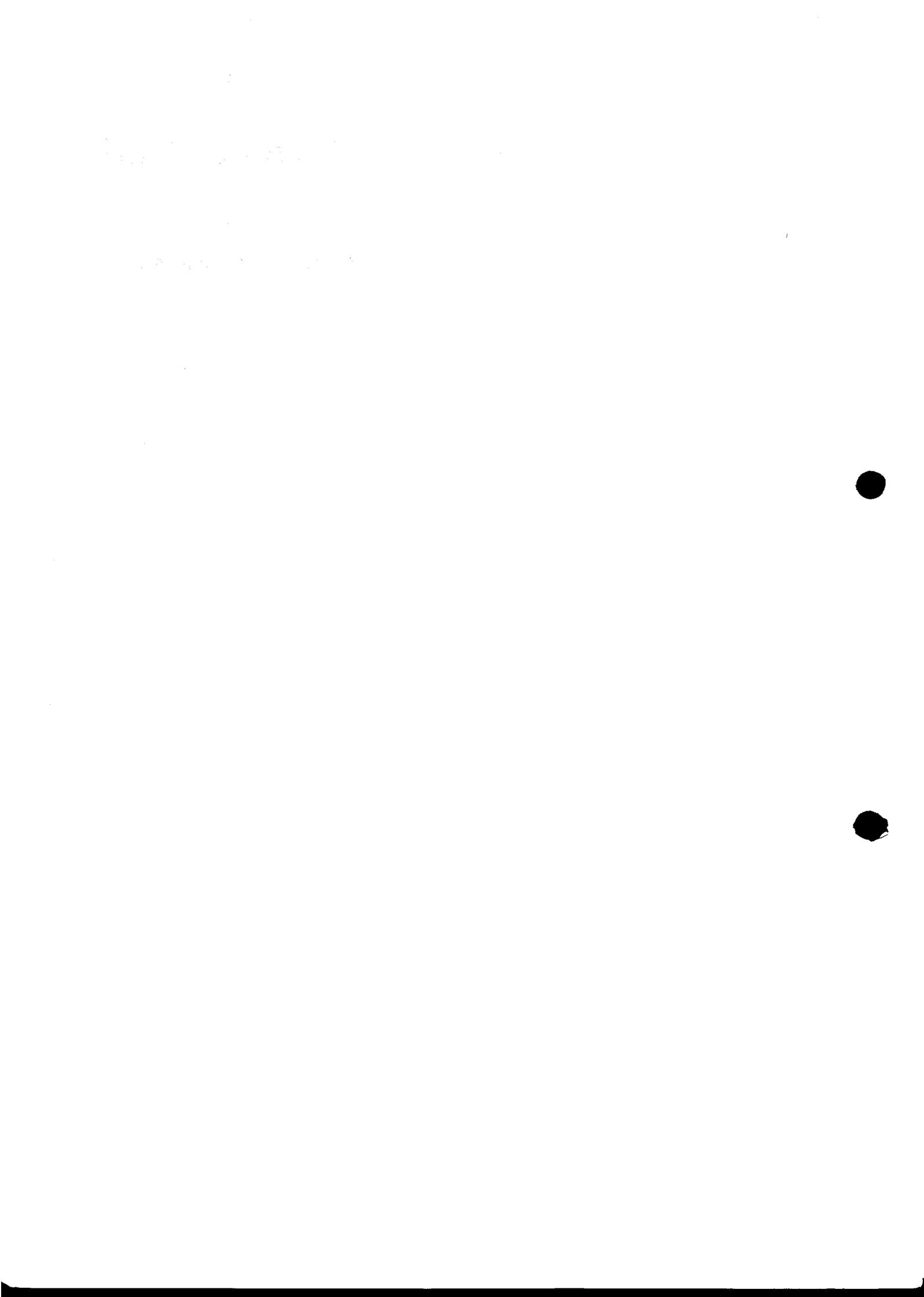


# Plant Varieties Journal

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# CONTENTS

## PART 1 — PLANT VARIETY RIGHTS

- 1.1 WHAT IS PVR?
- 1.2 THE PLANT VARIETY RIGHTS ACT 1987
- 1.3 ELIGIBLE GENERA AND SPECIES
- 1.4 CRITERIA FOR THE GRANT OF RIGHTS
- 1.5 PROVISIONAL PROTECTION (S22)
- 1.6 PLANT VARIETIES JOURNAL [S11(3)]
- 1.7 COMPULSORY LICENCES (S39)
- 1.8 UPOV

## PART 2 — GRANTING OF PVR

- 2.1 WHO CAN APPLY (S15)
- 2.2 APPLICATION FORMS (S16)
- 2.3 ACCEPTANCE/REJECTION OF APPLICATION (S15, 16 and 17)
- 2.4 DUS CRITERIA
- 2.5 DESCRIPTION OF CLOSEST KNOWN VARIETY(IES)
- 2.6 CERTIFICATION OF RESULTS
- 2.7 PENALTIES (S52)
- 2.8 VARIETIES ORIGINATED IN ANOTHER COUNTRY (S23)
- 2.9 TEST GROWING (S24)
- 2.10 VARIATION OF APPLICATION (S19)
- 2.11 WITHDRAWAL OF APPLICATION (S25)
- 2.12 PUBLIC NOTICE OF APPLICATION (S19)
- 2.13 OBJECTION TO APPLICATIONS (S20)
- 2.14 INSPECTION OF APPLICATIONS AND OBJECTIONS (S21)
- 2.15 EXAMINATION OF APPLICATIONS (S26)
- 2.16 GRANTING OF RIGHTS (S26)
- 2.17 REGISTER OF PLANT VARIETY RIGHTS (S9)
- 2.18 TRANSFER OF RIGHTS (S31)
- 2.19 SUPPLY OF REPRODUCTIVE MATERIAL (S33)
- 2.20 REVOCATION OF RIGHTS (S35)
- 2.21 MAINTENANCE OF CHARACTERISTICS
- 2.22 OBLIGATIONS AND EXEMPTIONS (S38, S39)
- 2.23 INFRINGEMENT OF RIGHTS — (S40, S41)
- 2.24 NON-INFRINGEMENT NOTICE (S42)
- 2.25 APPLICATION FOR REVIEW

## PART 3 — FEES

- 3.1 FEE SCHEDULE
- 3.2 PAYMENT OF FEES

## PART 4 — PROPOSED SCHEDULE FOR INCLUSION OF GENERA/SPECIES IN THE PVR REGULATIONS

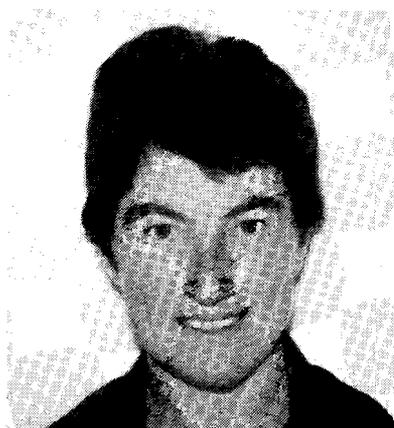
- Appendix 1 Proposed Schedule for the Implementation of PVR
- Appendix 2 Members of the Plant Variety Rights Advisory Committee
- Appendix 3 Schedule of Fees

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# PLANT VARIETIES JOURNAL



## EDITORIAL

Welcome to the first edition of the Australian Plant Varieties Journal. This journal is now the official communication medium for Plant Variety Rights. It will be published quarterly and will be available on subscription from the Australian Government Publishing Service. Copies for perusal will be available in State offices of the Department of Primary Industries and Energy.

The introduction of Plant Variety Rights (PVR) is the culmination of many years examination and assessment of the need for intellectual property rights for plants.

The Senate Standing Committee and the Lazenby Inquiry into Plant Breeding in Australia both strongly recommended the introduction of PVR in Australia to stimulate plant breeding. PVR has been a part of life in Europe, the United States and New Zealand for many years. Hopefully we in Australia can take the best of the existing schemes and develop something that is low cost but effective, meeting the needs of the user groups.

PVR in Australia will work best as a cooperative effort between those implementing the scheme (the Plant Variety Rights Office), breeders, growers, retailers and consumers. I see the system as being flexible and evolving over the next few years so please let me know if you believe we can meet our objectives more effectively.

This edition of the journal provides an outline of the conditions and procedures relating to PVR. If you have any problems, please contact this office. We are only a phone call away and will assist in any way we can within the legislative framework.

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**Registrar of Plant Variety Rights**

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# PART 1 — PLANT VARIETY RIGHTS

## 1.1 WHAT IS PVR?

PVR is an extension of the principle allowing ownership of invention existing in patents and copyright legislation. It is a limited form of proprietary ownership which provides the grantee with a legal right (for 20 years) to exclude others producing (except for their own use), or trading in the new variety without the owner's agreement. The rights do not extend to the use of the crop produced, the land on which the variety is grown, use in plant breeding or retention by the grower for production of another crop.

## 1.2 THE PLANT VARIETY RIGHTS ACT 1987

1.2.1 The authority for the introduction of PVR is given by the *Plant Variety Rights Act 1987*, proclaimed on 1 May 1987. The Act sets out the basic framework for PVR and the mechanism for implementation. The key players are listed below:

- a) The Secretary of the Department of Primary Industries and Energy has authority for many of the decisions relating to specific applications. This authority has also been delegated to the Registrar by the Secretary.
- b) The Registrar of Plant Variety Rights is responsible for implementing the provisions of the Act and chairing the Plant Variety Rights Advisory Committee. The Registrar is the main contact point on PVR matters.
- c) The Plant Variety Rights Advisory Committee, established by the Act, has two functions:
  - i) to advise the Minister (at his request) on the desirability of including genera or species in the Regulations, and
  - ii) to advise on technical and administrative matters relating to PVR.
- iii) The Committee is chaired by the Registrar and has members representing breeders, producers and consumers as well as two other members with appropriate qualifications and experience (see Appendix 2). The members are appointed by the Minister after wide consultation with industry and the community.
- iv) The Minister for Primary Industries and Energy is responsible for advising the

Governor General on genera/species to be included in the Regulations, after consultation with the Plant Variety Rights Advisory Committee.

The Minister is also responsible for imposing conditions on the grant of rights for a new variety, to protect the public interest, and for appointing the Advisory Committee.

- v) Applicants for Plant Variety Rights must meet specific criteria outlined in the Act. These will be discussed in detail throughout this journal.

1.2.2 Copies of the *Plant Variety Rights Act 1987* are available from the Australian Government Publishing Service in each State or Territory. Most major libraries also keep copies in their reference section.

## 1.3 ELIGIBLE GENERA AND SPECIES

1.3.1 Plant Variety Rights are only available for varieties if the genus or species has been included in the Regulations to the *Plant Variety Rights Act 1987*.

1.3.2 The first genera and species will be included in April 1988 and applications for those will be accepted from 31 March 1988. These are *Malus* (Apple), *Macadamia* (macadamia), *Brassica* (oilseeds — e.g. rape, mustard etc), *Phaseolus vulgaris* (bean), *Gossypium* (cotton), *Phalaris* (phalaris), *Anigozanthus* (kangaroo paw), *Rosa* (rose). Application forms are now available from the Registrar. New genera and species will be added progressively and the aim is to include most genera within 2 years unless any major problems are identified. A proposed timetable for implementation is given in Part 4 of this journal.

## 1.4 CRITERIA FOR THE GRANT OF RIGHTS

1.4.1 The Act establishes the criteria for the grant of rights. These are listed below:

- a) *A new plant variety must be originated by a person* [S3(1) and S3(5)].

Selections direct from the wild or discoveries are not eligible for plant variety rights.

If a variety is selected from the wild and grown in cultivation, some selective breeding activity must be carried out over a minimum of four generations. In the case of natural mutations, the applicant must carry out some activity in relation to the specific plants resulting in a variety that is different from the original variety in one or more important characteristics. The variety could then be considered to have been originated by a person. (The new variety must also meet the other criteria listed below).

- b) *A new plant variety must be homogeneous (uniform) with regard to particular features of its sexual reproduction or vegetative propagation [S3(1)]. This means that all the members of the population must be the same within the limits outlined in paragraph 2.4.7 of this journal.*
- c) *A new plant variety must be stable [S3(1) and S3(2)]. A plant variety will be considered stable if plants of the variety remain true to the description given in the application after repeated reproduction or propagation or at the end of a particular cycle which is specified in the application. Tests for stability are outlined in paragraph 2.4.7 of this journal.*
- d) *A new plant variety must be distinguishable, by one or more important morphological, physiological or other characteristics, from all other plant varieties whose existence was a matter of public knowledge at the time the application was made [S3(1) and S3(7)]. This is one of the key elements of PVR. The new variety must be measurably different from the closest publicly known existing variety.*
- e) A new plant variety (or its reproductive material) must not have been sold in Australia before making the application (S14).
- f) A new plant variety (or its reproductive material) cannot have been sold overseas for more than 6 years before making the application (S14).

1.4.2 Criteria b-d above are known as DUS (distinctness, uniformity and stability) and form the basis of test data to be supplied with the application (see paragraphs 2.4.1-4)

## 1.5 PROVISIONAL PROTECTION (S22)

1.5.1 Once an application has been *accepted*, (this date will differ from the date the application is lodged) the applicant is granted provisional rights, making it an infringement for any other person to sell the variety (or its reproductive material) or use the name of the variety (S40). (It should be noted that the applicant is not permitted to sell during the period of provisional protection (see d below).

1.5.2 Provisional protection will lapse:

- a) on the granting of rights
- b) on rejection of the application
- c) at any period which may be prescribed in relation to the application
- d) if the applicant sells a plant of that variety (or its reproductive material) in Australia after the application is accepted other than for scientific purposes or creating stock of plants or reproductive material for supply to the applicant e.g. it is permissible to pay someone to bulk up stock on your behalf prior to the granting of rights.
- e) for any other reason specified in the regulations. At this stage no other provisions are prescribed.

## 1.6 PLANT VARIETIES JOURNAL [S11(3)]

1.6.1 The Act makes provision for a Plant Varieties Journal to be the medium for public notice of matters relating to PVR.

This is the first edition of the journal which will be published quarterly. Future issues will contain:

### PART 1

- a) articles of general interest on PVR
- b) progress on the implementation of PVR
- c) variation to procedures
- d) fees
- e) agreements with other countries
- f) UPOV
- g) conferences, workshops etc.
- h) input from readers
- i) other general matters

### PART 2

- b) applications (including descriptions and *colour* photographs)
- b) withdrawal of applications
- c) variation to applications
- d) PVR granted

- e) change in ownership
- f) PVR not renewed, expired, terminated
- g) requests to issue, issue and withdrawal of compulsory licences
- h) other matters requiring notification

1.6.2 By having a special journal those interested in PVR will have a specialised medium for communication, allowing direct access to the required information.

1.6.3 Future issues of the journal will be available on subscription from the Australian Government Publishing Service (subscription leaflet included in this issue). Copies will also be available for perusal at capital city offices of the Department of Primary Industries and Energy.

## 1.7 COMPULSORY LICENCES (S39)

1.7.1 The Act requires that holders of PVR make reasonable quantities of the variety available at a reasonable price. If 2 years after the grant of rights a person considers that the grantee is not meeting this requirement, a submission can be made asking that a licence be given to someone else to sell the material.

1.7.2 The submission must:

- a) give reasons why the submitter does not believe the grantee is meeting the requirements and
- b) outline why this failure affects the submitter's interests.

The grantee will be given the opportunity to rebut the submission.

If a compulsory licence is to be issued public notice will be given in the journal inviting people to apply for the licence.

have priority in those countries for 12 months after the first application is accepted.

1.8.2 Membership of UPOV *does not* mean automatic granting of rights in other member countries once rights are granted in one country. Applicants must still comply with the testing requirement in each country where rights are sought.

## 1.8 UPOV

1.8.1 The International Union for the Protection of New Plant Varieties (UPOV) provides a link between Plant Variety Rights Offices throughout the world. UPOV aims to standardise requirements and procedures for PVR in member countries. The legislation in member countries must comply with the UPOV Convention. Australia is currently applying for membership. This will ensure that Australian plant breeders are eligible to apply for rights in all major countries and that they

## PART 2 — GRANTING OF PVR

### 2.1 WHO CAN APPLY (S15)

- 2.1.1 The only people who can apply for PVR are the original breeder (or the corporation if the breeder is an employee) of a new variety, a person to whom ownership has been transferred by the original breeder or the law, or an agent of the original breeder or successor.
- 2.1.2 There is no restriction based on nationality or residence.
- 2.1.3 *Joint Applications* can be made and if a variety is originated jointly all must apply unless they have the written consent of the others.
- 2.1.4 Agents must have the written consent of the original breeders and transferees must have written evidence of the transfer.

### 2.2 APPLICATION FORMS (S16)

- 2.2.1 Applications must be made on the forms available from the Registrar. They consist of three parts:
- General Information
  - Technical Questionnaire
  - Objective Description.
- 2.2.2 Applications will not be accepted (and therefore provisional protection will not apply) unless all three parts are completed (the Registrar may give written approval to vary this requirement).
- 2.2.3 For varieties originated overseas, test results from within Australia may not be required until a time specified in the notification of acceptance, as long as particulars are provided of an overseas test growing designed to demonstrate that the variety, if grown in Australia, will exhibit the characteristics described [to comply with S16(k)].
- 2.2.4 In the above cases where test results from within Australia are not available at the time of application, the application will be accepted (if all the criteria are met), but the application will not be examined. If results are not supplied by the due date, the application will be closed and the rights not granted unless sufficient reason is given to the Registrar as to why an extension of time should be given.

### 2.3 ACCEPTANCE/REJECTION OF APPLICATION (S15, 16 and 17)

- 2.3.1 If the application complies with S16 and S17 (correct nomenclature) of the Act it will be accepted and the applicant will be notified within 30 days of the decision being made. The application, with description, will also be notified in the Plant Varieties Journal.
- 2.3.2 If the application is rejected the applicant will be notified, with reasons, within 30 days of the decision.

### 2.4 DUS CRITERIA

- 2.4.1 Applicants are responsible for demonstrating to the Registrar that their variety meets the eligibility criteria in paragraph 1.4.
- 2.4.2 The Technical Questionnaire will provide guidelines on the minimum information required. Separate details on how the tests were carried out and the breeding history leading to the new variety will need to be clearly indicated.
- 2.4.3 If test results are not obtained using acceptable scientific techniques, rights will not be granted.
- 2.4.4 Applicants should provide as much information as they have to support their case to avoid further requests and time delays in the processing of applications.

#### Criteria for Distinctness

- 2.4.5 The new variety must be *distinct* from all other existing varieties in at least one important characteristic e.g. morphological (such as shape, colour), physiological (such as disease resistance) or some other measurable characteristic (such as canning quality).
- 2.4.6 Direct comparison must be made with the closest known variety. Test results should indicate how these comparisons were made using the same growing conditions. Direct pairwise comparisons show the least bias. The number of comparisons has to be sufficient to allow a comparable reliability of data (statistically significant difference) between the varieties.
- Diagnostic evidence such as isozyme analysis is also encouraged as this will make it easier for an applicant to defend the case, particularly if challenged in court.

## Homogeneity (Uniformity)

2.4.7 The variety must be sufficiently *homogeneous*, having regard to the particular features of its sexual reproduction or vegetative propagation. To be considered homogeneous, the variation shown by a variety, depending on the breeding system of that variety and off-types due to occasional mixture, mutation or other causes, must be as limited as necessary to permit accurate description and assessment of distinctness and to ensure stability. This requires a certain tolerance which will differ according to the reproductive system of the variety—vegetatively propagated, self-fertilized or cross-fertilized. The number of off-types appearing, that is plants which differ in their expression from that of the variety, should not—unless otherwise indicated in the appropriate Technical Questionnaire—exceed the tolerance indicated below:

### a) Vegetatively Propagated Varieties and Truly Self-Pollinated Varieties

2.4.8 For vegetatively propagated varieties and truly self-pollinated varieties, the following table based on existing experience indicates the maximum acceptable number of off-types in samples of various sizes.

Sample Size	Maximum Number of Off-Types
5	0
6 – 35	1
36 – 82	2
83 – 137	3

### b) Mainly Self-Pollinated Varieties

2.4.9 Mainly self-pollinated varieties which are not fully self-pollinated are treated as such for testing. For these, a higher tolerance is required and the maximum number of off-types allowed in the table for vegetatively propagated varieties and for truly self-pollinated varieties is doubled.

### c) Cross-Pollinated Varieties Including Synthetic Varieties

2.4.10 Cross-pollinated varieties normally exhibit wider variations within the variety than vegetatively propagated or self-pollinated varieties and it is sometimes difficult to distinguish off-types. Therefore no fixed tolerance can be determined but relative tolerance

limits are used through comparison with comparable varieties already known.

2.4.11 For *measured characteristics*, the standard deviation or variance should be used as the criterion for comparison. A variety is considered not to be homogeneous in the measured characteristic concerned if its variance exceeds 1.6 times the average of the variance of the varieties used for comparison.

2.4.12 *Visually assessed characteristics* have to be handled in the same way as those which are measured. The number of plants visually different from those of the variety should not significantly (5% probability of an error) exceed the number found in comparable varieties already known.

### d) Hybrid Varieties

2.4.13 *Single cross varieties* have to be treated as mainly self-pollinated varieties, but a tolerance has also to be allowed for inbred plants. It is not possible to fix a percentage as the decisions differ according to the species and the breeding method. However, the percentage of inbred plants should not be so high as to interfere with the trials. Each application will be assessed individually.

2.4.14 For *other categories of hybrids*, a segregation of certain characteristics is acceptable if it is in agreement with the formula of the variety. If the heredity of a clear-cut segregating characteristic is known, this characteristic has to be treated as a qualitative characteristic. If the described characteristic is not a clear-cut characteristic, it has to be handled as in the case of other kinds of cross-pollinated varieties; that is to say, the homogeneity has to be compared with that of comparable varieties already known. To establish a tolerance for inbred or parent plants, the same considerations apply as in the case of a single cross variety.

### Stability

2.4.15 The variety must be *stable* in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle [S1(2)].

2.4.16 It is not generally possible during a period of 2 to 3 years to perform tests on stability which lead to the same certainty as the testing of distinctness and homogeneity.

2.4.17 Generally, when a submitted sample has been shown to be homogeneous, the material can also be considered stable. Nevertheless, during the testing for distinctness and homogeneity, careful attention has to be paid to stability. As far as necessary, stability has to be tested by growing a further generation or new seed stock to verify that it exhibits the same characteristics as those shown by the previous material supplied.

## 2.5 DESCRIPTION OF CLOSEST KNOWN VARIETY(IES)

2.5.1 As outlined in paragraph 2.4.6, applications must provide details on comparison with the closest known variety(ies) for the characteristics being considered.

2.5.2 These comparisons must be carried out using acceptable scientific procedures.

## 2.6 CERTIFICATION OF RESULTS

2.6.1 All test results and procedures submitted with the application must be certified by a scientifically qualified plant breeder, taxonomist, geneticist or equivalent. Note should be taken of penalties in paragraphs 2.7.1-2.

## 2.7 PENALTIES (S52)

2.7.1 The Act imposes penalties for giving false information in an application form or any other document submitted in relation to PVR (\$1000 individual, \$5000 corporation).

2.7.2 The same penalties apply for falsely representing that you are, or are deemed to be, the grantee of rights and falsely representing that rights have been granted to a particular plant variety.

## 2.8 VARIETIES ORIGINATED IN ANOTHER COUNTRY (S23)

2.8.1 Paragraph 2.2.3 refers to provision of Australian test results for varieties originated overseas.

2.8.2 S23 of the Act requires Australian test results or equivalent. The most effective way to facilitate processing of the application is to carry out test growings in Australia.

2.8.3 The alternatives are to:

a) demonstrate the presence of the characteristics outside Australia in a test growing that is equivalent to a test growing carried out in Australia (the *applicant* must demonstrate equivalence) or

b) demonstrate the presence of the characteristic outside Australia in a test growing that would probably demonstrate the presence of the characteristic in Australia. This method can only be used if a test growing in Australia would take *more than 2 years*.

## 2.9 TEST GROWING (S24)

2.9.1 If the Registrar is not satisfied with the test results supplied by the applicant, the applicant will be required to have further tests carried out by an organisation or individual acceptable to the Registrar.

2.9.2 It will be the applicant's responsibility to arrange the test growing and to meet any associated fees charged by the person (corporation) doing the testing.

2.9.3 Applicants will be given a specific time in which to supply further results. During that time the application will not be processed further by the Plant Variety Rights Office.

2.9.4 If results are not submitted by the due date and the applicant has not sought and been granted an extension of time, the application will lapse.

## 2.10 VARIATION OF APPLICATION (S19)

2.10.1 If an applicant wishes to vary the application after it is accepted but before it is disposed of, they may make a written request.

2.10.2 The Registrar may accept the variation and notify the applicant. If the variation is significant it will also be notified in the Plant Varieties Journal.

2.10.3 If the application for variation is rejected, the applicant will be notified with reasons.

2.10.4 If the address given for the service of documents in a request for variation is different from that on the original application, the address on the original application will be varied accordingly.

2.10.5 Applications for variation must be accompanied by the relevant fee.

## 2.11 WITHDRAWAL OF APPLICATION (S25)

2.11.1 An applicant may withdraw an application at any time but if it is more than 3 months after the application has been accepted the *full* examination fee will be charged.

2.11.2 If the application is withdrawn 3 months or less after acceptance of the application, half the examination fee will be charged.

2.11.3 These charges will not apply to imported varieties if the applicant, at the time of application, has indicated that the examination should not proceed until further notification. (See para 2.2.3)

## 2.12 PUBLIC NOTICE OF APPLICATION (S18)

2.12.1 Once an application is accepted it will be published (with description) in the next edition of the Plant Varieties Journal. Significant variations will also be published.

## 2.13 OBJECTION TO APPLICATIONS (S20)

2.13.1 Following publication of the application or a variation to the original application in the journal a person may object to the grant of rights *for a particular variety* within 6 months.

2.13.2 The grounds for objection are:

- a) that commercial interests of the person raising the objection would be affected i.e. that a business will be adversely affected and
- b) that the provisions of S26 of the Act cannot be met. S26 requires that:
  - there is such a plant variety
  - the plant variety is new
  - the applicant is entitled to make the application
  - the grant of rights is not prohibited by the Act

- the rights have not been granted to someone else
- there has been no earlier application for those rights that has not been withdrawn or otherwise disposed of, and
- the name of the variety complies with S17

2.13.3 The objector will be required to provide supporting evidence to substantiate the objection.

2.13.4 A copy of the objection will be sent to the applicant who will be required to demonstrate why the objection should not be upheld [S26(5)].

2.13.5 The Registrar will notify the applicant and the objector on the decision relating to the objection.

## 2.14 INSPECTION OF APPLICATIONS AND OBJECTIONS (S21)

2.14.1 Applications and objections are available for inspection at the Plant Variety Rights Office.

2.14.2 Copies of any application or objection may be obtained by writing to the Registrar with the prescribed fee.

2.14.3 A separate fee is payable for each application or objection and for each copy if more than one is required.

## 2.15 EXAMINATION OF APPLICATIONS (S26)

2.15.1 Once an application has been accepted, the Registrar will take all necessary action to ensure that the claims made in the application are valid.

2.15.2 The Registrar reserves the right to consult with any person or organisation and to provide copies of any application to any person or organisation. Provisional protection will apply during this period.

## 2.16 GRANTING OF RIGHTS (S26)

2.16.1 If the provisions of S26(1) — listed in para 2.13.2(b) — are met to the satisfaction of the Registrar (holding the Secretary's delegation), Plant Variety Rights will be granted.

- 2.16.2 A period of at least 6 months must elapse after giving public notice of the application (or of a significant variation) to allow for objections.
- 2.16.3 In reality a minimum of about 9 months will be required for PVR to be granted, if further test results are not required and there are no major objections. It is therefore in the applicant's interest to ensure that all necessary documentation is provided and that it is accurate.
- 2.16.4 A grantee of Plant Variety Rights will be issued with a Certificate for that variety.
- 2.16.5 If an application is to be refused, the applicant will be given the opportunity to make a written submission justifying the case.
- 2.16.6 If the application is refused, the applicant will be notified in writing with reasons.
- 2.16.7 The Minister may impose conditions on the grant of rights if it is in the public interest (S34).

## 2.17 REGISTER OF PLANT VARIETY RIGHTS (S9)

- 2.17.1 A Register of Plant Variety Rights will be kept at the Plant Variety Rights Office in Canberra.
- 2.17.2 Copies will also be available for inspection at Department of Primary Industries and Energy offices in each capital city.
- 2.17.3 If an error is found in the Register, the grantee may submit an application for variation to the Registrar, providing evidence of the need for the change.
- 2.17.4 Copies of an entry in the Register may be available on payment of a fee (S49).

## 2.18 TRANSFER OF RIGHTS (S31)

- 2.18.1 Plant Variety Rights are personal property and can be assigned or transmitted by will or operation of law.
- 2.18.2 The assignment of rights must be in writing signed by or on behalf of the owner of the rights.

- 2.18.3 If rights are assigned or transmitted, the new owner must inform the Registrar within seven days giving an address in Australia for the service of documents. The Register will be amended accordingly.

## 2.19 SUPPLY OF REPRODUCTIVE MATERIAL (S33)

- 2.19.1 Grantees of rights will be required to:
- supply a quantity of reproductive material to a specified genetic resource centre or herbarium within 14 days (or such other period specified by the Registrar) of being granted rights (at the cost of the grantee) or
  - maintain original reproductive material in a condition such that the Registrar could require a quantity to be supplied to a genetic resource centre or herbarium at any time (with 14 days notice) during the currency of the rights.
- 2.19.2 In b) above, the grantee must be able to demonstrate at any time that the material is the same variety for which Plant Variety Rights have been granted. It is in the grantee's interest to keep accurate records to prove it is original material as court challenges to the use of rights could occur. It is the grantee's responsibility (*not the Registrar's*) to defend such challenges.
- 2.19.3 The reproductive material supplied to a genetic resource centre remains the property of the grantee and will not be available as part of a national collection [S33(7)].
- 2.19.4 The material will be used:
- if a compulsory licence is given under S39
  - for any litigation arising from the grant of rights
  - for maintaining public collections of varieties once the Plant Variety Rights have expired
  - for scientific purposes.

## 2.20 REVOCATION OF RIGHTS (S35)

- 2.20.1 Plant Variety Rights can be revoked if there is evidence that the plant was not a new variety, if fees have not been paid within one month of being given notice that they are due, if the grantee has not complied with any conditions of grant, has failed to supply genetic material or has not notified any change of ownership (S31).

2.20.2 The grantee will be given the opportunity to make a submission to the Registrar before the rights are revoked.

## 2.21 MAINTENANCE OF CHARACTERISTICS

2.21.1 It is the grantee's responsibility to ensure that material being sold exhibits the same characteristics as described in the original application.

2.21.2 If this is not so, the rights may be revoked.

2.21.3 The Registrar reserves the right to require the grantee at any time during the currency of the rights to demonstrate that material being sold still has the same characteristics given in the original application. A re-examination fee may be charged for this (see Fee Schedule).

## 2.22 OBLIGATIONS AND EXEMPTIONS (S38, S39)

2.22.1 Holders of plant variety rights are required to:  
make reasonable quantities of the variety available at reasonable prices within 2 years of the grant of rights. If this condition is not met compulsory licences may be granted.

2.22.2 The consent of the holder of rights is not required for:

- propagating, growing and using plants or reproductive material for own use
- selling plants or reproductive material for use as food or other uses that do not involve reproduction of plants of that variety
- selling land where plants of that variety are growing
- use as an initial source of variation for the purpose of originating another plant variety.

## 2.23 INFRINGEMENT OF RIGHTS — WHO IS RESPONSIBLE? (S40-43)

2.23.1 Enforcement of PVR is the responsibility of the owner of the rights — *not* the responsibility of the Registrar.

2.23.2 If you believe that someone is infringing your rights it is up to you to take action and to gather the evidence supporting your claim. It is therefore essential that you have access to original genetic material and maintain the integrity of the variety you are selling.

2.23.3 The Registrar may be called as an expert witness but will not have the resources to assist you with your claim.

## 2.24 NON-INFRINGEMENT NOTICE (S42)

2.24.1 A person wishing to sell a plant or genetic material which is covered by PVR may seek a Court declaration that such a sale would not be an infringement of the rights.

2.24.2 This can only occur if the applicant for the declaration has sought an admission from the holder of the rights agreeing that the applicant's sales would not constitute an infringement.

2.24.3 All costs in this case are borne by the applicant for the declaration who would have to demonstrate valid reasons.

## 2.25 APPLICATION FOR REVIEW (S53)

S53 of the Act lists decisions of the Secretary or Registrar which may be reviewed by the Administrative Appeals Tribunal. Applicants will be informed of these provisions when they are told of specific decisions relating to their application.

# PART 3 — FEES

## 3.1 FEE SCHEDULE

The schedule of fees (Appendix 3, attached) has been prepared to cover some of the costs of the Plant Variety Rights Office in administering the *Plant Variety Rights Act 1987*. The fees will be reviewed once the scheme is implemented with the aim of recovering full costs within 4-5 years.

## 3.2 PAYMENT OF FEES

3.2.1 Fees should be made payable to:  
The Collector of Public Monies  
Department of Primary Industries  
and Energy.

- 3.2.2. All fees with the exception of the Examination and Certification fees are *payable in advance* and must accompany the application to the Registrar for whatever action is required (eg application fee, request for variation, lodge objection etc). No action will be taken unless the fee is paid.
- 3.2.3 Examination and Certification fees will be claimed by invoice to the applicant following examination, but before the issue of the Certificate. The Certificate will not be issued until all fees are paid.
- 3.2.4 If fees (including annual renewal fees) are not paid within one month of the due date, rights will not be granted and the application will be closed. If rights have already been granted they will be revoked.

## **PART 4 — PROPOSED SCHEDULE FOR THE INCLUSION OF GENERA/SPECIES IN THE REGULATIONS**

### **4.1 INCLUSION OF GENERA/SPECIES**

- 4.1.1 Appendix 1 gives the proposed timetable for the inclusion of genera/species in the PVR Regulations, based on submissions received as a result of the advertisement on 28 November 1987. The first eight genera/species are now being included and applications can be made. (See para 1.3 of this journal).
- 4.1.2 The schedule may be modified if any major problems are identified during the initial phases. Anyone seeking a modification should send a submission to the Registrar of Plant Variety Rights by 23 April 1988.
- 4.1.3 Any changes will be notified in future issues of the journal.
- 4.1.4 As the timeframe proposed is short, effective implementation will require the cooperation of all parties.

#### **CORRESPONDENCE:**

All correspondence should be addressed to:

The Registrar of Plant Variety Rights  
Bureau of Rural Science  
GPO Box 858  
CANBERRA CITY ACT 2601

Phone: 062 71 6472

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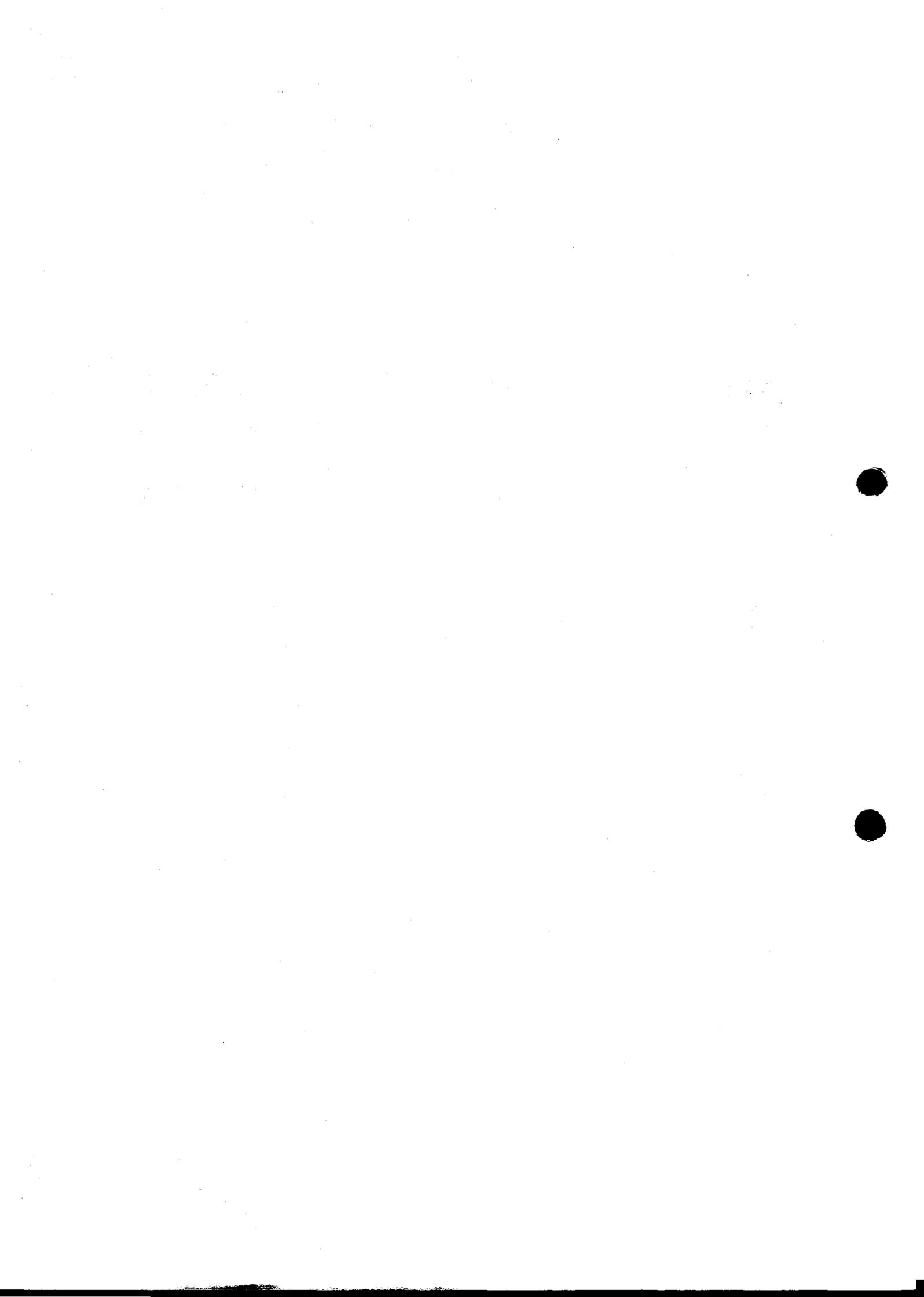
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PROPOSED SCHEDULE FOR INCLUDING GENERA/SPECIES  
IN THE PLANT VARIETY RIGHTS REGULATIONS

PLANT GROUP	MARCH 88	JULY 88	JAN 89	JULY 89	MARCH 90
STONE FRUIT		Prunus	All Stone Fruit		
CITRUS		All Citrus			
OTHER FRUIT	Malus (apple)	Fragaria (strawberry) Vitis (grape) Carica (paw paw) Rubus (raspberry) Persea americana (avocado)	Pyrus (pear) Actinidia (kiwifruit)		All Fruit
VEGETABLES	Phaseolus vulgaris (bean)	Solanum tuberosum (potato) Lycopersicon (tomato) Lactuca sativa (lettuce) Pisum (pea)	Allium cepa (onion) Daucus carota (carrot) Brassica oleracea (cabbage, cauliflower etc)	All vegetables	
NUTS	Macadamia	Prunus amygdalus (almond)	Juglans (walnut)	All nuts	
HERBAGE AND TURF GRASSES	Phalaris	Lolium (ryegrass) Agrostis (bent) Festuca (tall fescue) Cynodon (bermuda grass) Zoysia Stenotaphrum	Dactylus (cocksfoot) Bromus Lotus Paspalum	All herbage and turf grasses	
OILSEEDS	Brassica sp (oilseeds) (rape, mustard etc)	Glycine max (soybean) Helianthus annuus (sunflower)	Sesamum indicum (sesame) Carthamus tinctorius (safflower) Linum usitatissimum (linseed)	All oilseeds	
PASTURE AND GRAIN LEGUMES		Trifolium (clover) Medicago Ornithopus (serradella) Stylosanthes	Lupinus Desmanthus Vigna (mungbean) Cicer arietinum (chickpea) Indigofera	All pasture and grain legumes	
GRAINS		Setaria Avena (oats) Panicum Pisum (pea) Zea mays (corn)	Hordeum (barley) Pennisetum (pearl millet) Sorghum		All grains
AUST. NATIVE ORNAMENTALS	Anigozanthus (Kangaroo paw)	Grevillea Chamelaucium (Geraldton wax) Lechenaultia Melaleuca Decaspermum Artanema	Macropidia (Black Kangaroo Paw) Piper Callistemon Thryptomene Telopea Dryandra	Boronia Banksia Verticordia Darwinia Pimelea	All native ornamentals
OTHER ORNAMENTALS	Rosa (Rose)	Orchids (all genera) Dianthus (carnation) Alstroemeria Schlumbergera (Zygocactus) Lilium (Lily) Metrosideros carminea Freesia Rhododendron Gerbera	Rhipsalis Kalanchoe Euphorbia (Poinsettia) Chrysanthemum Zantedeschia		All ornamentals
FORESTRY		Eucalyptus	Pinus Acacia Casuarina		All forestry
OTHER	Gossypium (cotton)		Duboisia	Humulus lupulus	All species

**PLANT VARIETY RIGHTS ADVISORY COMMITTEE (PVRAC)**

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**PLANT VARIETY RIGHTS SCHEDULE OF FEES — 1988**

<b>FUNCTION</b>	<b>FEE (\$)</b>
APPLICATION	300
EXAMINATION OF APPLICATION	1000
COPY OF APPLICATION	50
VARIATION TO APPLICATION	55
*EXAMINATION OF OBJECTION	60
COPY OF OBJECTION	50
CERTIFICATE OF PVR	200
ANNUAL RENEWAL FEE	200
RE-EXAMINATION (IF REQUIRED)	600
COMPULSORY LICENCE	100
TRANSFER OF RIGHTS	100
PUBLICATIONS	HOURLY RATE

\*HOURLY RATE = \$50/ hr; EXAMINATION OF OBJECTIONS EXCEEDING 2 HOURS WILL BE CHARGED AT THE HOURLY RATE FOR THE EXTRA TIME

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