

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

PLANT VARIETY RIGHTS BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
for Primary Industry,  
the Hon. John Kerin, MP)



## PLANT VARIETY RIGHTS BILL 1986

### OUTLINE

This Bill is to establish a national scheme which would allow plant breeders to apply for a grant of proprietary rights over any new variety which they may develop.

The legislation has been prepared following recommendations of the Senate Standing Committee on National Resources, the Industries Assistance Commission and a recent report to the Government by Professor Lazenby on Australia's Plant Breeding Needs. Australian Agricultural Council has also endorsed the introduction of legislation for a Plant Variety Rights scheme.

The Plant Variety Rights (PVR) Bill is based on the following principles:

- . Participation of breeders is 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.
- . All plant species to be potentially eligible for inclusion in the scheme but species or genera to which the scheme is to apply at any time to be declared by regulation by the Minister on advice from a broad based Advisory Committee.
- . Ownership rights include the right to collect royalties including those from other persons who grow and sell protected varieties under licence, for commercial purposes.
- . Nothing in this Bill will prevent the retention of seed of protected varieties for sowing of crops or 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 administrative costs of the scheme are estimated at \$700,000 for the first three years of operation. This includes the cost of employing two staff members (1 technically qualified Registrar and 1 examiner), computing, production of a PVR Journal, membership of Union for the Protection of New Varieties of Plants (UPOV), plus equipment and operational costs.

Offsetting these costs, revenue received from applications and granting of rights, together with annual renewals over the initial three years is estimated at \$150,000. It is anticipated that full cost recovery will only be possible as the level of participation increases and the costs associated with the operation of the scheme become more stabilised.

PLANT VARIETY RIGHTS BILL 1986  
NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 Short Title

The nature of this Bill is described in Part III.

Clause 2 Commencement

The Bill will come into effect when it receives Royal Assent.

Clause 3 Interpretation

Sub-Clause 3(1)

This clause provides self explanatory definitions of "accepted", "applicant", "application", "court", "grantee", "member", "plant", "plant variety", "Register", "Registrar", "Secretary", "sell", "successor", "will".

"Advisory Committee" is the Plant Variety Rights Advisory Committee, the nature and functions of which are specified in Clauses 44-48.

"breeder" provides the legal definition of the person(s) who originated the new plant variety.

"convention" means the International Convention for the Protection of New Varieties of Plants, which Australia may wish to become a signatory, as prescribed in the Schedule.

"genetic resources centre" describes a recognised Plant Genetic Resources Centre, or any other place, deemed by the Secretary to be appropriate for the storage and maintenance of germ plasm material as outlined in Clauses 10 and 33.

"new plant variety" is a plant which is clearly distinguishable from other known varieties of that species and satisfies the requirements of distinctiveness, uniformity and stability and was originated by a person as described in Clause 3(3), (4) and (5).

"plant variety rights" refers to the proprietary rights described in Clause 12.

"reproductive material" refers to a seed, cutting, or any other part of the plant, which can be used to produce another plant.

## Sub-Clause 3(2)

Describes the requirements to establish stability in a new plant variety.

## Sub-Clause 3(3)

Where a new plant variety is derived from selective breeding, the breeder is taken to be the originator of that variety.

## Sub-Clause 3(4)

Where a new plant variety is derived from techniques designed to induce genetic mutation the person who induced that mutation is taken to be the originator of that variety.

## Sub-Clause 3(5)

Describes the eligibility of a person selecting a variety developed by natural processes for grant of a right. It is the intent of this sub-clause that active intervention by the person by way of cultivation or propagation of the species be a prerequisite for eligibility and that persons merely selecting varieties from the wild or from collections of wild species be excluded

## Sub-Clause 3(6)

Describes the process of test growing new plant varieties to establish whether the observed characteristics satisfy the distinctiveness, uniformity and stability criteria.

## Sub-Clause 3(7)

Describes the process for establishing prior knowledge of existence of a new plant variety by making inquiries and consulting appropriate publications readily available in Australia.

## Clause 4 Act to bind Crown

Outlines Constitutional responsibility in relation to this Bill.

## Clause 5 Extent of Act

Provides for the basis of the Bill under the Constitution or as a signatory to the Convention referred to in Clause 3 (1) and proscribed in the Schedule

## PART II - ADMINISTRATION

## Clause 6 Registrar of Plant Variety Rights

This clause establishes the position and office of the Registrar with the functions and powers conferred under this Bill and associated regulations.

## Clause 7 Delegation

This clause enables the delegation of all or any of the Secretary's powers, excluding the power of delegation, to the Registrar or another officer of the Department.

## Clause 8 Certain persons not to acquire plant variety rights

Specifies that any person who is performing, or has performed within the last 12 months, the duties of Registrar or Secretary is not allowed to apply for, or acquire, other than by will or law, a right. Infringement of these conditions will require the payment of a penalty and forfeiture of the right.

## Clause 9 Register of Plant Variety Rights

A Register of plant variety rights will be kept by the Registrar to record all of the particulars required by the Bill or regulations. Copies of the Register will be held in each State or Territory.

## Clause 10 Genetic Resources Centres

The Secretary may declare a specified place as a genetic resources centre to be used to store germ plasm material and to maintain the viability of the reproductive material of plants stored at that centre.

## Clause 11 Public Notice

This clause specifies that the Secretary shall give public notice in the Gazette and may issue a Plant Varieties Journal in which notice is given of those matters considered relevant to the administration of the Bill. If the Secretary considers it necessary, public notice may be given in another periodical.

## PART III - PLANT VARIETY RIGHTS

## Division 1 - Preliminary

## Clause 12 Plant Variety Rights

This clause empowers the holder or licensee of a plant variety right to produce for sale or to sell plants or reproductive material of a registered variety, subject to any other conditions imposed in the Bill.

## Clause 13 Plant variety rights to be granted in relation to certain varieties only

Rights to be granted only for genus or species declared by regulation. The Governor-General shall make regulations based on information provided by the Minister, who is advised by the Advisory Committee.

## Clause 14 Plant variety rights not to be granted in respect of varieties previously sold

Specifies that plants previously sold in Australia, or other countries, more than six years prior to application, are not eligible for protection. The aim of Sub-clause (b) is to facilitate Australian growers access to overseas developed species which exhibit superior performance.

## Division 2 - Application for Plant Variety Rights

## Clause 15 Application for plant variety rights

This clause allows for the breeder of a new variety to apply for plant variety rights irrespective of the nationality of the breeder or whether the variety was originated in Australia or overseas. An agent may be appointed to apply for a right and joint applications for a right are permissible.

## Clause 16 Form of application

This clause requires the application to be made in a form approved by the Secretary. The application should provide information such as the applicants name, the name and address of the breeder from whom the applicant derived the right, a statement of how the right was obtained, a full description of the variety (including name and origin), distinguishing characteristics, particulars of tests carried out and details of any application for, or registration in another country.



Clause 17 Names of new plant varieties

This clause specifies that the name of a variety proposed for registration should comply with the International Code of Nomenclature for Cultivated Plants, which are accepted by Australia. The name should not be deceptive or likely to cause confusion with another variety, contrary to law, offensive or prohibited by regulation.

Clause 18 Lodging of applications

Public notification to be given of applications accepted. If refused, the applicant must be notified of the reason.

Clause 19 Variation of application

Details of the application may be varied. Any significant variation must be publicly notified.

Clause 20 Objections to grant of plant variety rights

Anyone who considers that their commercial interests would be affected by the grant of a right, or that the Secretary would not be able to grant a right on the basis of the application, may lodge an objection within 6 months of notification of the application.

Clause 21 Inspection of applications and objections

Anyone may inspect, or upon payment of a fee, obtain a copy of an application or objection.

Clause 22 Provisional protection

This clause provides protection against infringement for the applicant during that period that the application is being considered and processed, including any consideration by the Administrative Appeals Tribunal or by a court. This provisional protection lapses upon notification by the Secretary that the application was unsuccessful.

Clause 23 Characteristics of plant varieties originated outside Australia

The Secretary must be satisfied that varieties originated overseas can demonstrate the original DUS characteristics when grown in Australia. This may require test growing of that introduced variety in Australia or in other cases, using the results of overseas tests.

Clause 24      Test growing of plant varieties

The Secretary may consider it necessary that test growing, or further test growing of the variety be necessary to confirm that the DUS requirements are being met. In such cases the Secretary will notify the applicant of the need to have the variety test grown or to supply a quantity of reproductive material to enable such test growing.

Clause 25      Withdrawal of application

Enables withdrawal of an application, and public notification of the withdrawal.

Division 3 - Grant of Plant Variety Rights

Clause 26      Grant of plant variety rights

Specifies criteria governing the granting of rights.

Clause 27      Entry of grant of plant variety rights

This clause states those particulars which are to be entered on the Register following the grant of a right. These include the name of the variety, the grantee, the breeders name and address, the date on which the rights were granted and any further information considered by the Secretary to be appropriate.

Clause 28      Notice of grant of plant variety rights

Requires public notification within 7 days of the granting of rights.

Clause 29      Effect of grant on certain persons

First applicant has priority over subsequent applicants who may have independently developed the same new variety. Although this person, or their successor, is not entitled to any interest in those rights, action may be taken by applying to the Secretary, or by instituting proceedings before a court of the Administrative Appeals Tribunal to revoke the rights.

## Division 4 - Miscellaneous

## Clause 30 Nature of plant variety rights

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 31 Assignment of plant variety rights

Person to whom rights are transferred is required to notify the Registrar within 7 days. The Registrar may accept or reject the transfer and subsequently amend the Register.

## Clause 32 Duration of plant variety rights

Rights have a duration of 20 years from the day the application is accepted as outlined in clause 18.

## Clause 33 Supply of reproductive material, &amp;c.

The grantee may be required, within 14 days of receiving a grant, to supply a specified quantity of reproductive material to a specified genetic resources centre (clause 10), to maintain the existence of that variety.

The purpose of this material is to maintain a permanent reference of that variety and for other purposes of this Bill which may include compulsory licencing by the Secretary under Clause 39. The material will be kept separate from any other national gene bank collections at the specified centres.

The Secretary may also require a specimen of the plant to be deposited in a herbarium.

## Clause 34 Plant variety rights subject to conditions

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 35 Revocation of plant variety rights

This clause provides for rights to be revoked by the Secretary if the Secretary becomes satisfied that the plant variety was not new, if prescribed fees are not paid, if conditions imposed under clause 34 are not met, if reproductive material etc pursuant to clause 33 is not supplied or if notifications on transfer etc of rights under clause 31 are not forthcoming. Any person whose interests affected by the grant of a right can apply for the right to be revoked.

Where the Secretary revokes a right, written notice must be given to the grantee. Such a decision is subject to appeal under the Administrative Appeals Tribunal.

Clause 36 Surrender of plant variety rights

The Registrar may accept an offer to surrender a plant variety right, providing that right is not subject to court action.

Clause 37 Entry of particulars of revocation, &c

Where a plant variety right is revoked, the Registrar shall amend the Register and the Secretary shall give public notice of the revocation.

Clause 38 Plant variety rights not to restrict sales for food, fibre, fuel, &c

Specifies purposes for which registered varieties may be grown or sold without infringing the rights. The Bill does not preclude the retention of plants or reproductive material for own use. Protected varieties may also be used for research or breeding purposes but not in the commercial production of hybrid varieties. The aim of this Clause is to make clear that the legislation is not intended to restrict traditional farming or home garden practices where by seed or other reproductive material is retained for production of a subsequent crop.

Clause 39 Protection of public interest in new plant varieties

Sufficient plants or plant material of registered varieties must be made available to meet reasonable public demands for that variety. Where the holder of the right fails to meet that demand the Secretary may licence other persons to grow and sell that variety provided specified provisions to ensure equity to all parties are met. Where a sufficient supply of reproductive material is not available, the Secretary may make this material available from a genetic resources centre, as referred to under Section 33.

Clauses 40 Infringement of plant variety rights

Outlines actions which constitute an infringement of rights eg, by a licenced person who breaches the terms and conditions of the licence, by an unlicenced person selling the variety or by using the registered name. Except for the exclusive right specifically authorised by this Bill, the Trade Practices Act (1974) will apply.

Clause 41      Actions for infringement of plant variety rights

This clause enables the grantee to take action or proceedings against an infringement of rights in the Federal court. It also provides for counter claims by the defendant to include application for revocation of rights.

Clause 42      Declaration as to non-infringement

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 the Federal court.

Clause 43      Jurisdiction of prescribed courts

This clause establishes the Federal Court as having sole jurisdiction in legal actions arising from infringements of plant variety rights under this Act. Notwithstanding the specific powers of this clause, certain administrative decisions are subject to appeal by the Administrative Appeal Tribunal (see clause 53).

PART IV - PLANT VARIETY RIGHTS ADVISORY COMMITTEE

Clause 44      Establishment of Advisory Committee

This clause establishes the Advisory Committee and specifies its functions.

Clause 45      Membership of Advisory Committee

The Committee will be broadly based, comprising the Registrar as Chairperson; two persons to represent breeders, one each to represent producers and consumers respectively and two other members considered by the Minister to have appropriate qualifications and experience. Members (excluding the Registrar) will hold part-time office at the pleasure of the Minister.

Clause 46      Remuneration and allowances

Members representing breeders, producers and consumers will not receive remuneration, other than specified allowances. The members with special qualifications will be paid at rates determined by the Remuneration Tribunal.

Clause 47 Disclosure of interests

Members with any pecuniary interest in matters considered by the Advisory Committee must disclose this interest at the meeting. Such disclosures should be recorded in the Minutes of the meeting.

Clause 48 Meetings

Outlines the frequency at which the Registrar convenes the meetings of the Advisory Committee and other procedural matters, including the required quorum.

PART V - MISCELLANEOUS

Clause 49 Inspection of Register

Enables inspection of Register and supply of a copy of an entry upon payment of a fee.

Clause 50 Agents may act in plant variety rights matters

Enables an agent to act on behalf of another person in plant variety rights matters.

Clause 51 Service of documents

This clause states that any document or notices, referred to in this Bill, which are to be sent to an existing or new applicant or grantee, should be sent by prepaid post to the address entered in the Register.

Clause 52 Offences

Misrepresentations are offences and penalties apply.

Clause 53 Applications for review

Provides for applications to be made to the Administrative Appeals Tribunal for review of specific decisions referred to elsewhere in the Bill. The Tribunal does not have the power to extend the time the applicant has to submit an application. The Secretary is required to give public notice of the applications and the outcome of any proceedings.

Clause 54 Statement to accompany notice of decisions

Notification of decisions, determinations or requirements specified in Clause 53(1) made by the Minister, Secretary, Registrar or their delegates should be accompanied by a statement indicating that application may be made to the Administrative Appeals Tribunal.

Clause 55      Regulations

Authorises the making of Regulations, including the level of fees to be paid, to give effect to the provisions of the Bill.

Schedule

Details the International Convention for the Protection of New Varieties of Plants of 2 December 1961 and as revised on 10 November 1972, and 23 October 1978 and which is referred to in Clause 3(1).

