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UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES

GENÈVE

CONSEIL

Vingt-deuxième session ordinaire

Genève, 18 et 19 octobre 1988

CONFORMITE DE LA LEGISLATION DU COMMONWEALTH D'AUSTRALIE
AVEC LES DISPOSITIONS DE LA CONVENTION

Document établi par le Bureau de l'Union

I. INTRODUCTION

1. Par note en date du 19 août 1988, faisant l'objet de l'annexe I, la Mission permanente de l'Australie auprès de l'Office des Nations Unies à Genève a notamment fait savoir au Conseil de l'UPOV que l'Australie envisage de devenir membre de l'UPOV.

2. Cette note renvoie à l'article 32.3) de la Convention. Etant donné que l'Australie n'est pas un Etat membre de l'UPOV et n'a pas signé le texte révisé de la Convention du 23 octobre 1978, elle doit, aux termes de l'article 32.3) de la Convention, demander l'avis du Conseil sur la conformité de sa législation avec les dispositions de ladite Convention avant de déposer son instrument d'adhésion. En conséquence, il est demandé au Conseil, dans la note précitée, de formuler un avis au sujet de la loi de 1987 sur la protection des variétés végétales.

3. Afin d'aider le Conseil à étudier la conformité de la législation australienne avec les dispositions de la Convention, le Bureau de l'Union a réalisé une étude de cette question, qui fait l'objet de la section II ci-après.

II. CONFORMITE DE LA LEGISLATION DU COMMONWEALTH D'AUSTRALIE AVEC
LES DISPOSITIONS DE LA CONVENTION

4. L'étude qu'a réalisée le Bureau de l'Union au sujet de la conformité de la législation du Commonwealth d'Australie (ci-après dénommé "Australie") repose sur les textes suivants :

i) la loi de 1987 sur la protection des variétés végétales (ci-après dénommée la "loi"), qui est reproduite, en anglais, à l'annexe II;

ii) le calendrier proposé pour l'application du règlement sur la protection des variétés végétales à certains genres et espèces, qui est reproduit à l'annexe III.

Généralités

5. La Constitution australienne reconnaît au Parlement la faculté de légiférer en vertu de divers pouvoirs déterminés. Les pouvoirs en vertu desquels a été adoptée la loi sur la protection des variétés végétales de 1987 ressortent à l'évidence des dispositions de l'article 5 de cette loi, qui prévoit ce qui suit :

"Aucune disposition de la présente loi n'exige ni n'autorise la protection d'une nouvelle variété végétale à moins que

"a) cette nouvelle variété végétale constitue une invention aux fins du paragraphe 51.xviii) de la Constitution, ou

"b) si l'Australie est partie à la Convention - cette protection soit conforme aux obligations qui incombent à l'Australie en vertu de la Convention."

6. L'alinéa a) est fondé sur les dispositions du paragraphe 51 de la Constitution, qui énonce les domaines auxquels s'étend le pouvoir de légiférer en matière fédérale. Plus précisément, le paragraphe 51.xviii) de la Constitution reconnaît le pouvoir de légiférer en matière de droit d'auteur, de brevets d'invention, de dessins et modèles et de marques. L'alinéa b) découle de la faculté reconnue au Parlement de légiférer en matière d'affaires étrangères. La "Convention" évoquée à l'alinéa b) est la Convention UPOV (en application de l'article 3.1) de la loi), qui est annexée à la loi. C'est là la seule mention faite de la Convention dans les dispositions de fond de la loi, et les liens existant entre la Convention et la loi découlent par conséquent des termes de l'article 5.b) de ce texte.

7. Il convient de noter soigneusement les termes de l'article 5.b) de la loi. Si l'Australie doit adhérer à la Convention, le texte applicable sera le suivant :

"Aucune disposition de la présente loi n'exige ni n'autorise la protection des variétés végétales, à moins que cette protection soit conforme aux obligations qui incombent à l'Australie en vertu de la Convention."

8. Il s'ensuit que la protection serait accordée chaque fois que la Convention l'exige, mais en aucun autre cas. Sur toutes les questions concernant l'octroi de la protection, la loi est par conséquent conforme aux dispositions de la Convention. C'est donc uniquement par rapport aux questions qui n'ont pas trait à l'octroi de la protection qu'il est nécessaire de vérifier si la loi est conforme à la Convention. Dans l'étude reproduite ci-après, les dispositions de la loi touchant à l'octroi de la protection ont néanmoins aussi été prises en considération pour déterminer la conformité avec la Convention.

9. Il convient de noter qu'il est possible, en vertu de l'article 55 de la loi, d'édicter des règlements - qui ne soient pas incompatibles avec la loi - afin de satisfaire à toute exigence de la Convention qui ne serait pas suffisamment prise en compte dans le cadre des dispositions de la loi.

Article 2.1) de la Convention (formes de protection)

10. La loi reconnaît le droit de l'obtenteur par l'octroi d'un titre de protection particulier, de préférence à l'octroi d'un brevet. Aucune disposition de la loi, ni d'ailleurs de la loi australienne sur les brevets de 1952 et des modifications successives dont elle a fait l'objet jusqu'en 1982, ne précise cependant expressément que des brevets ne peuvent être délivrés pour des variétés végétales. A cet égard, la position de l'Australie n'est pas différente de ce qu'était celle de certains autres Etats membres à l'époque de leur adhésion à la Convention.

Article 3 de la Convention (traitement national; réciprocité)

11. L'article 15.2) de la loi prévoit que l'obtenteur d'une nouvelle variété végétale a le droit de déposer une demande de protection pour cette variété, qu'il soit ou non citoyen australien, qu'il réside ou non en Australie et qu'il ait obtenu la variété en Australie ou dans un autre pays. Cette disposition est conforme au principe du traitement national énoncé à l'article 3 de la Convention et, en fait, va même plus loin que ce principe étant donné que tous les obtenteurs étrangers sont assimilés aux obtenteurs australiens.

12. Aucune discrimination contre les ressortissants ou résidents d'autres Etats membres de l'UPOV ne peut être décelée dans d'autres dispositions de la loi.

Article 4 de la Convention (genres et espèces botaniques qui doivent ou peuvent être protégés)

13. Les dispositions réglementaires adoptées en vertu de l'article 13 de la loi prévoient la protection, à compter du 1^{er} juillet 1988, de 62 taxons selon les modalités définies à l'annexe III. Les conditions énoncées à l'article 4 de la Convention sont par conséquent respectées.

Article 5 de la Convention (droits protégés; étendue de la protection)

14. Les droits conférés à l'obtenteur d'une nouvelle variété végétale sont énoncés aux articles 12 et 40 de la loi. Les restrictions dont ils font l'objet sont définies à l'article 38 de la loi. Ces droits sont subordonnés aux conditions énoncées dans les articles 33 et 34 de la loi, qui sont conformes à la Convention - voir plus loin sous les rubriques consacrées aux articles 10 et 9 de la Convention.

15. L'article 12.1) de la loi reconnaît à l'obtenteur le droit exclusif de vendre ou de produire en vue de la vente i) des plants de la variété [sous-alinéas a) et c)] et ii) du matériel de reproduction [sous-alinéas b) et d)]. L'expression "matériel de reproduction" est définie de façon extensive à l'article 3.1) de la loi et désigne les semences et tout matériel de multiplication végétative; le terme "vendre" est défini à l'article 3.1) comme comprenant la "mise en location" et l'"échange".

16. L'article 40 de la loi concerne les atteintes aux droits et précise que constitue une atteinte de cette nature le fait de proposer en vue de la vente (ce qui peut être considéré comme comprenant la commercialisation) i) des plants de la variété [sous-alinéa a)] ou ii) du matériel de reproduction [sous-alinéa b)].

17. Les dispositions décrites ci-dessus satisfont aux conditions énoncées dans les deux premières phrases de l'article 5.1) de la Convention.

18. Conformément à l'article 5.2) de la Convention, l'article 40.a) à e) de la loi permet à l'obtenteur de subordonner son autorisation aux conditions qu'il peut définir pour ce qui concerne les actes réservés.

19. L'article 38.1)e) de la loi énonce l'exception exigée aux termes de l'article 5.3) de la Convention en ce qui concerne l'exception en faveur de l'obtention. On peut cependant se demander si les droits exclusifs conférés par la loi s'étendent à l'utilisation de la variété protégée comme variété parentale d'un hybride, comme le voudraient les dispositions de la phrase finale de l'article 5.3) de la Convention.

20. L'article 38.1)a) de la loi prévoit une exception en vue de l'utilisation de la variété à des fins non commerciales qui est conforme aux dispositions de la Convention. L'article 38.1)b) et c) de la loi prévoit une exception en vue de la vente du "produit final" qui est conforme aux dispositions de la Convention. L'article 38.1)d) de la loi, qui prévoit une exception en vue de la vente, avec un terrain, des plants ou du matériel de reproduction de la variété qui y sont cultivés, semble aussi conforme à la Convention. Les cultures peuvent être considérées comme faisant partie intégrante de la terre, et ce n'est que lorsqu'elles en sont détachées qu'elles acquièrent une existence propre et deviennent un "bien meuble" sur lequel peuvent être reconnus des droits spécifiques.

21. Les articles 38.2) et 3) de la loi traitent expressément des droits, reconnus aux personnes privées, de produire du matériel de reproduction ou de multiplication pour leur propre usage, c'est-à-dire à l'exclusion de toute commercialisation de matériel de reproduction ou multiplication; la portée limitée des droits reconnus à l'obtenteur dans la Convention laisse aux personnes privées la faculté d'exercer des droits correspondant à ceux que prévoit la loi. Dans la mesure où des droits sont accordés pour des plantes ornementales en vertu de la loi, on peut se demander si ce texte garantit les droits annexes prévus dans la phrase finale de l'article 5.1) de la Convention. L'article 5.b) de la loi et les dispositions réglementaires adoptées en vertu de l'article 55 de ladite loi peuvent peut-être s'appliquer à cette situation, et les autorités australiennes ont fait savoir au Bureau de l'Union qu'elles ont l'intention de modifier la loi pour en aligner plus clairement les dispositions sur celles de la Convention en 1989.

Article 6 de la Convention (conditions requises pour bénéficier de la protection)

22. L'article 26.1)a)ii) de la loi prévoit que la protection s'applique à une "obtention", ou "nouvelle variété végétale", qui est définie à l'article 3.1) de la loi comme une variété végétale homogène, stable et distincte. Les définitions données de l'homogénéité, de la stabilité et de la distinction dans la loi sont conformes aux dispositions de l'article 6.1). Toutefois, l'article 3.1) de la loi exige aussi qu'une "nouvelle variété végétale" ait

été obtenue par une personne, et l'article 3.5) de la loi précise les cas dans lesquels il y a effectivement obtention - ce qui semble exclure de la protection les découvertes purement fortuites de nouvelles variétés végétales, dont les dispositions de l'article 6.1)a) de la Convention prévoient pourtant la protection. Néanmoins, comme il est expliqué plus haut au paragraphe 8, les dispositions de l'article 5.b) de la loi devraient permettre de régler la situation résultant de cette différence par rapport à la Convention.

23. L'article 14 de la loi prévoit qu'il n'est pas accordé de protection à l'égard des variétés ayant déjà été vendues. Plus précisément, cet article dispose que la variété ne doit pas avoir été vendue avec l'accord de l'obteneur en Australie à la date du dépôt de la demande, ni dans aucun autre pays plus de six ans avant le dépôt de la demande. Cette disposition est légèrement différente de celle de l'article 6.1)b) de la Convention. Cette dernière précise en effet que la variété ne doit pas avoir été offerte à la vente ou commercialisée alors que la loi australienne prévoit que le matériel de reproduction ou de multiplication de la variété ne doit pas avoir été vendu, mais cette formule peut sans doute être considérée comme une variante admissible compte tenu de la marge d'interprétation nécessaire. En outre, la Convention ne fixe un délai de six ans pour la commercialisation à l'étranger que dans le cas des vignes, des arbres forestiers, des arbres fruitiers et des arbres d'ornement et de leurs porte-greffes, ce délai étant de quatre ans pour toutes les autres plantes, alors que la législation australienne prévoit un délai de grâce correspondant de six ans pour toutes les catégories de plantes. L'article 5.b) de la loi semble néanmoins s'appliquer pour ce qui touche à ces différences entre la loi australienne et la Convention, ainsi qu'il est expliqué plus haut au paragraphe 8.

24. La condition, énoncée à l'article 6.1)e) de la Convention, qui veut que la variété reçoive une dénomination, est prévue à l'article 26.1)a)vii) de la loi.

25. Les seules autres conditions de protection sont les formalités énoncées à l'article 16 de la loi et le paiement des taxes (article 26.1)a)viii) de la loi). La loi est donc conforme à l'article 6.2) de la Convention.

Article 7 de la Convention (examen officiel des variétés; protection provisoire)

26. L'article 24 de la loi permet au ministre d'exiger que la variété fasse l'objet des essais en culture qu'il estime nécessaire pour en déterminer la distinction, l'homogénéité et la stabilité. La loi est donc conforme aux dispositions de l'article 7 de la Convention.

27. L'article 22 de la loi prévoit une protection provisoire conformément aux dispositions de l'article 7.3) de la Convention, bien que ces dernières ne soient pas impératives.

Article 8 de la Convention (durée de la protection)

28. L'article 32 de la loi prévoit que la protection est conférée pour une durée de 20 ans à compter de la date de la demande correspondante. Cette disposition est conforme à l'article 8 de la Convention.

Article 9 de la Convention (limitations de l'exercice des droits protégés)

29. L'article 34 de la loi prévoit des restrictions aux droits exclusifs accordés à l'obtenteur et l'octroi de licences obligatoires dans l'intérêt public, et l'article 39 de la loi définit les cas dans lesquels l'intérêt public peut être invoqué. Les dispositions de ces articles sont conformes à celles de l'article 9.1) de la Convention. L'article 39.10) de la loi prévoit que les licences obligatoires dans l'intérêt public sont octroyées aux mêmes conditions que celles qui auraient été applicables si la licence avait été concédée dans les conditions normales du commerce. Cela suppose que ces licences obligatoires seront assorties des garanties voulues pour permettre à l'obtenteur d'obtenir une rémunération équitable, conformément aux dispositions de l'article 9.2) de la Convention.

Article 10 de la Convention (nullité et déchéance des droits protégés)

30. L'article 35.1)a) de la loi correspond à l'article 10.1) de la Convention, bien que la loi prévoie la révocation des droits si la variété n'était pas "nouvelle" au sens de l'article 3.1) de la loi lors de la délivrance du titre de protection, tandis que la Convention prévoit la nullité du droit dans une situation légèrement différente, à savoir au cas où les conditions énoncées à l'article 6.1)a) et b) n'étaient pas remplies lors de la délivrance du titre de protection.

31. L'article 35.1)b) de la loi correspond à l'article 10.3)b) de la Convention.

32. L'article 33 de la loi prévoit des mesures destinées à assurer la conservation de la variété et l'article 35.2) prévoit la révocation de la protection si ces mesures ne sont pas observées. Ces deux articles conjugués correspondent aux paragraphes 2) et 3)a) de l'article 10 de la Convention.

33. L'article 10.4) de la Convention prévoit que le droit de l'obtenteur ne peut être annulé et que l'obtenteur ne peut être déchu de son droit pour d'autres motifs que ceux mentionnés aux paragraphes 1) à 3) du même article. L'article 35.2) de la loi prévoit cependant la révocation de la protection dans des cas qui ne sont pas envisagés aux paragraphes 1) à 3) de l'article 10 de la Convention.

Article 11 de la Convention (protection dans différents Etats)

34. La loi ne comporte aucune disposition au sujet de l'Etat dans lequel la première demande doit être déposée, et aucune disposition incompatible avec l'article 11 de la Convention ne peut y être décelée.

Article 12 de la Convention (droit de priorité)

35. La loi ne comporte aucune disposition expressément consacrée au droit de priorité, comme le voudrait l'article 12 de la Convention. Toutefois, ainsi qu'il est expliqué plus haut au paragraphe 8, l'article 5.b) de la loi devrait permettre de considérer comme satisfaites les exigences de l'article 12.

Article 13 de la Convention (dénomination de la variété)

36. Les articles 16.g), 17 et 27.b) de la loi répondent aux conditions énoncées aux paragraphes 1) à 3) de l'article 13 de la Convention. Etant donné que l'octroi de la protection est subordonné aux conditions énoncées au paragraphe 4), celles-ci seraient considérées comme remplies en vertu de l'article 5.b) de la loi, ainsi qu'il est expliqué plus haut au paragraphe 8. Les conditions énoncées au paragraphe 5), selon lesquelles la variété doit être déposée dans tous les Etats membres de l'Union sous la même dénomination, sont prises en compte à l'article 17.3) de la loi, aux termes duquel la dénomination doit être conforme aux recommandations du Code international de nomenclature des plantes cultivées (et satisfaire notamment aux dispositions des articles 32 et 35 de ce code). Les dispositions du paragraphe 6) de la Convention touchent à la procédure et n'ont pas à être reprises dans la loi. Celles du paragraphe 7) peuvent être prises en compte dans d'autres lois relatives au commerce des semences. Sinon, elles pourraient faire l'objet de dispositions réglementaires en vertu de l'article 55 de la loi. Les dispositions du paragraphe 8) n'ont pas à être expressément reprises et aucune disposition de la loi n'est incompatible avec ce paragraphe.

Article 14 de la Convention (protection indépendante des mesures réglementant la production, le contrôle et la commercialisation)

37. Aucune disposition de la loi ne laisse supposer que la protection est liée en quoi que ce soit à la réglementation de la production, du contrôle et de la commercialisation des semences et du matériel de multiplication végétative.

Article 30 de la Convention (application de la convention sur le plan national)

38. Les articles 41, 42 et 43 de la loi comportent des dispositions relatives aux procédures judiciaires en matière de protection des variétés végétales. Elles prévoient des recours légaux appropriés permettant de défendre efficacement les droits, conformément à l'article 30.1)a) de la Convention.

39. Comme l'exige l'article 30.1)b) de la Convention, l'article 6 de la loi prévoit la création d'un service spécial chargé de la protection des obtentions végétales; or, un Directeur de l'enregistrement des droits afférents aux variétés végétales a déjà été nommé et le Bureau des variétés végétales fonctionne.

40. L'article 11 de la loi permet au ministre de publier des annonces touchant aux questions relatives à la protection des variétés végétales lorsqu'il l'estime nécessaire ou souhaitable. L'article 28 de la loi exige que la délivrance de titres de protection de variétés végétales soit rendue publique et, en application de l'article 11 de la loi, des annonces doivent être publiées à cet effet dans la gazette ou dans le bulletin des variétés végétales. Les conditions prescrites à l'article 30.1)c) de la Convention sont donc remplies.

III. CONCLUSION

41. De l'avis du Bureau de l'Union, la législation du Commonwealth d'Australie est, pour l'essentiel, conforme aux dispositions de la Convention.

42. Le Conseil est invité :

i) à se prononcer sur la conformité de la législation australienne avec les dispositions de la Convention, comme le prévoit l'article 32.3) de la convention, et

ii) à autoriser le Secrétaire général à faire part au Gouvernement australien de la décision correspondante.

[Les annexes suivent]

ANNEXE I

NOTE DATED AUGUST 19, 1988, FROM THE AUSTRALIAN PERMANENT MISSION TO THE UNITED NATIONS OFFICE IN GENEVA TO THE COUNCIL OF UPOV

File No. 226/7/10/2

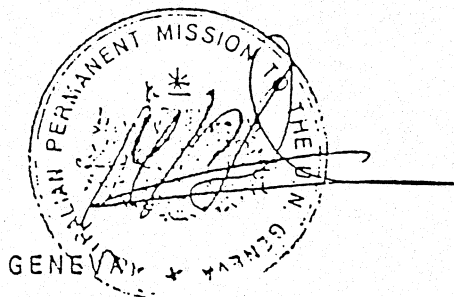
Note No. 67/88

- 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.



[L'annexe II suit]

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

PRELIMINARY

Section 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 subsection (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 38

Plant 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

MISCELLANEOUS

Section 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.

[L'annexe III suit]

ANNEXE III

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) Indigofera	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		