



# **Plant Breeder's Rights Regulations 1994**

**Statutory Rules No. 352, 1994**

made under the

*Plant Breeder's Rights Act 1994*

## **Compilation No. 11**

**Compilation date:** 10 October 2016

**Includes amendments up to:** F2016L01306

**Registered:** 12 October 2016

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Plant Breeder's Rights Regulations 1994* that shows the text of the law as amended and in force on 10 October 2016 (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](http://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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## 1 Name of regulations

These regulations are the *Plant Breeder's Rights Regulations 1994*.

## 2 Commencement

These Regulations commence on the date of commencement of the *Plant Breeder's Rights Act 1994*.

## 3 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

*Act* means the *Plant Breeder's Rights Act 1994*.

*approved means*, for doing an action, means the means specified for the action by the Registrar in a notice made under regulation 4A and published by the Registrar.

*authorised testing establishment* means an establishment authorised under regulation 3A.

- (2) In Schedule 1, a reference to a section or subsection, is a reference to that section or subsection of the Act.

### 3A Authorised testing establishment

- (1) For the purposes of conducting a test growing of a plant variety under section 37 of the Act, the Secretary may authorise, in writing, an establishment to conduct the test growing.
- (2) An establishment may be authorised only if the Secretary is satisfied that it is capable of conducting a test growing of a variety in a manner appropriate to give effect to the obligations of Australia under the Convention.
- (3) The Secretary must give the operator of the establishment written notice of:
- the Secretary's decision whether to authorise the establishment; and
  - if the decision is a refusal—the reasons for that decision.
- (4) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary to refuse to authorise an establishment.

### 3B Employees to whom Registrar may delegate (Act s59 (3))

For subsection 59 (3) of the Act, the Registrar may delegate all or any of the Registrar's powers or functions under the Act or these Regulations, to an employee of the PBR office:

- (a) holding, or performing the duties of, the position of Examiner of Plant Breeder's Rights; or
- (b) employed at any of the following levels:
  - (i) Executive level 1 or 2;
  - (ii) APS level 2, 3, 4, 5 or 6.

### **3C Employees to whom Minister's powers may be subdelegated (Act s59 (4))**

For subsection 59 (4) of the Act, the class of employee to whom the Minister's powers or functions may be delegated is an employee employed at Executive level 2.

### **3D Employees to whom Secretary's powers may be subdelegated (Act s59 (4))**

For subsection 59 (4) of the Act, the class of employee to whom the Secretary's powers or functions may be delegated is an employee:

- (a) holding, or performing the duties of, the position of Examiner of Plant Breeder's Rights; or
- (b) employed at any of the following levels:
  - (i) Executive level 1 or 2;
  - (ii) APS level 2, 3, 4, 5 or 6.

### **3E Period for doing certain acts—office not open for business**

For subsection 76A (1) of the Act, the circumstance is that the act is done at:

- (a) the PBR office; or
- (b) the PBR sub-office;

that was not open for business.

Note: Subsection 76A (1) provides as follows:

- '(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.'

### **3F Days when office not open for business**

- (1) For paragraph 76A (2) (a) of the Act, the days on which the PBR office or PBR sub-office is not open for business are:
  - (a) Saturday; and
  - (b) Sunday; and
  - (c) Australia Day; and
  - (d) Anzac Day.
- (2) For paragraph 76A (2) (b) of the Act, the table sets out prescribed persons.

Item	Person
1	The Director General of IP Australia
2	The Deputy Director General of IP Australia
3	Another person who: (a) is an SES employee of IP Australia; and (b) acts with the agreement of the Director General of IP Australia
4	Another person who: (a) is an SES employee of IP Australia; and (b) acts with the agreement of the Deputy Director General of IP Australia
5	Another person who: (a) is an SES employee of IP Australia; and (b) acts with the agreement of another SES employee of IP Australia

Note: **SES employee** is explained in section 34 of the *Public Service Act 1999*. That meaning is applied generally to Commonwealth legislation by section 2B of the *Acts Interpretation Act 1901*.

- (3) For paragraph 76A (2) (b) of the Act, the prescribed way of publishing a declaration is in the Plant Varieties Journal.

### 3G Period for doing certain acts—acts to which section 76A does not apply

For subsection 76A (7) of the Act, an act done in relation to proceedings in a court or a tribunal is prescribed.

### 4 Prescribed fees

The fee payable under subsection 80 (2) of the Act for a matter set out in Schedule 1 is the fee specified in Schedule 1 for that matter.

### 4A Approved means

- (1) The Registrar may, by notice published by the Registrar, specify one or more means for doing an action mentioned in Schedule 1.

*Examples of actions*

- 1 Making a request.
- 2 Lodging an application.

- (2) The means may be an electronic means or any other means.

Note: The means become **approved means** when they are published.

### 5 Refund and remission of fees in specified circumstances

- (1) If a person has paid, in respect of a matter, an amount greater than the prescribed fee for the matter, the Secretary may refund to the person so much of the amount as is excess to the fee.

## Regulation 5

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- (2) If a service in respect of which a person has paid a fee has not been provided, or has been provided only in part, the Secretary may refund the fee, or so much of the fee as is proportionate to the part of the service that has not been provided, as appropriate.
- (3) If a person to whom a refund could be made under subregulation (1) or (2) agrees, the Secretary may remit, against a fee that the person subsequently becomes liable to pay, an amount equal to the amount that could be refunded.
- (4) The Secretary must give each person to whom subregulation (1) or (2) applies written notice of:
  - (a) the Secretary's decision whether to refund or remit an amount, a fee or part of a fee (as the case may be); and
  - (b) if the decision is a refusal—the reasons for that decision.
- (5) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary:
  - (a) to refuse to refund:
    - (i) an amount paid in excess of a prescribed fee; or
    - (ii) a fee for a service that has not been provided; or
    - (iii) so much of a fee as is proportionate to the part of a service that has not been provided; or
  - (b) to refuse to remit an amount equal to an amount that could be refunded

## Schedule 1—Fees

Note: See regulation 4.

### 1 Table of fees

The following table sets out fees that are payable in relation to matters specified in the table.

Item	Act, service or occasion in respect of which fee is payable	Fee
1A	Designation of an approved person under section 8	\$50
1B	Renewal of designation of an approved person	\$50
1	On making a request under subsection 19 (4), whether or not the request includes a request under subsection 19 (10)	\$500
2	On making a request for a certificate under subsection 19 (11)	\$100
4	On lodgment of an application under section 26:	
	(a) fee paid by approved means;	\$345
	(b) fee paid by another means	\$445
6	On lodgment of a detailed description under section 34 for:	
	(a) a variety tested under section 37 to establish that the variety is distinct, uniform and stable:	
	(i) if the testing is conducted by an authorised establishment;	\$920
	(ii) in any other case;	\$1 610
	(b) a variety to which subsection 38 (3), (4) or (5) applies;	\$1 610
	(c) each of 2 or more varieties tested simultaneously at the same site in Australia under section 37 to establish that the varieties are distinct, uniform and stable, for which a complete application and detailed description are lodged on the same day by the same approved person or applicant or agent of the applicant under section 34	\$1 380
7	On lodgment of an objection under section 35	\$100
8	On making a request for a copy of an application, an objection or a detailed description under subsection 36 (2)	\$50
9	On lodgment of an application for a declaration of essential derivation under subsection 40 (1)	\$800
10	Grant of PBR in a plant variety under section 44	\$345
11	On lodgment of an application for:	
	(a) revocation of a PBR under subsection 50 (8); or	\$500
	(b) revocation of a declaration of essential derivation under subsection 50 (9)	\$500
12	On making a request for a copy of an entry in the register under subsection 62 (2)	\$50
12A	On making a request for the supply of 4 or more documents relating to a single application for PBR in a plant variety or a single PBR in a plant	\$200 for each request

## Schedule 1 Fees

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<b>Item</b>	<b>Act, service or occasion in respect of which fee is payable</b>	<b>Fee</b>
	variety	
15	For annual maintenance of a PBR—on each anniversary of the grant:	
	(a) fee paid by approved means;	\$345
	(b) fee paid by another means	\$395

## 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 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.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement date	Application, saving and transitional provisions
1994 No. 352	18 Oct 1994	10 Nov 1994 (gaz 1994, No. S392)	
1994 No. 353	18 Oct 1994	1 Jan 1995	—
1995 No. 290	10 Oct 1995	10 Oct 1995	—
1999 No. 83	4 June 1999	4 June 1999	—
2006 No. 355	15 Dec 2006 (F2006L03971)	1 Mar 2007	—
2007 No. 40	23 Mar 2007 (F2007L00650)	r 1–10 and Schedules 1–3, 5 and 6: 27 Mar 2007 Schedules 4 and 8: 1 Apr 2007 (r. 2 (b)) Schedule 7: 27 Mar 2007 (r 2 (c))	—
2011 No. 62	16 May 2011 (F2011L00773)	1 July 2011	—
2011 No. 217	29 Nov 2011 (F2011L02480)	Schedule 1 (Part 4): 27 Dec 2011	—
2012 No. 66	14 May 2012 (F2012L01031)	Schedule 4 (Part 1): 1 July 2012 Schedule 4 (Part 2): 1 Oct 2012	—
Name	Registration	Commencement	Application, saving and transitional provisions
Intellectual Property Legislation Amendment (Fee Review) Regulation 2016	19 Aug 2016 (F2016L01306)	Sch 1 (items 52–59): 10 Oct 2016 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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Provision affected	How affected
r. 1 .....	rs. 1999 No. 83
r. 3 .....	am. 1995 No. 290; 2012 No. 66; F2016L01306
r. 3A .....	ad. 1995 No. 290
	am. 1999 No. 83
r. 3B.....	ad. 2007 No. 40
r. 3C.....	ad. 2007 No. 40
r. 3D .....	ad. 2007 No. 40
r. 3E.....	ad. 2007 No. 40
r. 3F .....	ad. 2007 No. 40
	am. 2011 No. 62
Note to r. 3F (2) .....	am. 2011 No. 217
r. 3G .....	ad. 2007 No. 40
r. 4 .....	am F2016L01306
r. 4A .....	ad. 2012 No. 66
	am F2016L01306
r. 4 (2nd occurring) .....	ad. 1995 No. 290
	rep. 1999 No. 83
r. 5 .....	ad. 1999 No. 83
<b>Schedule</b>	
Schedule heading.....	rs F2016L01306
	renum F2016L01306
Schedule .....	rs. 1994 No. 353
	am. 1995 No. 290; 2006 No. 355
	rs. 2012 No. 66
<b>Schedule 1</b>	
Schedule 1 heading (prev schedule) .....	ad F2016L01306
Schedule 1 .....	am F2016L01306

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