



This publication has been scanned from a paper copy and may have some discrepancies from the original publication.

Cette publication a été numérisée à partir d'une copie papier et peut contenir des différences avec la publication originale.

Diese Veröffentlichung wurde von einer Papierkopie gescannt und könnte Abweichungen von der originalen Veröffentlichung aufweisen.

Esta publicación ha sido escaneada a partir de una copia en papel y puede que existan divergencias en relación con la publicación original.

UPOV

PLANT VARIETY PROTECTION

Gazette and Newsletter
of the
International Union for the Protection of New Varieties of Plants (UPOV)

No. 55

June 1988

Geneva

CONTENTS

Page

GAZETTE

Extension of Protection to Further Genera and Species

- Netherlands 2

NEWSLETTER

Member States

France: Modification of Fees 16

Legislation

Australia: Plant Variety Rights Act 1987 17

General Studies

Industrial Property Rights and Biotechnology (Dirk Böringer) 45

Non-member States

Australia: Entry into Operation of the Plant Variety Rights
System 52

Calendar 60

GAZETTE
EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

Netherlands

By virtue of Order No. 97 of February 15, 1988 (Staatsblad 1988 : 97, issued on March 24, 1988), Amending the Plant Breeders' Rights Order 1975, protection was extended to the following with effect from April 13, 1988 (the Latin and Dutch names appear in the above-mentioned Order, whereas the English, French and German common names have been added, without guarantee of concordance, by the Office of the Union):

<u>Latine</u>	<u>Nederlands</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Achillea L.	Achillea	Milfoil, Yarrow	Achillée	Schafgarbe
Aconitum L.	Monnikskap	Monkshood	Aconit	Eisenhut
Ageratum L.	Ageratum	Ageratum, Flossflower	Ageratum	Leberbalsam
Anemone L.	Anemoon	Anemone	Anémone	Anemone, Windröschen
Anigozanthos Labill.	Kangoeroepoot	Kangaroo Paw, Kangaroo's-foot	-	Känguruhblume
Antirrhinum majus L.	Leeuwebek	Common Snapdragon	Muflier, Gueule de loup, Gueule de lion	Löwenmaul
Araliaceae Juss.	Aralia-achtigen	Plants of the Aralia type	Plantes du type Aralia	Aralienartige Pflanzen
Astilbe Buch.-Ham. ex D. Don	Astilbe	Astilbe	Astilbe, Hoteia	Astilbe, Prachtspiere
Boltonia L'Hér.	Boltonia	Boltonia	Boltonie	Boltonie
Borago L.	Bernagie	Borage	Bourrache	Boretsch
Brodiaea Sm.	Brodiaea	Brodiaea	Brodiaea	Brodiaea
Calceolaria L.	Pantoffelplant	Slipperwort, Slipper Flower	Calcéolaire	Pantoffelblume
Callistephus Cass.	Zomeraster	China Aster	Aster, Aster de Chine, Reine-marguerite	Sommeraster
Calluna Salisb.	Struikheide	Heather, Ling	Callune	Besenheide
Canna L.	Bloemriet	Canna	Canna, Balisier	Blumenrohr
Chaenomeles Lindl.	Japanse dwergkwee	Flowering Quince	Cognassier du Japon	Japanische Quitte
Cichorium intybus L. [partim]	Roodlof	Red Chicory	Chicorée rouge	Rote Salatzichorie
Clematis L.	Clematis	Clematis	Clématite	Waldrebe
Colchicum L.	Tijloos	Autumn-crocus	Colchique	Zeitlose
Conanthera Ruiz et Pav.	Conanthera	Conanthera	Conanthera	Conanthera
Coprosma J.R. et G. Forst.	Coprosma	Coprosma	Coprosma	Coprosma
Crocus L.	Crocus	Crocus	Crocus	Krokus

<u>Latine</u>	<u>Nederlands</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Eremurus M.B.	Eremurus	Desert Candle, Foxtail Lily	Eremurus	Steppenkerze
Erica L.	Dopheide	Heath	Bruyère	Glockenheide
Exacum L.	Exacum	Exacum	Exacum	Exacum
Fittonia Oëm.	Fittonia	Fittonia	Fittonia	Fittonia
Fritillaria L.	Fritillaria	Fritillary	Fritillaire	Fritillarie
Gazania Gaertn.	Gazania	Gazania	Gazania	Gazanie
Hosta Tratt.	Hosta	Plantain Lily, Funkia, Hosta	Hémérocalle du Japon, Funkia	Funkie
Hydrangea L.	Hydrangea	Hydrangea	Hortensia	Hortensie
Juanulloa aurantiaca Otto et A. Dietr.	Juanulloa	Juanulloa	Juanulloa	Juanulloa
Limonium Mill.	Statice	Sea Lavender, Statice	Limonium, Statice	Widerstoss, Meerlavendel
Lobelia L.	Lobelia	Lobelia, Cardinal Flower	Lobélie	Lobelie
Lobularia Desv.	Lobularia	Lobularia, Sweet Alyssum	Lobularia, Alysse maritime, Corbeille d'argent	Lobularia, Duftsteinrich
Lonicera L.	Kamperfoelie	Honeysuckle, Lonicera	Lonicéra, Chèvrefeuille	Heckenkirsche, Geissblatt
Matricaria L.	Kamille	Chamomile, Mayweed	Camomille, Matricaire	Kamille, Mutterkraut
Matthiola incana R. Br.	Violier	Common Stock	Giroflée d'hiver	Levkoje
Petunia Juss.	Petunia	Petunia	Pétunia	Petunie
Phlox L.	Vlambloem	Phlox	Phlox	Phlox, Flammen- blume
Primula L.	Sleutelbloem	Auricula, Oxlip, Cowslip, Primrose	Primevère	Primel, Schlüsselblume
Prunus L.	Laurierkers	Cherry-laurel	Laurier-cerise	Kirschlorbeer
Pseudoranthemum Radlk.	Pseudoranthemum	Pseudoranthemum	Pseudoranthemum	Pseudoranthemum
Pyracantha M.J. Roem.	Vuurdoorn	Firethorn	Pyracantha, Buisson ardent	Feuerdorn
Rubus L. sect. Morifera	Braam	Blackberry	Ronce fruitière	Brombeere
Salvia L.	Salie	Sage	Sauge	Salbei
Scabiosa columbaria L.	Duifkruid	Dove Scabious	Scabieuse gorge de pigeon	Taubenskabiose
Senecio L.	Kruiskruid	Groundsel, Ragwort	Séneçon	Kreuzkraut
Solanum pseudocapsicum L.	Sierpeper	Jerusalem Cherry	Pommier d'amour	Korallenstrauch
Tagetes L.	Afrikaan	Marigold	Tagète, Oeillet d'Inde, Rose d'Inde	Sammetblume
Triteleia Dougl. ex Lindl.	Triteleia	Triteleia	Triteleia	Triteleia

<u>Latine</u>	<u>Nederlands</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Verbena L.	Ijzerhard	Vervain	Verveine	Verbene, Eisenkraut
Vigna unguiculata (L.) Walp. ssp. sesquipedalis (L.) Verdc.	Kouseband	Asparagus Bean, Yard Long Bean	Dolique asperge	Spargelbohne, Langbohne
Viola L.	Violtje	Violet, Pansy	Violette, Pensée	Veilchen, Stiefmütterchen
Weigela Thunb.	Weigelia	Diervilla	Weigela'	Weigeliae

Pursuant to Article 2 of the Plant Breeders' Rights Order 1975, the duration of the breeder's right is 20 years for varieties of the above species.

As regards the availability of protection to foreigners, reference is made to the item "Netherlands: Amendment of the Ministerial Decision Concerning Reciprocity" published on page 5 of Plant Variety Protection No. 42.

The list of taxa covered by plant variety protection legislation is given overleaf (the Dutch and Latin names appear in the above-mentioned Order, as amended, whereas the English, French and German common names have been added, without guarantee of concordance, by the Office of the Union).*

* A limited form of protection is also available for varieties of the taxa listed below. Those varieties may be the subject of an entry in the Dutch Register of Varieties under Article 18(2) of the Seeds and Planting Material Act. According to Section 85 of the Act, the effect of such entry is that propagating material of the variety may only be offered for sale, further commercialized or exported by the breeder or by any person who has obtained from the breeder foundation stock suitable for the production of propagating material.

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
1.a. Suikerbiet b. Voederbiet	Beta vulgaris L.	Sugar Beet Fodder Beet	Betterave sucrière Betterave fourra- gère	Zuckerrübe Runkelrübe
2. Mergkool	Brassica oleracea L.	Marrow-stem Kale	Chou moellier	Markkohl
3. Karwij	Carum carvi L.	Caraway	Carvi, Omin des prés	Kümmel
3bis Gekruist raai- gras	Lolium X hybridum Hausskn.	Hybrid Ryegrass	Ray-grass hybride	Bastardweidelgras, Oldenburgisches Weidelgras
4. Luzerne	Medicago sativa L. Medicago X varia Martyn	Lucerne, Alfalfa (Hybrid) Lucerne	Luzerne (cultivée) Luzerne hybride	Blaue Luzerne Bastardluzerne
5. Serradelle	Ornithopus sativus Brot.	Serradella	Serradelle	Serradella
6. Kanariezaad	Phalaris cana- riensis L.	Canary Grass, Canary Seed	Alpiste des Cana- ries, Phalaris	Kanariengras
7. Rogge	Secale cereale L.	Rye	Seigle	Roggen
8. Spurrie	Spergula arvensis L.	Corn Spurry	Spergule des champs, Spargoute, Espargoute, Fourrage de disette	Ackerspörgel, Ackerspark
9. Alexandrijnse klaver	Trifolium alexan- drinum L.	Berseem Clover	Trèfle d'Alexandrie	Alexandrinere Klee
10. Rode klaver	Trifolium pratense L.	Red Clover	Trèfle violet	Rotklee
11. Witte klaver	Trifolium repens L.	White Clover	Trèfle blanc	Weissklee

List of Taxa Covered by Plant Variety Protection Legislation in the Netherlands

Liste des taxons couverts par la législation sur la protection des obtentions végétales aux Pays-Bas

Liste der taxonomischen Einheiten, die in den Niederlanden der Sortenschutzgesetzgebung unterliegen

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Achillea	Achillea L.	Milfoil, Yarrow	Achillée	Schafgarbe
Monnikskap	Aconitum L.	Monkshood	Aconit	Eisenhut
Champignon	Agaricus L.	Mushroom	Champignon de couche	Champignon
Ageratum	Ageratum L.	Ageratum, Flossflower	Ageratum	Leberbalsam
a. Heidestruisgras	Agrostis canina L.	-	Agrostide des bruyères	Heidestraussgras
b. Kruipend struisgras		Velvet Bent	Agrostis des chiens	Hundsstraussgras
Hoog struisgras	Agrostis gigantea Roth	Red Top (Black Bent)	Agrostide blanche, Agrostide géante	Weisses Straussgras
Wit struisgras	Agrostis stolonifera L.	Creeping Bent	Agrostide blanche, Agrostide stloni- fère	Flechtstraussgras
Gewoon struisgras	Agrostis tenuis Sibth.	Brown Top, Common Bent	Agrostide commune	Rotes Straussgras
a. Prei	Allium L.	Leek	Poireau	Porree
b. Sierui		Ornamental Allium	Allium ornamental	Zierlauch
c. Sjalot		Shallot	Echalote	Schalotte
d. Ui		Onion	Oignon	Zwiebel
Incalelie	Alstroemeria L.	Alstroemeria, Herb Lily	Alstroèmère, Lis des Incas	Inkalilie
Anemoon	Anemone L.	Anemone	Anémone	Anemone, Windröschen
Dille	Anethum graveolens L.	Dill	Aneth	Dill
Kangoeroepoot	Anigozanthos Labill.	Kangaroo Paw, Kangaroo's-foot	-	Känguruhblume

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Kervel	<i>Anthriscus cerefolium</i> (L.) Hoffm.	Chervil	Cerfeuil	Kerbel
Leeuwebek	<i>Antirrhinum majus</i> L.	Common Snapdragon	Muflier, Gueule de loup, Gueule de lion	Löwenmaul
Selderij	<i>Apium graveolens</i> L.	Celery, Celeriac	Céleri, Céleri-rave	Sellerie
Aronskelk-achtigen	Araceae Juss.	Plants of the Arum type	Plantes du type Arum	Aronstabartige Pflanzen
Aralia-achtigen	Araliaceae Juss.	Plants of the Aralia type	Plantes du type Aralia	Aralienartige Pflanzen
Frans raaigras	<i>Arrhenatherum elatius</i> (L.) Beauvois ex J.S. et K.B. Presl	Tall Oatgrass, False Oatgrass	Fromental, Avoine élevée	Glatthafer
Asperge	<i>Asparagus officinalis</i> L.	Asparagus	Asperge	Spargel
Aster	<i>Aster</i> L.	Aster, Michaelmas Daisy	Aster	Aster
Astilbe	<i>Astilbe</i> Buch.-Ham. ex D. Don	Astilbe	Astilbe, Hoteia	Astilbe, Prachtspiere
Haver	<i>Avena sativa</i> L.	Oats	Avoine	Hafer
<i>Begonia elatior</i> hybriden	<i>Begonia</i> L.	Elatior Begonia	Bégonia elatior	Elatior-Begonie
a. Kroot	<i>Beta vulgaris</i> L.	Garden Beet, Beetroot	Betterave rouge, Betterave potagère	Rote Rübe
b. Snijbiet		Mangel, Leaf Beet, Swiss Chard	Bette commune, Poirée	Mangold
Boltonia	<i>Boltonia</i> L'Hér.	Boltonia	Boltonie	Boltonie
Bernagie	<i>Borago</i> L.	Borage	Bourrache	Boretsch
Bougainville	<i>Bougainvillea</i> Comm.	Bougainvillea	Bougainvillier	Bougainvillea
Bouvardia	<i>Bouvardia</i> Salisb.	Bouvardia	Bouvardia	Bouvardie
a. Bladkool	<i>Brassica napus</i> L.	Swede Rape	Colza fourrager	Futerraps
b. Koolraap		Swede	Chou-navet, Rutabaga	Kohlrübe
c. Koolzaad		Oilseed Rape	Colza oléagineux	Oelraps

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
a. Bloemkool	Brassica oleracea L.	Cauliflower	Chou-fleur	Blumenkohl
b. Boerenkool		Curly Kale	Chou frisé	Grünkohl
c. Broccoli		Sprouting Broccoli, Calabrese	Brocoli	Brokkoli, Spargelkohl, Sprossenbrokkoli
d. Koolrabi		Kohlrabi	Chou-rave	Kohlrabi
e. Rode kool		Red Cabbage	Chou rouge	Rotkohl
f. Savooiekool		Savoy Cabbage	Chou de Milan	Wirsing
g. Spruitkool		Brussels Sprouts	Chou de Bruxelles	Rosenkohl
h. Witte kool		White Cabbage	Chou cabus	Weisskohl
a. Raap	Brassica rapa L.	(Vegetable) Turnip	Navet (potager)	Mairübe, Herbstrübe
b. Stoppelknol		(Fodder) Turnip	Navet (fourrager)	Stoppelrübe
Brodiaea	Brodiaea Sm.	Brodiaea	Brodiaea	Brodiaea
Bromelia-achtigen	Bromeliaceae Juss.: Aechmea Ruiz et Pav., Cryptanthus Klotzsch ex O. et D., Guzmania Ruiz et Pav., Neoregelia L.B. Sm., Tillandsia L., Vriesea Lindl.	Plants of the Bromelia type	Plantes du type Bromelia	Bromelia-artige Pflanzen
Pantoffelplant	Calceolaria L.	Slipperwort, Slipper Flower	Calcéolaire	Pantoffelblume
Zomeraster	Callistephus Cass.	China Aster	Aster, Aster de Chine, Reine-marguerite	Sommeraster
Struikheide	Calluna Salisb.	Heather, Ling	Callune	Besenheide
Bloemriet	Canna L.	Canna	Canna, Balisier	Blumenrohr
a. Paprika	Capsicum annuum L.	Sweet Pepper	Poivron	Paprika
b. Spaanse peper		Chili	Piment	Spanischer Pfeffer
Japanse dwergkwee	Chaenomeles Lindl.	Flowering Quince	Cognassier du Japon	Japanische Quitte
Chrysant	Chrysanthemum L. sensu lato	Chrysanthemum	Chrysanthème	Chrysantheme
Andijvie	Cichorium endivia L.	Endive	Chicorée frisée, Scarole	Winterendivie

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
a. Witlof	Cichorium intybus L.	Chicory	Chicorée, Endive	Wurzelzichorie, Salatzichorie
b. Roodlof		Red Chicory	Chicorée rouge	Rote Salatzichorie
Clematis	Clematis L.	Clematis	Clématite	Waldrebe
Tijloos	Colchicum L.	Autumn-crocus	Colchique	Zeitlose
Conanthera	Conanthera Ruiz et Pav.	Conanthera	Conanthera	Conanthera
Coprosma	Coprosma J.R. et G. Forst.	Coprosma	Coprosma	Coprosma
Cotoneaster	Cotoneaster Med.	Cotoneaster	Cotoneaster	Cotoneaster
Montbretia	Crocsmia Planch.	Crocsmia	Crocsmia	Crocsmia
Crocus	Crocus L.	Crocus	Crocus	Krokus
Meloen	Cucumis melo L.	Melon	Melon	Melone
a. Augurk	Cucumis sativus L.	Gherkin	Cornichon	Essiggurke
b. Komkommer		Cucumber	Concombre	Salatgurke
Cyclamen	Cyclamen L.	Cyclamen	Cyclamen	Alpenveilchen
Kamgras	Cynosurus cristatus L.	Crested Dog's-tail	Crételle	Kammgras
Kropaar	Dactylis glomerata L.	Cocksfoot, Orchard Grass	Dactyle	Knaulgras
Dahlia	Dahlia Cav.	Dahlia	Dahlia	Dahlie
Wortel	Daucus carota L.	Carrot	Carotte	Möhre
Ridderspoor	Delphinium L.	Delphinium, Larkspur	Pied d'alouette	Rittersporn
Anjer	Dianthus L.	Carnation	Oeillet	Nelke
Eremurus	Eremurus M.B.	Desert Candle, Foxtail Lily	Eremurus	Steppenkerze
Dopheide	Erica L.	Heath	Bruyère	Glockenheide
Kruisdistel	Eryngium L.	Eryngo	Panicaut	Edeldistel, Mannstreu

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Kardinaalshoed	Euonymus L.	Spindle Tree	Fusain	Pfaffenhütchen, Spindelstrauch
Euphorbia	Euphorbia fulgens Karw.	Euphorbia fulgens	Euphorbia fulgens	Korallenranke
Christusdoorn	Euphorbia milii Desm.	Christ's Thorn, Crown of Thorns	Epine du Christ	Christusdorn
Poinsettia	Euphorbia pulcherrima Willd. ex Klotzsch	Poinsettia	Poinsettia	Poinsettie, Weihnachtsstern
Exacum	Exacum L.	Exacum	Exacum	Exacum
Rietzwenkgras	Festuca arundinacea Schreb.	Tall Fescue	Fétuque élevée	Rohrschwingel
a. Hardzwenkgras	Festuca ovina L. sensu	Hard Fescue	Fétuque durette	Härtlicher Schwingel
b. Schapegras	lato	Sheep's Fescue	Fétuque ovine, Fétuque des moutons, Poil de chien	Schafschwingel
Beemdlangbloem	Festuca pratensis Huds.	Meadow Fescue	Fétuque des prés	Wiesenschwingel
Roozwenkgras	Festuca rubra L.	Red Fescue, Creeping Fescue	Fétuque rouge	Rotschwingel
Waringin	Ficus benamina L	-	-	-
Fittonia	Fittonia Coëm.	Fittonia	Fittonia	Fittonia
Venkel	Foeniculum vulgare P. Mill.	Fennel	Fenouil	Fenchel
Aardbei	Fragaria L.	Strawberry	Fraisier	Erdbeere
Es	Fraxinus excelsior L.	Common Ash	Frêne élevé	Gemeine Esche
Freesia	Freesia Klatt	Freesia	Freesia	Freesie
Fritillaria	Fritillaria L.	Fritillary	Fritillaire	Fritillarie
Gazania	Gazania Gaertn.	Gazania	Gazania	Gazanie
Gentiaan	Gentiana L.	Gentian	Gentiane	Enzian
Gerbera	Gerbera Cass.	Gerbera	Gerbera	Gerbera
Gloxinia-achtigen	Gesneriaceae Dum.	Plants of the Gloxinia type	Plantes du type Gloxinia	Gloxinia-artige Pflanzen

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Gladiool	Gladiolus L.	Gladiolus	Glaïeul	Gladiole
Gloriosa	Gloriosa L.	Gloriosa	Gloriosa	Gloriosa
Gipskruid	Gypsophila L.	Gyp, Gypsophila, Baby's Breath	Gypsophile	Gipskraut, Schleierkraut
Haemanthus	Haemanthus L.	Haemanthus, Blood Lily	Haemanthus	Blutblume
Kerstroos	Helleborus L.	Hellebore	Hellébore	Nieswurz
Hibiscus	Hibiscus L.	Rose-mallow	Hibiscus	Eibisch
Amaryllis	Hippeastrum Herb.	Amaryllis	Amaryllis	Ritterstern, Amaryllis
Gerst	Hordeum vulgare L. sensu lato	Barley	Orge	Gerste
Hosta	Hosta Tratt.	Plantain Lily, Funkia, Hosta	Hémérocalle du Japon, Funkia	Funkie
Hyacint	Hyacinthus orientalis L.	Common Hyacinth	Jacinthe	Hyazinthe
Hydrangea	Hydrangea L.	Hydrangea	Hortensia	Hortensie
Balsemien	Impatiens L.	Balsam, Busy Lizzie, Touch-me-not	Balsamine, Impatiente	Springkraut, Balsamine
Hulst	Ilex L.	Holly	Houx	Ilex, Stechpalme
Iris	Iris L.	Iris	Iris	Iris, Schwertlilie
Ixia	Ixia L.	African Cornlily, Ixia	Ixia	Ixia, Klebschwertel
Juanulloo	Juanulloo aurantiaca Otto et A. Dietr.	Juanulloo	Juanulloo	Juanulloo
Kalanchoë	Kalanchoë Adans.	Kalanchoë	Kalanchoë	Kalanchoë
Lachenalia	Lachenalia Jacq. f.	Lachenalia, Cape Cowslip	Lachenalia, Coucou du Cap	Lachenalia

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Sla	Lactuca sativa L.	Lettuce	Laitue	Salat
Tuinkers	Lepidium sativum L.	Cress	Cresson alénois	Gartenkresse
Leptospermum	Leptospermum J.R. et G. Forst.	Leptospermum	Leptospermum	Südseemyrte
Leucocoryne	Leucocoryne Lindl.	Leucocoryne	Leucocoryne	Leucocoryne
Leucothoë	Leucothoë D. Don	Leucothoë	Leucothoë	Traubenheide
Liatris	Liatris Gaertn. ex Schreb.	Liatris, Blazing Star, Gayfeather	Liatris	Prachtscharte
Lelie	Lilium L.	Lily	Lis	Lilie
Statice	Limonium Mill.	Sea Lavender, Statice	Limonium, Statice	Widerstoss, Meerlavendel
Vlas	Linum usitatissimum L.	Flax, Linseed	Lin	Lein
Lobelia	Lobelia L.	Lobelia, Cardinal Flower	Lobélie	Lobelia
Lobularia	Lobularia Desv.	Lobularia, Sweet Alyssum	Lobularia, Alysse maritime, Corbeille d'argent	Lobularia, Duftsteinrich
a. Italiaans raaigras	Lolium multiflorum Lam.	Italian Ryegrass	Ray-grass d'Italie	Italienisches Raygras
b. Westerwolds raaigras		Westerwold Ryegrass	Ray-grass de Westerwold	Welsches Weidelgras
Engels raaigras	Lolium perenne L.	Perennial Ryegrass	Ray-grass anglais	Deutsches Weidelgras
Kamperfoelie	Lonicera L.	Honeysuckle, Lonicera	Lonicéra, Chèvrefeuille	Heckenkirsche, Geissblatt
Witte lupine	Lupinus albus L.	White Lupin	Lupin blanc	Weisslupine
Blauwe lupine	Lupinus angustifolius L.	Blue Lupin	Lupin bleu	Blaue Lupine
Gele lupine	Lupinus luteus L.	Yellow Lupin	Lupin jaune	Gelbe Lupine
Tomaat	Lycopersicon lycopersicum (L.) Karsten ex Farwell	Tomato	Tomate	Tomate

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Mahonia	Mahonia Nutt.	Mahonia	Mahonia	Mahonie
Appel, voor zover geen siergewas	Malus Mill.	Apple, excluding or- namental varieties	Pommier, sauf varié- tés ornementales	Apfel, ausser Ziersorten
Maranta-achtigen	Marantaceae Petersen	Plants of the Maranta type	Plantes du type Maranta	Maranta-artige Pflanzen
Kamille	Matricaria L.	Chamomile, Mayweed	Camomille, Matricaire	Kamille, Mutterkraut
Violier	Matthiola incana R. Br.	Common Stock	Giroflée d'hiver	Levkoje
Narcis	Narcissus L.	Narcissus, Daffodil Jonquil	Narcisse, Jonquille	Narzisse
Nerine	Nerine Herb.	Nerine	Nerine	Nerine
Teunisbloem	Oenothera L.	Oenothera, Evening Primrose	Onagre	Nachtkerze
Orchidee-achtigen	Orchidaceae Juss.	Plants of the Orchid type	Plantes du type Orchidée	Orchideeenartige Pflanzen
Blauwmaanzaad	Papaver somniferum L.	Opium Poppy	Oeillette, Pavot	Mohn
Geranium	Pelargonium L'Hér. ex Ait.	Geranium, Pelargonium, Stork's Bill	Géranium, Pelargonium	Pelargonie
Peterselie	Petroselinum crispum (Mill.) Nyman ex A.W. Hill	Parsley	Persil	Petersilie
Petunia	Petunia Juss.	Petunia	Pétunia	Petunie
Pronkboon	Phaseolus coccineus L.	Runner Bean, Kidney Bean	Haricot d'Espagne	Prunkbohne
Boon	Phaseolus vulgaris L.	French Bean	Haricot	Gartenbohne
Kleine timothee	Phleum bertolonii DC.	Timothy	Fléole diploïde, petite fléole	Zwiebellieschgras
Timothee	Phleum pratense L.	Timothy	Fléole des prés	Wiesenlieschgras
Vlambloem	Phlox L.	Phlox	Phlox	Phlox, Flammenblume

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
a. Kapucijner b. Erwt c. Peul	Pisum sativum L. sensu lato	Brown Marrow Fat Pea Pea Sugar Pea	Pois à écosser Pois Pois mangetout	Schalerbse Erbse Zuckererbse
Straatgras	Poa annua L.	Annual Meadow-grass	Pâturin annuel	Einjähriges Rispengras
Plathalmig beemdgras	Poa compressa L.	Canada Bluegrass, Flattened Meadow- grass	Pâturin comprimé	Flaches Rispengras
Bosbeemdgras	Poa nemoralis L.	Wood Meadow-grass	Pâturin des bois	Hainrispengras
Moerasbeemdgras	Poa palustris L.	Swamp Meadow-grass	Pâturin des marais	Sumpfrispengras
Velabeemdgras	Poa pratensis L.	Kentucky Bluegrass, Smooth Stalked Meadow-grass	Pâturin des prés	Wiesenrispengras
Ruwbeemdgras	Poa trivialis L.	Rough Stalked Meadow-grass	Pâturin commun	Gemeines Rispengras
Populier	Populus L.	Poplar	Peuplier	Pappel
Potentilla	Potentilla L.	Cinquefoil	Potentille	Fingerkraut
Sleutelbloem	Primula L.	Auricula, Oxlip, Cowslip, Primrose	Primevère	Primel, Schlüsselblume
a. Kers, voor zover geen siergewas b. Pruim, voor zover geen siergewas c. Laurierkers	Prunus L.	Cherry, excluding ornamental varieties Plum, excluding or- namental varieties Cherry-laurel	Cerisier, sauf va- riétés ornementales Prunier, sauf varié- tés ornementales Laurier-cerise	Kirsche, ausser Ziersorten Pflaume, ausser Ziersorten Kirschlorbeer
Pseudoranthemum	Pseuderanthemum Radlk.	Pseuderanthemum	Pseuderanthemum	Pseuderanthemum
Vuurdoorn	Pyracantha M.J. Roem.	Firethorn	Pyracantha, Buisson ardent	Feuerdorn
Peer	Pyrus communis L.	Pear	Poirier	Birne
a. Blaaramenas	Raphanus sativus L.	Fodder Radish	Radis oléifère, Radis chinois	Oelrettich
b. Radijs		Radish	Radis de tous les mois	Radieschen
c. Ramenas		Black Radish	Radis d'été, d'au- tomne et d'hiver	Rettich

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Rabarber	Rheum rhabarbarum L.	Rhubarb	Rhubarbe	Krauser Rhabarber
Lidacactus	Rhipsalidopsis Britt. et Rose (incl. Epiphyllopsis Berger), Schlumbergera Lem., Zygocactus K. Schum	Cactus with jointed stems [Easter and Christmas Cactuses]	Cactus à articles [cactus de Pâques et de Noël]	Gliederkaktus [Oster- und Weihnachtskaktus]
a. Azalea b. Rododendron	Rhododendron L.	Azalea Rhododendron	Azalée Rhododendron	Azalee Rhododendron
Bes, voor zover geen siergewas	Ribes L.	Currants, Goose- berry, excluding ornamental varieties	Cassis, Groseil- liers, sauf variétés ornementales	Johannisbeeren, Stachelbeere, ausser Ziersorten
Acacia	Robinia pseudoacacia L.	False Acacia	Robinier faux-acacia	Gemeine Robinie, Scheinakazie
Roos	Rosa L.	Rose	Rosier	Rose
Framboos	Rubus idaeus L.	Raspberry	Framboisier	Himbeere
Braam	Rubus L. sect. Morifera	Blackberry	Ronce fruitière	Brombeere
wilg	Salix L.	Willow	Saule	Weide
Salie	Salvia L.	Sage	Sauge	Salbei
Duifkruid	Scabiosa columbaria L.	Dove Scabious	Scabieuse gorge de pigeon	Taubenskabiose
Schefflera	Schefflera J.R. et G. Forst.	Schefflera	Schefflera	Schefflera
Schorseneer	Scorzonera hispanica L.	Black Salsify	Scorsonère, Salsifis noir	Schwarzwurzel
Kruiskruid	Senecio L.	Groundsel, Ragwort	Séneçon	Kreuzkraut
Gele mosterd	Sinapis alba L.	White Mustard	Moutarde blanche	Weisser Senf
Aubergine	Solanum melongena L.	Eggplant, Aubergine	Aubergine	Eierfrucht, Aubergine
Sierpeper	Solanum pseudocapsicum L.	Jerusalem Cherry	Pommier d'amour	Korallenstrauch
Aardappel	Solanum tuberosum L.	Potato	Pomme de terre	Kartoffel

<u>Nederlands</u>	<u>Latine</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Guldenroede	Solidago L.	Golden Rod	Verge d'or	Goldrute
Spinazie	Spinacia oleracea L.	Spinach	Epinard	Spinat
Sering	Syringa L.	Lilac	Lilas	Flieder
Afrikaan	Tagetes L.	Marigold	Tagète, Oeillet d'Inde, Rose d'Inde	Sammetblume
Triteleia	Triteleia Dougl. ex Lindl.	Triteleia	Triteleia	Triteleia
Tarwe	Triticum aestivum L. emend. Fiori et Paoletti; Triticum durum Desfontaines	Wheat	Blé	Weizen
Tulp	Tulipa L.	Tulip	Tulipe	Tulpe
Iep	Ulmus L.	Elm	Orme	Ulme
Velasla	Valerianella locusta (L.) Laterrade	Cornsalad, Lamb's Lettuce	Mâche, Doucette	Feldsalat
Ijzerhard	Verbena L.	Vervain	Verveine	Verbene, Eisenkraut
a. Tuinboon	Vicia faba L.	Broad Bean, Horse Bean	Fève	Dicke Bohne (Puffbohne)
b. Veldboon		Field Bean, Tick Bean	Féverole	Ackerbohne
Voederwikke	Vicia sativa L.	Common Vetch	Vesce commune	Saatwicke
Kouseband	Vigna unguiculata (L.) Walp. ssp. sesquipedalis (L.) Verdc.	Asparagus Bean, Yard Long Bean	Dolique asperge	Spargelbohne, Langbohne
Violtje	Viola L.	Violet, Pansy	Violette, Pensée	Veilchen, Stiefmütterchen
Wijnstok	Vitis L.	Vine	Vigne	Rebe
Weigelia	Weigela Thunb.	Diervilla	Weigela	Weigelia
Mais	Zea mays L.	Maize	Maïs	Mais

NEWSLETTER
MEMBER STATES

France: Modification of Fees

By virtue of the Order of December 19, 1986 (Journal officiel of January 20, 1987) on the Tariff of Fees Charged in Respect of Plant Variety Protection, a new tariff of fees has been introduced with effect from November 1, 1987. The main fees are now as follows (in French francs).

Type of Fee	Crops	A	B	C
1. <u>Fees charged in connection with the issuing of a new plant variety certificate</u>				
- at the filing of the application		359	359	307
- at the issuing of the certificate		256	256	205
- where the denomination does not appear in the application		256	256	256
- change of denomination		205	205	205
- priority claim		205	205	205
2. <u>Fees for the examination of the application</u>				
- in case of test growings: per year		2390	2390	1330
- in the case of streamlined tests*		795	795	795
- where no test growings are made in France: amount of the examination fee, as charged by the foreign service,** and		140	140	140
3. <u>Annual maintenance fee</u>				
- First annuity		256	154	103
- Second annuity		359	205	103
- Third annuity		461	256	205
- Fourth annuity		615	307	205
- Fifth annuity		769	410	307
- Subsequent annuities		923	615	307

A: Agricultural crops except flax and rice, horticultural and vegetable crops, ornamental plants mainly grown for cut flowers

B: Fruit and forest trees, berry and soft fruit shrubs, flax, rice, vine

C: Ornamental plants and shrubs grown only for the garden or in pots, lavender, thyme

* The reduced fee of 795 francs is charged in the case where the Committee for the Protection of New Plant Varieties decides to have recourse to a test procedure limited to a list of characteristics established in advance, species by species, for varieties of mutational origin.

** That fee corresponds either to the examination fee of the examining authority if it has no examination results available for the variety or to a purchase fee for results already available. The fees mentioned in the table above are also due in the event of withdrawal of the application if the procedure for requesting examination results from a foreign authority has already been initiated.

AUSTRALIA

Plant Variety Rights Act 1987*

Number 2 of 1987

TABLE OF PROVISIONS

<u>Part I - Preliminary</u>		Division 3 - Grant of Plant Variety Rights	
<u>Section</u>		<u>Section</u>	
1. Short Title		26. Grant of Plant Variety Rights	
2. Commencement		27. Entry of Grant of Plant Variety Rights	
3. Interpretation		28. Notice of Grant of Plant Variety Rights	
4. Act to Bind Crown		29. Effect of Grant on Certain Persons	
5. Extent of Act			
		Division 4 - Miscellaneous	
<u>Part II - Administration</u>		30. Nature of Plant Variety Rights	
6. Registrar of Plant Variety Rights		31. Assignment of Plant Variety Rights	
7. Delegation		32. Duration of Plant Variety Rights	
8. Certain Persons not to Acquire Plant Variety Rights		33. Supply of Reproductive Material, etc.	
9. Register of Plant Variety Rights		34. Plant Variety Rights Subject to Conditions	
10. Genetic Resources Centres		35. Revocation of Plant Variety Rights	
11. Public Notice		36. Surrender of Plant Variety Rights	
		37. Entry of Particulars of Revocation, etc.	
<u>Part III - Plant Variety Rights</u>		38. Plant Variety Rights not to Restrict Sales for Food, Fibre, Fuel, etc.	
Division 1 - Preliminary		39. Protection of Public Interest in New Plant Varieties	
12. Plant Variety Rights		40. Infringement of Plant Variety Rights	
13. Plant Variety Rights to be Granted in Relation to Certain Varieties Only		41. Actions for Infringement of Plant Variety Rights	
14. Plant Variety Rights not to be Granted in Respect of Varieties Previously Sold		42. Declaration as to Non-Infringement	
		43. Jurisdiction of Court	
Division 2 - Applications for Plant Variety Rights		<u>Part IV - Plant Variety Rights Advisory Committee</u>	
15. Applications for Plant Variety Rights		44. Establishment of Advisory Committee	
16. Form of Application		45. Membership of Advisory Committee	
17. Names of New Plant Varieties		46. Remuneration and Allowances	
18. Lodging of Applications		47. Disclosure of Interests	
19. Variation of Application		48. Meetings	
20. Objections to Grant of Plant Variety Rights		<u>Part V - Miscellaneous</u>	
21. Inspection of Applications and Objections		49. Inspection of Register	
22. Provisional Protection		50. Agents May Act in Plant Variety Rights Matters	
23. Characteristics of Plant Varieties Originated Outside Australia		51. Service of Documents	
24. Test Growing of Plant Varieties		52. Offences	
25. Withdrawal of Application		53. Applications for Review	
		54. Statement to Accompany Notice of Decisions	
		55. Regulations	

* 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);

* Not reproduced here.

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

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

"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.

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

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

Section 7**Delegation**

- (1) The Secretary may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Secretary, delegate to the Registrar or to another officer of the Department all or any of the powers of the Secretary under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Secretary.
- (3) A delegation under this section does not prevent the exercise of a power by the Secretary.

Section 8**Certain Persons not to Acquire Plant Variety Rights**

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

Penalty: \$2,000

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

Section 9**Register of Plant Variety Rights**

- (1) The Registrar shall keep, at a place approved by the Secretary, a register, to be known as the Register of Plant Variety Rights, in which shall be entered particulars required to be entered by this Act or the regulations.
- (2) The Registrar shall cause a copy of, or copies of, the Register to be kept and maintained in each State or Territory (other than the State or Territory where the place at which the Register is required to be kept is located) at the principal office of the Department in that State or Territory and at such other place or places (if any) in that State or Territory as the Secretary may direct.

Section 10

Genetic Resources Centres

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

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

Section 11

Public Notice

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

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

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

(4) The Secretary--

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

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

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

(6) The Secretary--

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

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

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

Part III**PLANT VARIETY RIGHTS****Division I - Preliminary****Section 12****Plant Variety Rights**

- (1) Plant variety rights, in respect of a new plant variety, are--
- (a) the exclusive right to sell, including the right to license other persons to sell, plants of that variety;
 - (b) the exclusive right to sell, including the right to license other persons to sell, reproductive material of plants of that variety;
 - (c) the exclusive right to produce, including the right to license other persons to produce, plants of that variety for sale; and
 - (d) the exclusive right to produce, including the right to license other persons to produce, reproductive material of plants of that variety for sale.
- (2) Plant variety rights in respect of a plant variety are subject to conditions imposed in respect of those rights by section 33 or under section 34.

Section 13**Plant Variety Rights to be Granted
in Relation to Certain Varieties Only**

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

Section 14**Plant Variety Rights not to be Granted
in Respect of Varieties Previously Sold**

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

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

Division 2 - Applications for Plant Variety Rights

Section 15

Application for Plant Variety Rights

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

Section 16

Form of Application

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

- (a) the name of the person making the application;
- (b) where the applicant is the breeder of the variety, a statement that the applicant is the breeder of the variety;
- (c) where the applicant is not the breeder of the variety, the name and address of the breeder from whom the applicant derived the right to make an application and particulars of all relevant assignments and transmissions of the right to make the relevant application;
- (d) a description, or a description and photograph, of a plant of the variety sufficient to identify plants of that variety;
- (e) particulars of the characteristics that distinguish the variety from other varieties;
- (f) particulars of the manner in which the variety was originated;
- (g) the name of the variety;
- (h) particulars of any application for, or approval of a grant of, rights of any kind in respect of the variety in any other country;
- (j) particulars of any tests carried out to establish that the variety is homogeneous and stable (including particulars of any cycle of reproduction or multiplication for the purposes of paragraph 3(2)(b));

- (k) in the case of a plant variety originated outside Australia, particulars of any test growing of that variety carried out for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic;
- (m) an address in Australia for the service of documents on the applicant for the purposes of this Act; and
- (n) such other particulars (if any) as are prescribed.

Section 17

Names of New Plant Varieties

- (1) The name of a new plant variety shall consist of a word or words (which may be an invented word or words) with or without the addition of--
 - (a) a letter or letters not constituting a word;
 - (b) a figure or figures; or
 - (c) both a letter or letters not constituting a word and a figure or figures.
- (2) A new plant variety shall not have--
 - (a) a name the use of which would be likely to deceive or cause confusion, including a name that is the same as, or is likely to be mistaken for, the name of another plant variety;
 - (b) a name the use of which would be contrary to law;
 - (c) a name that comprises or contains scandalous or offensive matter; or
 - (d) a name, or name of a kind, that is, at the time when the application is made, prohibited by the regulations.
- (3) The name of a new plant variety in respect of which an application is made shall comply with any recommendations of the International Code of Nomenclature for Cultivated Plants, as in force when the application is made, formulated and adopted by the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences that are accepted by Australia.
- (4) The name of a new plant variety in respect of which an application is made shall not consist of, or include--
 - (a) the name of a natural person living at the time of the application, other than a person who has given written consent to the name of the plant variety;
 - (b) the name of a natural person who died within the period of ten years immediately preceding the application, other than a person who has given, or whose legal personal representative has given, written consent to the name of the plant variety; or
 - (c) the name of a corporation, organisation or institution, other than a corporation, organisation or institution that has given its written consent to the name of the plant variety.

Section 18

Lodging of Applications

- (1) Where an application is lodged in respect of a new plant variety--
 - (a) if the Secretary is satisfied that--
 - (i) the application complies with the requirement of section 16; and
 - (ii) the name of the variety complies with section 17,the Secretary shall accept the application; or
 - (b) if the Secretary is not so satisfied--the Secretary shall reject the application.

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

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

Section 19

Variation of Application

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

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

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

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

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

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

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

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

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

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

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

Section 20

Objections to Grant of Plant Variety Rights

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

(a) that the commercial interests of the person would be affected by the grant of those rights to the applicant; and

(b) that the Secretary cannot be satisfied, in relation to that variety, of a matter referred to in paragraph 26(1)(a) (other than a matter referred to in sub-paragraph 26(1)(a)(viii)),

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

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

Section 21

Inspection of Applications and Objections

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

Section 22

Provisional Protection

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

(a) when the application is disposed of; or

(b) if the Secretary has given the applicant a notice under sub-section

(2)--at the expiration of the prescribed period after the notice is given, whichever occurs first.

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

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

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

(i) scientific purposes;

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

(iii) another prescribed purpose; or

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

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

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

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

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

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

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

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

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

Section 23

Characteristics of Plant Varieties Originated Outside Australia

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

(a) a test growing of the variety carried out in Australia has demonstrated that the variety has that characteristic;

(b) the Secretary is satisfied that--

(i) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic; and

(ii) the test growing of the variety carried out at that place is equivalent to a test growing of the variety carried out in Australia; or

(c) the Secretary is satisfied that--

(i) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic;

(ii) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and

- (iii) if a test growing of the variety in Australia that would be sufficient to demonstrate whether the variety has that characteristic were to be carried out, the test growing would take longer than two years.

Section 24

Test Growing of Plant Varieties

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

- (a) for the purpose of determining whether the plant variety is homogeneous or stable; or

- (b) for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic,

the Secretary shall give written notice to the applicant--

- (c) stating that the Secretary considers that a test growing, or a further test growing, as the case may be, of the variety is necessary;

- (d) specifying the purpose of the test growing; and

- (e) requiring the applicant--

- (i) to supply the Secretary with sufficient plants, or sufficient reproductive material of plants, of the variety, as the case requires, and with any necessary information, to enable the variety to be test grown for the purpose so specified; or

- (ii) to have the variety test grown for the purpose so specified and to give the Secretary a copy of the records of observations made during the test growing,

whichever the Secretary deems appropriate,

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

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

Section 25

Withdrawal of Application

(1) An application may be withdrawn by the applicant.

(2) Where an application is withdrawn after public notice of the application has been given, the Secretary shall forthwith give public notice of that withdrawal.

Division 3 - Grant of Plant Variety Rights

Section 26

Grant of Plant Variety Rights

(1) Subject to this section, where an application for plant variety rights in respect of a plant variety is accepted--

- (a) if the Secretary is satisfied that--

- (i) there is such a plant variety;

- (ii) the plant variety is a new plant variety;
 - (iii) the applicant is entitled to make the application;
 - (iv) the grant of those rights to the applicant is not prohibited by this Act;
 - (v) those rights have not been granted to another person;
 - (vi) there has been no earlier application for those rights that has not been withdrawn or otherwise disposed of;
 - (vii) the name of the variety would comply with section 17; and
 - (viii) all fees payable under this Act in relation to the application and the grant have been paid,
- the Secretary shall grant those rights to the applicant; or
- (b) if the Secretary is not so satisfied--the Secretary shall refuse to grant those rights to the applicant.

(2) The Secretary shall not grant, or refuse to grant, plant variety rights in respect of a plant variety unless a period of at least six months has elapsed since the giving of public notice of the application, or, if the application has been varied in pursuance of a request under sub-section 19(1) in a manner that the Secretary considers to be significant, a period of six months has elapsed since the giving of public notice of particulars of the variation, or of the last such variation, as the case requires.

(3) The Secretary shall not refuse to grant plant variety rights unless the Secretary has given the applicant for the rights a reasonable opportunity to make a written submission to the Secretary in relation to the application.

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

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

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

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

Section 27

Entry of Grant of Plant Variety Rights

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

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

Section 28

Notice of Grant of Plant Variety Rights

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

Section 29

Effect of Grant on Certain Persons

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

(2) Where--

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

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

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

Division 4 - Miscellaneous

Section 30

Nature of Plant Variety Rights

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

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

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

Section 31

Assignment of Plant Variety Rights

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

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

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

(a) give written notice to the claimant--

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

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

- (i) setting out particulars of the information given by the claimant;
- (ii) stating that the Registrar is not so satisfied; and
- (iii) setting out the grounds on which the Registrar is not so satisfied.

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

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

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

Section 32

Duration of Plant Variety Rights

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

Section 33

Supply of Reproductive Material, etc.

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

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

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

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

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

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

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

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

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

Section 34

Plant Variety Rights Subject to Conditions

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

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

- (a) the Secretary shall give to the grantee a copy of the instrument setting out those conditions;
- (b) the Secretary shall give public notice of those conditions; and
- (c) the Registrar shall enter particulars of those conditions in the Register.

Section 35

Revocation of Plant Variety Rights

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

- (a) The Secretary becomes satisfied that the plant variety was not a new plant variety or that facts exist which, if known before the grant of those rights, would have resulted in the refusal of the grant; or
- (b) the grantee has failed to pay a prescribed fee payable in respect of those rights within one month after having been given notice, as prescribed, that that fee has become payable.

(2) The Secretary may revoke the plant variety rights in respect of a plant variety if the Secretary is satisfied that--

(a) the grantee has failed to comply, in relation to those rights, with the condition imposed by section 33 or with any condition imposed under section 34; or

(b) a person to whom those rights have been assigned or transmitted has failed to comply with section 31.

(3) Where the Secretary revokes plant variety rights in respect of a plant variety in accordance with this section, the Secretary shall, within seven days after the decision was taken, give written notice of the revocation to the grantee setting out the grounds for the revocation.

(4) The Secretary shall not revoke plant variety rights in accordance with this section unless and until the Secretary has given the grantee and any person to whom, the Secretary believes, those rights have been assigned or transmitted particulars of the grounds for the proposed revocation and given the grantee and any such person a reasonable opportunity to make a written submission to the Secretary in relation to the proposed revocation.

(5) The revocation of plant variety rights in respect of a plant variety in accordance with this section takes effect--

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

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

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

(7) Any person whose interests are affected by the grant of plant variety rights in respect of a plant variety may apply to the Secretary for the revocation of those rights in accordance with this section.

(8) The Secretary shall consider any application made under sub-section (7) for the revocation of plant variety rights and, if the Secretary decides not to revoke the rights, the Secretary shall, within seven days after the decision was taken, give written notice of the decision to the applicant setting out the grounds for the decision.

Section 36

Surrender of Plant Variety Rights

(1) Subject to sub-section (2), a grantee of plant variety rights may at any time, by giving notice to the Registrar, offer to surrender those rights, and the Registrar, after giving public notice of the offer and giving all parties interested an opportunity to make a written submission to the Registrar in relation to the offer, may, if the Registrar thinks fit, accept the offer and revoke those rights.

(2) Where an action or proceeding under section 41 or 42 in respect of plant variety rights is pending in a court, the Registrar shall not accept an offer for the surrender of, or revoke, those rights, except by leave of the court or by consent of the parties to the action or proceeding.

Section 37

Entry of Particulars of Revocation, etc.

Where--

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

then--

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

Section 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 COMMITTEE

Section 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.

GENERAL STUDIES

Industrial Property Rights and Biotechnology*Dirk Böringer****1. Biological Innovations Qualifying for Plant Variety Protection****1.1 Subject Matter of Protection**

The subject matter of plant variety protection according to the Plant Variety Protection Law is constituted by plant varieties, that is to say not "inventions" of plant varieties within the meaning of patent law, but the varieties as such. The difference is as follows:

An invention represents an instruction for using forces or materials for the direct achievement of a causally perceivable result. An invention mostly concerns a technical teaching for the manufacture of a device or a substance, for its utilization or for the application of a process. An invention consists of the definition of a problem and its solution in such a way that a man of the art may reproduce that solution.

A plant variety, within the meaning of plant variety protection law, is constituted by a group of living botanical individuals (plants or parts of plants) which are characterized by a common expression of certain characteristics and which, as a result of their biological capability to replicate, can be used continuously.

That which is to be protected is therefore not a teaching for obtaining such plants, i.e., the concept of the breeding process, but its result, the "variety" as an economic asset, thus constituting genuine protection of an object.

1.2 Requirements for Protection

The biological particularities of the subject matter of protection mean that the requirements for protection must be suitably adapted, particularly the following:

1.2.1 The botanical group that is to be protected must be botanically distinguishable in the expressions of the characteristics of its individuals from other groups, thus requiring special technical definitions in view of the frequently imprecise frontiers in the field of living matter.

1.2.2 The single individuals within the group must be sufficiently alike in the expression of their characteristics, i.e., the variety must be homogeneous.

1.2.3 The individuals resulting from the successive replication cycles (propagation) must correspond in each case to those produced in the preceding replication cycles, i.e., the variety must be stable.

1.2.4 Since the genetic potential for the expression of given characteristics and properties inserted in the material is rarely visible, the variety must be designated by means of a variety denomination with which the user will associate its characteristics and properties and thus be able to identify the variety.

The above-mentioned requirements are examined by the Federal Office of Plant Varieties, as the authority that grants protection, by means of technical tests (growing and laboratory). There is no requirement for:

* Paper presented at the Hearing Before the Legal Committee of the German Bundestag on February 3, 1988. It sets out the position of the Federal Office of Plant Varieties on the Topic Industrial Property for Advanced Biotechnological Processes and Products.

** President, Federal Office of Plant Varieties of the Federal Republic of Germany

1.2.5 Inventive step. Progress in breeding consists, also as far as economic aspects are concerned, not only in the fact that new characteristics or new expressions of characteristics (for that species) are produced within a variety, but also that expressions that are in fact already known are brought together within one variety. In such a case, the breeding progress is particularly significant where, for biological reasons, it is difficult to obtain certain characteristics or expressions of characteristics (e.g., resistance to pests and diseases and expressions of characteristics of relevance for quality) at one and the same time. The requirement for protection is therefore simply a new combination of expressions of characteristics, irrespective of whether it concerns a special combination of characteristics or expressions of characteristics which are already known individually or whether some (at least for the plant species concerned) have been obtained within a variety for the first time.

Moreover, changes in the genome and the corresponding expressions are only possible within the narrow limits of the genetic interaction mechanisms and therefore are almost always achievable by small steps only. It is therefore possible that the difference in the expression of a characteristic obtained over a long period through a multiplicity of successive varieties (not necessarily all produced by the same breeder) shows sufficient significance to justify recognition of inventive step (e.g., the improvement of advantageous elements or the reduction in disadvantageous elements by a certain percent). In order to promote progress in breeding, however, as is done through plant variety protection, it is necessary that those breeding results (varieties) that are intermediate and which comprise less difference should be afforded a title of protection.

1.2.6 Industrial applicability. This is not required for each individual variety, but has so far been an incidental general requirement for the inclusion of a plant species in the list of those species of which varieties may obtain protection (list of species). Moreover, the undertaking of breeding work, which is both time consuming and expensive, on a species generally implies commercial utilization of the varieties produced.

1.2.7 Reproducibility. The utilization of a plant variety consists in the exploitation of its biological capability of replication in order to obtain plants and parts of plants (harvest crops) and the products obtained from them. For this purpose, a variety is generally cultivated continuously. It is therefore not a matter of obtaining plants or parts of plants by repeating the breeding process each time. The requirement of reproducibility meaning the disclosure of a reproducible teaching for obtaining such plants is therefore not applicable.

1.3 Genetic Requirements

New plant varieties arise primarily because the genome of existing plants is recombined through the exchange of genes. Where this does not happen through a mutation, it is always the result of gene transfer. There exist the following possibilities:

1.3.1 Combining the genomes of differing plants, through their generative organs, by way of crossing. The art of crossing has long since made use of biotechnological methods, e.g., the prevention of self-fertilization in monoecious plants to ensure cross-pollination.

1.3.2 Direct access to the cell by protoplast fusion leading to somatic hybridization with subsequent regeneration of the cells to whole plants followed by propagation in the usual manner.

1.3.3 Recombination of DNA (the genetic substance) by transfer of individual genes using vector systems with subsequent regeneration and propagation in the usual manner.

The above-mentioned methods differ technically, but not as regards biological conditions and effects. The techniques referred to in 1.3.2 and 1.3.3 are used in order to achieve the breeding aim with more reliability and in less time. In any event, the gene to be transferred must be adaptable to the interaction mechanism of the host genome. Where such is the case, it subsequently participates in the interaction mechanism. The outcome of gene transfer is the same in all the cases referred to, that is to say botanical individuals

with a (partly) recombined genome. Since plant variety protection addresses only the result of the breeding process, but not its method, all varieties which satisfy the above-mentioned conditions are protectable in accordance with the existing principles quite irrespective of the techniques used to optimize the breeding process.

1.4 Effects and Scope of Protection

1.4.1 The effects of plant variety protection do not at present cover all acts of utilization of a variety, but only the commercial marketing of propagating material and its production for that purpose and, in the case of ornamental species, the commercial production of ornamental plants and cut flowers from plant material other than propagating material.

1.4.2 The major acts of utilization not covered by protection are as follows:

- Cultivation on own land for the production of material for consumption.
- Acts of utilization with material other than propagating material, even where the owner of protection could not assert his rights in respect of the propagating material (e.g., importation of material for consumption originating from propagations in areas where there is no protection).
- Use of propagating material of the variety to breed a new variety, and commercialization of the latter.

This latter act (breeders' exemption) derives from the consideration that new plants can only be created by the genetic modification of existing plants. This is also true where genetic engineering methods are used under which it is not complete genomes that are assembled, but simply individual genes that are transferred into the otherwise unchanged genome of existing plants. The general availability of genetic resources is therefore regarded as an absolutely essential condition for all progress in breeding. From an economic point of view, the main body of genetic resources is composed of the varieties which correspond to the most recent state of the art in breeding (and are therefore usually protected), and which are further improved in respect of individual characteristics (e.g., through a qualitative improvement in the case of a high-yielding variety). If the patent law principle of dependency were to be introduced, dependency would become the normal case in the plant variety area and would considerably limit the possibilities of granting any independent protection rights at all. The above-mentioned breeders' exemption is explicitly laid down for the Contracting States of the International Convention for the Protection of New Varieties of Plants in its Article 5(3). This exemption is also in keeping with the International Undertaking on Plant Genetic Resources initiated by FAO in order "to ensure that plant genetic resources of ... interest, particularly for agriculture, will be ... made available for plant breeding purposes."

1.4.3 Since the subject matter of protection is the variety as materialized in its living individuals and not a breeding concept representing an invention, no claims are formulated in order to determine the scope of protection. Such scope in fact derives directly from the law.

1.5 Maintenance of Plant Variety Protection

Since living matter, contrary to a disclosed inventive concept, can change or even disappear, maintenance of protection requires that the owner of plant variety protection should ensure the unchanged continuing existence of the variety by means of repeated maintenance breeding activities. The Federal Office of Plant Varieties, as the authority granting protection, has an obligation to ascertain, by means of technical examinations, that the variety continues to exist.

1.6 The Situation Abroad

German plant variety protection law is based on the previously mentioned International Convention for the Protection of New Varieties of Plants of December 2, 1961, as last amended by the Revised Text of October 23, 1978. This treaty has led, much more than most international patent conventions, in various ways to a very high degree of harmonization and integration of plant variety protection law amongst the Contracting States. The Convention

contains a number of detailed provisions that are directly binding on the Contracting States. It further provides for cooperation in examination between the Contracting States, of which the Federal Office of Plant Varieties has availed itself by concluding agreements with the competent authorities of other States in respect of the taking over of test results and the reciprocal utilization of national testing facilities. Finally, the Council of UPOV, the International Union for the Protection of New Varieties of Plants constituted by the Contracting States, has adopted numerous decisions on the practical aspects of granting protection (e.g., technical test guidelines for various plant species, rules on the establishment and exchange of test reports and official gazettes).

The number of Contracting States is currently 17, including the Federal Republic of Germany, of which nine are EEC Member States, a further three European States (Hungary, Sweden, Switzerland) and five non-European States, including the United States and Japan. A number of further States, both in Europe and overseas, are presently engaged, at varying stages, in the drafting of plant variety protection legislation.

Japan, as one of the States that has acceded only recently to the Convention (1982), carefully considered the form which industrial property should take in respect of new varieties of plants. Its conclusion was that the greatest advantages for its highly developed breeding industry and for agriculture were to be derived from the introduction of plant variety rights complying with the UPOV system, and Japan is at present continuing to extend this system.

The same may be said for the United States of America, which acceded to UPOV in 1981. When the need for effective industrial property protection for varieties of sexually reproduced species (to which most agricultural species belong) was perceived, it was decided not to extend the existing Plant Patent Act, promulgated in 1930 already, which applies to varieties of vegetatively propagated species (primarily ornamental species), to the sexually reproduced species; it was preferred to adopt a Plant Variety Protection Act, of which the version of December 22, 1980, is aligned on the UPOV Convention.

Thus, the same principles of protection apply in the most important industrialized countries in which advanced plant breeding exists. This has led to a high level of transfer in breeding results, breeding material and technical know-how between the most important economic regions of the world.

In the United States of America, the Patent Office has expressed the view in various individual decisions that, in addition to protection under the Plant Variety Protection Act, general patents would also be possible for plant varieties. What the effect of such patents would be has not as yet been clarified by court decisions and the discussion is still ongoing as to whether this practice adopted in decisions will generate a need to take legislative action. In the case of Canada, the Federal Court of Appeals has refused, in a decision of March 11, 1987, the application of the Patent Act to plant varieties.

2. Need to Extend the Provisions on Protection

2.1 As already explained, plant variety protection law is adapted to the particularities of plant varieties as groups of living individuals and, where gaps may still exist, the system is intrinsically adaptable even in respect of biotechnological innovations, including genetic engineering. Extension of patent protection to plant varieties would not appear advisable in view of the differently structured principles of protection.

2.2 On the other hand, plant variety protection has not been conceived for subject matter other than biological groups and is therefore not appropriate to biotechnological or genetic engineering processes or to substances which act genetically or in some other biological way, but are not capable of biological replication since they are not living matter. It would not seem appropriate to extend plant variety protection into such areas.

2.3 The following points, in particular, are to be considered for further development within the system of plant variety protection:

2.3.1 Continuation of the long-standing practice of adapting the list of species by extending it to all plant species (including their interspecific hybrids as done so far) in respect of which breeding activities are carried out. It would be logical, in lieu of the successive inclusion of individual plant species, as has been predominantly the case so far, to formulate the corresponding provisions in future in such a way that varieties of plant species newly included in breeding activities may be individually covered by the system of protection without changing the provisions. A corresponding preliminary draft ordinance is currently the subject of initial consultation with the professional associations.

2.3.2 Extension of the material covered by protection from propagating material to further material (plants, parts of plants and products obtained by their exploitation) wherever this is necessary to enable the breeder to assert his rights in respect of all material obtained from propagation.

2.3.3 Extension of the effects of protection to further acts of utilization in addition to marketing and production for marketing in order to cover, for example, internal use within an enterprise of variety material in order to obtain exploitation products or energy.

2.3.4 Breeders of animals have not as yet formulated the need for protection of animal races, but this cannot be excluded for the future. Since the basic requirement as to subject matter (a group of living, biologically replicable individuals) relevant to industrial property protection corresponds to that also applying to plant varieties, there would appear to be considerable arguments in favor of any industrial property protection for animal races being drafted on the lines of the plant variety protection principles.

It may be mentioned in this context that the Hungarian Patent Law, which provides for the grant of patents for plant varieties in compliance with the principles of the UPOV Convention, has stated that these provisions are applicable, *mutatis mutandis*, without further *sui generis* ruling, to animal varieties. A similar provision is also contained in the draft Czechoslovak Plant Variety Protection Law and various Western States (including EEC members) are likewise examining such a ruling.

2.3.5 As far as the deposit of plant material is concerned, there is no need for legislative action in the field of plant variety protection law since any unresolved matters are more of a technical nature. Under Article 26(3) of the Plant Variety Protection Law, in conjunction with Article 5 of the Ordinance on the Procedure Before the Federal Office of Plant Varieties, the applicant is required to submit sample material not to an external deposit authority, but directly to the Federal Office of Plant Varieties as the granting authority. The Office uses this test sample to ascertain whether the requirements referred to above under 1.2.1 to 1.2.3 are complied with.

Even when protection has been granted, the owner must deposit with the Federal Office of Plant Varieties a standard sample representative of the variety and which also corresponds to the test sample. The Office uses this sample to examine in accordance with the second sentence of Article 16(2) of the Plant Variety Protection Law, in conjunction with Article 8 of the Ordinance on the Procedure, the continued existence of the variety. This subsequent test takes place in the following way: the material is regenerated to whole plants, generally by cultivation, at specific intervals and is compared with material corresponding to that marketed by the breeder and which the breeder must submit. It is not sufficient for this purpose to simply hold material in store at the deposit authority. Storage must be carried out in such a way that the material maintains its full regenerative capacity. The Federal Office of Plant Varieties does not therefore maintain material in its deposit facility in a deep-frozen state since it could lead, in particular, to impaired germination and vegetation capacity. The regenerating capacity is in fact ensured by means of a special storage technique. The samples are initially examined in the laboratory for their germination capacity and are only accepted for deposit where they meet the prescribed germination standards. They are then dried down to 4 - 9% humidity content (depending on the species) in an insulated drying room (dry cell) with air-conditioning (4 - 5% relative humidity, 20 - 22°C temperature) by means of continuous replacement of humidified air by dehumidified air. Various measures are taken, such as superficial arrangements to create the largest possible exchange surface and control of the time sequence of drying over a period of up to eight days, taking into account the characteristics of the sample (strength of shell of the given species, humidity

content determined beforehand by hygrometer) to ensure that the extraction of humidity is achieved with sufficient caution to avoid the occurrence of stress cracks which could lead to damage of the germ. The samples are then sealed in foil impermeable to water vapor and stored in cooling cells at +4°C.

This procedure is quite effective in the case of sample material in the form of seed. However, special technical problems arise in the case of living material used for vegetative propagation (cell material that must be maintained in vitro) since the mutagenicity which frequently occurs in such cases can lead to changes in the material. The Federal Office of Plant Varieties is therefore working on methods to fix the protein and DNA structure of the material by means of laboratory techniques and to keep in deposit the resulting fixation as the sample identifying the variety.

3. Possible Changes Required in Industrial Property Protection

3.1 The principle of plant variety protection was established with due regard to the particular conditions of the biological subject matter and has been continuously developed over the years. Again, at present, it is in a phase of revision. The UPOV Council decided in 1986 to undertake work on the adaptation of the Convention. As a result of that decision, UPOV has established, inter alia, a Biotechnology Subgroup to examine to what extent developments in biotechnology, including genetic engineering, call for modifications to the Convention. The Subgroup presented its report in 1987 and its conclusions have been incorporated in the draft that is already under preparation for a revision of the Convention and which is to take into account, in particular, the aspects referred to above under 2.3. This work has already shown that the basic principles of plant variety protection are so flexibly adapted to the conditions of biological matter that any necessary modifications, even where they result from biotechnological and genetic engineering innovations, can be smoothly built into the system without flaw.

3.2 In answering the question how and in what form industrial property protection should be afforded to biological innovations or, where necessary, should be adapted, the following principles should be taken as the starting point.

3.2.1 In its own specific area of application, plant variety protection is the best suited and most progressive form of industrial property protection. Therefore, where improvements are needed (see above under No. 2), further development of variety protection within the system are more promising than their replacement (in part) by other forms of protection (patents).

3.2.2 For those technical processes for the breeding or propagation of plants and for genetically or otherwise biologically active substances that are not biologically replicable, because they are not living matter, patent protection should be made available subject, of course, to the general requirements being met.

3.2.3 The elements of patent protection and plant variety protection should be harmonized in such a way that together the two forms of protection constitute a comprehensive self-contained system of industrial property protection for biological innovations permitting neither overlapping nor gaps in the protection of eligible subject matter.

3.2.4 Under the above aspect, the following problem, in particular, would need to be solved:

Where certain acts of exploitation were to remain explicitly designated as not subject to protection (see 1.4.2 above, particularly the breeders' exemption), such provision could be rendered obsolete if it were possible to cover such acts by means of (complementary) utilization patents.

The principle of free drafting of patent claims applying in patent law--quite differently from plant variety protection law--does not exclude claims being formulated in such a way that they cover a whole botanical species, and therefore all varieties or a major part of the varieties of such species, e.g., in the case of a claim to plant material possessing specific properties or possibilities of use, not defined as a variety.

In the case of living matter, patents for breeding processes and genetically active substances can give rise to special questions with respect to the effects of protection. Those products obtained by means of such processes or substances which are living matter are not used up after their production, unlike other substances which require the repeated application or utilization of the protected process or substance to obtain them anew each time. Quite the contrary, in view of the biological replication capacity of the material, it can be used as a means of production for obtaining identical products in a manner that is potentially unlimited. However, it is quite clear from general patent principles that at least each use of the process for the breeding of plants and the first-generation material directly obtained therefrom, as also the first use of the substance (e.g., the DNA sequence as a gene) following its marketing, is subject to the right of prohibition under the patent. Concepts that go even further, some of which have already been presented, aim, however, at subjecting to the right of prohibition under the patent all those acts that concern the subsequent generations and additionally all newly-bred subsequent varieties that derive in some way or other from material obtained by applying or utilizing the patented process or substance.

A common aspect of the above-mentioned problems is that, at least when broadly interpreted and handled, they could lead to subjecting the exercise of the rights provided by plant variety protection or acts not subject to such protection being generally, or at least extensively, subjected to the right of prohibition under the patent and therefore rendering more or less inoperative the plant variety protection principle of affording an individual, independent self-contained protective right for plant varieties.

The aim of maintaining the specific individual effects both of patents and of plant variety protection under a harmonized comprehensive system of legal protection, as referred to above, could be achieved by means of a provision stipulating that the right of prohibition under a patent would not extend to those acts in respect of a variety which under plant variety protection law are either explicitly permitted or explicitly not subject to protection. A patent owner could then prohibit the use of a breeding process or of a gene for the breeding of a variety, but not, however, where he had consented to the use (in doubt, against license fees), prohibit any further propagation of the variety or its use for breeding further varieties.

A similar idea was already contained in earlier German plant variety protection law. The "Law on Variety Protection and Seed of Cultivated Plants" (Seed Law) of June 27, 1953 (BGBl. I p. 450) included the following Article 68:

"Where a variety of cultivated plant for which variety protection under this Law has been granted or seed of such variety is also protected on the basis of other statutory provisions, rights deriving therefrom may only be asserted to the extent that they do not conflict with the provisions of this Law."

This provision, that was introduced during the parliamentary discussions "in agreement with the Patent Law Committee" was based, according to the written report (Bundestag publication No. 4339), on the following consideration: "According to the present case law practice of the German Patent Office, it is to be assumed that both product and process patents may be granted in respect of new plant varieties. ... The rights under patents and the rights under plant variety protection based on the Seed Law produce contrary effects in the following cases:" (followed by a list of the cases). "The solution to the above-mentioned conflicting effects of patent law and seed law should not, for reasons of legal security, be left to the courts. ... It is therefore necessary that the Law should provide explicit clarification that either the provisions of patent law or those of seed law should take precedence. ... In order to secure the precedence of the Seed Law, it is not necessary for the patenting of new plant varieties to be fully prohibited. It suffices for the Seed Law to stipulate that the effects of a patent shall not be operative where they are in conflict with the provisions of the Seed Law."

At a later date, this question of conflict was solved internationally and nationally by adopting a different approach. In Article 2 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, it was stipulated that a member State of the Union may grant either a special title of protection or a patent (which must, however, also satisfy the principles of the Convention), but not both at the same time. In that respect,

Article 2(b) of the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention of November 27, 1963 (Strasbourg Patent Convention) contains an option and Article 53(b) of the European Patent Convention of October 5, 1973 (EPC) a stipulation that patents cannot be granted, inter alia, for plant varieties or for essentially biological processes for the breeding of plants. (For the reasons behind this ruling, see memorandum, Bundestag publication 220/75, concerning Article 2 of the Strasbourg Patent Convention and Article 53 of the EPC).

This ruling has also been adopted in the German Patent Law (current Article 2(2) of the Patent Law), through the intermediary of Article 4(2) of the Law on International Patent Treaties of June 21, 1976 (BGBl. II p. 649), although limited to plant species subject to the Plant Variety Protection Law. As a result, Article 68 of the Seed Law was not incorporated in the Plant Variety Protection Law (cf. official reasoning in Bundestag publication V/1630, p. 66, ad. Article 68).

The above-mentioned, cross-referenced provisions of plant variety protection law and patent law, taken as a whole, constitute what is sometimes referred to as the "prohibition of dual protection." To the extent that this prohibition is no longer adequate to solve the question of conflict under current or future circumstances, it may be worth considering whether the earlier ruling did not resolve the matter of conflict in a better way since it contained no prohibition of patenting, but simply prohibited the assertion of a patent against rights in a protected variety deriving from plant variety protection law.

Indeed, the same principle for demarcation between plant variety protection and another industrial property right has been introduced recently in a specific case. Article 14(2) and Article 43(2) of the new Plant Variety Protection Law of December 11, 1985 (BGBl. I p. 2170) have replaced the previous ruling contained in Article 4 of the Trademark Law, that prohibited registration of a trademark that was the same as a variety denomination previously registered with the Federal Office of Plant Varieties, by the prohibition on its assertion against such variety denomination.

It must be recognized, however, that for as long as patent law does not itself completely regulate the protection of the results of breeding, taking into account plant variety law aspects, and the special plant variety protection law continues to exist in parallel with patent law, the differing principles of these two systems can lead to frictions which will have to be resolved in some legislative way.

NON-MEMBER STATES

Australia: Entry into Operation of the Plant Variety Rights System

The plant variety rights system of Australia, which is based on the Plant Variety Rights Act 1987 published in the "Legislation" subsection of this issue, starting on page 17, has now come into operation. Details on the system are given overleaf in the form of extracts from Volume 1, Number 1, of the Plant Varieties Journal, issued in March 1988 (the Journal--publication No. 1905--is available from the Australian Government Publishing Service, GPO Box 84, Canberra, ACT, 2601 - subscription: \$30 for four issues).

Mrs. Kathryn Adams has been appointed as Registrar of Plant Variety Rights.

Address: Registrar of Plant Variety Rights
Bureau Rural Science
GPO Box 858
Canberra ACT 2601

Tel.: (062) 71 64 72

1.1 WHAT IS PVR?

PVR is an extension of the principle allowing ownership of invention existing in patents and copyright legislation. It is a limited form of proprietary ownership which provides the grantee with a legal right (for 20 years) to exclude others producing (except for their own use), or trading in the new variety without the owner's agreement. The rights do not extend to the use of the crop produced, the land on which the variety is grown, use in plant breeding or retention by the grower for production of another crop.

1.2 THE PLANT VARIETY RIGHTS ACT 1987

1.2.1 The authority for the introduction of PVR is given by the *Plant Variety Rights Act 1987*, proclaimed on 1 May 1987. The Act sets out the basic framework for PVR and the mechanism for implementation. The key players are listed below:

- a) The Secretary of the Department of Primary Industries and Energy has authority for many of the decisions relating to specific applications. This authority has also been delegated to the Registrar by the Secretary.
- b) The Registrar of Plant Variety Rights is responsible for implementing the provisions of the Act and chairing the Plant Variety Rights Advisory Committee. The Registrar is the main contact point on PVR matters.
- c) The Plant Variety Rights Advisory Committee, established by the Act, has two functions:
 - i) to advise the Minister (at his request) on the desirability of including genera or species in the Regulations, and
 - ii) to advise on technical and administrative matters relating to PVR.
- iii) The Committee is chaired by the Registrar and has members representing breeders, producers and consumers as well as two other members with appropriate qualifications and experience (see Appendix 2). The members are appointed by the Minister after wide consultation with industry and the community.
- iv) The Minister for Primary Industries and Energy is responsible for advising the

Governor General on genera/species to be included in the Regulations, after consultation with the Plant Variety Rights Advisory Committee.

The Minister is also responsible for imposing conditions on the grant of rights for a new variety, to protect the public interest, and for appointing the Advisory Committee.

- v) Applicants for Plant Variety Rights must meet specific criteria outlined in the Act. These will be discussed in detail throughout this journal.

1.2.2 Copies of the *Plant Variety Rights Act 1987* are available from the Australian Government Publishing Service in each State or Territory. Most major libraries also keep copies in their reference section.

1.3 ELIGIBLE GENERA AND SPECIES

1.3.1 Plant Variety Rights are only available for varieties if the genus or species has been included in the Regulations to the *Plant Variety Rights Act 1987*.

1.3.2 The first genera and species will be included in April 1988 and applications for those will be accepted from 31 March 1988. These are *Malus* (Apple), *Macadamia* (macadamia), *Brassica* (oilseeds — e.g. rape, mustard etc), *Phaseolus vulgaris* (bean), *Gossypium* (cotton), *Phalaris* (phalaris), *Anigozanthus* (kangaroo paw), *Rosa* (rose). Application forms are now available from the Registrar. New genera and species will be added progressively and the aim is to include most genera within 2 years unless any major problems are identified. A proposed timetable for implementation is given in Part 4 of this journal.

1.4 CRITERIA FOR THE GRANT OF RIGHTS

1.4.1 The Act establishes the criteria for the grant of rights. These are listed below:

- a) *A new plant variety must be originated by a person [S3(1) and S3(5)].*
Selections direct from the wild or discoveries are not eligible for plant variety rights.

If a variety is selected from the wild and grown in cultivation, some selective breeding activity must be carried out over a minimum of four generations. In the case of natural mutations, the applicant must carry out some activity in relation to the specific plants resulting in a variety that is different from the original variety in one or more important characteristics. The variety could then be considered to have been originated by a person. (The new variety must also meet the other criteria listed below).

- b) *A new plant variety must be homogeneous (uniform) with regard to particular features of its sexual reproduction or vegetative propagation [S3(1)].* This means that all the members of the population must be the same within the limits outlined in paragraph 2.4.7 of this journal.
- c) *A new plant variety must be stable [S3(1) and S3(2)].*
A plant variety will be considered stable if plants of the variety remain true to the description given in the application after repeated reproduction or propagation or at the end of a particular cycle which is specified in the application. Tests for stability are outlined in paragraph 2.4.7 of this journal.
- d) *A new plant variety must be 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 the application was made [S3(1) and S3(7)].* This is one of the key elements of PVR. The new variety must be measurably different from the closest publicly known existing variety.
- e) A new plant variety (or its reproductive material) must not have been sold in Australia before making the application (S14).
- f) A new plant variety (or its reproductive material) cannot have been sold overseas for more than 6 years before making the application (S14).

1.4.2 Criteria b-d above are known as DUS (distinctness, uniformity and stability) and form the basis of test data to be supplied with the application (see paragraphs 2.4.1-4)

1.5 PROVISIONAL PROTECTION (S22)

- 1.5.1 Once an application has been *accepted*, (this date will differ from the date the application is lodged) the applicant is granted provisional rights, making it an infringement for any other person to sell the variety (or its reproductive material) or use the name of the variety (S40). (It should be noted that the applicant is not permitted to sell during the period of provisional protection (see d below).
- 1.5.2 Provisional protection will lapse:
 - a) on the granting of rights
 - b) on rejection of the application
 - c) at any period which may be prescribed in relation to the application
 - d) if the applicant sells a plant of that variety (or its reproductive material) in Australia after the application is accepted other than for scientific purposes or creating stock of plants or reproductive material for supply to the applicant e.g. it is permissible to pay someone to bulk up stock on your behalf prior to the granting of rights.
 - e) for any other reason specified in the regulations. At this stage no other provisions are prescribed.

1.7 COMPULSORY LICENCES (S39)

- 1.7.1 The Act requires that holders of PVR make reasonable quantities of the variety available at a reasonable price. If 2 years after the grant of rights a person considers that the grantee is not meeting this requirement, a submission can be made asking that a licence be given to someone else to sell the material.
- 1.7.2 The submission must:
 - a) give reasons why the submitter does not believe the grantee is meeting the requirements and
 - b) outline why this failure affects the submitter's interests.

The grantee will be given the opportunity to rebut the submission.

If a compulsory licence is to be issued public notice will be given in the journal inviting people to apply for the licence.

2.1 WHO CAN APPLY (S15)

- 2.1.1 The only people who can apply for PVR are the original breeder (or the corporation if the breeder is an employee) of a new variety, a person to whom ownership has been transferred by the original breeder or the law, or an agent of the original breeder or successor.
- 2.1.2 There is no restriction based on nationality or residence.
- 2.1.3 *Joint Applications* can be made and if a variety is originated jointly all must apply unless they have the written consent of the others.
- 2.1.4 Agents must have the written consent of the original breeders and transferees must have written evidence of the transfer.

2.2 APPLICATION FORMS (S16)

- 2.2.1 Applications must be made on the forms available from the Registrar. They consist of three parts:
- General Information
 - Technical Questionnaire
 - Objective Description.
- 2.2.2 Applications will not be accepted (and therefore provisional protection will not apply) unless all three parts are completed (the Registrar may give written approval to vary this requirement).
- 2.2.3 For varieties originated overseas, test results from within Australia may not be required until a time specified in the notification of acceptance, as long as overseas test growing designed to demonstrate that the variety, if grown in Australia, will exhibit the characteristics described [to comply with S16(k)].
- 2.2.4 In the above cases where test results from within Australia are not available at the time of application, the application will be accepted (if all the criteria are met), but the application will not be examined. If results are not supplied by the due date, the application will be closed and the rights not granted unless sufficient reason is given to the Registrar as to why an extension of time should be given.

2.3 ACCEPTANCE/REJECTION OF APPLICATION (S15, 16 and 17)

- 2.3.1 If the application complies with S16 and S17 (correct nomenclature) of the Act it will be accepted and the applicant will be notified within 30 days of the decision being made. The application, with description, will also be notified in the Plant Varieties Journal.
- 2.3.2 If the application is rejected the applicant will be notified, with reasons, within 30 days of the decision.

2.4 DUS CRITERIA

- 2.4.1 Applicants are responsible for demonstrating to the Registrar that their variety meets the eligibility criteria in paragraph 1.4.
- 2.4.2 The Technical Questionnaire will provide guidelines on the minimum information required. Separate details on how the tests were carried out and the breeding history leading to the new variety will need to be clearly indicated.
- 2.4.3 If test results are not obtained using acceptable scientific techniques, rights will not be granted.
- 2.4.4 Applicants should provide as much information as they have to support their case to avoid further requests and time delays in the processing of applications.

The detailed explanations given in the Plant Varieties Journal correspond to the General Introduction to the Test Guidelines (UPOV document TG/1/2).

2.5 DESCRIPTION OF CLOSEST KNOWN VARIETY(IES)

- 2.5.1 As outlined in paragraph 2.4.6, applications must provide details on comparison with the closest known variety(ies) for the characteristics being considered.
- 2.5.2 These comparisons must be carried out using acceptable scientific procedures.

2.6 CERTIFICATION OF RESULTS

- 2.6.1 All test results and procedures submitted with the application must be certified by a scientifically qualified plant breeder, taxonomist, geneticist or equivalent. Note should be taken of penalties in paragraphs 2.7.1-2.

2.8 VARIETIES ORIGINATED IN ANOTHER COUNTRY (S23)

- 2.8.1 Paragraph 2.2.3 refers to provision of Australian test results for varieties originated overseas.
- 2.8.2 S23 of the Act requires Australian test results or equivalent. The most effective way to facilitate processing of the application is to carry out test growing in Australia.
- 2.8.3 The alternatives are to:
- demonstrate the presence of the characteristics outside Australia in a test growing that is equivalent to a test growing carried out in Australia (the *applicant* must demonstrate equivalence) or
 - demonstrate the presence of the characteristic outside Australia in a test growing that would probably demonstrate the presence of the characteristic in Australia. This method can only be used if a test growing in Australia would take *more than 2 years*.

2.9 TEST GROWING (S24)

- 2.9.1 If the Registrar is not satisfied with the test results supplied by the applicant, the applicant will be required to have further tests carried out by an organisation or individual acceptable to the Registrar.
- 2.9.2 It will be the applicant's responsibility to arrange the test growing and to meet any associated fees charged by the person (corporation) doing the testing.
- 2.9.3 Applicants will be given a specific time in which to supply further results. During that time the application will not be processed further by the Plant Variety Rights Office.
- 2.9.4 If results are not submitted by the due date and the applicant has not sought and been granted an extension of time, the application will lapse.

2.11 WITHDRAWAL OF APPLICATION (S25)

- 2.11.1 An applicant may withdraw an application at any time but if it is more than 3 months after the application has been accepted the *full* examination fee will be charged.
- 2.11.2 If the application is withdrawn 3 months or less after acceptance of the application, half the examination fee will be charged.
- 2.11.3 These charges will not apply to imported varieties if the applicant, at the time of application, has indicated that the examination should not proceed until further notification. (See para 2.2.3)

2.13 OBJECTION TO APPLICATIONS (S20)

- 2.13.1 Following publication of the application or a variation to the original application in the journal a person may object to the grant of rights *for a particular variety* within 6 months.
- 2.13.2 The grounds for objection are:
- that commercial interests of the person raising the objection would be affected i.e. that a business will be adversely affected and
 - that the provisions of S26 of the Act cannot be met. S26 requires that:
 - there is such a plant variety
 - the plant variety is new
 - the applicant is entitled to make the application
 - the grant of rights is not prohibited by the Act
 - the rights have not been granted to someone else
 - there has been no earlier application for those rights that has not been withdrawn or otherwise disposed of, and
 - the name of the variety complies with S17
- 2.13.3 The objector will be required to provide supporting evidence to substantiate the objection.
- 2.13.4 A copy of the objection will be sent to the applicant who will be required to demonstrate why the objection should not be upheld [S26(5)].
- 2.13.5 The Registrar will notify the applicant and the objector on the decision relating to the objection.

2.15 EXAMINATION OF APPLICATIONS (S26)

- 2.15.1 Once an application has been accepted, the Registrar will take all necessary action to ensure that the claims made in the application are valid.
- 2.15.2 The Registrar reserves the right to consult with any person or organisation and to provide copies of any application to any person or organisation. Provisional protection will apply during this period.

2.16 GRANTING OF RIGHTS (S26)

- 2.16.1 If the provisions of S26(1) — listed in para 2.13.2(b) — are met to the satisfaction of the Registrar (holding the Secretary's delegation), Plant Variety Rights will be granted.
- 2.16.2 A period of at least 6 months must elapse after giving public notice of the application (or of a significant variation) to allow for objections.
- 2.16.3 In reality a minimum of about 9 months will be required for PVR to be granted, if further test results are not required and there are no major objections. It is therefore in the applicant's interest to ensure that all necessary documentation is provided and that it is accurate.
- 2.16.4 A grantee of Plant Variety Rights will be issued with a Certificate for that variety.
- 2.16.5 If an application is to be refused, the applicant will be given the opportunity to make a written submission justifying the case.
- 2.16.6 If the application is refused, the applicant will be notified in writing with reasons.
- 2.16.7 The Minister may impose conditions on the grant of rights if it is in the public interest (S34).

2.19 SUPPLY OF REPRODUCTIVE MATERIAL (S33)

- 2.19.1 Grantees of rights will be required to:
- supply a quantity of reproductive material to a specified genetic resource centre or herbarium

within 14 days (or such other period specified by the Registrar) of being granted rights (at the cost of the grantee) or

- maintain original reproductive material in a condition such that the Registrar could require a quantity to be supplied to a genetic resource centre or herbarium at any time (with 14 days notice) during the currency of the rights.

- 2.19.2 In b) above, the grantee must be able to demonstrate at any time that the material is the same variety for which Plant Variety Rights have been granted. It is in the grantee's interest to keep accurate records to prove it is original material as court challenges to the use of rights could occur. It is the grantee's responsibility (*not the Registrar's*) to defend such challenges.

- 2.19.3 The reproductive material supplied to a genetic resource centre remains the property of the grantee and will not be available as part of a national collection [S33(7)].

- 2.19.4 The material will be used:
- if a compulsory licence is given under S39
 - for any litigation arising from the grant of rights
 - for maintaining public collections of varieties once the Plant Variety Rights have expired
 - for scientific purposes.

2.20 REVOCATION OF RIGHTS (S35)

- 2.20.1 Plant Variety Rights can be revoked if there is evidence that the plant was not a new variety, if fees have not been paid within one month of being given notice that they are due, if the grantee has not complied with any conditions of grant, has failed to supply genetic material or has not notified any change of ownership (S31).
- 2.20.2 The grantee will be given the opportunity to make a submission to the Registrar before the rights are revoked.

2.22 OBLIGATIONS AND EXEMPTIONS (S38, S39)

- 2.22.1 Holders of plant variety rights are required to:

make reasonable quantities of the variety available at reasonable prices within 2 years of the grant of rights. If this condition is not met compulsory licences may be granted.

- 2.22.2 The consent of the holder of rights is not required for:
- propagating, growing and using plants or reproductive material for own use
 - selling plants or reproductive material for use as food or other uses that do not involve reproduction of plants of that variety
 - selling land where plants of that variety are growing
 - use as an initial source of variation for the purpose of originating another plant variety.

2.23 INFRINGEMENT OF RIGHTS — WHO IS RESPONSIBLE? (S40-43)

- 2.23.1 Enforcement of PVR is the responsibility of the owner of the rights — *not* the responsibility of the Registrar.
- 2.23.2 If you believe that someone is infringing your rights it is up to you to take action and to gather the evidence supporting your claim. It is therefore essential that you have access to original genetic material and maintain the integrity of the variety you are selling.
- 2.23.3 The Registrar may be called as an expert witness but will not have the resources to assist you with your claim.

2.24 NON-INFRINGEMENT NOTICE (S42)

- 2.24.1 A person wishing to sell a plant or genetic material which is covered by PVR may seek a Court declaration that such a sale would not be an infringement of the rights.
- 2.24.2 This can only occur if the applicant for the declaration has sought an admission from the holder of the rights agreeing that the applicant's sales would not constitute an infringement.
- 2.24.3 All costs in this case are borne by the applicant for the declaration who would have to demonstrate valid reasons.

3.1 FEE SCHEDULE

The schedule of fees (Appendix 3, attached) has been prepared to cover some of the costs of the Plant Variety Rights Office in administering the *Plant Variety Rights Act 1987*. The fees will be reviewed once the scheme is implemented with the aim of recovering full costs within 4-5 years.

3.2 PAYMENT OF FEES

- 3.2.1 Fees should be made payable to:
The Collector of Public Monies
Department of Primary Industries
and Energy.
- 3.2.2 All fees with the exception of the Examination and Certification fees are *payable in advance* and must accompany the application to the Registrar for whatever action is required (eg application fee, request for variation, lodge objection etc). No action will be taken unless the fee is paid.
- 3.2.3 Examination and Certification fees will be claimed by invoice to the applicant following examination, but before the issue of the Certificate. The Certificate will not be issued until all fees are paid.
- 3.2.4 If fees (including annual renewal fees) are not paid within one month of the due date, rights will not be granted and the application will be closed. If rights have already been granted they will be revoked.

PLANT VARIETY RIGHTS SCHEDULE OF FEES — 1988

FUNCTION	FEE (\$)
APPLICATION	300
EXAMINATION OF APPLICATION	1000
COPY OF APPLICATION	50
VARIATION TO APPLICATION	55
*EXAMINATION OF OBJECTION	60
COPY OF OBJECTION	50
CERTIFICATE OF PVR	200
ANNUAL RENEWAL FEE	200
RE-EXAMINATION (IF REQUIRED)	600
COMPULSORY LICENCE	100
TRANSFER OF RIGHTS	100
PUBLICATIONS	HOURLY RATE

*HOURLY RATE = \$50/ hr; EXAMINATION OF OBJECTIONS EXCEEDING 2 HOURS WILL BE CHARGED AT THE HOURLY RATE FOR THE EXTRA TIME

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

PLANT GROUP	MARCH 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 GRASSES	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 Chamaelium (Geraldton wax) Lechenaultia Metaleuca Decaspermum Arianema	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

CALENDAR

UPOV Meetings

June 7 to 9	Technical Working Party on Automation and Computer Programs
Edinburgh (United Kingdom)	
June 13 to 15	Technical Working Party for Vegetables
Wageningen (Netherlands)	
June 16 and 17	Workshop on the Examination of Varieties of Lettuce
Wageningen (Netherlands)	
June 20 to 24	Technical Working Party for Ornamental Plants and Forest Trees
Melle (Belgium)	
June 29 to July 1	Technical Working Party for Fruit Crops (Subgroups on June 28)
Hanover (Federal Republic of Germany)	
July 5 to 8	Technical Working Party for Agricultural Crops
Surgères (France)	
September 27 and 28	Workshop on the Use of New Technology in the Examination of Varieties
Cambridge (United Kingdom)	
October 11 to 14	Administrative and Legal Committee
October 17	Consultative Committee
October 18 and 19	Council
October 20 and 21	Technical Committee

Other Meetings

June 4 to 8	FIS Congress
Brighton (United Kingdom)	
June 9 and 10	ASSINSEL Congress
Brighton (United Kingdom)	
September 4 to 8	Hungarian Group of AIPPI and Hungarian Association for the Protection of Industrial Property - International Conference on Recent Phenomena in the Protection of Industrial Property
Budapest (Hungary)	
September 14 to 16	WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property
Geneva	
October 24 to 28	WIPO Committee of Experts on Biotechnological Inventions and Industrial Property
Geneva	
November 17	ASSINSEL 50th Anniversary Celebration and meetings
Amsterdam (Netherlands)	
November 21 and 22	COMASSO General Assembly
Brussels (Belgium)	
December 5 and 6	Cornell University, Conference on Animal Patents
Ithaca (New York, United States of America)	

The International Union for the Protection of New Varieties of Plants (UPOV)--an international organization established by the International Convention for the Protection of New Varieties of Plants--is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders--for their benefit and for the benefit of agriculture and thus also of the community at large--in accordance with uniform and clearly defined principles.

"Plant Variety Protection" is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only--although some items are trilingual (English, French and German)--at irregular intervals, usually at a rate of four issues a year. Subscription orders may be placed with:

The price per issue is 2 Swiss francs, to be settled on invoice by payment to our account, No. C8-763.163/0 at the Swiss Bank Corporation, Geneva, or by deduction from the subscriber's current account with the World Intellectual Property Organization (WIPO).

The International Union for the Protection of New Varieties of Plants
34, chemin des Colombettes, 1211 Geneva 20 (POB 18)
(Telephone: (022) 999.111 - Telex: 22 376-OMPI)