Primary Industries and Energy Legislation
Amendment Bill (No. 2) 1989

Date Introduced: 8 March 1989
House: House of Representatives
Presented by: Hon. John Kerin, M.P., Minister for Primary Industries and Energy

Digest of Bill

Purpose
This is an omnibus Bill that will amend a number of Acts within the Primary Industries and Energy portfolio. The main amendments will allow owners of plant variety rights to asexually propagate plants for commercial production; remove the application fee refund for unsuccessful applicants of petroleum exploration, production, and pipeline construction licences; and allow a fee to be charged when a special prospecting authority is granted.

Background
The concept of Plant Variety Rights (PVR) is to grant a proprietary right to the breeder of new varieties of certain plants included in the regulations. Under the Plant Variety Rights Act 1987, breeders of new plant varieties can claim the exclusive rights to sell, or license others to sell, plants or seeds of those varieties for a period of 20 years that they have developed (i.e. the natural re-production of those plants). PVR protection does not extend to the sale of the product of the new variety. For example, the holder of PVR cannot control the sale of the fruit from a protected variety.

The P.V.R. Act requires that plants and reproductive material must be available in sufficient quantity to meet demand, at reasonable prices and the holder of PVR is required to take all reasonable steps to ensure that the reasonable requirements of the public are satisfied. Due to this availability it is argued that the developers are being deprived of a large return from their development, that is, the ability to control the market for their entire product.

The first genera and species included in the Regulations included varieties of the apple, macadamia nut, oilseeds, beans, cotton, grasses, and kangaroo paw. PVR is now available for over 90 plant species in Australia. On 14 February 1989 the Minister for Primary Industries and Energy announced that a Queensland farming family has become the first in Australia to be granted PVR. They have been granted PVR for two new varieties of Macadamia nut.
Main Provisions

Amendments to the *Plant Variety Rights Act 1987*

Proposed subsection 12 (1) (e) will allow the owner of a PVR an exclusive right to produce asexually (i.e., reproduction in plants by vegetative propagation, grafting, or tissue culture), or licence others to produce asexually, plants or reproductive material for the commercial production of the fruit, flowers or other products of those plants.

The PVR of an owner, in respect of a plant variety, will be infringed where a person produces asexually plants or reproductive material for the commercial production of fruit, flowers or other products, of that plant without being licensed by the PVR owner to do so (proposed paragraphs 40 (da) and (db)).

Amendments to the *Dairy Produce Act 1986*

Proposed subsection 62 (3A) will allow the purchaser of a milk producer's milk to deduct from the purchase price of the milk, an amount equivalent to the milk fat levies payable on the milk.

Where a purchaser deducts an amount under proposed subsection 62 (3A) and fails to pay the Commonwealth the amount deducted, they will be liable for a 20% per annum late payment penalty on the amount outstanding (proposed subsection 63 (2A)).

Amendments to the *Petroleum (Submerged Lands) Act 1967*

Proposed subsections 24 (2) and 48 (2), and the repeal of subsections 21 (5), 22A (7) and 65 (12), will provide that where an application for a petroleum exploration, production, and pipeline construction licence/permit is not granted, the application fee will not be refunded unless the applicant has requested the Designated Authority grant the permit or the Designated Authority otherwise determines.

Section 57 of the Act will be repealed. This section requires, as a condition of holding a licence, petroleum producers to spend, or recover production to the value of $300,000 in their licence area.

Proposed paragraphs 111 (2) (b) and (c) will allow a fee to be charged where a special prospecting authority is granted. A special prospecting authority allows a person access to land for petroleum exploration purposes.

Proposed subsections 112 (1B) and (1C) will allow the holder of a permit, lease or special prospecting authority to apply to the Designated Authority for access to land (an access authority) within an adjacent area, to carry out petroleum exploration operations or operations related to the recovery of petroleum.
The proposed amendments to subsections 4 (1) of the Petroleum (Submerged Lands) (Exploration Permit Fees) Act 1967, Petroleum (Submerged Lands) (Pipeline Licence Fees) Act 1967, Petroleum (Submerged Lands) (Production Licence Fees) Act 1967, subsections 4 (2), (3), (4), (6) and (6A) of the Petroleum (Submerged Lands) (Registration Fees) Act 1967, and subsection 4 (1) of the Petroleum (Submerged Lands) (Retention Lease Fees) Act 1985 will allow the level of registration, permit, lease, and licence fees to be set by Regulation.

References

For further information, if required, contact the Science, Technology & Environment Group.

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Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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