

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

HORTICULTURAL-PLANT VARIETY RIGHTS BILL 1984

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1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 11 October 1984)

(SENATOR HILL)

A BILL

FOR

An Act to provide for the granting of proprietary rights to persons originating new horticultural-plant varieties, and for related purposes

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Horticultural-Plant Variety Rights Act 1984*.

Commencement

- 2.** This Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
- “Advisory Committee” means the Horticultural-Plants Advisory Committee established by section 8;
- “applicant”, in relation to an application, means the person for the time being shown in the application as the person making the application; 5
- “application” means an application under section 14 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; 10
 - (b) subject to paragraph (c), in the case of a variety originated by 2 or more persons (whether jointly, independently at different times or otherwise)—each of those persons; or
 - (c) in the case of a variety originated— 15
 - (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; 20
- “Department” means the Department of Primary Industry;
- “grantee”, in relation to plant variety rights, means the person for the time being entered on the Register as the grantee of those rights; 25
- “member” means a member of the Advisory Committee;
- “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; 30
 - (c) is stable;
 - (d) is uniform; and
 - (e) 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 date of the application in respect of the variety; 35
- “plant variety” includes cultivar, clone, hybrid and strain;
- “plant variety rights” means the rights specified in section 11;
- “prescribed court” means the Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia; 40
- “Register” means the Register of Horticultural-Plant Variety Rights kept in pursuance of section 10;

“Registrar” means the Registrar of Horticultural-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 and includes a person performing the duties of the office of Secretary to the Department;

“sell”, in relation to a plant or reproductive material of a plant, includes exchange by way of barter or let on hire;

“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, a plant variety in respect of which an application has been made shall be taken to be uniform if, and only if—

- (a) any variations of plants of the variety that will occur in the course of propagating or reproducing plants of the variety are described in the application;
- (b) the application includes particulars of the circumstances in which these variations will occur; and
- (c) the proportion of plants of the variety propagated or reproduced that are variations does not exceed such percentage as is prescribed.

(4) 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.

(5) 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.

(6) For the purposes of this Act, where a plant variety is originated by natural mutation, the person who discovers the existence of plants of that variety shall be taken to have originated that plant variety if, and only if, the person has undertaken such test-growing of the variety as to establish that it

satisfies paragraphs (b) to (e), inclusive, of the definition of “new plant variety” in sub-section (1).

(7) 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; 5
- (b) the observation of the characteristics, and the condition, of the plants grown at the various stages in their growth; and 10
- (c) the recording of those observations.

(8) 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— 15

- (a) that all the plant varieties whose existence was a matter of public knowledge when the application was made were constituted by the plant varieties that were in existence at the time when the application was made; and 20
- (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 enquiries, and consulting such publications readily available in Australia, as that person considers appropriate. 25

Act to bind Crown

4. This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory.

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 the origination of that new plant variety constituted an invention for the purposes of paragraph 51 (xviii) of the Constitution. 30

PART II—ADMINISTRATION

Registrar of Horticultural-Plant Variety Rights 35

6. (1) There shall be a Registrar of Horticultural-Plant Variety Rights.

(2) The Registrar has such functions and powers as are conferred on him by this Act or by the regulations or are delegated to the Registrar by the Secretary under section 7.

(3) The Registrar shall be an officer of the Department. 40

Delegation

5 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.

10 **Advisory Committee**

8. (1) For the purposes of this Act, there is established by this Act an advisory committee, by the name Horticultural-Plant Variety Rights Advisory Committee.

15 (2) The functions of the Advisory Committee are to advise the Secretary on such technical matters arising under this Act and on such other matters related to the administration of this Act as the Secretary refers to the Advisory Committee for advice.

Certain persons not to acquire plant variety rights

20 9. (1) The Secretary, the Registrar, a person performing the duties of the Registrar or a person who, during the preceding 12 months has held, or performed the duties of, the office of Secretary or Registrar 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: \$500.

25 (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 Horticultural-Plant Variety Rights

30 10. (1) The Registrar shall keep, at a place approved by the Secretary, a register, to be known as the Register of Horticultural-Plant Variety Rights, in which shall be entered particulars required to be entered by this Act or the regulations.

35 (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 in which is located the place at which the Register is required to be kept) 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.

PART III—PLANT VARIETY RIGHTS

Division 1—Preliminary

Plant variety rights

- 11. (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; 5
 - (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 10
 - (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 any conditions imposed in respect of those rights under section 33. 15

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

12. Plant variety rights shall not be granted in respect of plant varieties unless plants of that variety are plants for use in horticulture.

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

13. 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— 20

- (a) the sale took place in Australia before the making of the application; 25
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 30

14. (1) 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, or is resident in Australia and whether the breeder originated the variety in Australia or in another country. 35

(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, and that right

may be assigned or transmitted notwithstanding that 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 (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.

10 (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
15 an application for those rights by reason of the variety having been originated by those breeders.

Form of application

20 **15.** 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 originated the variety, a statement that the applicant is the breeder of the variety;
- 25 (c) where the applicant did not originate the variety, the name and address of the breeder whose right to make an application has been assigned or transmitted to the applicant and particulars of the assignment or transmission;
- (d) a description, or a description and photograph, of a plant of the variety sufficient to identify plants of that variety;
- 30 (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;
- 35 (h) particulars of any application for, or approval of a grant of, rights 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));
- 40 (k) particulars of any tests carried out by the applicant or any official testing organization to establish the yield from, or other performance of, plants of the variety together with particulars of the likely place of

the variety in the market and of any characteristics indicating its suitability for particular conditions;

- (l) 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; 5
- (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

10

16. (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. 15

(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; 20
- (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 the International Code of Nomenclature for Cultivated Plants formulated and adopted by the International Commission for Nomenclature of Cultivated Plants of the International Union of Biological Sciences. 25

(4) The name of a new plant variety in respect of which an application is made shall not consist of, or include, a name that is chosen by reason that it is or includes— 30

- (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 35
- (c) the name of a corporation, organization or institution, other than a corporation, organization or institution that has given its written consent to the name of the plant variety. 40

Duties of Secretary when application lodged

17. (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 15;
and

(ii) the name of the variety complies with sub-section 16 (1) and
does not contravene paragraph 16 (2) (c),

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 and of such particulars relating to the application as the Secretary
considers appropriate.

(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 on
which the application has been rejected.

(4) For the purposes of this Act, an application shall not be taken to be
made unless and until it is accepted.

Notification of applications and grants

18. (1) The Secretary shall cause to be published in the *Gazette* such
particulars of applications and grants as are required by the regulations to be so
published and all such other matters as are directed by this Act to be so
published and such other matters and information as appears to the Secretary
to be useful or important for the purposes of this Act.

(2) Where the Secretary considers that the volume of matters to be
published in the *Gazette* in accordance with sub-section (1) justified their
publication in a separate publication, the Secretary may—

(a) issue periodically a journal, to be called the Horticultural-Plant
Varieties Journal, containing those matters; or

(b) publish those matters in some other journal or publication (whether
relating exclusively to horticultural-plant varieties or not) if the name
of that journal or publication contains the words “plant varieties”.

(3) At least 28 days before the Secretary commences to issue the
Horticultural-Plant Varieties Journal, the Secretary shall publish in the
Gazette notice of intention to do so.

(4) If at any time the Secretary proposes to cease issuing the
Horticultural-Plant Varieties Journal, the Secretary shall, at least 28 days
before doing so, publish in that Journal notice of intention to do so.

(5) For the purposes of this Act, where any matter has been published in the Horticultural-Plant Varieties Journal or in another journal of a kind mentioned in paragraph (2) (b), the matter shall be deemed to have been published in the *Gazette*.

(6) Publication of matter in accordance with this section shall be deemed to be sufficient public notice of that matter. 5

Variation of application

19. (1) Where, after an application has been made 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. 10

(2) Where, after an application has been made 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. 15

(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. 20

(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 on which the request has been rejected. 25

(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. 30

(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; 35

(b) stating that the request has been rejected; and

(c) setting out the grounds on which the request has been rejected.

(7) Where an application is varied in a significant manner in pursuance of a request under sub-section (1), or is varied under sub-section (2), the Secretary shall forthwith give public notice of particulars of that variation. 40

(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 15 (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 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 date of publication of the notice in the *Gazette* 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 his or her interests 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.

30 Inspection of applications and objection

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 an application or of such an objection.

35 Provisional protection

22. (1) Where an application for plant variety rights in respect of a plant variety has been made, the applicant shall, for the purpose of sections 37 and 38, be deemed to be the grantee of plant variety rights in respect of that plant variety during the period commencing on the making 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— 5

(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— 10

(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 15

(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), 15

the Secretary may give the applicant notice, in writing, that this section shall cease to apply to that variety. 20

(3) The Secretary shall not give notice under sub-section (2) in relation to an application unless and until he 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 so ceased. 25

(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— 30

(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. 35

(6) Nothing in this section shall be taken to affect the powers of the Federal Court of Australia 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). 40

(7) A person who is to be 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 to be 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.

5 **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 made was originated outside Australia, the variety shall not be taken to have a particular characteristic unless—

- 10 (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—
- 15 (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—
- 20 (i) a test growing of the variety carried out 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
- 25 (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, it would take longer than 2 years.

Test growing of plant varieties

30 24. 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
- 35 (b) for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic,
- he 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
- 40 (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 makes 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.

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 made—

(a) if the Secretary is satisfied that—

- (i) there is such a variety;
- (ii) the 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 16; and
- (viii) all fees payable under this Act in relation to the application 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 date of publication in the *Gazette* of the notice of the application, and, if the application has been varied in a significant manner in pursuance of a request under sub-section 19 (1), a period of 6 months has elapsed since the date of publication in the *Gazette* of the 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 give written notice of the refusal to the applicant for the rights.

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) an address for the service of documents on the grantee for the purposes of this Act, being the address given in accordance with paragraph 15 (m);
- (f) the date 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 of those rights.

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 (including a person who originated that variety independently of the breeder to whom, or to whose successor, those rights were granted) is not

entitled to any interest in those rights by reason that that other person was entitled to make an application for those rights or of the grounds on which that other person was entitled to make such an application, but nothing in this sub-section prevents a person from applying to the Secretary for the revocation of those plant variety rights or from instituting proceedings before a court or the Administrative Appeals Tribunal in respect of those plant variety rights. 5

(2) Where—

- (a) plant variety rights in respect of a new plant variety are granted to a person; and
- (b) another person was entitled, at law or in equity, to have the right to make an application for those plant variety rights assigned to him or her, 10

the other person is entitled to have those plant variety rights assigned to him or her.

Division 4—Miscellaneous 15

Nature of plant variety rights

30. (1) Plant variety rights are personal property and, subject to any conditions imposed under section 33, are capable of assignment and of transmission by will or by operation of law.

(2) An assignment of plant variety rights does not have effect unless it is in writing signed by or on behalf of the assignor. 20

(3) Where the grantee of plant variety rights licenses another person in respect of those rights, the licence binds every successor in title to the interest of the grantee in the plant variety rights to the same extent as it was binding on the grantee of those rights. 25

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 he or she 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. 30

(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. 35

(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) 40

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 (e)—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 they are granted.

Plant variety rights subject to conditions

33. (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 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

34. (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 5
- (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— 10

- (a) the grantee has failed to comply, in relation to those rights, with any condition imposed under section 33; or
- (b) a person to whom those rights have been assigned or transmitted has failed to comply with the requirements of section 31. 15

(3) Where the Secretary revokes plant variety rights in respect of a plant variety, the Secretary shall give written notice of the revocation to the grantee within 7 days after that decision was taken.

(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. 20

(5) The revocation of plant variety rights in respect of a plant variety takes effect— 25

- (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. 30

(6) Nothing in this section shall be taken to affect the powers of the Federal Court of Australia 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). 35

(7) Where the revocation of plant variety rights in respect of a plant variety takes effect—

- (a) the Registrar shall enter particulars of the revocation in the Register; and 40
- (b) the Secretary shall give public notice of the revocation.

(8) 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 plant variety rights under this section.

5 (9) The Secretary shall consider any application made under sub-section (8) and, if the Secretary decides not to revoke the plant variety rights, the Secretary shall give written notice of the decision to the applicant.

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

35. (1) Notwithstanding that plant variety rights have been granted in respect of a plant variety, any person may—

- 10 (a) propagate, grow and use plants of that variety for purposes other than commercial purposes;
- (b) sell plants of that variety for a use that does not involve the growing of the plants or the production of plants of that variety;
- 15 (c) sell reproductive material of plants of that variety for a use that does not involve the production of plants of that variety;
- (d) sell with a farm or other land on which plants of that variety are grown any plants or reproductive material of plants of that variety on the land; or
- 20 (e) do anything necessary or desirable for the purpose of producing, or attempting to produce, another new plant variety from plants of that variety by hybridizing or otherwise.

(2) A right under sub-section (1) to sell plants, or reproductive material of plants, includes the right to do anything for the purpose of selling the plants or reproductive material, including the right to produce the plants or reproductive material for the sale.

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(3) Without limiting the generality of paragraph (1) (b), 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.

30

Protection of public interest in new plant varieties

36. (1) For the purposes of this section, the reasonable requirements of the public with respect to a plant variety in respect of which plant variety rights have been granted shall be deemed to be satisfied if—

- 35 (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 in sufficient quantities to meet demand; or
- 40 (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 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 33, 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 have been granted are satisfied, the Secretary, in accordance with sub-sections (4) to (10), inclusive, may, on behalf of the grantee of those rights— 5

(a) license a person or persons whom the Secretary considers appropriate to sell plants of that variety; 10

(b) license a person or persons whom the Secretary considers appropriate to sell reproductive material of plants of that variety; or

(c) 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. 15

(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. 20

(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); 25

(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). 30

(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) written notice inviting the grantee to furnish to the Secretary, within one month after the date on which the notice is given, a written statement setting out reasons why the Secretary should be satisfied that the grantee— 35

(i) is complying with sub-section (2) in relation to that variety; or

(ii) will so comply within a reasonable time. 40

(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 notice under paragraph (6) (b), decide whether or not to exercise the power or powers concerned and shall—

- 5 (a) give written notice of his or her decision to the grantee of plant variety rights in respect of that plant variety; 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).

10 (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
 15 (c) inviting persons to apply in writing to the Secretary, within one month after the date of the publication of the notice in the *Gazette*, to be licensed to do that thing, or to do any of those things, as the case requires, in relation to that variety,

20 and the Secretary shall not exercise that power without considering all applications in response to the invitation in the notice.

(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—

- 25 (a) gave written notice to each person who applied to be licensed in response to the invitation in the relevant public notice 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.

30 (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
 35 course of business.

Infringement of plant variety rights

37. Subject to sections 35 and 36, the plant variety rights of a grantee in respect of a plant variety are infringed by a person who—

- 40 (a) not being licensed by the grantee to do so—
 (i) sells, or holds himself or herself out as being willing to sell, plants of that variety;
 (ii) sells, or holds himself or herself out as being willing to sell, reproductive material of plants of that variety;

- (iii) produces plants of that variety for sale; or
- (iv) produces reproductive material of plants of that variety for sale;
- (b) 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; 5
- (c) 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

38. (1) An action or proceeding for an infringement of plant variety rights may be instituted in a prescribed court, or in any other court of competent jurisdiction. 10

(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— 15

- (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 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. 20

(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— 25

- (a) the court shall order the defendant to serve on the Registrar an office copy of the order revoking the plant variety rights; and
- (b) the Registrar shall enter particulars of the revocation in the Register.

Declaration as to non-infringement 30

39. (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 a prescribed court against the grantee of plant variety rights, claim a declaration that the sale or production of the plant or reproductive material would not constitute an infringement of plant variety rights although no assertion to the contrary has been made by the grantee of the plant variety rights. 35

(2) A prescribed court shall not make a declaration sought in an action under sub-section (1) unless—

- (a) the plaintiff— 40
 - (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; 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 valid.

Jurisdiction of prescribed courts

40. (1) Subject to sub-section (2), every prescribed 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 a prescribed court.

(2) The jurisdiction conferred by sub-section (1) on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

(3) The jurisdiction of a prescribed court under this section shall be exercised by a single judge.

(4) The relief that a 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.

(5) A 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 that 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.

(6) The regulations may make provision for and in relation to the practice and procedure of prescribed courts 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.

Transfer of action or proceeding

41. (1) A prescribed court in which an action or proceeding has been instituted under this Act may, if the court thinks fit, upon application of a party made at any stage in the action or proceeding, by order, transfer the action or proceeding to another prescribed court having jurisdiction to hear and determine the action or proceeding.

(2) Where an action or proceeding is transferred from a court in pursuance of this section—

- (a) all documents filed of record in that court shall be transmitted by the Registrar or other proper officer of that court to the Registrar or other proper officer of the court to which the action or proceeding is transferred; and 5
- (b) the court to which the action or proceeding is transferred shall proceed as if the action or proceeding had been originally instituted in that court and as if the same proceedings had been taken in that court as had been taken in the court from which the action or proceeding was transferred. 10

Appeals

42. (1) Subject to sub-section (2), an appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this Act or a judgment or order of any other court in an action or proceeding referred to in sub-section 38 (1). 15

(2) An appeal lies to the High Court, by special leave of the High Court, from a judgment or order referred to in sub-section (1).

(3) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in sub-section (1). 20

PART IV—CONSTITUTION OF ADVISORY COMMITTEE

Constitution of Advisory Committee

43. (1) The Advisory Committee shall consist of—

- (a) the Secretary;
- (b) 2 members representing users of horticultural-plants; 25
- (c) 2 members representing breeders of horticultural-plants;
- (d) 2 members having special knowledge of horticultural-plant matters; and
- (e) 7 members, each of whom shall be a person representing a State.

(2) The members referred to in paragraph (1) (b) to (e), inclusive, shall be appointed by the Governor-General. 30

(3) The members hold office as part-time members.

(4) The members referred to in paragraph (1) (b) shall be persons selected from a list, submitted to the Minister by the Australian Consumers Association, of persons considered by that Association as suitable to represent users of horticultural-plants on the Advisory Committee. 35

(5) The members referred to in paragraph (1) (c) shall be persons selected from a list, submitted to the Minister by the Seed Industry Association of Australia or by the Australian Nurserymen's Association Limited, of persons

considered by the Association that submitted the list as suitable to represent breeders of horticultural-plants on the Advisory Committee.

(6) A member representing a State shall be a person appointed on the nomination of the Minister of that State responsible for agricultural matters.

5 (7) The Minister shall, whenever he considers it necessary to do so, request, in writing—

10 (a) the Australian Consumers Association to submit to him a list containing the names of not less than 3 persons considered by that Association as suitable to represent users of horticultural-plants on the Advisory Committee; or

(b) the Seed Industry Association of Australia and the Nurserymen's Association Limited each to submit to him a list containing the names of not less than 3 persons considered by that Association as suitable to represent breeders of horticultural-plants on the Advisory Committee.

15 (8) In this section, a reference to a State shall be read as including a reference to the Northern Territory.

Terms and conditions of appointment

44. (1) Subject to this Act, a member, not being the Secretary, holds office for a period of 3 years, but is eligible for re-appointment.

20 (2) A member, other than the Secretary, holds office on such terms and conditions, if any, in respect of matters not provided for by this Act as are determined by the Governor-General.

Remuneration and allowances

25 45. A member shall not be paid any remuneration in respect of the performance of the duties of his office but may be reimbursed, as prescribed, travelling and other expenses incurred in connection with the performance of those duties.

Resignation

30 46. A member, other than the Secretary, may resign office by writing signed by the member and delivered to the Governor-General.

Termination of appointment

47. (1) The Governor-General may terminate the appointment of a member, other than the Secretary, by reason of misbehaviour or physical or mental incapacity.

35 (2) If a member, other than the Secretary—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with the member's creditors; or

- (b) fails, without reasonable excuse, to comply with his obligations under section 48,

the Governor-General shall terminate the appointment of the member.

Disclosures of interests

48. Where a member has or acquires any direct or indirect interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in respect of a matter referred to the Advisory Committee— 5

- (a) the member shall, as soon as practicable after it comes to his knowledge that he has, or has acquired, the interest, disclose the interest at a meeting of the Advisory Committee; and 10
- (b) the member shall not, after having so disclosed the interest, take part in the proceedings of the Advisory Committee with respect to that matter without the consent of a majority of the other members of the Advisory Committee. 15

Acting appointments

49. (1) The Minister may appoint a person to act in the office of a member, other than the Secretary—

- (a) during any period or during all periods when the member holding the office is absent from Australia or is, for any other reason, unavailable to perform the duties of the office; or 20
- (b) during a vacancy in the office.

(2) The appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment. 25

(3) The Minister shall not appoint a person to act in the office of a member under sub-section (1) unless the Governor-General would be authorized under section 43 to appoint the person to that office.

(4) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under sub-section (1), but not so as to entitle the person to be paid remuneration; and 30
- (b) terminate the appointment at any time.

(5) The appointment of a person to act in the office of a member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister. 35

(6) While a person is acting in the office of a member, the person has, and may exercise, all the powers, and shall perform all the duties of a member under this Act.

Meetings

50. (1) The Secretary may convene such meetings of the Advisory Committee as are necessary for the purposes of the performance of the functions of the Advisory Committee.

5 (2) The Secretary shall preside at a meeting of the Advisory Committee at which the Secretary is present, but if the Secretary is not present, the members present shall elect one of their number to preside at the meeting.

(3) 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.

10 **PART V—MISCELLANEOUS**

Inspection of Register

51. 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.

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

52. 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.

20 **Service of documents**

53. (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.

25 (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.

30 **Offences**

54. A person shall not—

- 35 (a) knowingly make a false statement in an application or other document submitted to the Secretary or the Registrar for the purposes of this Act;
 - (b) falsely represent to another person that he or she is the grantee of plant variety rights in respect of a plant variety;
 - (c) falsely represent to another person that he or she is deemed to be the grantee of plant variety rights in respect of a plant variety by virtue of section 22; or
- 40

- (d) falsely represent that a plant is a plant of a plant variety in respect of which plant variety rights have been granted.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Applications for review

55. (1) Applications may be made to the Administrative Appeals Tribunal for review of— 5

- (a) a decision of the Secretary under paragraph 17 (1) (b) rejecting an application;
- (b) the refusal of the Secretary to vary an application upon a request made under sub-section 19 (1) or (2); 10
- (c) the giving by the Secretary of a notice under sub-section 22 (2);
- (d) a requirement by the Secretary under section 24;
- (e) a grant of plant variety rights by the Secretary under section 26 or a refusal of the Secretary to grant plant variety rights under that section;
- (f) the amendment of the Register by the Registrar under section 31 or a refusal of the Registrar to amend the Register under that section; 15
- (g) the imposition by the Minister of conditions under sub-section 33 (1);
- (h) the revocation of plant variety rights by the Secretary under section 34;
- (j) a decision of the Secretary under sub-section 36 (7) to exercise a power under sub-section 36 (3); 20
- (k) a decision of the Secretary to license a person under sub-section 36 (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 36 (8) (c); or 25
- (m) the determination by the Secretary of terms and conditions of a licence in accordance with sub-section 36 (10).

(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) (j). 30

(3) The Secretary shall give public notice of any decision of the Administrative Appeals Tribunal on an application made under sub-section (1). 35

Regulations

56. 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; 40
- (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 sections 23 and 24.

