--

(a) subject to paragraph (c), in the case of a variety originated by one person only--that person;

(b) subject to paragraph (c), in the case of a variety originated by two or more persons (whether jointly, independently at the same time, independently at different times or otherwise)--each of those persons; or

(c) in the case of a variety originated--

(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 two or more persons in the course of performing duties as members or employees of such a body,

the body of which that person is a member or employee, or of which those persons are members or employees, as the case may be;

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

"Court" means the Federal Court of Australia;

"genetic resources centre" means--

(a) a place known as a Plant Genetic Resources Centre; or

(b) a place that is a genetic resources centre because of a declaration in force under sub-section 10(1);

"grantee," in relation to plant variety rights, means the person for the time being entered on the Register as the grantee of those rights;

* Not reproduced here.

"member" means a member of the Advisory Committee, and includes the Registrar;

"new plant variety" means a plant variety that--

- (a) was originated by a person;
- (b) is homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation;
- (c) is stable; and
- (d) is distinguishable by one or more important morphological, physiological or other characteristics from all other plant varieties whose existence was a matter of public knowledge at the time when the application in respect of the variety was made;

"plant" does not include fungus, alga or bacterium;

"plant variety" includes cultivar, clone, hybrid and strain;

"plant variety rights" means the rights specified in section 12;

"Register" means the Register of Plant Variety Rights kept in pursuance of section 9;

"Registrar" means the Registrar of Plant Variety Rights;

"reproductive material," in relation to a plant, means--

- (a) a seed of that plant;
- (b) a cutting from that plant; or
- (c) any other part, or product, of that plant, from which another plant can be produced;

"Secretary" means the Secretary to the Department;

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

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

"will" includes a codicil.

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

- (a) except where paragraph (b) applies--after repeated reproduction or propagation of plants of the variety; or
- (b) where the application specifies a particular cycle of reproduction or multiplication--at the end of each of those cycles.

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

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

(5) Where--

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

(b) a plant variety so derived, or apparently so derived, originates by natural processes,

that person shall be taken to have originated the plant variety referred to in paragraph (b).

(6) A reference in this Act to a test growing of a plant variety is a reference to a test involving--

(a) the growing, or the production and growing, of plants, or of two or more generations of plants, of that variety at a place that is, and under conditions that are, appropriate for the growing of plants of that variety;

(b) the observation of the characteristics, and the condition, of the plants grown at the various stages in their growth; and

(c) the recording of those observations.

(7) Where, for the purposes of this Act, the Secretary or another person (including a court and the Administrative Appeals Tribunal) is required to be satisfied that a plant variety in respect of which an application has been made is a new plant variety, that person shall, for the purpose of deciding whether the person is so satisfied, assume--

(a) that all the plant varieties whose existence was a matter of public knowledge when the application was made were constituted by, and constituted only by, the plant varieties that were in existence at the time when the application was made; and

(b) that the only plant varieties that were in existence at the time when the application was made were the plant varieties of the existence of which at that time that person is aware after making such inquiries, and consulting such publications readily available in Australia, as that person considers appropriate.

Section 4

Act to Bind Crown

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

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

Section 5

Extent of Act

Nothing in this Act requires or permits the grant of plant variety rights in respect of a new plant variety unless--

(a) the origination of that new plant variety constituted an invention for the purposes of paragraph 51(xviii) of the Constitution*, or

(b) where Australia is a party to the Convention--the grant is appropriate to give effect to the obligations of Australia under the Convention.

Part II

ADMINISTRATION

Section 6

Registrar of Plant Variety Rights

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

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

* Paragraph 51(xviii) of the Constitution authorizes the Australian Parliament to legislate with respect to "copyrights, patents of inventions and designs and trade marks."

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

Section 7

Delegation

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

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

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

Section 8

Certain Persons not to Acquire Plant Variety Rights

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

Penalty: \$2,000

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

Section 9

Register of Plant Variety Rights

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

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

Section 10

Genetic Resources Centres

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

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

Section 11

Public Notice

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

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

(3) Subject to sub-section (4), where the Secretary considers that the volume of public notices of matters to be given for the purposes of this Act justifies the issue from time to time of a journal, to be called the Plant Varieties Journal, and the publication of notices of those matters in that journal instead of in the Gazette, the Secretary may issue that journal and, during

the period in which the journal is being issued, shall give public notice of those matters by publishing notice in writing of them in that journal.

(4) The Secretary--

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

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

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

(6) The Secretary--

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

(b) where the Secretary wishes to discontinue publishing notices of matters in a particular periodical in accordance with sub-section (5), the Secretary shall give public notice of his or her intention to so discontinue and, after giving that notice, shall so discontinue; and

(c) if it becomes impossible to publish notices of matters in accordance with sub-section (5) in a particular journal because the journal has ceased publication or otherwise, the Secretary shall publish a notice in writing in the Gazette of the discontinuance of the publication of those notices in that publication.

Part III

PLANT VARIETY RIGHTS

Division I - Preliminary

Section 12

Plant Variety Rights

(1) Plant variety rights, in respect of a new plant variety, are--

(a) the exclusive right to sell, including the right to license other persons to sell, plants of that variety;

(b) the exclusive right to sell, including the right to license other persons to sell, reproductive material of plants of that variety;

(c) the exclusive right to produce, including the right to license other persons to produce, plants of that variety for sale; and

(d) the exclusive right to produce, including the right to license other persons to produce, reproductive material of plants of that variety for sale.

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

Section 13

**Plant Variety Rights to be Granted
in Relation to Certain Varieties Only**

- (1) Plant variety rights shall not be granted in respect of a plant variety unless the plants of that variety are plants of a genus or species declared by the regulations to be a genus or species to which this Act applies.
- (2) The Governor-General shall not make a regulation declaring a genus or species to be a genus or species to which this Act applies unless the Governor-General has been informed by the Minister that the Minister has considered advice given by the Advisory Committee in relation to the desirability of the genus or species being declared to be a genus or species to which this Act applies.
- (3) For the purposes of this section, a plant that is a hybrid derived from plants of different genera or species may be taken to be a plant of either of those genera or species.

Section 14

**Plant Variety Rights not to be Granted
in Respect of Varieties Previously Sold**

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

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

Division 2 - Applications for Plant Variety Rights

Section 15

Application for Plant Variety Rights

- (1) Subject to this Act, a breeder of a new plant variety may make an application to the Secretary for plant variety rights in respect of the variety.
- (2) A breeder of a new plant variety has the right under sub-section (1) to make an application for plant variety rights in respect of that variety whether or not the breeder is an Australian citizen, whether or not the breeder is resident in Australia and whether the breeder originated the variety in Australia or in another country.
- (3) The right under sub-section (1) of a breeder of a new plant variety to make an application for plant variety rights is personal property and is capable of assignment or of transmission by will or by operation of law (whether before or after the application has been made).
- (4) An assignment of a right to make an application for plant variety rights does not have effect unless it is in writing signed by or on behalf of the assignor.
- (5) Subject to sub-section (6), where two or more persons are entitled to make applications for plant variety rights in respect of a new plant variety, whether by reason that they originated the variety jointly or independently or otherwise, those persons or some of those persons may make a joint application for those rights.
- (6) Where two or more persons (in this sub-section referred to as the "breeders") originate a new plant variety jointly, one of those breeders or a successor of one of those breeders shall not make an application for plant variety rights in respect of that variety otherwise than jointly with, or with the consent in writing of, the other person, or each other person, entitled to make an application for those rights.

Section 16

Form of Application

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

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

Section 17

Names of New Plant Varieties

- (1) The name of a new plant variety shall consist of a word or words (which may be an invented word or words) with or without the addition of--
 - (a) a letter or letters not constituting a word;
 - (b) a figure or figures; or
 - (c) both a letter or letters not constituting a word and a figure or figures.
- (2) A new plant variety shall not have--
 - (a) a name the use of which would be likely to deceive or cause confusion, including a name that is the same as, or is likely to be mistaken for, the name of another plant variety;
 - (b) a name the use of which would be contrary to law;
 - (c) a name that comprises or contains scandalous or offensive matter; or
 - (d) a name, or name of a kind, that is, at the time when the application is made, prohibited by the regulations.

(3) The name of a new plant variety in respect of which an application is made shall comply with any recommendations of the International Code of Nomenclature for Cultivated Plants, as in force when the application is made, formulated and adopted by the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences that are accepted by Australia.

(4) The name of a new plant variety in respect of which an application is made shall not consist of, or include--

(a) the name of a natural person living at the time of the application, other than a person who has given written consent to the name of the plant variety;

(b) the name of a natural person who died within the period of ten years immediately preceding the application, other than a person who has given, or whose legal personal representative has given, written consent to the name of the plant variety; or

(c) the name of a corporation, organisation or institution, other than a corporation, organisation or institution that has given its written consent to the name of the plant variety.

Section 18

Lodging of Applications

(1) Where an application is lodged in respect of a new plant variety--

(a) if the Secretary is satisfied that--

(i) the application complies with the requirement of section 16;
and

(ii) the name of the variety complies with section 17,

the Secretary shall accept the application; or

(b) if the Secretary is not so satisfied--the Secretary shall reject the application.

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

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

Section 19

Variation of Application

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

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

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

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

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

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

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

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

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

(a) where the Secretary complies with the request and the address so given is different from the address contained in the application in accordance with paragraph 16(m)--the Secretary shall vary the application so that the address so given is shown as the address for the service of documents on the applicant for the purposes of this Act; or

(b) where the Secretary rejects the request--the notice to that person under sub-section (4) shall be given by being posted by pre-paid post as a letter addressed to the person at the address so given.

Section 20

Objections to Grant of Plant Variety Rights

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

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

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

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

Section 21

Inspection of Applications and Objections

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

Section 22

Provisional Protection

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

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

whichever occurs first.

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

(a) plant variety rights will not be granted, or are unlikely to be granted, to the applicant in respect of that plant variety;

(b) after the application was made, the applicant sold a plant, or reproductive material of a plant, of that variety in Australia otherwise than for--

(i) scientific purposes;

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

(iii) another prescribed purpose; or

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

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

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

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

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

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

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

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

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

Section 23

Characteristics of Plant Varieties Originated Outside Australia

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

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

Section 24

Test Growing of Plant Varieties

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

- (a) for the purpose of determining whether the plant variety is homogeneous or stable; or
- (b) for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic,

the Secretary shall give written notice to the applicant--

- (c) stating that the Secretary considers that a test growing, or a further test growing, as the case may be, of the variety is necessary;
- (d) specifying the purpose of the test growing; and
- (e) requiring the applicant--
 - (i) to supply the Secretary with sufficient plants, or sufficient reproductive material of plants, of the variety, as the case requires, and with any necessary information, to enable the variety to be test grown for the purpose so specified; or
 - (ii) to have the variety test grown for the purpose so specified and to give the Secretary a copy of the records of observations made during the test growing,

whichever the Secretary deems appropriate,

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

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

Section 25

Withdrawal of Application

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

Division 3 - Grant of Plant Variety Rights

Section 26

Grant of Plant Variety Rights

- (1) Subject to this section, where an application for plant variety rights in respect of a plant variety is accepted--
 - (a) if the Secretary is satisfied that--
 - (i) there is such a plant variety;
 - (ii) the plant variety is a new plant variety;
 - (iii) the applicant is entitled to make the application;
 - (iv) the grant of those rights to the applicant is not prohibited by this Act;
 - (v) those rights have not been granted to another person;
 - (vi) there has been no earlier application for those rights that has not been withdrawn or otherwise disposed of;
 - (vii) the name of the variety would comply with section 17; and
 - (viii) all fees payable under this Act in relation to the application and the grant have been paid,the Secretary shall grant those rights to the applicant; or
 - (b) if the Secretary is not so satisfied--the Secretary shall refuse to grant those rights to the applicant.
- (2) The Secretary shall not grant, or refuse to grant, plant variety rights in respect of a plant variety unless a period of at least six months has elapsed since the giving of public notice of the application, or, if the application has been varied in pursuance of a request under sub-section 19(1) in a manner that the Secretary considers to be significant, a period of six months has elapsed since the giving of public notice of particulars of the variation, or of the last such variation, as the case requires.
- (3) The Secretary shall not refuse to grant plant variety rights unless the Secretary has given the applicant for the rights a reasonable opportunity to make a written submission to the Secretary in relation to the application.
- (4) Where an objection to the grant of plant variety rights has been lodged under section 20, the Secretary shall not grant the rights unless the Secretary has given the person who lodged the objection a reasonable opportunity to make a written submission to the Secretary in relation to the objection.
- (5) Plant variety rights shall be granted to a person by the issue to that person by the Secretary of a certificate, signed by the Secretary or by the Registrar, in a form approved by the Secretary and containing such particulars of the plant variety to which the rights relate as the Secretary considers appropriate.
- (6) Where plant variety rights are granted to persons who made a joint application for those rights, those rights shall be granted to those persons jointly.
- (7) Where the Secretary refuses to grant plant variety rights in respect of a plant variety, the Secretary shall, within 30 days after refusing, give written notice of the refusal to the applicant for the rights setting out the grounds for the refusal.

Section 27

Entry of Grant of Plant Variety Rights

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

- (a) a description, or a description and photograph, of a plant of that variety;
- (b) the name of the variety;
- (c) the name of the grantee;
- (d) the name and address of the breeder;
- (e) the address for the service of documents on the grantee for the purposes of this Act which is shown on the application for the rights;
- (f) the day on which the rights were granted; and
- (g) such other particulars relating to the grant as the Secretary considers appropriate.

Section 28

Notice of Grant of Plant Variety Rights

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

Section 29

Effect of Grant on Certain Persons

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

(2) Where--

- (a) plant variety rights in respect of a new plant variety are granted to a person; and
- (b) another person (in this sub-section referred to as the "eligible person") was entitled, at law or in equity, to have the right to make an application for those plant variety rights assigned to the eligible person,

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

Division 4 - Miscellaneous

Section 30

Nature of Plant Variety Rights

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

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

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

Section 31

Assignment of Plant Variety Rights

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

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

(3) Where the Registrar is not satisfied that plant variety rights have been assigned or transmitted to a person (in this sub-section referred to as the "claimant") who has informed the Registrar in accordance with sub-section (1) that those rights have been assigned or transmitted to the claimant, the Registrar shall forthwith--

(a) give written notice to the claimant--

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

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

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

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

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

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

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

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

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

Section 32

Duration of Plant Variety Rights

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

Section 33

Supply of Reproductive Material, etc.

(1) Plant variety rights in respect of a plant variety are subject to the condition that the grantee of the rights shall comply with any notice given to the grantee by the Secretary under sub-section (2) or (8).

(2) Where plant variety rights are granted in respect of a plant variety, the Secretary may give the grantee of the rights written notice requiring the grantee, within 14 days of the giving of the notice or any further time that is allowed by the Secretary, to cause a specified quantity of reproductive material of plants of that variety to be delivered, at the expense of the grantee, to a specified genetic resources centre.

(3) The quantity of reproductive material of plants of a variety specified in a notice under sub-section (2) shall be the quantity that the Secretary considers would be sufficient to enable that variety to be kept in existence if there were no other reproductive material of plants of that variety.

(4) Where the reproductive material of plants is delivered to a genetic resources centre in accordance with the condition imposed on plant variety rights by sub-section (1), the Secretary shall, subject to sub-section (6), cause that material to be stored at a genetic resources centre.

(5) The delivery and storing of the reproductive material of plants in accordance with this section does not affect the ownership of the material but that material shall not be dealt with otherwise than for the purposes of this Act.

(6) The reproductive material of plants stored at a genetic resources centre may be used by the Secretary for the purposes of this Act, including the purposes of section 39.

(7) Without limiting sub-sections (5) and (6), where, in accordance with this section, the reproductive material of plants is stored at a genetic resources centre that is a place known as a National Plant Genetic Resources Centre, the material shall not form part of the collection known as the national gene bank collection and shall not be used for the purposes of that collection.

(8) Where plant variety rights are granted in respect of a plant variety, the Secretary may give the grantee of the rights written notice requiring the grantee, within 14 days of the giving of the notice or any further time that is allowed by the Secretary, to cause to be delivered to the Secretary a specimen of a plant of the variety suitable for deposition by the Secretary in a herbarium.

(9) Where a specimen of a plant is delivered in accordance with the condition imposed on plant variety rights by sub-section (1), the Secretary shall cause the specimen to be deposited in a herbarium.

Section 34

Plant Variety Rights Subject to Conditions

(1) Where the Minister considers it necessary, in the public interest, that plant variety rights in respect of a new plant variety should be subject to conditions restricting the assignment of those rights, to conditions requiring, or relating to, the licensing of persons to sell, or produce for sale, plants, or reproductive material of plants, of that variety or to other conditions, the Minister may, at the time when those rights are granted or at any time while those rights subsist, by instrument under his or her hand, impose those conditions.

(2) Where the Minister imposes conditions on plant variety rights under sub-section (1)--

(a) the Secretary shall give to the grantee a copy of the instrument setting out those conditions;

(b) the Secretary shall give public notice of those conditions; and

(c) the Registrar shall enter particulars of those conditions in the Register.

Section 35

Revocation of Plant Variety Rights

(1) The Secretary shall revoke the plant variety rights in respect of a plant variety if--

- (a) The Secretary becomes satisfied that the plant variety was not a new plant variety or that facts exist which, if known before the grant of those rights, would have resulted in the refusal of the grant; or
- (b) the grantee has failed to pay a prescribed fee payable in respect of those rights within one month after having been given notice, as prescribed, that that fee has become payable.
- (2) The Secretary may revoke the plant variety rights in respect of a plant variety if the Secretary is satisfied that--
- (a) the grantee has failed to comply, in relation to those rights, with the condition imposed by section 33 or with any condition imposed under section 34; or
- (b) a person to whom those rights have been assigned or transmitted has failed to comply with section 31.
- (3) Where the Secretary revokes plant variety rights in respect of a plant variety in accordance with this section, the Secretary shall, within seven days after the decision was taken, give written notice of the revocation to the grantee setting out the grounds for the revocation.
- (4) The Secretary shall not revoke plant variety rights in accordance with this section unless and until the Secretary has given the grantee and any person to whom, the Secretary believes, those rights have been assigned or transmitted particulars of the grounds for the proposed revocation and given the grantee and any such person a reasonable opportunity to make a written submission to the Secretary in relation to the proposed revocation.
- (5) The revocation of plant variety rights in respect of a plant variety in accordance with this section takes effect--
- (a) subject to paragraph (b), at the expiration of the period within which an application may be made to the Administrative Appeals Tribunal for a review of the revocation; or
- (b) if such an application is made to the Administrative Appeals Tribunal --at the time when the application is withdrawn or finally determined, whether by the Tribunal or by a court.
- (6) Nothing in this section shall be taken to affect the powers of the Federal Court under sub-section 44A(2) of the Administrative Appeals Tribunal Act 1975 where an appeal is instituted in that court from a decision of the Administrative Appeals Tribunal in respect of an application referred to in paragraph (5)(b).
- (7) Any person whose interests are affected by the grant of plant variety rights in respect of a plant variety may apply to the Secretary for the revocation of those rights in accordance with this section.
- (8) The Secretary shall consider any application made under sub-section (7) for the revocation of plant variety rights and, if the Secretary decides not to revoke the rights, the Secretary shall, within seven days after the decision was taken, give written notice of the decision to the applicant setting out the grounds for the decision.

Section 36

Surrender of Plant Variety Rights

- (1) Subject to sub-section (2), a grantee of plant variety rights may at any time, by giving notice to the Registrar, offer to surrender those rights, and the Registrar, after giving public notice of the offer and giving all parties interested an opportunity to make a written submission to the Registrar in relation to the offer, may, if the Registrar thinks fit, accept the offer and revoke those rights.
- (2) Where an action or proceeding under section 41 or 42 in respect of plant variety rights is pending in a court, the Registrar shall not accept an offer for the surrender of, or revoke, those rights, except by leave of the court or by consent of the parties to the action or proceeding.

Section 37

Entry of Particulars of Revocation, etc.

Where--

- (a) the revocation of plant variety rights in respect of a plant variety in accordance with section 35 takes effect;
- (b) plant variety rights are revoked in accordance with section 36; or
- (c) the Registrar is served with an office copy of an order of a court given under sub-section 41(3) revoking plant variety rights,

then--

- (d) the Registrar shall enter particulars of the revocation in the Register; and
- (e) the Secretary shall give public notice of the revocation.

Section 38Plant Variety Rights not to Restrict Sales
for Food, Fibre, Fuel, etc.

(1) Notwithstanding that plant variety rights subsist in respect of a plant variety, any person may--

- (a) propagate, grow and use plants of that variety for purposes other than commercial purposes;
- (b) sell plants of that variety for use as food or for another use that does not involve the growing of the plants or the production of plants of that variety;
- (c) sell reproductive material of plants of that variety for use as food or for another use that does not involve the production of plants of that variety;
- (d) sell with a farm or other place at which plants of that variety are grown any plants or reproductive material of plants of that variety at that place; or
- (e) use, and do anything necessary or desirable for the purpose of using, plants or reproductive material of plants of the variety as an initial source of variation for the purpose of originating another new plant variety except where the person makes repeated use of plants or reproductive material of plants of the first-mentioned variety for the commercial production of the other variety.

(2) The right of a person under paragraph (1)(b) to sell plants of a plant variety in respect of which plant variety rights subsist includes--

- (a) the right of the person to use plants, or reproductive material of plants, of that variety purchased or otherwise acquired by the person without any infringement of those plant variety rights to--
 - (i) produce plants for the sale; or
 - (ii) produce plants, or reproductive material of plants, from which plants for the sale may be derived; and
- (b) the right of the person to use plants, or reproductive material of plants, derived by the person from plants, or reproductive material of plants, of that variety, purchased or otherwise acquired by the person without any infringement of those plant variety rights to--
 - (i) produce plants for the sale; or
 - (ii) produce plants, or reproductive material of plants, from which plants for the sale may be derived.

(3) The right of a person under paragraph (1)(c) to sell reproductive material of plants of a plant variety in respect of which plant variety rights subsist includes--

(a) the right of the person to use plants, or reproductive material of plants, of that variety purchased or otherwise acquired by the person without any infringement of those plant variety rights to--

(i) produce reproductive material of plants for the sale; or

(ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived; and

(b) the right of the person to use plants, or reproductive material of plants derived by the person from plants, or reproductive material of plants, of that variety, purchased or otherwise acquired by the person without any infringement of those plant variety rights to--

(i) produce reproductive material of plants for the sale; or

(ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived.

(4) Without limiting the generality of paragraph (1)(c), for the purposes of that paragraph, the use of reproductive material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of food, before it has developed further shall not be taken to be a use that involves the production of a plant.

Section 39

Protection of Public Interest in New Plant Varieties

(1) For the purposes of this Act, the reasonable requirements of the public with respect to a plant variety in respect of which plant variety rights subsist shall be deemed to be satisfied if--

(a) where there is no demand or no significant demand for plants of that variety but there is a demand or a significant demand for reproductive material of plants of that variety--reproductive material of plants of that variety of reasonable quality is available for sale to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand; or

(b) in any other case--plants, or reproductive material of plants, of that variety of reasonable quality are available for sale to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand.

(2) The grantee of plant variety rights in respect of a plant variety shall, subject to any conditions imposed under section 34, take all reasonable steps to ensure that the reasonable requirements of the public with respect to that plant variety are satisfied.

(3) For the purpose of ensuring that the reasonable requirements of the public with respect to a plant variety in respect of which plant variety rights subsist are satisfied, the Secretary, in accordance with sub-sections (4) to (10), inclusive, may, on behalf of the grantee of those rights--

(a) license a person or persons whom the Secretary considers appropriate to sell plants of that variety;

(b) license a person or persons whom the Secretary considers appropriate to sell reproductive material of plants of that variety;

(c) license a person or persons whom the Secretary considers appropriate to produce plants of that variety for sale; or

(d) license a person or persons whom the Secretary considers appropriate to produce reproductive material of plants of that variety for sale,

during such period as the Secretary considers appropriate.

(4) Where, at any time later than two years after the grant of plant variety rights in respect of a plant variety, a person considers that the grantee of those rights is failing to comply with sub-section (2) in relation to that variety and that the failure affects the interests of that person, that person may, in writing, request the Secretary to exercise a relevant power or powers under sub-section (3) in relation to that variety.

(5) A request by a person under sub-section (4) in relation to a plant variety shall--

(a) set out the reasons why that person considers that the grantee of plant variety rights in respect of that variety is failing to comply with sub-section (2);

(b) give particulars of the way in which the person considers that the failure affects the interests of the person; and

(c) give an address for the purpose of a notice to the person under sub-section (7).

(6) Where a request under sub-section (4) is made to the Secretary in relation to a plant variety, the Secretary shall give the grantee of plant variety rights in respect of that variety--

(a) a copy of the request; and

(b) a written invitation to furnish to the Secretary, within one month after the day on which the invitation is given, a written statement setting out reasons why the Secretary should be satisfied that the grantee--

(i) is complying with sub-section (2) in relation to that variety; or

(ii) will so comply within a reasonable time.

(7) Where a request is made to the Secretary under sub-section (4) to exercise a power or powers under sub-section (3) in relation to a plant variety, the Secretary shall, after considering the request and any statement furnished by the grantee of plant variety rights in respect of that variety in response to the invitation under paragraph (6) (b), decide whether or not to exercise the power or powers concerned and shall, within 30 days after the decision was taken--

(a) give written notice of his or her decision to the grantee of plant variety rights in respect of that plant variety setting out the grounds for the decision; and

(b) cause written notice of his or her decision to be posted by pre-paid post as a letter addressed to the person who made the request at the address given by that person in accordance with paragraph (5) (c) setting out the grounds for the decision.

(8) Where the Secretary proposes to exercise a power under sub-section (3) in relation to a plant variety, the Secretary shall give public notice--

(a) identifying the variety;

(b) setting out particulars of the thing or things that the Secretary proposes to license persons to do and of the periods for which the Secretary proposes to license them; and

(c) inviting persons to apply in writing to the Secretary, within one month after the giving of public notice, to be licensed to do that thing, or to do any of those things, as the case requires, in relation to that variety,

and the Secretary shall not exercise that power without considering all applications in response to the invitation.

(9) The Secretary shall not license a person under sub-section (3) in relation to a plant variety unless, at least one month before so doing, the Secretary--

(a) gave written notice to each person who applied to be licensed in response to the relevant invitation given under sub-section (8); and

(b) gave public notice,

of the name or names of the person or persons whom the Secretary proposes to license.

(10) A licence granted to a person by the Secretary under sub-section (3) on behalf of the grantee of plant variety rights in respect of a plant variety shall be granted on such terms and conditions as the Secretary determines, being terms and conditions that the Secretary considers would be the terms and conditions of the licence if it were being granted by the grantee in the normal course of business.

(11) Where--

(a) a licence has been granted to a person under sub-section (3) to produce plants, or reproductive material of plants, of a plant variety; and

(b) the Secretary is satisfied that, unless the powers of the Secretary under this sub-section are exercised, that person will be unable to obtain reproductive material of plants of that variety at a reasonable price or without charge,

the Secretary may, on behalf of the grantee of those rights, make available to that person reproductive material of plants of that variety stored at a genetic resources centre under sub-section 33(4).

Section 40

Infringement of Plant Variety Rights

Subject to sections 38 and 39, the plant variety rights of a grantee in respect of a plant variety are infringed by--

(a) a person who, not being licensed by the grantee to sell plants of that variety, sells, or holds himself, herself or itself out as being willing to sell, plants of that variety;

(b) a person who, not being licensed by the grantee to sell reproductive material of plants of that variety, sells, or holds himself, herself or itself out as being willing to sell, reproductive material of plants of that variety;

(c) a person who, not being licensed by the grantee to produce plants of that variety for sale, produces plants of that variety for sale;

(d) a person who, not being licensed by the grantee to produce reproductive material of plants of that variety for sale, produces reproductive material of plants of that variety for sale;

(e) a person who, being a person to whom a licence has been granted in respect of that plant variety, does not comply with a term or condition of the licence; or

(f) a person who uses the name of that plant variety, being the name entered in the Register, in relation to any other plant variety or in relation to any plant other than a plant of the first-mentioned variety.

Section 41

Actions for Infringement of Plant Variety Rights

(1) An action or proceeding for an infringement of plant variety rights may be instituted in the Court.

(2) A defendant in an action or proceeding for an infringement of plant variety rights in respect of a plant variety may apply by way of counter-claim in the action or proceeding for the revocation of the plant variety rights--

(a) on the ground that the plant variety was not a new plant variety; or

(b) on the ground that facts exist which, if known to the Secretary before the grant of those rights, would have resulted in the refusal of the grant.

(3) If, in an action or proceeding for an infringement of plant variety rights in respect of a plant variety in which a defendant has applied by way of counter-claim for the revocation of those rights on a ground referred to in paragraph (2) (a) or (b), the court is satisfied that the ground exists, the court may revoke those rights.

(4) Where, in an action or proceeding for an infringement of plant variety rights, the court, on an application by the defendant by way of counter-claim, revokes the plant variety rights, the court shall order the defendant to serve on the Registrar an office copy of the order revoking the plant variety rights.

Section 42

Declaration as to Non-Infringement

(1) A person who desires to sell a plant or reproductive material of a plant, or to produce a plant or reproductive material of a plant for sale, may, by action in the Court against the grantee of plant variety rights in respect of a new plant variety, claim a declaration that the sale or production of the plant or reproductive material, as the case requires, would not constitute an infringement of those plant variety rights and may do so although no assertion of the infringement has been made by the grantee of the plant variety rights.

(2) The Court shall not make a declaration sought in an action under sub-section (1) in relation to a plant or reproductive material of a plant unless:

(a) the plaintiff--

(i) has applied in writing to the defendant for an admission in writing to the effect of the declaration sought;

(ii) has furnished the defendant with full particulars in writing of the plant or reproductive material, as the case may be; and

(iii) has undertaken to pay a reasonable sum for the expenses of the defendant in obtaining advice in respect of the declaration sought; and

(b) the defendant has refused or failed to make such an admission.

(3) The costs of all parties in proceedings for a declaration under this section shall, unless the prescribed court otherwise orders, be paid by the person seeking the declaration.

(4) The validity of a grant of plant variety rights shall not be called in question in proceedings for a declaration under this section and the making of, or refusal to make, the declaration does not imply that the grant of plant variety rights is, or is not, valid.

Section 43

Jurisdiction of Court

(1) The Court has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in that court and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

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

(3) The Court may refuse to award damages, or to make an order for an account of profits, against a person in respect of an infringement of plant variety rights in relation to a plant variety if the person satisfies the court that, at the time of the infringement, the person was not aware, and had no reasonable grounds for suspecting, that plant variety rights existed in relation to that plant variety.

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

(5) Sub-section (4) shall not be read as limiting the power of the Judges of the Court or a majority of them to make rules of Court under section 59 of the Federal Court of Australia Act 1976 not inconsistent with the regulations referred to in that sub-section.

Part IV

PLANT VARIETY RIGHTS ADVISORY COMMITTEESection 44

Establishment of Advisory Committee

- (1) There is established by this Act a Committee by the name of the Plant Variety Rights Advisory Committee.
- (2) The functions of the Advisory Committee are--
 - (a) at the request of the Minister, to advise the Minister on the desirability of a genus or species being declared by the regulations to be a genus or species to which this Act applies; and
 - (b) to advise the Secretary on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Secretary refers to the Advisory Committee.

Section 45

Membership of Advisory Committee

- (1) The Advisory Committee shall consist of--
 - (a) the Registrar;
 - (b) two members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties;
 - (c) one member who, in the opinion of the Minister, is an appropriate person to represent producers, and likely producers, of new plant varieties;
 - (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) two other members who, in the opinion of the Minister, possess qualifications or experience that are appropriate for a member of the Advisory Committee.
- (2) The members, other than the Registrar, shall be appointed by the Minister.
- (3) The members hold office as part-time members.
- (4) The members, other than the Registrar, hold office during the pleasure of the Minister.
- (5) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.

Section 46

Remuneration and Allowances

- (1) A member referred to in paragraph 45(1)(b), (c) or (d) shall not be paid any remuneration in respect of the performance of the duties of the member but is entitled, in the appropriate circumstances, to payment of allowances as if the member were a Senior Executive Service officer within the meaning of the Public Service Act 1922.
- (2) The members referred to in paragraph (1)(e) shall be paid--
 - (a) such remuneration as is determined by the Remuneration Tribunal; and
 - (b) such allowances as are prescribed.
- (3) This section has effect subject to the Remuneration Tribunals Act 1973.

Section 47

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 shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting.
- (2) A disclosure under sub-section (1) in relation to a matter shall--
 - (a) be recorded in the minutes of the meeting of the Advisory Committee, and
 - (b) be made known in any advice given by the Committee in relation to that matter.

Section 48

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, four members constitute a quorum.
- (3) The Registrar shall preside at a meeting of the Advisory Committee at which the Registrar is present, but, if the Registrar is not present, the members present shall elect one of their number to preside at the meeting.
- (4) Subject to sub-section (2), the procedure to be followed at a meeting of the Advisory Committee shall be as determined by the Advisory Committee.

Part V

MISCELLANEOUSSection 49

Inspection of Register

A person may inspect the Register at any reasonable time and is entitled, upon payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.

Section 50

Agents May Act in Plant Variety Rights Matters

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

Section 51

Service of Documents

- (1) Where the Secretary or the Registrar is required by this Act to give a written notice or other document to an applicant for, or a grantee of, plant variety rights, that document shall be given by being posted by pre-paid post as a letter addressed to the applicant or the grantee at the address for service shown on the application or entered in the Register, as the case requires.
- (2) Where the Secretary or the Registrar is required by this Act to give a written notice or other document to a person who has been an applicant for, or a grantee of, plant variety rights, that document shall be given by being posted by pre-paid post as a letter addressed to that person at the address for service of that person that was formerly shown on the application for those rights or entered in the Register in respect of those rights, as the case may be.

Section 52

Offences

(1) A person shall not knowingly make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act.

Penalty:

(a) in the case of a natural person--\$1,000 or imprisonment for six months, or both; or

(b) in the case of a body corporate--\$5,000.

(2) A person shall not:

(a) falsely represent to another person that he, she or it is the grantee of plant variety rights in respect of a plant variety;

(b) falsely represent to another person that he, she or it is deemed to be the grantee of plant variety rights in respect of a plant variety by virtue of section 21; or

(c) falsely represent that a plant is a plant of a variety in respect of which plant variety rights have been granted.

Penalty for contravention of this sub-section:

(a) in the case of a natural person--\$1,000; or

(b) in the case of a body corporate--\$5,000.

(3) Where, in proceedings for an offence against sub-section (1) or (2) in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a corporation--

(a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of a provision of this Act that creates an offence, to have been engaged in by the corporation.

(5) A reference in sub-section (3) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

Section 53

Applications for Review

(1) Applications may be made to the Administrative Appeals Tribunal for review of--

(a) a decision of the Secretary under paragraph 18(1)(b) rejecting an application;

(b) a decision of the Secretary to refuse to vary an application upon a request made under sub-section 19(1) or (2);

(c) a decision of the Registrar under sub-section 20(1) to allow, or refuse to allow, further time for the lodging of an objection;

(d) a decision of the Secretary to give a notice under sub-section 22(2);

- (e) a decision of the Secretary that the Secretary is satisfied, or not satisfied, of a matter for the purposes of paragraph 23(b);
 - (f) a decision of the Secretary that the Secretary is satisfied, or not satisfied, of a matter for the purposes of paragraph 23(c);
 - (g) a requirement by the Secretary under section 24;
 - (h) a decision of the Secretary to grant, or refuse to grant, plant variety rights under section 26;
 - (j) a decision of the Registrar to amend, or refuse to amend, the Register under section 31;
 - (k) a decision of the Secretary under sub-section 33(2) or (8) to allow, or refuse to allow, further time for a delivery;
 - (m) a decision by the Minister to impose conditions under sub-section 34(1);
 - (n) a decision by the Secretary to revoke plant variety rights under section 35;
 - (p) a decision by the Secretary under sub-section 35(8) not to revoke plant variety rights;
 - (q) a decision of the Secretary under sub-section 39(7) to exercise a power under sub-section 39(3);
 - (r) a decision of the Secretary to license a person under sub-section 39(3) or the refusal of the Secretary to license under that sub-section a person who applied to be so licensed in response to an invitation under paragraph 39(8)(c);
 - (s) the determination by the Secretary of the terms and conditions of a licence in accordance with sub-section 39(10); or
 - (t) a decision of the Secretary to make reproductive material of plants available under sub-section 39(11).
- (2) The Administrative Appeals Tribunal does not have power under sub-section 29(7) of the Administrative Appeals Tribunal Act 1975 to extend the time for making an application to that Tribunal for a review of a decision referred to in paragraph (1)(q).
- (3) The Secretary shall give public notice of--
- (a) any application made under sub-section (1);
 - (b) any decision of the Administrative Appeals Tribunal on such an application; and
 - (c) any decision of a court in relation to, or arising out of--
 - (i) such an application; or
 - (ii) a decision of the Administrative Appeals Tribunal on such an application.
- (4) In sub-sections (1) and (2), "decision" has the same meaning as in the Administrative Appeals Tribunal Act 1975.

Section 54

Statement to Accompany Notice of Decisions

(1) Where the Minister, the Secretary, a delegate of the Secretary or the Registrar makes a determination, decision or requirement of a kind referred to in sub-section 53(1) and gives to the person or persons whose interests are affected by the determination, decision or requirement, notice in writing of the making of the determination, decision or requirement, that notice shall include a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal for review of the determination, decision or requirement to which the notice relates by or on behalf of the person or persons whose interests are affected by the determination, decision or requirement.

(2) Any failure to comply with the requirements of sub-section (1) in relation to a determination, decision or requirement does not affect the validity of the determination, decision or requirement.

Section 55

Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing fees, including--

- (a) fees on applications for plant variety rights;
- (b) fees payable by grantees of plant variety rights at specified intervals or on specified dates; and
- (c) fees to meet costs incurred in the test growing of plants under section 24.

[Annex III follows]

**PROPOSED SCHEDULE FOR INCLUDING GENERA/SPECIES IN
THE PLANT VARIETY RIGHTS REGULATIONS**

PLANT GROUP	APRIL 88	JULY 88	JAN 89	JULY 89	MARCH 90
STONE FRUIT		Prunus	All Stone Fruit		
CITRUS		All Citrus			
OTHER FRUIT	Malus (apple)	Fragaria (strawberry) Vitis (grape) Carica (paw paw) Rubus (raspberry) Persea americana (avocado)	Pyrus (pear) Actinidia (kiwifruit)		All Fruit
VEGETABLES	Phaseolus vulgaris (bean)	Solanum tuberosum (potato) Lycopersicon (tomato) Lactuca sativa (lettuce) Pisum (pea)	Allium cepa (onion) Daucus carota (carrot) Brassica oleracea (cabbage, cauliflower etc)	All vegetables	
NUTS	Macadamia	Prunus amygdalus (almond)	Juglans (walnut)	All nuts	
HERBAGE AND TURF GRASS	Phalaris	Lolium (ryegrass) Agrostis (bent) Festuca (tall fescue) Cynodon (bermuda grass) Zoysia Stenotaphrum	Dactylus (cocksfoot) Bromus Lotus Paspalum	All herbage and turf grasses	
OILSEEDS	Brassica sp (oilseeds) (rape, mustard etc)	Glycine max (soybean) Helianthus annuus (sunflower)	Sesamum indicum (sesame) Carthamus tinctorius (safflower) Linum usitatissimum (linseed)	All oilseeds	
PASTURE AND GRAIN LEGUMES		Trifolium (clover) Medicago Ornithopus (serradella) Stylosanthes	Lupinus Desmanthus Vigna (mungbean) Cicer arietinum (chickpea) Indigolera	All pasture and grain legumes	
GRAINS		Setaria Avena (oats) Panicum Pisum (pea) Zea mays (corn)	Hordeum (barley) Pennisetum (pearl millet) Sorghum		All grains
AUST. NATIVE ORNAMENTALS	Anigozanthus (Kangaroo paw)	Grevillea Chamelaucium (Geraldton wax) Lechenaultia Melaleuca Decaspermum Artanema	Macropidia (Black Kangaroo Paw) Piper Callistemon Thryptomene Telopea Dryandra	Boronia Banksia Verticordia Darwinia Pimelea	All native ornamentals
OTHER ORNAMENTALS	Rosa (Rose)	Orchids (all genera) Dianthus (carnation) Alstroemeria Schlumbergera (Zygocactus) Lilium (Lily) Metrosideros carminea Freesia Rhododendron Gerbera	Rhipsalis Kalanchoe Euphorbia (Poinsettia) Chrysanthemum Zantedeschia		All ornamentals
FORESTRY		Eucalyptus	Pinus Acacia Casuarina		All forestry
OTHER	Gossypium (cotton)		Duboisia	Humulus lupulus	All species
PROPOSED ADDITIONS		Cuphea Limonium Cyphomandra Streptocarpus Impatiens Cyclamen Begonia Achimenes Choysia	Hemerocallis Bougainvillea Ilex		