# Plant Breeder's Rights Act 1994

**No. 110, 1994**

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**This compilation includes commenced amendments made by Act No. 8, 2015 and Act No. 126, 2015**

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# About this compilation

### This compilation

This is a compilation of the *Plant Breeder's Rights Act 1994* that shows the text of the law as amended and in force on 24 February 2017 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to provide for the granting of proprietary rights to breeders of certain new varieties of plants and fungi, to repeal the *Plant Variety Rights Act 1987*, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Plant Breeder's Rights Act 1994*.

### 2 Commencement

(1) Subject to subsection (2), the provisions of this Act commence on a day to be fixed by Proclamation.

(2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### 3 Definitions

(1) In this Act, unless the contrary intention appears:

***AAT*** means the Administrative Appeals Tribunal.

***AAT Act*** means the *Administrative Appeals Tribunal Act 1975*.

***address*** has a meaning affected by subsection (2).

***Advisory Committee*** means the Plant Breeder's Rights Advisory Committee established by section 63.

***applicant,*** in relation to an application, means the person currently shown in the application as the person making the application.

***application*** means an application under section 24 for PBR in a plant variety to which this Act extends.



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***approved form*** means a form approved by the Secretary for the purposes of the provision in which the expression appears.

***biosecurity control order*** has the same meaning as in the *Biosecurity Act 2015*.

***biosecurity response zone*** has the same meaning as in the *Biosecurity Act 2015*.

***biosecurity response zone determination*** has the same meaning as in the *Biosecurity Act 2015*.

***breeder***, in relation to a new plant variety, means:

(a) subject to paragraph (c), if the variety was bred by one person only—the person; or

(b) subject to paragraph (c), if the variety was bred by 2 or more persons (whether jointly or independently and whether at the same time or different times)—each of those persons; or

(c) if the variety was bred:

(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 a member or employee of such a body;

the body of which that person or each of those persons is a member or employee;

and includes any person or body that is the successor in title to the person referred to in paragraph (a), to any of the persons referred to in paragraph (b) or the body referred to in paragraph (c).

***conditioning***, in relation to propagating material of a plant variety, means:

(a) cleaning, coating, sorting, packaging or grading of the material; or

(b) any other similar treatment;

undertaken for the purpose of preparing the material for propagation or sale.

***contracting party*** means a State, or an intergovernmental organisation, that is a party to the Convention.



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***Convention*** means the International Convention for the Protection of New Varieties of Plants, done at Geneva on 23 October 1978, as that treaty is in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1989 No. 2 ([1989] ATS 2). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

***dependent plant variety***, in relation to another plant variety in which a person holds PBR in Australia, means a plant variety over which PBR in the other plant variety extends under section 13.

***essential characteristics***, in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal features, performance or value of the variety.

***Federal Circuit Court*** means the Federal Circuit Court of Australia.

***Federal Court*** means the Federal Court of Australia.

***genetic resource centre*** means a place that the Secretary declares to be a genetic resource centre under subsection 70(1).

***grantee***:

(a) in relation to PBR in a plant variety—means the person currently entered on the Register as the holder of that right in that variety; and

(b) in relation to PBR in a plant variety declared to be an essentially derived variety of another plant variety—includes the person currently entered on the Register as the holder of that right in relation to that other plant variety.

***herbarium*** means the organisation that the Secretary declares to be the herbarium under section 71.

***hybrid*** means a plant that is a combination of 2 or more genotypes of the same or different taxa but excluding a combination comprising a scion grafted on to a root stock.

***indigenous*** means:



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(a) a member of the Aboriginal race of Australia; or
(b) a descendant of the indigenous inhabitants of the Torres Strait Islands.

***member*** means a member of the Advisory Committee and includes the Registrar.

***PBR***, in a plant variety, means the plant breeder's right specified in section 11.

***PBR***, in respect of a plant variety registered in another contracting party, means a plant breeder's right corresponding to the right specified in section 11 conferred under the law of that contracting party.

***PBR office*** means place of work of the Registrar or a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

***PBR sub-office*** means place of work in a single State of the Registrar or a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

***plant*** includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages.

***plant class***, for the purpose of variety denomination, means a class consisting of all plants:
(a) that belong to a single botanical genus; or
(b) that belong to a group of closely related genera;
that is specified from time to time as a plant class in the Registrar's List of Plant Classes maintained under subsection 61(1A).

***plant variety*** means a plant grouping (including a hybrid):
(a) that is contained within a single botanical taxon of the lowest known rank; and
(b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that plant grouping; and



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(c) that can be distinguished from any other plant grouping by the expression of at least one of those characteristics; and

(d) that can be considered as a functional unit because of its suitability for being propagated unchanged.

Note: Plant groupings for the purposes of this definition include genetically modified plant groupings. See section 6.

***process***, in relation to the reproduction of propagating material, of a plant variety does not include:

(a) the development of a cell or tissue or a plant part into a plant of that variety; or

(b) the growth of a plant into a larger plant of that variety.

***propagating material***, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced.

***propagation***, in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component, whether by sexual or asexual means.

***Register*** means the Register of Plant Varieties kept under section 61.

***Registrar*** means the Registrar of Plant Breeder's Rights.

***release from biosecurity control*** has the same meaning as in the *Biosecurity Act 2015*.

***reproduction***, in relation to propagating material of a plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent plants is multiplied.

***Secretary*** means the Secretary of the Department.

***sell*** includes letting on hire and exchanging by way of barter.

***subject to biosecurity control*** has the same meaning as in the *Biosecurity Act 2015*.



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***successor*** means:

(a) in relation to a breeder of a plant variety—a person to whom the right of the breeder to make application for PBR in that variety has been assigned, or transmitted by will or by operation of law; and

(b) in relation to a grantee of PBR—a person to whom that right has been assigned, or transmitted by will or by operation of law.

***synonym***, in relation to the name of a plant variety, means a name that:

(a) is included in an application in addition to the name of the variety; and

(b) is a name by which the variety will be known or sold in Australia.

***test growing*** includes a comparative test growing.

***Union*** means the Union for the Protection of New Varieties of Plants as defined in Article 1 of the Convention.

***will*** includes a codicil.

*Electronic address*

(2) After the time specified in the regulations, a reference in this Act to an ***address*** includes a reference to an electronic address.

(3) The time specified under subsection (2) must be later than the day on which the regulations are registered under the *Legislation Act 2003*.

(4) Subsection (2) of this section does not apply to the following references to an ***address***:

(a) a reference in subsection 26(2);

(b) the first reference in subsection 26(3).

(5) For the purposes of this Act, the question of whether an electronic address is in Australia is to be determined in accordance with the regulations.



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(6) For the purposes of this Act, the question of whether an electronic address is in New Zealand is to be determined in accordance with the regulations.

## 4 Definition of essentially derived varieties

A plant variety is taken to be an essentially derived variety of another plant variety if:

(a) it is predominantly derived from that other plant variety; and

(b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and

(c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

## 5 Definition of breeding

(1) A reference in this Act to breeding, in relation to a new plant variety, includes a reference to the discovery of a plant together with its use in selective propagation so as to enable the development of the new plant variety.

(2) If a plant is discovered by one person but used in selective propagation by another so as to enable the development of a new plant variety, those persons are together taken to be the joint breeders of the new plant variety.

## 6 Genetic modification

For the purposes of this Act, an organism may be treated as constituting a plant grouping within a single botanical taxon despite the fact that the genome of the plants in that plant grouping has been altered by the introduction of genetic material that is not from plants.

## 8 Approved persons

(1) In this Act, a reference to an approved person is a reference to a person who, on the basis of the person's qualifications and



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experience, the Secretary has designated, by instrument in writing, to be such a person in relation to one of more species of plant.

(2) The Registrar must, from time to time, cause lists of all persons who are approved persons in relation to particular species of plant to be published in the *Plant Varieties Journal*.

## 9 Act to bind Crown

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) Nothing in this Act renders the Crown, in any of its capacities, liable to be prosecuted for an offence.

## 9A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 9B Extension to Norfolk Island

This Act does not extend to Norfolk Island unless the regulations prescribe.

## 10 Extent of Act

Nothing in this Act requires or permits the granting of PBR in a plant variety unless:

(a) if Australia is a party to the Convention—the grant is appropriate to give effect to the obligations of Australia under the Convention; or

(b) the breeding of the plant variety constitutes an invention for the purpose of paragraph 51(xviii) of the Constitution.



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# Part 2—Plant breeder's right

## 11 General nature of PBR

Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is the exclusive right, subject to this Act, to do, or to license another person to do, the following acts in relation to propagating material of the variety:

(a) produce or reproduce the material;
(b) condition the material for the purpose of propagation;
(c) offer the material for sale;
(d) sell the material;
(e) import the material;
(f) export the material;
(g) stock the material for the purposes described in paragraph (a), (b), (c), (d), (e) or (f).

Note: In certain circumstances, the right conferred by this section extends to essentially derived varieties (see section 12), certain dependent plant varieties (see section 13), harvested material (see section 14) and products obtained from harvested material (see section 15).

## 12 Extension of PBR to cover essentially derived varieties

Subject to section 23, if:

(a) PBR is granted to a person in a plant variety (the ***initial variety***); and
(b) PBR is granted to another person in another plant variety; and
(c) the Secretary makes a declaration, on application by the first-mentioned person, that the other plant variety is an essentially derived variety from the initial variety;

the right granted in the initial variety extends, with effect from the date of the declaration, to that other plant variety.



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## 13 Extension of PBR to cover certain dependent plant varieties

Subject to section 23, if PBR is granted in a plant variety (the ***initial variety***), the right extends to:

(a) any other plant variety that:

(i) is not clearly distinguishable from the initial variety; and

(ii) is clearly distinguishable from any plant variety that was a matter of common knowledge at the time of the grant of PBR in the initial variety; and

(b) any other plant variety that cannot be reproduced except by the repeated use of the initial variety or of a variety referred to in paragraph (a);

whether or not that other plant variety was in existence at the time PBR was granted in the initial variety.

## 14 Extension of PBR to harvested material in certain circumstances

(1) If:

(a) propagating material of a plant variety covered by PBR is produced or reproduced without the authorisation of the grantee; and

(b) the grantee does not have a reasonable opportunity to exercise the grantee's right in relation to the propagating material; and

(c) material is harvested from the propagating material;

section 11 operates as if the harvested material were propagating material.

(2) Subsection (1) applies to so much of the material harvested by a farmer from propagating material conditioned and reproduced in the circumstances set out in subsection 17(1) as is not itself required by the farmer, for the farmer's own use, for reproductive purposes.



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## 15 Extension of PBR to products obtained from harvested material in certain circumstances

If:

(a) propagating material of a plant variety covered by PBR is produced or reproduced without authorisation of the grantee; and

(b) the grantee does not have a reasonable opportunity to exercise the grantee's rights in relation to the propagating material; and

(c) material is harvested from plants grown from the propagating material but the grantee does not have, in the circumstances set out in section 14, a reasonable opportunity of exercising the grantee's rights in the harvested material; and

(d) products are made from the harvested material;

section 11 operates as if those products were propagating material.

## 16 Certain acts done for private, experimental or breeding purposes do not infringe PBR

Any act done in relation to a plant variety covered by PBR that is done:

(a) privately and for non-commercial purposes; or

(b) for experimental purposes; or

(c) for the purpose of breeding other plant varieties;

does not infringe the PBR.

## 17 Conditioning and use of farm saved seed does not infringe PBR

(1) If:

(a) a person engaged in farming activities legitimately obtains propagating material of a plant variety covered by PBR either by purchase or by previous operation of this section, for use in such activities; and

(b) the plant variety is not included within a taxon declared under subsection (2) to be a taxon to which this subsection does not apply; and



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(c) the person subsequently harvests further propagating material from plants grown from that first-mentioned propagating material;

the PBR is not infringed by:

(d) the conditioning of so much of that further propagating material as is required for the person's use for reproductive purposes; or

(e) the reproduction of that further propagating material.

(2) The regulations may declare a particular taxon to be a taxon to which subsection (1) does not apply.

## 18 Restriction on grantee's rights in certain circumstances

(1) If:

(a) a person is authorised by or under a law of the Commonwealth or of a State or Territory to do an act referred to in a paragraph of section 11 in relation to propagating material of a plant variety; and

(b) the act is one which (apart from this provision) would require authorisation from the grantee of PBR in the plant variety; and

(c) before the person does the act, the person either pays equitable remuneration to the grantee in respect of the act or arranges for the payment of such remuneration; and

(d) the person does the act;

then the grantee is not entitled to exercise PBR in the plant variety against the person in respect of that act.

(2) To avoid doubt, subsection (1) does not limit the operation of section 17 in relation to the conditioning or reproduction of propagating material in the circumstances referred to in that section.

(3) In this section:

***equitable remuneration***, in relation to an act done in relation to propagating material of a plant variety, means an amount:



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(a) that is agreed between the person proposing to undertake the act and the grantee of PBR in the plant variety; or

(b) if agreement cannot be reached under paragraph (a)— determined by a court of competent jurisdiction to constitute equitable remuneration in relation to the act.

## 19 Reasonable public access to plant varieties covered by PBR

(1) Subject to subsection (11), the grantee of PBR in a plant variety must take all reasonable steps to ensure reasonable public access to that plant variety.

(2) Reasonable public access to a plant variety covered by PBR is taken to be satisfied if propagating material of reasonable quality is available to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand.

(3) For the purpose of ensuring reasonable public access to a plant variety covered by PBR, the Secretary may, on behalf of the grantee, in accordance with subsections (4) to (10), license a person whom the Secretary considers appropriate:

(a) to sell propagating material of plants of that variety; or

(b) to produce propagating material of plants of that variety for sale;

during such period as the Secretary considers appropriate and on such terms and conditions (including the provision of reasonable remuneration to the grantee) as the Secretary considers would be granted by the grantee in the normal course of business.

(4) If, at any time more than 2 years after the grant of PBR in a plant variety, a person considers:

(a) that the grantee is failing to comply with subsection (1) in relation to the variety; and

(b) that the failure affects the person's interests;

the person may make a written request to the Secretary to exercise a power under subsection (3) in relation to the variety.

(5) A request must:

(a) set out the reasons why the person considers that the grantee is failing to comply with subsection (1); and



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(b) give particulars of the way in which the person considers that the failure affects the person's interests; and

(c) give an address of the person for the purposes of notifications under this section.

(5A) An address given under paragraph (5)(c) must be an address in Australia or New Zealand.

(6) The Secretary must give the grantee:

(a) a copy of the request; and

(b) a written invitation to give the Secretary, within 30 days after giving the request, a written statement of the reasons the Secretary should be satisfied that the grantee:

(i) is complying with subsection (1) in relation to the variety; or

(ii) will so comply within a reasonable time.

(7) The Secretary must, after considering the request and any statement given by the grantee in response to the invitation under paragraph (6)(b):

(a) decide whether or not to exercise the power concerned; and

(b) within 30 days after so deciding, give written notice of the decision to the grantee and to the person making the request.

Note: A decision under this subsection is reviewable by the AAT under section 77.

(8) If the Secretary proposes to exercise a power under subsection (3) in relation to a plant variety, the Secretary must give public notice:

(a) identifying the variety; and

(b) setting out particulars of any licence the Secretary proposes to grant; and

(c) inviting persons to apply in writing to the Secretary, within 30 days of the publication of the notice, to be granted that licence.

(9) The Secretary must not grant any such licence unless:

(a) the Secretary has considered all applications made in response to the invitation; and



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(b) at least one month before granting any such licence, the Secretary has:

(i) given written notice to each such applicant of the name of the proposed licensee; and

(ii) given public notice of the name of the proposed licensee.

(10) If the Secretary:

(a) has granted a person a licence to produce propagating material of plants of a particular variety; and

(b) is satisfied that the person will be unable to obtain such propagating material at a reasonable price or without charge;

the Secretary may, on behalf of the grantee, make that propagating material available to the person from material stored at a genetic resource centre.

Note: A decision under this subsection to make propagating material available is reviewable by the AAT under section 77.

(11) This section does not apply in relation to a plant variety in respect of which the Secretary certifies, in writing, at the time of the grant of PBR, that he or she is satisfied that plants of that variety have no direct use as a consumer product.

Note: A decision under this subsection is reviewable by the AAT under section 77.

## 20 PBR is personal property

(1) PBR is personal property and, subject to any conditions imposed under section 49, is capable of assignment, or of transmission by will or by operation of law.

(2) An assignment of PBR (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 and assignee.

(3) If a grantee of PBR in a plant variety gives another person a licence in that right, the licence binds every successor in title to the interest of that grantee to the same extent as it was binding on that grantee of the PBR.



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Note 1: The *Personal Property Securities Act 2009* applies to PBR, and any licence in PBR, as ***intellectual property*** (see paragraph (d) of the definition of that phrase in section 10 of that Act). That Act deals with security interests in personal property, including intellectual property and intellectual property licences.

Note 2: Section 106 of the *Personal Property Securities Act 2009* corresponds to subsection 20(3) of this section. Section 106 of that Act provides for security agreements in relation to intellectual property licences (or sub-licences) to be binding on successors in title to the licences (or sub-licences).

## 21 Registrar must be notified of an assignment of PBR

(1) If a person (the ***claimant***) claims that PBR was assigned or transmitted to the claimant, the claimant must inform the Registrar in writing that the claimant has acquired that right, giving particulars of the manner in which that right was acquired, within 30 days after acquiring that right.

(2) If the Registrar is satisfied that the right has been so assigned or transmitted, the Registrar must amend the Register by entering the name of the claimant as the holder of that right.

(3) If the Registrar enters the name of the claimant on the Register as the holder of PBR, the Registrar must, within 30 days after entering the name, give written notice to the claimant and to the person who was the holder before the entry was made, stating that the entry has been made.

(4) If the Registrar is not satisfied that PBR has been assigned or transmitted to the claimant, the Registrar must, as soon as possible:

(a) give written notice to the claimant:

(i) telling the claimant that the Registrar is not so satisfied; and

(ii) setting out the reasons why the Registrar is not so satisfied; and

(b) give written notice to the person entered on the Register as the holder of the right:

(i) setting out particulars of the information given by the claimant; and



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(ii) telling the claimant that the Registrar is not so satisfied; and

(iii) setting out the reasons why the Registrar is not so satisfied.

(5) A claimant must include, in the notice to the Registrar informing of the assignment or transmission, an address in Australia or New Zealand for the service of documents in accordance with this Act.

Note: A decision under this section to amend or to refuse to amend the Register is reviewable by the AAT under section 77.

## 22 Duration of PBR

(1) Subject to subsections (4) and (5), PBR in a plant variety begins on the day that the grant of PBR in the variety is made.

(2) Subject to subsections (3), (4) and (5), PBR in a plant variety lasts for:

(a) in the case of trees and vines—25 years; and

(b) for any other variety—20 years.

(3) The regulations may provide that PBR in a plant variety included within a specified taxon lasts for a longer period than is specified in subsection (2).

(4) PBR in a plant variety that is a dependent plant variety of another plant variety begins on:

(a) the day that the grant of PBR in the other plant variety is made; or

(b) the day that dependent variety comes into existence;

whichever occurs last, and ends when PBR in the other variety ceases.

(5) If:

(a) PBR is held in a plant variety (the ***initial variety***); and

(b) another plant variety is declared under section 40 to be an essentially derived variety of the initial variety;

PBR in the initial variety extends to the essentially derived variety from the day on which that declaration is made until the day on which PBR in the initial variety ends.



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## 23 Exhaustion of PBR

(1) PBR granted in a plant variety does not extend to any act referred to in section 11:

(a) in relation to propagating material of the variety; or

(b) in relation to propagating material of any essentially derived variety or dependent plant variety;

that takes place after the propagating material has been sold by the grantee or with the grantee's consent unless that act:

(c) involves further production or reproduction of the material; or

(d) involves the export of the material:

(i) to a country that does not provide PBR in relation to the variety; and

(ii) for a purpose other than final consumption.

(2) If:

(a) a plant variety is declared to be an essentially derived variety of another plant variety (the ***initial variety***); and

(b) PBR in the essentially derived variety is held both by the grantee of PBR in the essentially derived variety and by the grantee of PBR in the initial variety;

the reference in subsection (1) to propagating material sold by the grantee or with the grantee's consent is a reference to propagating material sold by, or with the consent of, both of the grantees referred to in paragraph (b).

(3) If, under subsection 18(1), equitable remuneration is paid, or arranged to be paid, to the grantee of PBR in a plant variety in respect of an act (the ***first act***) in relation to propagating material of that variety before the person does the act, PBR in that variety does not extend to any later act (the ***later act***) referred to in section 11 in relation to that propagating material unless the later act:

(a) involves the further production or reproduction of that propagating material; or

(b) involves the export of the material:

(i) to a country that does not provide PBR in relation to the variety; and



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(ii) for a purpose other than final consumption.

(4) To avoid doubt, nothing in subsection (1) or (3) prevents the exercise of the rights of the grantee of PBR in a plant variety in relation to any propagating material of that variety that is obtained by reproduction of the propagating material to which that subsection applies.



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# Part 3—Application for plant breeder's right

## Division 1—The making of the application

### 24 Right to apply for PBR

(1) A breeder of a plant variety may make application to the Secretary for the grant of a PBR in the variety.

(2) The breeder can make the application whether or not:
  (a) the breeder is an Australian citizen; and
  (b) the breeder is resident in Australia; and
  (c) the variety was bred in Australia.

(3) Subject to subsection (4), if 2 or more persons bred a plant variety jointly, those persons or some of them may make a joint application for that right.

(4) If 2 or more persons bred a plant variety jointly, one of those persons is not entitled to apply for PBR in the variety otherwise than jointly with, or with the consent in writing of, each other of those persons.

### 25 Right to apply for PBR is personal property

(1) The right of a breeder of a plant variety to apply for PBR is personal property and is capable of assignment and of transmission by will or by operation of law.

(2) An assignment of a right to apply for PBR must be in writing signed by or on behalf of the assignor.

Note: The *Personal Property Securities Act 2009* deals with security interests in personal property, including a right to apply for PBR.

### 26 Form of application for PBR

(1) An application for PBR in a plant variety must:
  (a) be in writing; and



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(b) be in an approved form; and

(c) be lodged in a manner set out in the approved form.

(2) The application must contain:

(a) the name and address of the applicant; and

(b) if the applicant is using an agent to make the application on the applicant's behalf—the name and address of the agent; and

(c) if the applicant is the breeder of the variety—a statement of that effect; and

(d) if the applicant is not the breeder of the variety—the name and address of the breeder and particulars of the assignment, or transmission by will or by operation of law, of the right to make the application; and

(e) a brief description, or a brief description and photograph, of a plant of the variety sufficient to establish a *prima facie* case that the variety is distinct from other varieties of common knowledge; and

(f) the name of the variety, having regard to the requirements of section 27, and any proposed synonym for that name; and

(g) the name of the location at which the variety was bred; and

(ga) the name of each variety (the ***parent variety***) used in the breeding program including, in respect of each parent variety:

(i) particulars of the names (including synonyms) by which the parent variety is known or sold in Australia; and

(ii) particulars of any PBR granted in Australia or in any other contracting party; and

(gb) a brief description of the manner in which the variety was bred; and

(h) particulars of any application for, or grant of, rights of any kind in the variety in any other country; and

(i) the name of an approved person who:

(i) will verify the particulars in the application; and

(ii) will supervise any test growing or further test growing of the variety required under section 37; and



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(iii) will verify a detailed description of the variety when such a description is supplied to the Secretary;

(j) such other particulars (if any) as are required by the approved form.

Note: The information given under paragraph (ga) is not available to the public under section 36.

(3) If an applicant is resident overseas in a country other than New Zealand, the applicant must, unless the applicant has appointed an agent resident in Australia or New Zealand to act on the applicant's behalf in the application, specify, in addition to any address overseas, an address in Australia or New Zealand for the service of notices on the applicant.

(4) An applicant must, before, or at the time of, lodging an application under this section, pay to the Commonwealth such application fee (if any) as is prescribed.

## 27 Names of new plant varieties

(1) If PBR has not been granted in another contracting party in a plant variety before an application for that right in that variety is made in Australia, the name set out in the application must comply with subsections (4), (5), (6) and (7).

(2) If, before making an application in Australia for PBR in a plant variety, PBR has been granted in that variety in another contracting party:

(a) the name of the variety set out in the Australian application must be the name under which PBR was first granted in another contracting party; but

(b) there may, and, if the name referred to in paragraph (a) does not comply with subsections (4), (5), (6) and (7) there must, also be included in the application a synonym, additional to the name of the variety.

(3) The synonym must be a name determined in accordance with subsections (4), (5), (6) and (7) as if the variety had not been the subject of a grant of PBR in another contracting party.



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(3A) If, before making an application in Australia for PBR in a plant variety, PBR has not been granted in that variety in another contracting party, a synonym may also be included in the application.

(4) A name (including a synonym), in respect of a plant variety, must be a word or words (whether invented or not) with or without the addition of either or both of the following:

(a) a letter or letters that do not constitute a word;

(b) a figure or figures.

(5) A name (including a synonym), in respect of a plant variety must not:

(a) be likely to deceive or cause confusion, including confusion with the name of another plant variety of the same plant class; or

(b) be contrary to law; or

(c) contain scandalous or offensive matter; or

(d) be prohibited by regulations in force at the time of the application; or

(e) be or include a trade mark that is registered, or whose registration is being sought, under the *Trade Marks Act 1995*, in respect of live plants, plant cells and plant tissues.

(6) A name (including a synonym), in respect of a plant variety must comply with the International Code of Botanical Nomenclature and subsidiary codes.

(7) A name (including a synonym), in respect of a plant variety must not consist of, or include:

(a) the name of a natural person living at the time of the application unless the person has given written consent to the name of the variety; or

(b) the name of a natural person who died within the period of 10 years before the application unless the legal personal representative of the person has given written consent to the name of the variety; or



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(c) the name of a corporation or other organisation, unless the corporation or other organisation has given its written consent to the name of the variety.

## 28 Applications to be given priority dates

(1) The Secretary must ensure that each application for PBR is given a priority date.

(2) The priority date is, unless section 29 applies in relation to the application, the date on which the application was lodged with the Secretary or, if another date is determined under the regulations for the application, the date determined.

(3) If 2 or more applications are made for PBR in the same plant variety, the Secretary must first consider the application having the earlier priority date.

## 29 Priority dates arising from foreign application

(1) If:

(a) a person has lodged an application for PBR in a plant variety in one or more contracting parties other than Australia; and

(b) within a period of 12 months after the date that the earliest of those applications (the ***foreign application***) was lodged, the person lodges an application in Australia (the ***local application***) for PBR in the variety; and

(c) the local application is accompanied with a claim to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application; and

(d) the local application is accepted;

the person is entitled to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application, subject to subsections (3) and (4).

(3) The entitlement of the person to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application is conditional on the person lodging with the Secretary, within 3 months of making the local application, a copy of the documents that constituted the foreign application, certified



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by the Authority that received the foreign application to be a true copy of the documents.

(4) The entitlement of the person to have the date of lodgment of the foreign application treated as the priority date for the purposes of the local application is conditional on the person providing to the Secretary, within a period of 3 years after the making of the foreign application, such further particulars in relation to the plant variety as are required to complete the consideration of the local application.

## 30 Acceptance or rejection of applications

(1) The Secretary must, as soon as practicable after an application for PBR is lodged in a plant variety, decide whether to accept or reject the application.

(2) If the Secretary is satisfied that:

(a) no other application has, or, if the application were to meet the requirements of paragraphs (b) and (c), would have, an earlier priority date in the variety; and

(b) the application complies with the requirements of section 26; and

(c) the application establishes a *prima facie* case for treating the plant variety as distinct from other varieties;

the Secretary must accept the application.

(3) If the Secretary is not satisfied of all of the matters referred to in subsection (2), the Secretary must reject the application.

(4) If the Secretary decides to accept the application, the Secretary must:

(a) give written notice to the applicant telling the applicant that the application has been accepted; and

(b) as soon as possible after notifying the applicant—give public notice of the acceptance of the application.

(5) If the Secretary decides to reject an application, the Secretary must:

(a) give written notice to the applicant telling the applicant of the rejection and setting out the reasons for the rejection; and



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(b) as soon as possible after notifying the applicant—give public notice of the rejection of the application.

Note: A decision under this section to accept or reject an application is reviewable by the AAT under section 77.

## 31 Requests for variation of application

(1) If:

(a) after an application for PBR in a plant variety has been accepted; but

(b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the right of the applicant to apply for PBR in a particular plant variety is assigned to, or has been transmitted by will or operation of law to, another person, that other person may request the Secretary, in writing, to vary the application so that that other person is shown as the applicant.

(2) If the Secretary is satisfied that the right to apply for PBR in a particular plant variety has been assigned to, or has been transmitted by will or operation of law to, to a particular person, the Secretary must vary the application so that that person is shown as the applicant.

(3) A request by a person under subsection (1) must give an address in Australia or New Zealand for the service of notices on the person for the purposes of this Act.

(4) If the Secretary complies with a request under subsection (1) and the address for the service of notices that is given in connection with that request is different from the address contained in the application as the address for service of documents on the applicant, the Secretary must vary the application so that the address so given is shown as the address for service of documents on the applicant.

(5) If:

(a) after an application for PBR in a plant variety has been accepted; but



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(b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the applicant requests the Secretary, in writing, to vary the application in any other respect other than that referred to in subsection (1), the Secretary may, in his or her discretion, vary the application in accordance with the request.

(6) Despite the previous provisions of this section, the Secretary is not obliged or permitted to vary an application in response to a request under this section unless the person making the application for the variation has paid to the Commonwealth the application variation fee that is prescribed for the purposes of this section.

Note: A decision under this section to vary or to refuse to vary an application is reviewable by the AAT under section 77.

## 32 Notification of decisions on requests to vary application

(1) If the Secretary varies an application in accordance with a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request telling the person that the application has been so varied.

(2) If the Secretary rejects a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request:

(a) telling the person that the request has been rejected; and

(b) setting out the reasons for the rejection.

(3) If the Secretary rejects a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice to the applicant:

(a) setting out particulars of the request; and

(b) telling the applicant that the request has been rejected; and

(c) setting out the reasons for the rejection.

(4) If the Secretary varies an application in accordance with a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice of particulars of the variation to the person who was the applicant before the variation was made.



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(5) If an application:

(a) is varied because of a request under subsection 31(1); or

(b) is varied because of a request under subsection 31(5) in a significant respect;

the Secretary must, as soon as practicable, give public notice of particulars of the variation.

## 33 Withdrawal of application

(1) An application may be withdrawn by the applicant at any time.

(2) If an application is withdrawn after public notice of acceptance of the application is given, the Secretary must, as soon as practicable, give public notice of the withdrawal.



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## Division 2—Dealing with the application after its acceptance

### 34 Detailed description in support of application to be given to Secretary

(1) As soon as practicable after, but not later than 12 months after, an application has been accepted, or within such further period as the Secretary allows for the purpose, the applicant must, if the applicant has not already done so, give the Secretary a detailed description of the plant variety to which the application relates.

Note: A decision under this subsection to refuse to extend the 12 months period is reviewable by the AAT under section 77.

(2) If the applicant fails to give the Secretary the detailed description required under this section within the required period, the application is taken to have been withdrawn.

(3) The detailed description must:
(a) be in writing; and
(b) be in an approved form; and
(c) be lodged with the Secretary in a manner set out in the approved form.

(4) The detailed description must contain:
(a) particulars of the characteristics that distinguish the variety from other plant varieties the existence of which is a matter of common knowledge; and
(b) particulars of:
(i) any test growing carried out, including a test growing carried out as required under section 37, to establish that the variety is distinct, uniform and stable; and
(ii) any test growing carried out as required under section 41; and
(c) if the variety was bred outside Australia—particulars of any test growing outside Australia that tend to establish that the variety will, if grown in Australia, be distinct, uniform and stable; and



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(d) such other particulars (if any) as are required by the approved form;

and must be accompanied by a certificate, in the approved form, verifying the particulars of the detailed description, completed by the approved person nominated in the application as the approved person in relation to that application.

(5) The Secretary must, as soon as practicable after receiving a detailed description of a plant variety to which an application for PBR relates, give public notice of that description.

(6) The applicant must:

(a) unless paragraph (b) applies—within 12 months after the application has been accepted; and

(b) if the detailed description has been given to the Secretary before the end of that period—at the time when the description was given;

pay to the Commonwealth such examination fee as is prescribed.

(7) Subsection (6) does not apply to an applicant if, when the examination fee would become payable apart from this subsection:

(a) the plant variety to which the application relates is subject to biosecurity control; or

(b) a biosecurity control order is in force in relation to the plant variety to which the application relates; or

(c) a biosecurity response zone determination is in force and the plant variety to which the application relates is in the biosecurity response zone.

(8) If subsection (7) applies, the applicant must pay the prescribed examination fee within 12 months after (as the case requires):

(a) the plant variety is released from biosecurity control; or

(b) the biosecurity control order ceases to be in force in relation to the plant variety; or

(c) the biosecurity response zone determination ceases to be in force.



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## 35 Objection to application for PBR

(1) Any person who considers, in relation to an application for PBR in a plant variety that has been accepted:

(a) that his or her commercial interests would be affected by the grant of that PBR to the applicant; and

(b) that the Secretary cannot be satisfied, in relation to that application, of a matter referred to in a paragraph of subsection 26(2) or in subparagraph 44(1)(b)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii);

may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.

(2) An objection must set out:

(a) particulars of the manner in which the person considers his or her commercial interests would be affected; and

(b) the reasons why the person considers that the Secretary cannot be satisfied of a matter referred to in paragraph (1)(b).

(2A) An objection is of no effect unless it is accompanied by the prescribed fee.

(3) The Registrar must give a copy of the objection to the applicant.

## 36 Inspection of applications and objections

(1) A person may, at any reasonable time, inspect an application for PBR in a plant variety (including any detailed description of the plant variety given in support of the application) or an objection lodged in respect of that application (including that detailed description).

(2) A person is entitled, on payment of such fee as is prescribed, to be given a copy of an application for PBR in a plant variety, of an objection to such an application, or of a detailed description of the plant variety.

(3) However, this section does not entitle a person to inspect the part of the application that contains the information referred to in



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paragraph 26(2)(ga) or to have a copy of the part of the application containing that information, unless the person is:

(a) the applicant; or

(b) the applicant's authorised agent; or

(c) the Minister; or

(d) the Secretary; or

(e) a person who is required to inspect the part of the application in the course of performing his or her duties in accordance with this Act; or

(f) a person prescribed for the purposes of this subsection.

## 37 Test growing of plant varieties

(1) If, in dealing with:

(a) an application for PBR that has been accepted; or

(b) an objection to such an application for PBR; or

(c) a request for revocation of PBR;

the Secretary decides that there should be a test growing or a further test growing of the variety to which the application, objection or request relates, the Secretary:

(d) must give written notice of that decision:

(i) to the person who made the application, objection or request; and

(ii) in the case of an objection to an application for PBR—also to the applicant; and

(iii) in the case of a request for revocation of PBR—also to the grantee; and

(e) may also give written notice of that decision to any other person whom the Secretary considers appropriate if the test growing or further test growing is a comparative test growing.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

(2) The notice, in addition to telling the person of the Secretary's decision:

(a) must specify the purpose of the test growing; and



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(b) may require the person:

(i) to supply the Secretary with sufficient plants or sufficient propagating material of plants of the variety, and with any necessary information, to enable the Secretary to arrange a test growing; or

(ii) to make arrangements for an approved person to supervise the test growing, to supply the approved person with sufficient plants or propagating material to enable the test growing, to give the Secretary a copy of the records of observations made during the test growing and to certify the records of observations so provided;

whichever the Secretary considers appropriate.

(2A) A person to whom a notice is sent under this section must comply with the requirements of the notice:

(a) in the case of trees and vines, or propagating materials of trees and vines—within 2 years from the date of service of the notice; and

(b) in the case of other species of plant or propagating materials of other species of plant—within 12 months from that date.

(2B) If a person, without reasonable excuse, fails to comply with the requirements of a notice issued under this section, the Secretary may:

(a) if the person is the grantee—revoke PBR, in the plant variety to which the notice relates, under section 50; or

(b) if the person made an application, objection or request—decide not to further proceed with the application, objection or request for revocation.

Note: A decision not to further proceed with the application, objection or request for revocation is reviewable by the AAT under section 77.

(3) If a notice under this section contains the requirement referred to in subparagraph (2)(b)(i) and the applicant complies with the request, the Secretary must arrange to have the variety concerned test grown.

(4) After completion of a test growing arranged by the Secretary, any propagating material of the variety used in, or resulting from, the



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test growing, that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purposes of the test growing.

(5) All of the costs associated with a test growing must be paid:
  (a) if it is conducted to deal with an application for PBR—by the applicant for PBR; or
  (b) if it is conducted to deal with an objection to an application for PBR:
    (i) by the applicant for PBR, where the test growing shows that there are valid reasons for the objection; or
    (ii) by the objector, in any other case; or
  (c) if it is conducted to deal with a request for revocation of PBR:
    (i) by the grantee, where the test growing shows that there are valid reasons for the request; or
    (ii) by the person making the request, in any other case.

(6) If a contracting party, or a national or an organisation of a contracting party, requests the Secretary to conduct in Australia a test growing of a plant variety, the Secretary may decide to conduct the test growing as so requested.

(7) If the Secretary decides to conduct a test growing under subsection (6), subsections (1), (2), (3), (4) and (5) apply to such test growing as if:
  (a) the person or organisation requesting the test growing under subsection (6) was an applicant for PBR; and
  (b) the test growing had been decided on in relation to that application.

## 38 Characteristics of plant varieties bred or test grown outside Australia

(1) If:
  (a) a plant variety (the ***subject variety***):
    (i) was bred outside Australia; or



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(ii) was bred in Australia but, before an application for PBR was made in Australia, an application for PBR was made in a contracting party other than Australia; and

(b) an application under this Act for PBR in the variety has been accepted;

the variety is not to be taken to have a particular characteristic unless subsection (2), (3), (4) or (5) applies to the variety.

(2) This subsection applies to the subject variety if a test growing in Australia has demonstrated that the variety has the particular characteristic.

(3) This subsection applies to the subject variety if:

(a) a test growing of the variety has been carried out outside Australia; and

(b) that test growing has demonstrated that the variety has the particular characteristic; and

(c) under an agreement between Australia and the country in which the test growing was carried out, Australia is required to accept that the variety has that particular characteristic.

(4) This subsection applies to the subject variety if the Secretary is satisfied that:

(a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

(b) that test growing of the variety is equivalent to a test growing of the variety in Australia.

(5) This subsection applies to the subject variety if the Secretary is satisfied that:

(a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

(b) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and



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(c) if a test growing of the variety in Australia sufficient to demonstrate whether the variety has that characteristic were to be carried out, it would take longer than 2 years.

Note: A decision to the effect that the Secretary is, or is not, satisfied of the matters referred to in subsection (4) or (5) is reviewable by the AAT under section 77.



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## Division 3—Provisional protection

### 39 Provisional protection

(1) When an application for PBR in a plant variety is accepted, the applicant is taken to be the grantee of that right for the purposes of Part 5 from the day the application is accepted until:

(a) the application is disposed of; or

(b) if the Secretary gives the applicant a notice under subsection (2)—the notice is disposed of;

whichever occurs first.

(2) If the Secretary is satisfied in relation to an application for PBR in a plant variety, that:

(a) PBR will not be granted or is unlikely to be granted to the applicant; or

(aa) a decision has been taken under paragraph 37(2B)(b) not to proceed with the application; or

(ab) the application has been withdrawn; or

(b) the applicant has given an undertaking to a person (whether or not for consideration) not to commence proceedings for infringement of the right of which the applicant is deemed to be the grantee; or

(c) at least 12 months have elapsed since the publication of the detailed description that was given to the Secretary under subsection 34(1);

the Secretary may notify the applicant, in writing, that this section will cease to apply to that variety on a day specified in the notice unless, before that time the applicant has made a submission to the Secretary providing reasons why this section should not cease to apply.

Note: A decision under this subsection to notify an applicant is reviewable by the AAT under section 77.

(3) For the purposes of paragraph (1)(b) a notice referred to in that paragraph is not taken to be disposed of until:



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(a) the end of the period within which application may be made to the AAT for a review of the giving of the notice; or

(b) if such an application is made to the AAT—the application is withdrawn or finally determined, whether by the AAT or a court.

(4) As soon as practicable after a person ceases to be taken to be the grantee of PBR under this section, the Secretary must give public notice that the person has ceased to be so taken.

(5) Nothing in this section affects the power of:

(a) the Federal Court, or a Judge of that Court, under subsection 44A(2) of the AAT Act; or

(b) the Federal Circuit Court, or a Judge of that Court, under subsection 44A(2A) of that Act;

where an appeal is begun in that court from a decision of the AAT.

(6) A person who is taken to be the grantee of PBR in a plant variety is not entitled to begin an action or proceeding for an infringement of that right occurring during the period when the person is so taken unless and until that right is finally granted to the person under section 44.



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## Division 4—Essential derivation

### 40 Applications for declarations of essential derivation

(1) If:

(a) a person is the grantee of PBR in a particular plant variety—(the ***initial variety***); and

(b) another person is the grantee of, or has applied for, PBR in another plant variety (the ***second variety***); and

(c) the grantee of PBR in the initial variety is satisfied that the second variety is, within the meaning of section 4, an essentially derived variety of the initial variety; and

(d) the initial variety has not itself been declared to be an essentially derived variety of another variety in which PBR has been granted;

the grantee of PBR in the initial variety may make written application to the Secretary for a declaration that the second variety is so derived.

(2) Nothing in this section implies that a person who is the grantee of PBR in the initial variety may not, in relation to an application by another person for PBR in the second variety that has been accepted but not finally determined:

(a) make an objection, under section 35, to the granting of PBR in the second variety; and

(b) in the alternative, if PBR is granted to another person in the second variety—apply under subsection (1) for a declaration that the second variety is essentially derived from the initial variety.

(3) If the second variety:

(a) is the subject of an application for PBR; and

(b) is also the subject of an application for a declaration of essential derivation;

then, unless and until the Secretary decides to grant the application for PBR:



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(c) the Secretary must not make the declaration of essential derivation; but

(d) the Secretary may, in his or her discretion:

(i) examine both the application for PBR and the application for a declaration of essential derivation at the same time; and

(ii) for the purpose only of examining the application for a declaration of essential derivation—treat the applicant for PBR as the grantee of PBR in the variety.

(4) An application for a declaration of essential derivation must:

(a) be in writing; and

(b) be in an approved form; and

(c) be lodged with the Secretary in a manner set out in the approved form; and

(d) be accompanied by the prescribed fee in respect of the application.

(5) An application must contain such information relevant to establishing a *prima facie* case that the second variety is an essentially derived variety of the initial variety as is required by the form.

(6) If the initial variety has itself been declared to be essentially derived from another variety, the Secretary must refuse to declare the second variety essentially derived from:

(a) the initial variety; and

(b) inform the applicant for the declaration in writing, to that effect, and give the applicant reasons for the decision.

(7) If the initial variety has not been so declared, the Secretary must determine, on the basis of the application, whether the Secretary is satisfied that there is a *prima facie* case that the second variety is an essentially derived variety of the initial variety.

(8) If the Secretary is satisfied of that *prima facie* case, the Secretary must:

(a) inform the applicant and the grantee of PBR in the second variety that the Secretary is so satisfied; and



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(b) inform the grantee of PBR in the second variety that, unless the grantee establishes, within 30 days after being so informed or such longer period as the Secretary allows, that the second variety is not an essentially derived variety of the initial variety, the Secretary will, at the end of that period, declare the second variety to be such an essentially derived variety.

Note: A decision under this subsection to refuse to extend the period of 30 days is reviewable by the AAT under section 77.

(9) If the Secretary is not satisfied of that *prima facie* case, the Secretary must inform the applicant, in writing, to that effect, and give the applicant reasons for the decision.

(10) If, after considering:

(a) the information presented by the grantee of PBR in the second variety; and

(b) any information obtained from a test growing conducted in accordance with section 41; and

(c) any other relevant information obtained by the Secretary;

the Secretary is not satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:

(d) declare, in writing, that the second variety is an essentially derived variety of the initial variety; and

(e) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee of the declaration; and

(f) by notice in writing given to the grantee of PBR in the second variety, tell that grantee of the declaration and set out the reasons for not being satisfied that the *prima facie* case has been rebutted.

(11) If, after considering the information referred to in paragraph (10)(a), (b) or (c), the Secretary is satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:

(a) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee that he or she is so satisfied and set out the reasons for being so satisfied; and



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(b) by notice in writing given to the grantee of PBR in the second variety, tell that grantee that he or she is so satisfied.

(12) While a declaration that the second variety is essentially derived from the initial variety remains in force, section 19 applies in relation to the second variety as if:

(a) the references in that section to the grantee, in relation to that variety were references both to the person holding PBR in that variety and to the person holding PBR in the initial variety; and

(b) the reference in subsection 19(4) to 2 years after the grant of PBR were a reference to 2 years after the grant of PBR in the second variety whether or not the declaration of essential derivation was made at the same time or a later time; and

(c) a failure by the other person holding PBR in the initial variety or the person holding PBR in the second variety to co-operate in making the second variety available to the public in accordance with the requirements of subsection 19(1) was a failure of the grantee to comply with the requirements of that subsection.

Note: A decision under this section to declare, or not to declare, a plant variety essentially derived is reviewable by the AAT under section 77.

## 41 Test growing associated with applications for declarations of essential derivation

(1) If:

(a) the grantee of PBR in a plant variety (the ***initial variety***) applies for a declaration that another variety (the ***second variety***) is an essentially derived variety of the initial variety; and

(b) in the course of that application the grantee of PBR in the initial variety establishes a *prima facie* case that the second variety is essentially derived; and

(c) on the basis of information supplied by the grantees of PBR in the initial variety and in the second variety, the Secretary comes to the view that a test growing or further test growing is necessary to determine whether the *prima facie* case has been rebutted;



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the Secretary must give notice of that decision both to the grantee of PBR in the initial variety and in the second variety.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

(2) The notice must require:

(a) the grantee of PBR in the initial variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that variety and with any necessary information; and

(b) the grantee of PBR in the second variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that second variety and with any necessary information;

to enable the Secretary to arrange a test growing.

(3) After completion of the test growing, any propagating material of a variety used in, or resulting from, the test growing that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purpose of the test growing.

(4) All costs associated with the test growing must be paid by the person who, without the test growing, failed to rebut the *prima facie* case of essential derivation, whether or not the test growing led to rebuttal of that case.

(5) If the Secretary requires a test growing or further test growing, subsection 40(8) has effect as if the reference in that subsection to 30 days after being so informed were a reference to 30 days after being informed of the results of the test growing.



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# Part 4—The grant and revocation of Plant Breeder's Right

## Division 1—Grant of Plant Breeder's Right

### 42 PBR not to be granted in excluded varieties

(1) PBR must not be granted in any variety of plant in a taxon that the regulations declare to be a taxon to which this Act does not apply.

(2) The Governor-General must not make a regulation for the purposes of subsection (1) 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 making the regulation.

(3) If:

(a) a plant variety is a hybrid; and

(b) each of the plant varieties from which it is derived is a plant variety included in a taxon to which this Act does not apply;

PBR must not be granted in the hybrid.

### 43 Registrable plant varieties

(1) For the purposes of this Act, a plant variety in which an application for PBR is made is registrable if:

(a) the variety has a breeder; and

(b) the variety is distinct; and

(c) the variety is uniform; and

(d) the variety is stable; and

(e) the variety has not been exploited or has been only recently exploited.

(2) For the purposes of this section, a plant variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge.



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(3) For the purposes of this section, a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is uniform in its relevant characteristics on propagation.

(4) For the purposes of this section, a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation.

(5) For the purposes of this section, a plant variety is taken not to have been exploited if, at the date of lodging the application for PBR in the variety, plant material of the variety has not been sold to another person by, or with the consent of, the breeder.

(6) For the purposes of this section, a plant variety is taken to have been only recently exploited if, at the date of lodging the application for PBR in the variety, plant material of the variety has not been sold to another person by, or with the consent of, the breeder, either:

(a) in Australia—more than one year before that date; or

(b) in the territory of another contracting party:

(i) in the case of trees or vines—more than 6 years before that date; or

(ii) in any other case—more than 4 years before that date.

Note: For the definition of ***sell*** see subsection 3(1).

(7) Subsection (6) does not apply to a sale by the breeder of a plant variety of plant material of the variety to another person if that sale is a part of, or related to, another transaction under which the right of the breeder to make application for PBR in that plant variety is sold to that other person.

(7A) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if:

(a) the sole purpose of the sale is for the person to multiply plant material of that plant variety on behalf of the breeder; and

(b) under the agreement for the sale, immediately after the plant material is multiplied, property in the new plant material vests in the breeder.



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(7B) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if the sale is part of an agreement under which the person agrees to use plant material of that variety for the sole purpose of evaluating the variety in one or more of the following tests or trials:

(a) field tests;

(b) laboratory trials;

(c) small-scale processing trials;

(d) tests or trials prescribed for the purposes of this subsection.

(7C) Subsection (6) does not apply to a sale of plant material of a plant variety to a person by, or with the consent of, the breeder if:

(a) the sale only involves plant material that is a by-product or surplus product of one or more of the following:

(i) the creation of the variety;

(ii) a multiplication of the variety;

(iii) tests or trials covered by subsection (7B); and

(b) the plant material is sold:

(i) without identification of the plant variety of the plant material; and

(ii) for the sole purpose of final consumption.

(8) In addition to any other reason for treating a plant variety as a variety of common knowledge, a variety is to be treated as a variety of common knowledge if:

(a) an application for PBR in the variety has been lodged in a contracting party; and

(b) the application is proceeding, or has led, to the grant of PBR.

(9) A plant variety that is to be treated as a variety of common knowledge under subsection (8) because of an application for PBR in the variety is to be so treated from the time of the application.

(10) In this section:

***authority*** has the same meaning as in the Convention.

***plant material***, in relation to a plant variety, means one or more of the following:



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(a) propagating material of the plant variety;
(b) harvested material of the plant variety;
(c) products obtained from harvested material of the plant variety.

***territory*** has the same meaning as in the Convention.

***variety*** has the same meaning as in the Convention.

## 44 Grant of PBR

(1) If:
(a) an application for PBR in a plant variety is accepted; and
(b) after examining the application (including the subsequent detailed description) and any objection to the application, the Secretary is, or continues to be, satisfied that:
(i) there is such a variety; and
(ii) the variety is a registrable plant variety within the meaning of section 43; and
(iii) the applicant is entitled to make the application; and
(iv) the grant of that right is not prohibited by this Act; and
(v) that right has not been granted to another person; and
(vi) the name of the variety complies with section 27; and
(vii) propagating material of that variety has been deposited for storage, at the expense of the applicant, in a genetic resource centre approved by the Secretary; and
(viii) if the Secretary so requires, a satisfactory specimen plant of the variety has been supplied to the herbarium; and
(ix) all fees payable under this Act in respect of the application, examination and grant have been paid;
the Secretary must grant that right to the applicant.

(2) If:
(a) an application for PBR in a plant variety is accepted; and
(b) the plant variety is a variety of a species indigenous to Australia;



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the Secretary must require supply of a satisfactory specimen plant of the variety to the herbarium.

(3) If:

(a) an application for PBR in a plant variety is accepted; and

(b) the Secretary is not satisfied of all of the matters referred to in paragraph (1)(b);

the Secretary must refuse to grant that right to the applicant.

(4) The Secretary must not grant or refuse to grant PBR in a plant variety until at least 6 months after the giving of public notice of the detailed description of the variety.

(5) If:

(a) an application for PBR in a plant variety has been varied under section 31; and

(b) the variation relates to the detailed description of the variety that has been given to the Secretary; and

(c) the Secretary has given public notice of the variation;

the Secretary must not grant, or refuse to grant, PBR in the variety until 6 months after giving public notice of the variation or of the last such variation.

(6) If an objection to an application for PBR is made under section 35, the Secretary must give the applicant 30 days, starting when a copy of the objection is given to the applicant, or such longer period as the Secretary considers to be reasonable in the circumstances, to provide an answer to the objection.

(7) A quantity of propagating material of a plant variety that is lodged with a genetic resource centre must be sufficient to enable that variety to be kept in existence if there were no other propagating material of plants of that variety.

(8) The delivery and storage of propagating material of a plant variety does not affect the ownership of the material but the material must not be dealt with otherwise than for the purposes of this Act.

(9) The propagating material of a plant stored at a genetic resource centre may be used by the Secretary for the purposes of this Act, including the purposes of section 19.



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(10) PBR is granted to a person by the issue to that person by the Secretary of a certificate in an approved form, signed by the Secretary or the Registrar, containing such particulars of the plant variety concerned as the Secretary considers appropriate.

(11) If the PBR is granted to persons who make a joint application for the right, the right is to be granted to those persons jointly.

(12) If the Secretary refuses to grant PBR in a plant variety, the Secretary must, within 30 days of so refusing, give written notice to the applicant:

(a) telling the applicant of the refusal; and

(b) setting out the reasons for the refusal.

Note: A decision under this section to grant, or refuse to grant, PBR in a plant variety is reviewable by the AAT under section 77.

## 45 Grant of PBR to be exclusive

(1) Subject to subsections (2) and (3), only one grant of PBR may be made under this Act in relation to a plant variety.

(2) If 2 breeders lodge a joint application for PBR, the Registrar may grant PBR to them jointly.

(3) If:

(a) a person is the grantee of PBR in a plant variety (the ***initial variety***); and

(b) another person is the grantee of PBR in another plant variety; and

(c) the Secretary declares the other variety to be an essentially derived variety of the initial variety;

subsection (1) does not prevent PBR in the initial variety extending to the other variety.

## 46 Grant of PBR to be entered on Register

(1) When the Secretary grants PBR in a plant variety, the Registrar must enter in the Register:

(a) a description, or description and photograph, of a plant of that variety; and



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(b) the name of the variety and any proposed synonym; and
(c) the name of the grantee; and
(d) the name and address of the breeder; and
(e) the address for the service of documents on the grantee for the purposes of this Act as shown on the application for the right; and
(f) the day on which the right is granted; and
(g) such other particulars relating to the granting as the Registrar considers appropriate.

(2) When the Secretary makes a declaration that a variety (the ***derived variety***) is essentially derived from another variety (the ***initial variety***), the Registrar must enter in the Register both in respect of the derived variety and the initial variety:
(a) the fact that the declaration has been made; and
(b) the day on which the declaration was made.

## 47 Notice of grant of PBR

(1) The Secretary must, as soon as possible after granting PBR to a person, give public notice of the grant in the *Plant Varieties Journal*.

(2) The Secretary must, as soon as possible after the making of a declaration that a plant variety is an essentially derived variety of another plant variety, give public notice of the making of the declaration in the *Plant Varieties Journal*.

## 48 Effect of grant of PBR

(1) If a person is granted PBR in a plant variety:
(a) any other person who was entitled to make, but had not made, application for the right in the variety:
(i) ceases to be entitled to make such application; and
(ii) is not entitled to any interest in the right; and
(b) any other person who had made application for the right in the variety:



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(i) ceases to be entitled to have his or her application considered or further considered; and

(ii) is not entitled to any interest in the right.

(2) Subsection (1) does not prevent a person:

(a) from applying for a revocation of the rights under section 50; or

(b) from instituting proceedings before a court or the AAT in relation to the right; or

(c) from requesting the Secretary to make a declaration under section 40 that the plant variety in which the right was granted is essentially derived from another plant variety in which the person holds PBR.

(3) If:

(a) PBR in a particular plant variety is granted to a person; and

(b) another person (the ***eligible person***) was entitled, at law or equity, to an assignment of the right to make an application for the PBR;

the eligible person is entitled to an assignment of the PBR.

## 49 PBR may be subject to conditions

(1) The Minister may, if the Minister thinks it necessary, in the public interest, refer to the Plant Breeder's Rights Advisory Committee the question whether a grant of PBR, whether proposed or made, should be subject to conditions.

(2) The Minister may, having regard to the views of the Plant Breeder's Rights Advisory Committee on a matter referred under subsection (1), impose such conditions on PBR that is to be granted or that has been granted as the Minister considers appropriate.

(3) If the Minister imposes conditions on PBR:

(a) the Secretary must give public notice of those conditions and give the grantee a copy of the instrument setting them out; and



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(b) the Registrar must enter details of those conditions in the Register.

Note: A decision under this section by the Minister to make a grant subject to conditions is reviewable by the AAT under section 77.



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# Division 2—Revocation of Plant Breeder's Right or declaration of essential derivation

## 50 Revocation of PBR

(1) The Secretary must revoke PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety if:

(a) the Secretary becomes satisfied that facts existed that, if known before the grant of that right or the making of that declaration, would have resulted in the refusal to grant that right or make that declaration; or

(b) the grantee has failed to pay a fee payable in respect of that right or of that declaration within 30 days after having been given notice that the fee has become payable.

(2) The Secretary may revoke PBR in a plant variety if:

(a) the Secretary is satisfied that a person to whom that right has been assigned or transmitted has failed to comply with section 21; or

(aa) the Secretary is satisfied that the grantee, without reasonable excuse, has failed to comply with the requirements of a notice under section 37; or

(b) the Secretary is satisfied that the grantee has failed to comply with a condition imposed under section 49.

(3) If the Secretary revokes PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety, the Secretary must, within 7 days after the decision to revoke was taken, by notice given to the grantee of the right that has been revoked or of the right that is affected by the giving of the declaration of essential derivation, tell that grantee of the decision and set out the reasons for the revocation.

(4) The Secretary must not revoke PBR under this section unless:

(a) the Secretary has given the grantee, or any person to whom the Secretary believes that right has been assigned or



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transmitted, particulars of the grounds of the proposed revocation; and

(b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

(5) The Secretary must not under this section, revoke a declaration that a plant variety is essentially derived from another plant variety (the ***initial variety***) unless:

(a) the Secretary has given the grantee of PBR in the initial variety, or any person to whom the Secretary believes that that PBR has been assigned or transmitted, particulars of the grounds of the proposed revocation of that declaration of essential derivation; and

(b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

(6) The revocation of PBR in a plant variety or of a declaration that a plant variety is essentially derived from another plant variety takes effect:

(a) if no application for review of the revocation is made to the AAT—at the end of the period within which such an application might be made; or

(b) if such an application is made—at the time when the application is withdrawn, or finally determined, whether by the Tribunal or by a court.

(7) Nothing in this section affects the power of:

(a) the Federal Court, or a Judge of that Court, under subsection 44A(2) of the AAT Act; or

(b) the Federal Circuit Court, or a Judge of that Court, under subsection 44A(2A) of that Act.

(8) A person whose interests are affected by the grant of PBR in a plant variety may apply to the Secretary, in writing, for the revocation of the right.

(9) A person whose interests are affected by the making of a declaration that a plant variety is essentially derived from another



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plant variety may apply to the Secretary, in writing, for a revocation of that declaration.

(9A) An application under subsection (8) or (9) is of no effect unless it is accompanied by the prescribed fee.

(10) If the Secretary decides not to revoke PBR in a plant variety in accordance with an application under subsection (8) or not to revoke a declaration of essential derivation in accordance with subsection (9), the Secretary must, within 7 days of making that decision, by notice in writing to the person who applied for the revocation, tell the person of the decision and set out the reasons for the decision.

Note: A decision under this section to revoke, or refuse to revoke, PBR or a declaration of essential derivation is reviewable by the AAT under section 77.

## 51 Entry of particulars of revocation

(1) If:

(a) PBR in a plant variety is revoked in accordance with section 50; or

(b) the Secretary is served with a copy of an order of a court given under subsection 54(3) revoking that right;

the Secretary must:

(c) enter particulars of the revocation in the Register; and

(d) give public notice of the revocation.

(2) If the holder of PBR in a plant variety fails to pay the prescribed annual fee for the renewal of the right by the last day for payment of that fee, the holder is taken to have surrendered the right.

(3) The Secretary must:

(a) enter particulars of the surrender in the Register; and

(b) give public notice of the surrender.

## 52 Surrender of PBR

The holder of PBR in a plant variety may, at any time, by written notice to the Secretary, offer to surrender that right.



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# Part 5—Enforcement of Plant Breeder's Right

## 53 Infringement of PBR

(1) Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is infringed by:

(a) a person doing, without, or otherwise than in accordance with, authorisation from the grantee of the right, an act referred to in a paragraph of section 11 in respect of the variety or of a dependent variety; or

(b) a person claiming, without, or otherwise than in accordance with, authorisation from the grantee of that right, the right to do an act referred to in a paragraph of section 11 in respect of that variety or of a dependent variety; or

(c) a person using a name of the variety that is entered in the Register in relation to:

(i) any other plant variety of the same plant class; or

(ii) a plant of any other variety of the same plant class.

(1A) To avoid doubt, an infringement of PBR in a plant variety under paragraph (1)(c) can include using a synonym in relation to the name of a plant variety, if that synonym is entered in the Register under paragraph 46(1)(b).

(2) If a plant variety (the ***derived variety***) has been declared to be an essentially derived variety of another plant variety (the ***initial variety***), the reference in paragraphs (1)(a) and (b) to authorisation from the grantee of the right means, in relation to the derived variety, authorisation from both the grantee of PBR in the derived variety and from the grantee of PBR in the initial variety.

(3) In this section, a reference to the grantee of PBR in a plant variety includes a reference to a person who has, by assignment or transmission, become the holder of that right.



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## 54 Actions for infringement

(1) An action for infringement of PBR in a plant variety may be begun in the Federal Court or the Federal Circuit Court only by the grantee.

(2) A defendant in an action for infringement of PBR in a plant variety may apply, by way of counterclaim, for revocation of that right on the ground that:

(a) the variety was not a new plant variety; or

(b) facts exist that would have resulted in the refusal of the grant of that right if they had been known to the Secretary before the grant of that right.

(3) If, in an action for infringement of PBR in a plant variety:

(a) the defendant applies, by way of counterclaim, for the revocation of that right; and

(b) the court is satisfied that a ground for revocation of that right exists;

the court may make an order revoking that right.

(4) If the court revoked PBR in a plant variety on the counterclaim of a defendant, the court may order the defendant to serve on the Registrar a copy of the order revoking that right.

## 55 Declarations as to non-infringement

(1) A person who proposes to perform an act described in a paragraph of section 11 in relation to the propagating material of a plant variety may, by an action in the Federal Court or the Federal Circuit Court against the grantee of PBR in a plant variety, apply for a declaration that the performance of that act would not constitute an infringement of that right.

(2) A person may apply for a declaration whether or not there has been an assertion of an infringement of PBR by the grantee of that right.

(3) The court must not make such a declaration unless:

(a) the person proposing to perform the act:



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(i) has applied in writing to the grantee of the PBR concerned for an admission that the proposed performance of the act would not infringe that right; and

(ii) has given the grantee full written particulars of the propagating material concerned; and

(iii) has undertaken to repay all expenses reasonably incurred by the grantee in obtaining advice in the declaration; and

(b) the grantee has refused or failed to make such an admission.

(4) The costs of all parties in proceedings for a declaration under this section are to be paid by the person seeking the declaration unless the court otherwise orders.

(5) The validity of a grant of PBR in a plant variety is not to be called in question in proceedings for a declaration under this section.

(6) The making of, or the refusal to make, a declaration under this section does not imply that a grant of PBR in a plant variety is, or is not, valid.

## 56 Jurisdiction of the Federal Court

(1) The Federal Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Federal Court.

Note: A matter may also be transferred to the Federal Court from the Federal Circuit Court: see section 39 of the *Federal Circuit Court of Australia Act 1999*.

(2) That jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of:

(a) the Federal Circuit Court under subsection 56A(2); and

(b) the High Court under section 75 of the Constitution.

(3) The relief that the Federal Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Federal Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(4) The regulations may make provision in relation to the practice and procedure of the Federal Court in actions under this Act, including



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provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time.

(5) Subsection (4) does not limit the power of the Judges of the Federal Court or a majority of them to make Rules of Court under section 59 of the *Federal Court of Australia Act 1976* that are consistent with the regulations referred to in that subsection.

## 56A Jurisdiction of Federal Circuit Court

(1) The Federal Circuit Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Federal Circuit Court.

Note: A matter may also be transferred to the Federal Circuit Court from the Federal Court: see section 32AB of the *Federal Court of Australia Act 1976*.

(2) That jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of:

(a) the Federal Court under subsection 56(2) of this Act; and

(b) the High Court under section 75 of the Constitution.

(3) The relief that the Federal Circuit Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Federal Circuit Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(4) The regulations may make provision in relation to the practice and procedure of the Federal Circuit Court in actions under this Act, including provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time.

(5) Subsection (4) does not limit the power of the Judges of the Federal Circuit Court, or a majority of them, to make Rules of Court under section 81 of the *Federal Circuit Court of Australia Act 1999* that are consistent with the regulations referred to in that subsection.



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## 57 Innocent infringement

(1) A court may refuse to award damages, or to make an order for an account of profits, against a person in an action for infringement of PBR in a plant variety, if the person satisfies the court that, at the time of the infringement, the person was not aware of, and had no reasonable grounds for suspecting, the existence of that right.

(2) If the propagating material of plants of the plant variety, labelled so as to indicate that PBR is held in the variety in Australia, has been sold to a substantial extent before the date of the infringement, the person against whom the action for infringement is brought is taken to have been aware of the existence of PBR in the variety, unless the contrary is established.



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# Part 6—Administration

## 58 Registrar of Plant Breeder's Rights

(1) There is established by this section a Registrar of Plant Breeder's Rights.

(2) The office of the Registrar of Plant Breeder's Rights is an office in the Department.

(3) The Registrar has the functions and powers:

(a) that are conferred on the Registrar by this Act or by the regulations; or

(b) that are delegated to the Registrar by the Secretary under section 59.

## 59 Delegation

*Delegation of Minister's statutory powers and functions*

(1) The Minister may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Minister under this Act or the regulations.

*Delegation of Secretary's statutory powers and functions*

(2) The Secretary may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Secretary under this Act or the regulations.

*Delegation of Registrar's statutory powers and functions*

(3) The Registrar may, by signed instrument, delegate to a prescribed employee, or employees in a prescribed class, any of the powers or functions of the Registrar under this Act or the regulations.



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*Subdelegation of delegated powers and functions*

(4) A person to whom a power or function under this Act or the regulations has been delegated by the Minister or the Secretary under subsection (1) or (2) may, by signed instrument, delegate the power or function to a prescribed employee, or employees in a prescribed class.

(5) A power or function that is exercised or performed by an employee under a delegation under subsection (4) is taken, for the purposes of this Act and the regulations, to have been exercised or performed by the person who originally delegated the corresponding power or function under subsection (1) or (2).

*Requirement to act under direction or supervision*

(6) If required by an instrument under subsection (3) or (4) delegating a power or function to an employee, the employee must exercise the power or perform the function under the direction or supervision of:

(a) the person who delegated the power or function to the employee; or

(b) another employee specified in the instrument.

This subsection applies whether the instrument identifies the employee specifically or by reference to a class.

*Definition*

(7) In subsections (3), (4), (5) and (6):

***employee*** means a person who is engaged under the *Public Service Act 1999* or otherwise for or on behalf of the Commonwealth and whose duties involve providing assistance to the Registrar.

## 60 Certain persons not to acquire PBR

(1) A person must not apply for, or otherwise acquire, except than by will or by operation of law, PBR in a plant variety or an interest in such right if the person has during the 12 months before the application, held, or performed the duties of:

(a) the office of Secretary; or



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(b) the office of Registrar of Plant Breeder's Rights; or

(c) an office in the Department the duties of which involve providing assistance to the Registrar.

Penalty: 60 penalty units.

(2) A grant of PBR applied for in contravention of subsection (1) or an acquisition of PBR in contravention of that subsection is void.

## 61 Register of Plant Varieties

(1) The Registrar must keep a register, to be known as the Register of Plant Varieties, at a place approved by the Secretary.

(1A) The Registrar must maintain, for the purposes of this Act, a list of all plant classes to be known as the Registrar's List of Plant Classes.

(1B) In maintaining that list the Registrar must, for so long as the Union maintains the document presently known as the List of Classes for Variety Denomination Purposes, have regard to that list and to any variations to that list as so maintained.

(1C) The list maintained by the Registrar must be kept as a part of the Register.

(2) In order to foster public access to the information contained in the Register, the Registrar may disseminate that information on the internet or in such other manner as the Registrar considers most likely to enhance its accessibility.

## 62 Inspection of Register

(1) A person may inspect the Register at any reasonable time.

(2) A person is entitled, on payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.

(3) For the purposes of subsection (2), a reference to an entry in the Register does not include a reference to the Registrar's List of Plant Classes or to any part of that list.



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# Part 7—Plant Breeder's Rights Advisory Committee

## 63 Establishment of Advisory Committee

(1) There is established by this section a Committee by the name of the Plant Breeder's 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 declaring:

(i) in regulations made for the purpose of subsection 17(2)—that subsection 17(1) does not apply to a particular taxon; or

(ii) in regulations made for the purpose of subsection 22(3)—that the duration of PBR in a particular taxon will be longer than provided in subsection 22(2); or

(iii) in regulations made for the purpose of subsection 42(1)—that a particular taxon is a taxon to which this Act does not apply; and

(aa) at the request of the Minister, to advise the Minister on the question of whether an existing, or proposed, grant of PBR should be subject to conditions; and

(b) to advise the Registrar on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Registrar refers to the Advisory Committee.

## 64 Membership of Advisory Committee

(1) The Advisory Committee consists of:

(a) the Registrar; and

(b) 2 members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties; and



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(c) one member who, in the opinion of the Minister, is an appropriate person to represent users, and likely users, of new plant varieties; and

(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) one member who will represent the conservation interests in relation to new plant varieties and the potential impacts of new plant varieties; and

(f) one member who will represent indigenous Australian interests in relation to new plant varieties and the source, use and impacts of new plant varieties; and

(g) 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, must be appointed by the Minister.

(3) The members, other than the Registrar, hold office as part-time members.

(4) Each member, other than the Registrar, holds office for the period, not exceeding 3 years, that is specified in the instrument of appointment, but is eligible for re-appointment.

(5) The Minister may terminate the appointment of a member, other than the Registrar, for misbehaviour or for physical or mental incapacity.

(6) The Minister must terminate the appointment of a member, other than the Registrar, if the member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) fails, without reasonable excuse, to disclose any interest in a matter required to be disclosed under section 66.



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(7) If a person's appointment as a member is terminated under subsection (6), the Minister must give the person a written notice informing the person of the termination and setting out the reasons for the termination.

(8) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.

## 65 Remuneration and allowances

(1) The members referred to in paragraphs 64(1)(b), (c), (d), (e), (f) and (g) must be paid:

(a) such remuneration as is determined by the Remuneration Tribunal; and

(b) such allowances as are prescribed.

(2) Subsection (1) has effect subject to the *Remuneration Tribunal Act 1973*.

## 66 Disclosure of interests

(1) A member who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, 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 must:

(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.

## 67 Meetings

(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.



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(2) At a meeting of the Advisory Committee, 5 members constitute a quorum.

(3) The Registrar presides at a meeting of the Advisory Committee at which the Registrar is present.

(4) If the Registrar is not present, the members present must elect one of their number to preside at the meeting.

(5) Subject to subsection (2), the Advisory Committee may determine the procedure to be followed at a meeting of the Committee.



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# Part 8—Miscellaneous

## 68 Public notices

(1) The Secretary must issue a journal, to be called the *Plant Varieties Journal*, at least 4 times each year.

(2) Any public notice that the Secretary is required to make under this Act must be published in the Journal.

(3) Public notice of any matter additional to the matters referred to in subsection (2) that the Secretary considers it necessary or desirable to publicise may also be published in the Journal.

(4) If the Secretary considers it desirable to give additional public notice of matters by publishing notices of those matters in a periodical other than the Journal, the Secretary may arrange for, or consent to, the giving of additional public notice of those matters in the periodical.

## 69 Notices inviting submissions in respect of certain regulations

(1) Regulations must not be made for the purposes of subsection 17(2), 22(3) or 42(1) unless, before the making of the regulations and before the Minister seeks any advice from the Advisory Committee concerning those regulations:

(a) the Minister has, in accordance with section 68, given public notice of the Minister's intention to make a regulation for the purposes of that subsection in relation to a particular taxon that is specified in the notice; and

(b) the notice has given a broad indication of the objectives of the intended regulations and invited persons to make submissions to the Minister concerning it within a period of 30 days after the publication of the notice.

(2) If the Minister receives, in accordance with an invitation in a public notice under subsection (1), a submission concerning an intended regulation, the Minister must have regard to the submission so made.



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(3) If the Minister seeks advice of the Advisory Committee concerning an intended regulation, the Minister may comply with subsection (2):

(a) by providing to the Committee, at the time of requesting the advice of that Committee, a copy of all submissions received; and

(b) requesting the Advisory Committee to have regard to those submissions in preparing its advice to the Minister.

## 70 Genetic resource centres

(1) If, in the opinion of the Secretary, a place is suitable for the storage and maintenance of germplasm material, the Secretary may, by notice in writing, declare that place to be a genetic resource centre for the purposes of this Act.

(2) The person in charge of a genetic resource centre may do all things necessary to maintain the viability of propagating material stored at that centre.

## 71 The herbarium

If, in the opinion of the Secretary, an organisation has facilities suitable for the storage of plant specimens, the Secretary may, by notice in writing, declare the organisation to be the herbarium for the purposes of this Act.

## 72 Agents may act in matters relating to PBR

Subject to any other law of the Commonwealth, including Rules of Court of the High Court, the Federal Court or the Federal Circuit Court, 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, by one person on behalf of another person.

## 73 Service of documents

If:



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(a) this Act provides for a document to be served on, or given or sent to, a person; and

(b) the person has given the Secretary or the Registrar an address in Australia or New Zealand for service;

the document may be served on, or given or sent to, the person by a prescribed means to that address.

## 74 Infringement offences

(1) A person must not, in relation to propagating material of a plant variety in which PBR has been granted, do any of the acts referred to in a paragraph of section 11 if such an act would, under section 53, infringe the PBR in the variety.

Penalty: 500 penalty units.

(1A) In subsection (1), strict liability applies to the physical element of circumstance, that the infringement of the PBR would be under section 53.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) The fact that an action for infringement has been brought against a person under section 54 in respect of a particular act does not prevent a prosecution under this section in respect of the same act.

## 75 Offences other than infringement offences

(1) A person must not make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act.

Penalty: 6 months imprisonment.

(2) A person who is not the grantee of PBR in a plant variety must not represent to another person that he or she is the grantee of PBR in that variety.

Penalty: 60 penalty units.



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(3) A person must not represent to another person that PBR granted to that first-mentioned person in a plant variety extends to cover another plant variety that is not:

(a) a dependent variety of the first-mentioned variety; or

(b) a variety that has been declared to be an essentially derived variety of the first-mentioned variety.

Penalty: 60 penalty units.

(4) A person must not represent to another person that a plant of a variety in which PBR has not been granted is a plant of a variety in which PBR has been granted.

Penalty: 60 penalty units.

## 76 Conduct by directors, employees and agents

(1) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, employee or agent of the body corporate, within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by an employee or agent of the person, within the scope of his or her actual or apparent authority; and



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(b) that the employee or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted for the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against section 74 or 75 includes a reference to an offence:

(a) against section 6 of the *Crimes Act 1914*; or

(b) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(c) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;



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that relates to section 74 or 75 of this Act.

## 76A Doing act when PBR office reopens after end of period otherwise provided for doing act

(1) If the last day of a period provided by this Act (except this section) or the regulations for doing an act is a day when the PBR office or a PBR sub-office is not open for business, the act may be done in prescribed circumstances on the next day when the office or sub-office is open for business.

(2) For the purposes of this section, the PBR office or a PBR sub-office is taken not to be open for business on a day:

(a) declared by regulations to be a day on which the office or sub-office is not open for business; or

(b) declared, by a prescribed person in writing published in the prescribed way, to be a day on which the office or sub-office is not open for business.

*Declarations*

(3) A declaration mentioned in paragraph (2)(a) or (b) may identify the day by reference to its being declared a public holiday by or under a law of a State or Territory. This does not limit the way the declaration may identify the day.

(4) A declaration mentioned in paragraph (2)(b):

(a) may be made before, on or after the day; and

(b) is not a legislative instrument.

*Relationship with other law*

(5) This section has effect despite the rest of this Act.

(6) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply in relation to the act mentioned in subsection (1) of this section.

*Exception for prescribed act*

(7) This section does not apply to a prescribed act.



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Note: Subsection 36(2) of the *Acts Interpretation Act 1901* is relevant to a prescribed act.

## 77 Applications for review

(1) Applications may be made to the AAT for review of:

(a) a decision by the Minister under subsection 49(2); or

(b) a decision by the Secretary:

(i) under subsection 19(7) to exercise a power under subsection 19(3); or

(ii) under subsection 19(3) to license, or refuse to license, a person who applied to be so licensed in response to an invitation under paragraph 19(8)(c); or

(iii) under subsection 19(10) to make propagating material available; or

(iv) under subsection 19(11) to certify, or to refuse to certify, a plant variety; or

(v) under section 30 to accept or reject an application; or

(vi) under section 31 to vary, or refuse to vary, an application; or

(vii) under subsection 34(1) refusing to extend the period for giving a detailed description; or

(viii) under section 37 to require a test growing; or

(viiia) under paragraph 37(2B)(b) not to proceed further with an application, objection or request for revocation; or

(ix) under subsection 38(4) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or

(x) under subsection 38(5) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or

(xi) under subsection 39(2) to issue a notice to an applicant; or

(xii) under paragraph 40(8)(b) refusing to extend the period for rebutting the *prima facie* case of essential derivation; or

(xiii) under section 40 in respect of an application for a declaration of essential derivation; or

(xiv) under section 41 to require a test growing; or



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(xv) under section 44 to grant, or refuse to grant, PBR in a plant variety; or

(xvi) under section 50 to revoke, or not to revoke, PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety; or

(c) a decision of the Registrar under section 21 to amend, or refuse to amend, the Register.

(2) The AAT does not have power under subsection 29(7) of the AAT Act to extend the time for making an application to that Tribunal for a review of a decision referred to in subsection (1).

(3) The Secretary must give public notice of:

(a) any application made under subsection (1); and

(b) any decision of the AAT 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 AAT on such an application.

(4) In this section:

***decision*** has the same meaning as in the AAT Act.

## 78 Repeal

The *Plant Variety Rights Act 1987* is repealed.

## 79 Compensation for acquisition of property

(1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is to pay the person such reasonable amount of compensation as is agreed on between the person and the Commonwealth, or failing agreement, as is determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in proceedings that are begun otherwise than under this section must be taken into account in assessing compensation payable in



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proceedings begun under this section and arising out of the same event or circumstance.

(3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

## 80 Regulations

(1) The Governor-General may make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), that subsection includes the power to make regulations:

(a) prescribing fees including:

(i) fees payable in respect of the making of applications for PBR, the examination of those applications and the issue of certificates in respect of the grant of PBR; and

(ii) fees payable in respect of the making of applications for declarations of essential derivation, the examination of those applications and the making of those declarations; and

(iii) fees payable by grantees of PBR at specified intervals or on specified dates; and

(iv) fees payable in respect of costs incurred by the Secretary in respect of the conduct or supervision of the test growing of plants;

and, if the matter is not dealt with by another provision of this Act, specifying the time at which, or the circumstances in which, such fees are to be paid and the manner of payment of such fees; and



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(b) making provision in relation to the refund, in specified circumstances, of the whole or part of a fee paid under this Act; and

(c) making provision in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or a part of a fee; and

(d) making provision in relation to the amendment of an entry in the Register to correct a clerical error or an obvious mistake; and

(e) making such transitional and saving provisions as are necessary or convenient as a result of the repeal of the *Plant Variety Rights Act 1987* and the enactment of this Act.



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# Part 9—Transitional

## 81 Definitions

In this Part:

***commencing day*** means the day on which, in accordance with section 2, this Act commences.

***old Act*** means the *Plant Variety Rights Act 1987*.

## 82 Plant variety rights under old Act to be treated as PBR under this Act

(1) If:

(a) a person was granted plant variety rights in respect of a plant variety under the old Act; and

(b) those rights were still in force immediately before the commencing day;

then, subject to the regulations, those rights have effect, despite the repeal of the old Act, on and after that day, as if:

(c) this Act had been in force at the time when those rights were granted; and

(d) they had been granted at that time as PBR in that variety.

(2) Despite subsection (1), rights treated as if they had been granted as PBR under this Act continue in force for so long only as they would have continued in force if the old Act had not been repealed.

(3) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to claim PBR in respect of plant varieties that would, under this Act, be dependent plant varieties in relation to that particular plant variety.

(4) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to seek a declaration that another plant variety is an essentially derived



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variety of the particular plant variety unless PBR in that other plant variety was given only on or after the commencing day.

## 83 Applications for plant variety rights lodged and criminal proceedings begun before commencing day

(1) If, before the commencing day:

(a) a person has made application for plant variety rights under the old Act; but

(b) the application has not been finally disposed of under that Act;

the provisions of the old Act are taken to continue in force, for the purpose of dealing with the application, and any objection that has been made before that day, or is made after that day, in relation to the application.

(2) If before the commencing day, criminal proceedings had been begun under the old Act but those proceedings had not been finally determined before that day, the provisions of the old Act are taken to continue in force, for the purposes of those proceedings.

## 84 Other applications and proceedings under old Act

(1) Subject to the regulations, this Act applies, on and after the commencing day, to any application, request, action or proceeding made or started under the old Act and not finally dealt with or determined under that Act before that day as if the application, request, action or proceeding had been made or started under a corresponding provision of this Act.

(2) Subsection (1) does not apply in relation to an application for plant variety rights, or to criminal proceedings, covered by section 83.

## 85 Transitional arrangements for membership and functions of Advisory Committee

(1) The persons who, under the old Act, were members of the Plant Variety Rights Advisory Committee established under section 44 of that Act are to be taken, with effect from the commencing day,



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to be members of the Plant Breeder's Rights Advisory Committee established by section 63 of this Act.

(2) Those members who were appointed by the Minister under section 45 of the old Act continue to hold office as if they had been appointed by the Minister under section 64 of the new Act on the same terms and conditions for the balance of the term of their respective appointments.

(3) Any advice given to the Minister or to the Secretary by the Plant Variety Rights Advisory Committee has effect, on and after the commencing day, as if it had been given by the Plant Breeder's Rights Advisory Committee.

## 86 Register of Plant Varieties

On and after the commencing day, the Register of Plant Varieties under the old Act is taken to form part of the Register of Plant Varieties under this Act.



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# Endnotes

## Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

**Abbreviation key—Endnote 2**
The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.



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## Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced



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# Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Plant Breeder's Rights Act 1994 | 110, 1994 | 5 Sept 1994 | 10 Nov 1994 (s 2(1) and gaz 1994, No S392) | |
| Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 1999 | 4, 1999 | 31 Mar 1999 | Sch 5: 31 Mar 1999 (s 2) | — |
| Public Employment (Consequential and Transitional) Amendment Act 1999 | 146, 1999 | 11 Nov 1999 | Sch 1 (item 733): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584) | — |
| Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999 | 170, 1999 | 10 Dec 1999 | Sch 1: 10 Dec 1999 (s 2(1)) | Sch 1 (item 7) |
| Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 | 115, 2001 | 18 Sept 2001 | Sch 1 (items 244–247): 16 Oct 2001 (s 2) | s 4 |
| Plant Breeder's Rights Amendment Act 2002 | 148, 2002 | 19 Dec 2002 | 20 Dec 2002 (s 2) | Sch 1 (items 39–45) |
| Intellectual Property Laws Amendment Act 2006 | 106, 2006 | 27 Sept 2006 | Sch 11 (items 1, 2), Sch 14 and Sch 15 (items 2, 3): 28 Sept 2006 (s 2(1) items 11, 13)<br>Sch 12 (items 5–7): 27 Mar 2007 (s 2(1) item 12) | Sch 11 (item 2), Sch 14 (item 3) and Sch 15 (item 3) |



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## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Personal Property Securities (Consequential Amendments) Act 2009 | 131, 2009 | 14 Dec 2009 | Sch 2 (items 16, 17): 30 Jan 2012 (s 2(1) item 1) | — |
| Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010 | 4, 2010 | 19 Feb 2010 | Sch 11 (item 15): 20 Feb 2010 (s 2(1) item 13) | — |
| Statute Law Revision Act 2010 | 8, 2010 | 1 Mar 2010 | Sch 1 (item 40) and Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) items 4, 38) | — |
| Statute Law Revision Act 2011 | 5, 2011 | 22 Mar 2011 | Sch 1 (item 92): 22 Mar 2011 (s 2(1) item 2) | — |
| Intellectual Property Laws Amendment (Raising the Bar) Act 2012 | 35, 2012 | 15 Apr 2012 | Sch 6 (items 104–108): 15 Apr 2013 (s 2(1) item 7) | — |
| Statute Law Revision Act (No. 1) 2015 | 5, 2015 | 25 Feb 2015 | Sch 3 (items 147–151): 25 Mar 2015 (s 2(1) item 10) | — |
| Intellectual Property Laws Amendment Act 2015 | 8, 2015 | 25 Feb 2015 | Sch 3: 25 Aug 2015 (s 2(1) item 4)<br>Sch 4 (items 59–67, 81–84): 24 Feb 2017 (s 2(1) item 5) | Sch 4 (item 81–84) |
| Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015 | 62, 2015 | 16 June 2015 | Sch 2 (items 47, 48) and Sch 4: 16 June 2016 (s 2(1) items 2, 4)<br>Sch 3: 16 June 2015 (s 2(1) item 3) | Sch 3 and Sch 4 |



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## Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 674): 24 Feb 2017 (s 2(1) item 3) | — |
| Territories Legislation Amendment Act 2016 | 33, 2016 | 23 Mar 2016 | Sch 5 (item 81): 1 July 2016 (s 2(1) item 7) | — |



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# Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Part 1** | |
| s 3 | am No 4, 1999; No 148, 2002; No 106, 2006; No 35, 2012; No 8, 2015; No 62, 2015; No 126, 2015 |
| s 7 | rep No 106, 2006 |
| s 9A | ad No 115, 2001 |
| s 9B | ad No 33, 2016 |
| **Part 2** | |
| s 11 | am No 148, 2002 |
| s 18 | rs No 148, 2002 |
| s 19 | am No 8, 2015 |
| s 20 | am No 131, 2009 |
| s 21 | am No 170, 1999; No 8, 2015 |
| s 23 | am No 148, 2002 |
| **Part 3** | |
| **Division 1** | |
| s 25 | am No 131, 2009 |
| s 26 | am No 148, 2002; No 8, 2015 |
| | ed C17 |
| s 27 | am No 4, 1999; No 148, 2002 |
| s 28 | am No 106, 2006 |
| s 29 | am No 148, 2002 |
| s 30 | am No 148, 2002 |
| s 31 | am No 8, 2015 |
| **Division 2** | |
| s 34 | am No 148, 2002; No 62, 2015 |
| s 35 | am No 170, 1999 |
| s 36 | am No 148, 2002 |
| s 37 | am No 170, 1999; No 148, 2002 |



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## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Division 3** | |
| s 39 | am No 148, 2002; No 8, 2015 |
| **Part 4** | |
| **Division 1** | |
| s 43 | am No 170, 1999; No 148, 2002; No 35, 2012 |
| s 48 | am No 148, 2002 |
| s 49 | am No 148, 2002 |
| **Division 2** | |
| s 50 | am No 170, 1999; No 148, 2002; No 8, 2015 |
| s 51 | am No 5, 2011 |
| **Part 5** | |
| s 53 | am No 4, 1999; No 148, 2002 |
| s 54 | am No 148, 2002; No 8, 2015 |
| s 55 | am No 8, 2015 |
| s 56 | am No 8, 2015 |
| s 56A | ad No 8, 2015 |
| s 57 | am No 8, 2015 |
| **Part 6** | |
| s 59 | am No 146, 1999 |
| | rs No 106, 2006 |
| s 61 | am Nos 4 and 170, 1999; No 8, 2010 |
| s 62 | am No 4, 1999 |
| **Part 7** | |
| s 63 | am No 148, 2002 |
| s 64 | am No 148, 2002 |
| s 65 | am No 148, 2002 |
| s 67 | am No 148, 2002 |
| **Part 8** | |
| s 72 | am No 8, 2015 |
| s 73 | rs No 8, 2015 |
| s 74 | am No 115, 2001 |



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## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| s 75 | am No 115, 2001 |
| s 76 | am No 4, 2010; No 5, 2015 |
| s 76A | ad No 106, 2006 |
| s 77 | am No 148, 2002 |
| s 80 | am No 170, 1999 |
| Schedule | am No 148, 2002; No 8, 2010 |
| | rep No 35, 2012 |



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## Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

### Subsection 26(3)

**Kind of editorial change**

Give effect to the misdescribed amendment as intended

**Details of editorial change**

Schedule 4 item 63 of the *Intellectual Property Laws Amendment Act 2015* instructs to insert the text "in a country other than New Zealand" after "overseas".

The word "overseas" appears twice in subsection 26(3).

This compilation was editorially changed to insert the text "in a country other than New Zealand" after "overseas" (first occurring) and give effect to the misdescribed amendment as intended.



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