

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

THE PLANT BREEDER'S RIGHTS BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

Circulated by the authority of
The Minister for Primary Industries and Energy
Senator Bob Collins

Amendments to the Plant Breeder's Rights Bill 1994

OUTLINE

1. The proposed amendments are minor, technical or consequential amendments to the administration of 'essential derivation', (clause 12), in clauses 34 and 50 of the Plant Breeder's Rights Bill 1994.
2. The amendment of section 79 is to extend the power to set fees for essential derivation which is consistent with policy adopted for similar applications throughout the Bill, but was unintentionally omitted from section 79,
3. Revocation provisions apply in the Bill to grants of the breeder's right and amendments are proposed to extend the provisions of revocation of breeder's rights under section 50 to essentially derived varieties
4. It is proposed to delete the superfluous subclause 73 (3) since the infringement related to an essentially derived variety is provided for under section 53.
5. The amendment of section 76 is to provide for an AAT review of decisions by the Secretary in relation to essential derivation which was unintentionally omitted from the Bill.

FINANCIAL IMPACT STATEMENT

6. The proposed amendments to the Bill will not introduce any new costs for the Government. The Plant Breeder's Rights Scheme, like the Plant Variety Rights Scheme it proposes to replace, will continue to recover the full costs of administration and staffing from the users of the Scheme,

NOTES ON AMENDED CLAUSES

CLAUSE 34 - Detailed description in support of application to be given to the Secretary

7. This proposed amendment will serve to correct the impression that only details of test growing under section 41 be given in support of applications when it was intended that particulars of test growing under either section 37 or 41 (for essential derivation) may be required in support of an application.

DIVISION 2 - Revocation of Plant breeder's right

8. This proposed amendment extends the heading of Division 2 with "or declaration of essential derivation" and is consequential to the inclusion of subclauses in clause 50 that provide for a parallel treatment of declarations of essential derivation and the breeder's right in cases of revocation.

CLAUSE 50 - Revocation of PBR

9. Subclauses (1), (3), (4A), (5), (8), (9) are included to extend the Ministers power of revocation of plant breeder's right to cover the closely related declaration of essential derivation. Thus if a holder of a variety managed to extend the right to a new variety by misrepresentation, that extension of the right to the new variety can now be revoked by these proposed amendments. There is also provision under the amended clause 50 for a decision to revoke a declaration to be reviewed by the AAT.

CLAUSE 73 - Infringement offences

10. It is proposed that Subclause (3) be deleted as it is redundant and was inadvertently carried forward from an earlier version of the Bill. Infringement offences in relation to essentially derived varieties are provided for in the PBR Bill in subsection 53(2).

CLAUSE 76 - Applications for review

11. Subparagraph (1)(b)(xvi) is extended to include provision for an AAT review of a decision to declare that a variety is essentially derived from another variety. This amendment is consequential to the giving of parallel provisions to declarations of essential derivation and breeder's right under section 50.

CLAUSE 79 - Regulations

12. Subparagraph 2(a)(i) is inserted to extend the power to set fees for applications for essential derivation which is consistent with policy adopted for similar applications throughout the Bill and the Plant Variety Rights Act 1987.



9 780644 297875