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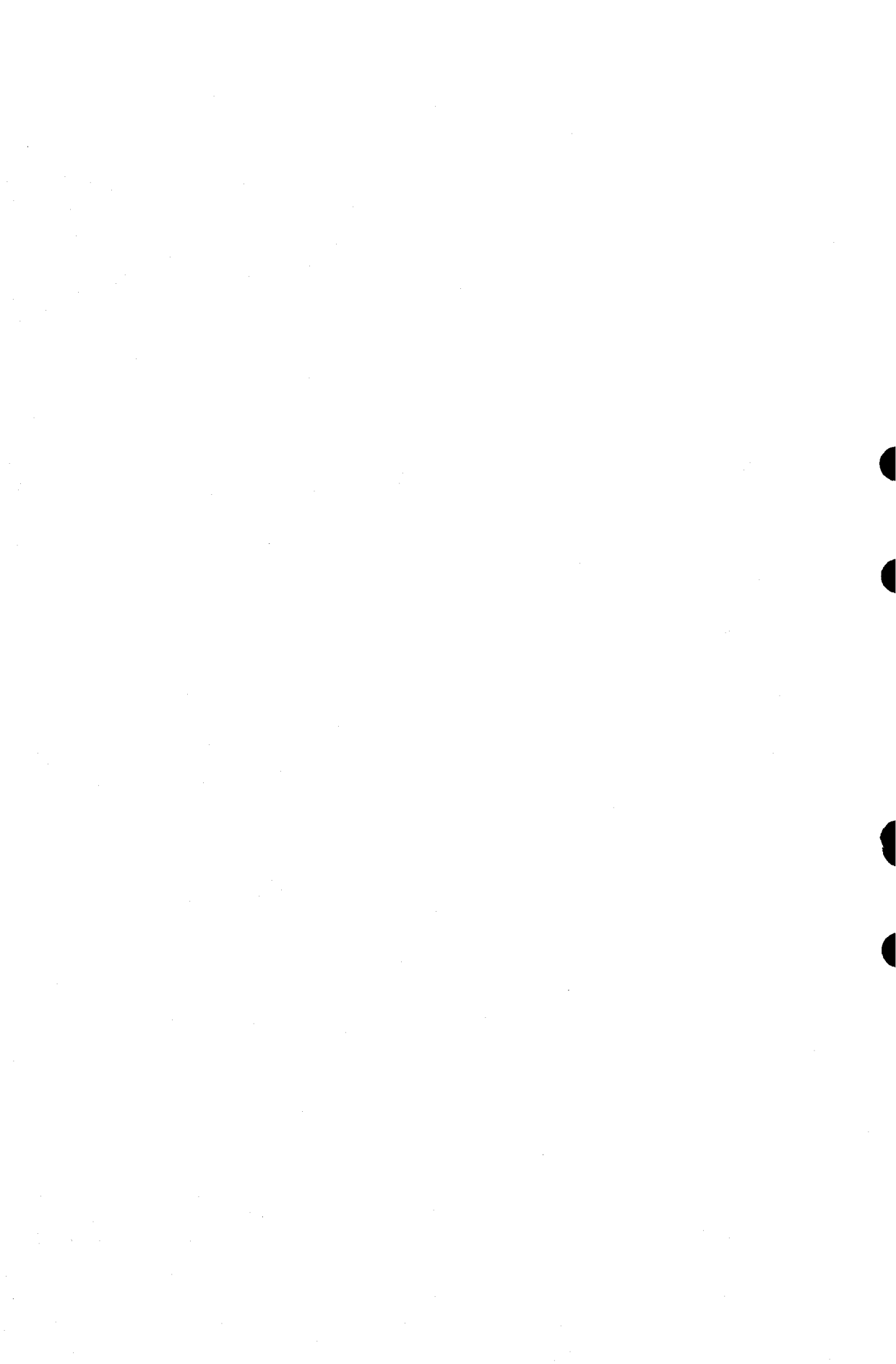
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Plant Variety Rights Bill 1981
Amendments and New Clauses

EXPLANATORY MEMORANDUM

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



PURPOSE OF AMENDMENTS AND NEW CLAUSES

The main purpose of amendments and new clauses is to incorporate requests received from the Australian Agricultural Council and from representations made by the general public.

The main amendments comprise deletions of clauses which deal with:

the inclusion of certain categories of plants only;

the determination, by the grantee of a right, of the conditions for licensing others to grow and sell the variety;

arrangements with the States for financing the Scheme.

Minor amendments have also been made to clarify the intention of certain clauses and to clarify procedures to be followed.

The main new clauses provide for the test growing in Australia of varieties originated outside Australia. Minor new clauses deal with procedures to be followed.



PLANT VARIETY RIGHTS BILL 1981

Explanatory Memorandum to Amendments and New Clauses

Explanation

- Amendment 1. Includes hybrids in definition of "plant variety".
- Amendment 2. Allows common knowledge to be based on time application was made rather than time of origination and permits degree of latitude in interpretation of common knowledge.
- Defines test growing.
- Amendment 3. Provides that the Bill meets the requirements of the Constitution.
- Amendment 4. Removes legislative exclusion of species.
- Amendment 5. Existing clause does not permit an overseas variety of a genus or species to be registered under PVR if that variety has been available for sale overseas for more than the prescribed periods (4 or 6 years). The amendment allows a holiday from this provision for a period of two years from the time that genus or species is included in the Scheme.
- Amendment 6. Provides for inclusion in application of characteristics of variety originated overseas when grown under local conditions.
- Amendment 7. Clarifies intention of the Clause.
- Amendment 8. Provides that for the purpose of acceptance of an application the Secretary need only be satisfied that the application complies with the requirements of Clause 13 and 14(2)(c) rather than all of Clause 13 and 14.

- Amendment 9. Requires the Secretary to give written notice to an applicant concerning results of requests for variation of an application.
- Amendment 10. Sets out procedures to be followed concerning mailing of documents relating to variations of application.
- Amendment 11,
12 & 13 Extends the time during which objections to the grant of rights can be made, (in the first instance from 3 to 6 months, but further extension of time can be allowed by the Registrar.)
- Amendment 14. Provides for checking that a variety originated overseas exhibits or would exhibit relevant characteristics grown under local conditions and for requiring test growing if necessary to determine description, homogeneity or stability.
- Amendment 15
& 16 Provides for the 6 month time period which must elapse before a right can be granted or refused, to date from the date of public notice of the application for a grant, or a variation of an application, rather than the making of the application.
- Amendment 17. Clarifies procedures to be followed by Registrar on assignment of rights.
- Amendment 18
& 19 Extends purposes for which registered varieties may be sold without violating the rights, be excluding normal practices of farmers and gardeners of retaining seed for their own non-commercial use or selling material for non-reproduction use.

- Amendment 20. Clause 9 provides for licensing of rights
Deletion avoids conflict with provisions of
Trade Practices Act.
- Amendment 21. Clarifies grounds for counter claims in
infringement action.
- Amendment 22. Provides for agents to act on behalf of
others.
- Amendment 23. Clarifies procedure concerning mailing
of documents.
- Amendment 24. Removes reference to financial contribution
by States.
- Amendment 25. Increases penalty.
- Amendment 26. Provides for appeal against Secretary's
requirement for test growing.
- Amendment 27. Provides for appeal against decisions by
Minister placing conditions on rights in
the public interest.

