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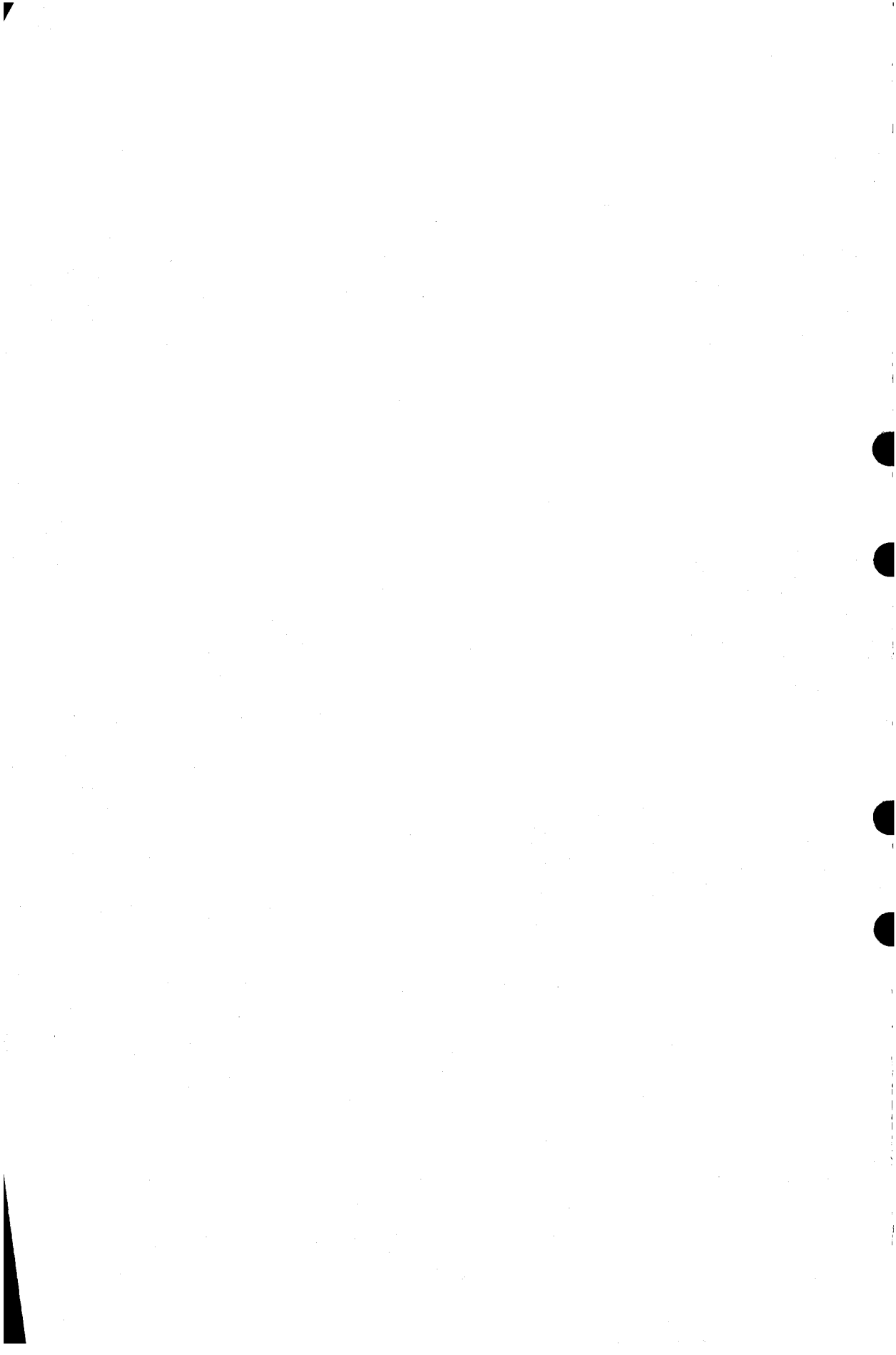
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Plant Variety Rights Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industry,  
the Hon. Peter Nixon, M.P.)



## Explanatory Memorandum

### Plant Variety Rights Bill - 1981

#### Outline

This Bill is to establish an Australian-wide scheme for the granting of proprietary rights to plant breeders over any new varieties which they may develop. The scheme will cover horticultural, ornamental, pasture and fodder plants. Field crops will not be included.

The scheme was developed after consultations between representatives of Commonwealth and State Governments and relevant industry organisations and has been endorsed by the Australian Agricultural Council.

The Plant Variety Rights (PVR) Bill incorporates the following principles:

- . Participation in the scheme will be voluntary.
- . The grant of a right would only be given where a new variety can be clearly distinguished by one or more important characteristics from any other known plant variety.
- . Plant species to be included in the scheme will be, in effect, determined by the Australian Agricultural Council.
- . Ownership rights include the right to levy and collect royalties from other persons growing and selling protected varieties for commercial purposes.
- . Nothing in the Bill will prevent farmers or gardeners retaining seed of protected varieties for sowing of crops for sale for human and animal consumption. Protected varieties will also be freely available for research purposes and to plant breeders for use in breeding programmes.
- . Protection of a right, once granted, will be the responsibility of the owner of the new variety, through the normal legal process.
- . Appeals against decisions of the registration authority can be made to the Administrative Appeals Tribunal.
- . The scheme is to be administered by the Department of Primary Industry.

Explanation

- Clause 3 Specifies the meaning and interpretation of terms used throughout the Bill.
- Clause 5-8 These clauses are concerned with Administration and Staffing matters.
- Clause 9 This clause specifies the nature of the rights which form the basis of the Scheme.
- Clause 10 PVR will cover certain categories of plants only. The Minister, acting on the advice of the Australian Agricultural Council, must declare the genus or species of plants to which the Act will apply.
- Clause 11 Specifies that plants previously sold in Australia, or overseas prior to specified time limits, are not eligible for protection.
- Clause 12 Specifies the rights of a potential applicants to apply for ownership of a new plant variety.
- Clause 13 There will be a standard application form. Specified information must be provided.
- Clause 14 Specifies conditions covering the naming of varieties. A name may include, but not consist of, random letters or numbers.
- Clause 15 Public notification to be given of applications accepted. If refused, the applicant must be notified of the reason.
- Clause 16 Details of the application may be varied. Any significant variation must be publicly notified.
- Clause 17 Third persons, for sufficient reasons, may object to applications or variations to applications.
- Clause 19 Outlines procedures for granting of provisional protection.
- Clause 20 Provides for official test growing of new plant varieties to determine eligibility.
- Clause 22 Specifies criteria governing the granting of rights.
- Clause 23 Specifies details to be entered in the Register.
- Clause 25 First applicant has priority over subsequent applicants who may have independently developed the same new variety.
- Clause 26 Rights are transferrable assets. Licences granted by the holder of the right to other persons to grow and sell registered varieties are not invalidated when a right is transferred.
- Clause 28 Rights have a duration of 20 years.

- Clause 29 Certain conditions may be imposed on the granting of rights where the public interest is involved. These conditions must be specified and publicly notified.
- Clause 30 Rights can be revoked. Such a decision is subject to appeal.
- Clause 31 Other persons may retain and sow seed of protected varieties and sell the produce of such varieties for consumption purposes. Protected varieties may also be used for research purposes.
- Clause 32 The holder of a plant variety right has exclusive ownership of the protected variety and can determine the conditions for the licensing of other persons who wish to grow that variety for commercial use.
- Clause 33 This clause provides for the protection of the public interest in new plant varieties. Sufficient plants or plant material of registered varieties must be made available to meet the reasonable demands for that variety from the public. Where the holder of the right fails to meet that demand the Secretary may licence other persons to grow and sell that variety provided he complies with specified provisions to ensure equity to all parties.
- Clauses 34, and 35 Plant variety rights can be infringed and the holder of the right may invoke Court action to defend his rights.
- Clause 36 A person may seek from the holder of a right an admission that the sale or production of a plant or its reproductive material would not constitute an infringement of plant variety rights. If refused, the person may seek a declaration from a prescribed court.
- Clause 37, 38, and 39 These clauses outline the courts which have jurisdiction in plant variety rights matters, together with procedures dealing with transfer of actions and handling of appeals.
- Clause 42 This clause provides for making arrangements with the States to contribute to the costs of administering the Scheme.
- Clause 43 Misrepresentations are offences and a penalty is prescribed.
- Clause 44 Appeals may be made to the Administrative Appeals Tribunal against decisions taken by the Secretary or the Registrar.
- Clause 45 Authorises the making of Regulations, including the level of fees to be paid, to give effect to the provisions of the Act.

