

# Plant Variety Rights Act 1987

No. 2 of 1987

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## SCHEDULE

## CONVENTION

### **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]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## PART 1 PRELIMINARY

### *Short title*

1. This Act may be cited as the *Plant Variety Rights Act 1987*.

### *Commencement*

2. This Act shall come into operation on a day to be fixed by Proclamation.

### *Interpretation*

3. (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 2 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 2 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\(1\)](#);

“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 2 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.

### *Act to bind Crown*

**4. (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.

### *Extent of Act*

**5.** 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.

## **PART II ADMINISTRATION**

### *Registrar of Plant Variety Rights*

**6. (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](#).

### *Delegation*

7. (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.

### *Certain persons not to acquire plant variety rights*

8. (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.

### *Register of Plant Variety Rights*

9. (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.

### *Genetic resources centres*

10. (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 plasm 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](#).

### *Public notice*

11. (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 1—Preliminary*

#### *Plant variety rights*

12. (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](#).

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

**13. (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 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.

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

**14.** 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***

### *Application for plant variety rights*

**15. (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 2 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 2 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.

### *Form of application*

16. 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.

### *Names of new plant varieties*

17. (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 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 10 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.

### *Lodging of applications*

18. (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.

### *Variation of application*

19. (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.

### *Objections to grant of plant variety rights*

**20. (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 6 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.

### *Inspection of applications and objections*

21. 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.

### *Provisional protection*

22. (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](#).

### *Characteristics of plant varieties originated outside Australia*

**23.** 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 2 years.

### *Test growing of plant varieties*

**24. (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.

### *Withdrawal of application*

25. (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**

### *Grant of plant variety rights*

26. (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 6 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 6 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.

### *Entry of grant of plant variety rights*

27. 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.

### *Notice of grant of plant variety rights*

28. Where the Secretary grants plant variety rights, the Secretary shall, within 7 days after granting those rights, give public notice of the grant.

### *Effect of grant on certain persons*



**29. (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**

### *Nature of plant variety rights*

**30. (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.

### *Assignment of plant variety rights*

**31. (1)** Where plant variety rights are assigned or transmitted to a person, the person shall, within 7 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 7 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 \(c\)](#)—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.

#### *Duration of plant variety rights*

32. 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.

#### *Supply of reproductive material, &c.*

33. (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.

### *Plant variety rights subject to conditions*

**34. (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.

### *Revocation of plant variety rights*

**35. (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 7 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 [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 7 days after the decision was taken, give written notice of the decision to the applicant setting out the grounds for the decision.

### *Surrender of plant variety rights*

**36. (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.

### *Entry of particulars of revocation, &c.*

**37.** 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 [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.

*Plant variety rights not to restrict sales for food, fibre, fuel, &c.*

**38. (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.

### *Protection of public interest in new plant varieties*

**39. (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 2 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 \(4\)](#).

### *Infringement of plant variety rights*

**40.** 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.

### *Actions for infringement of plant variety rights*

**41. (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.

### *Declaration as to non-infringement*

42. (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.

### *Jurisdiction of Court*

43. (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

### *Establishment of Advisory Committee*

**44. (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.

### *Membership of Advisory Committee*

**45. (1)** The Advisory Committee shall consist of—

- (a) the Registrar;
- (b) 2 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) 2 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.

### *Remuneration and allowances*

46. (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*.

### *Disclosure of interests*

47. (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.

### *Meetings*

48. (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, 4 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

### *Inspection of Register*

49. 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.

### *Agents may act in plant variety rights matters*

50. 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.

### *Service of documents*

**51. (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.

### Offences

**52. (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 6 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.

### *Applications for review*

**53. (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*.

### *Statement to accompany notice of decisions*

**54. (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.

### *Regulations*

**55.** 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](#).

## SCHEDULE

[Sub-section 3 \(1\)](#) (definition of “Convention”)

## CONVENTION

**International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978**

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#### THE CONTRACTING PARTIES,

*Considering* that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders.

*Reaffirming* the principles contained in the Preamble to the Convention to the effect that:

- (a) They are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
- (b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
- (c) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

*Considering* that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention.

*Considering* that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,



*Considering* that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

*Considering* that these objectives may be best achieved by a new revision of the Convention,

*Have agreed* as follows:

## Article 1 Purpose of the Convention; Constitution of a Union; Seat of the Union

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as “the breeder”) a right under the conditions hereinafter defined.

(2) The States parties to this Convention (hereinafter referred to as “the member States of the Union”) constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

## Article 2 Forms of Protection

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

## Article 3 National Treatment; Reciprocity

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be checked.

(3) Notwithstanding the provisions of [paragraphs \(1\) and \(2\)](#), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

## Article 4 Botanical Genera and Species Which Must or May be Protected

(1) This Convention may be applied to all botanical genera species.

(2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.

- (3) (a) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.
- (b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:
- (i) within three years, to at least ten genera or species in all;
  - (ii) within six years, to at least eighteen genera or species in all;
  - (iii) within eight years, to at least twenty-four genera or species in all.
- (c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of [Article 2 \(2\)](#), that genus or species shall nevertheless, for the purposes of [subparagraphs \(a\) and \(b\)](#), be considered as one genus or species.

(4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in [paragraph \(3\)](#), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under [paragraph \(3\) \(b\)](#), decide, for the purposes of that State, to extend the periods referred to in [paragraph \(3\) \(b\)](#).

## Article 5 Rights Protected; Scope of Protection

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under [Article 29](#) grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in [paragraph \(1\)](#), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

## Article 6 Conditions Required for Protection

(1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

- (a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.
- (b) At the date on which the application for protection in a member State of the Union is filed, the variety
  - (i) must not—or, where the law of that State so provides, must not for longer than one year—have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and
  - (ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of all other plants. Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.
- (c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
- (d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.
- (e) The variety shall be given a denomination as provided in [Article 13](#).

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the member State of the Union in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

## Article 7 Official Examination of Varieties; Provisional Protection

(1) Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species.

(2) For the purposes of such examination, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) Any member State of the Union may provide measures to protect the breeder against abusive acts of third parties committed during the period between the filing of the application for protection and the decision thereon.

## Article 8 Period of Protection

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection may not be less than eighteen years, computed from the said date.

## Article 9 Restrictions in the Exercise of Rights Protected

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

## Article 10 Nullity and Forfeiture of the Rights Protected

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in [Article 6 \(1\) \(a\)](#) and [\(b\)](#) were not effectively complied with at the time when the title of protection was issued.

(2) The right of the breeder shall become forfeit when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its characteristics as defined when the protection was granted.

(3) The right of the breeder may become forfeit if:

- (a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or
- (b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

## Article 11 Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

(1) The breeder may choose the member State of the Union in which he wishes to file his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he filed his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

## Article 12 Right of Priority

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of [paragraph \(1\)](#), the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of [paragraph \(2\)](#), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in [paragraph \(1\)](#), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

## Article 13 Variety Denomination

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to [paragraph \(4\)](#) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which

designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in [Article 30 \(1\) \(b\)](#). If it is found that such denomination does not satisfy the requirements of [paragraph \(2\)](#), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of [Article 7](#).

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of [paragraph \(7\)](#), is obliged to use it, the authority referred to in [Article 30 \(1\) \(b\)](#) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in [Article 30\(1\) \(b\)](#) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in [Article 30 \(1\) \(b\)](#) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in [Article 30 \(1\) \(b\)](#) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of [paragraph \(4\)](#), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

## Article 14 Protection Independent of Measures Regulating Production, Certification and Marketing

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

## Article 15 Organs of the Union

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

## Article 16 Composition of the Council; Votes

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.

(2) Representatives or alternates may be accompanied by assistants or advisers.

(3) Each member State of the Union shall have one vote in the Council.

## Article 17 Observers in Meetings of the Council

(1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.

(2) Other observers or experts may also be invited to such meetings.

## Article 18 President and Vice-Presidents of the Council

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

## Article 19 Sessions of the Council

(1) The Council shall meet upon convocation by its President.

(2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

## Article 20 Rules of Procedure of the Council; Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

## Article 21 Tasks of the Council

The tasks of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) appoint the Secretary-General and, if it finds it necessary, a vice Secretary-General and determine the terms of appointment of each;
- (c) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (d) give to the Secretary-General, whose functions are set out in [Article 23](#), all the necessary directions for the accomplishment of the tasks of the Union;
- (e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of [Article 26](#);

- (f) examine and approve the accounts presented by the Secretary-General;
- (g) fix, in accordance with the provisions of [Article 27](#) the date and place of the conferences referred to in that article and take the measures necessary for their preparation; and
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

## Article 22 Majorities Required for Decisions of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under [Articles 4 \(4\)](#), [20](#), [21 \(e\)](#), [26 \(5\) \(b\)](#), [27 \(1\)](#), [28 \(3\)](#) or [32 \(3\)](#) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

## Article 23 Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff

(1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of [Article 21\(b\)](#), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in [Article 20](#).

## Article 24 Legal Status

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.

(3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

## Article 25 Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in [Article 20](#). Such State shall be designated, with its agreement, by the Council.

## Article 26 Finances

- (1) The expenses of the Union shall be met from:
  - the annual contributions of the member States of the Union;
  - payments received for services rendered;



- miscellaneous receipts.
- (2) (a) The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under [paragraph \(3\)](#). The said share shall be computed according to [paragraph \(4\)](#).
- (b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.
- (3) (a) As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.
- (b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.
- (c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under [subparagraph \(a\)](#) or [\(b\)](#). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.
- (4) (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.
- (b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.
- (5) (a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to [paragraph \(b\)](#), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.
- (b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

## Article 27 Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the

Union represented at the conference shall be required for the adoption of a revised text of the Convention.

## Article 28 Languages Used by the Office and in Meetings of the Council

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

(2) Meetings of the Council and of revision conferences shall be held in the three languages.

(3) If the need arises, the Council may decide that further languages shall be used.

## Article 29 Special Agreement for the Protection of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

## Article 30 Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

- (a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;
- (b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;
- (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of [Article 7](#) and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

## Article 31 Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

## Article 32 Ratification, Acceptance or Approval; Accession

(1) Any State shall express its consent to be bound by this Act by the deposit of:

- (a) its instrument of ratification, acceptance or approval, if it has signed this Act; or

(b) its instrument of accession, if it has not signed this Act.

(2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of the Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

### **Article 33 Entry Into Force; Closing of Earlier Texts**

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

- (a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and
- (b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.

(2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in [paragraph \(1\)\(a\)](#) and [\(b\)](#) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to [paragraph \(1\)](#), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

### **Article 34 Relations Between States Bound by Different Texts**

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

(2) Any member State of the Union not bound by this Act (“the former State”) may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union through ratification, acceptance or approval of or accession to this Act (“the latter State”). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

### **Article 35 Communications Concerning the Genera and Species Protected; Information to be Published**

(1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.

(2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:

- (a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;
- (b) any use of the faculty provided for in [Article 33](#) ;
- (c) the use of any faculty granted by the Council pursuant to [Article 4 \(4\)](#) or [\(5\)](#);
- (d) any use of the faculty provided for in [Article 34](#) , first sentence, with an indication of the nature of the more extensive rights and with specification of the genera and species to which such rights apply;
- (e) any use of the faculty provided for in [Article 34](#) , second sentence;
- (f) the fact that the law of the said State contains a provision as permitted under [Article 6 \(1\) \(b\) \(i\)](#), and the length of the period permitted;
- (g) the length of the period referred to [Article 8](#) if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

## Article 36 Territories

(1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

- (3) (a) Any declaration made under [paragraph \(1\)](#) shall take effect on the same date as the ratification, acceptance, approval, or accession in the instrument of which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Secretary-General.
- (b) Any notification given under [paragraph \(2\)](#) shall take effect twelve months after its receipt by the Secretary-General.

## Article 37 Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of [Article 21](#) , any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in [Article 2 \(1\)](#) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.

(2) Where, in a member State of the Union to which [paragraph \(1\)](#) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of [Article 6 \(1\) \(a\)](#) and [\(b\)](#) and [8](#).

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under [paragraph \(1\)](#). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

## Article 38 Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of [Article 6](#), any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

## Article 39 Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

## Article 40 Reservations

No reservations to this Convention are permitted.

## Article 41 Duration and Denunciation of the Convention

(1) This Convention is of unlimited duration.

(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.

(3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

## Article 42 Languages; Depositary Functions

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.

(3) The Secretary-General shall, after consultation with the Governments of the interested States which were represented in the said Conference, establish official texts in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of the instruments of ratification, acceptance, approval and accession, any notification received under [Articles 34 \(2\)](#), [36 \(1\)](#) and [\(2\)](#), [37 \(1\)](#) and [\(3\)](#) or [41 \(2\)](#) and any declaration made under [Article 36 \(1\)](#).

[Minister's second reading speech made in—



House of Representatives on 8 October 1986

Senate on 1 December 1986]