PLANT VARIETY RIGHTS BILL 1981

Date Introduced: 7 May 1981
House: House of Representatives
Presented by: Hon. P.J. Nixon, M.P., Minister for Primary Industry

Short Digest of Bill

Purpose

To establish a system of Plant Variety Rights in Australia.

Background

Plant Variety Rights (PVRs) or plant breeders' rights are basically a system of patents giving proprietary rights for newly developed plant varieties. In the same way as an inventor can take out a patent, so could a plant breeder under the proposed PVRs legislation. There is, however, an important difference. The patent system confers on the inventor rights to a process for making an item. This would not protect a plant breeder since a plant, once developed, can be readily reproduced. Hence, rights to the plant itself must become the property of the breeder if the breeder is to be given protection.

PVRs have been the subject of considerable controversy both here and overseas. A Basic Paper on PVRs which was released by the Legislative Research Service in November 1980 summarises the main arguments. Most of the arguments for and against are related to the appropriateness or otherwise of conferring monopoly rights over plant varieties to private individuals. However, some objections are based on the fear that allowing the profit motive to encourage private plant breeding is the first step in a program aimed at reducing the public sector's role in the provision of research into plant varieties. In addition there has been concern that research by such bodies as the CSIRO will be funded by royalties on plants developed by those bodies. Producers who fund research from their compulsory levies fear that they will be charged twice. The "Razor Gang", Review of Commonwealth Functions, recommended a curtailment of Commonwealth Funding of research thereby increasing the urgency of these issues. However, under the proposed Act the Minister would have the power to impose restrictions on the terms and conditions under which public
bodies license plant and seed producers and sellers who sell or produce the results of research undertaken by public bodies. In addition it should be noted that public bodies, or anyone for that matter, need not elect to take out plant variety rights.

Of course there are arguments, based on the "user pays" principle, which suggest that growers should be prepared to pay for the research which benefits them, and that, in any case, breeders will only be able to impose higher charges if the results of their research are valued by growers.

It is worth noting that the present Bill gives quite wide powers to PVRs holders. PVRs are designed to protect breeders from others who might propagate their varieties in competition with them. Of course farmers are normally exempted because they do not compete with plant and seed suppliers. However, the present Bill extends PVRs beyond this. All retail sellers of protected varieties (including farmers selling fodder) would have to be licensed and subject to the terms and conditions imposed by the PVRs holders. This would apply to all retail sales of protected plants even where the retailer buys plants from a licensed breeder. By contrast with the present Bill, the US PVRs legislation exempts farmers who produce crops for sale, other than for reproductive purposes. The proposed Bill exempts only persons who produce plants for food or fuel.

Main Provisions

The Interpretations clause (cl. 3) specifies the meaning of "new plant varieties" as being distinguishable by one or more characteristics, being homogeneous and stable and having been originated by a person. Newly discovered varieties are explicitly excluded (sub.cl. 3(5)). Also excluded are any varieties which are a matter of common knowledge by way of their being available for sale, or their being listed, catalogued or described in the literature (sub.cl. 3(6)).

Clause 5 establishes a Registrar of Plant Variety Rights to keep a Register of Plant Variety Rights (cl. 8). The Secretary of the Department of Primary Industry is empowered to delegate his authority under the Act to the Registrar (cl. 6).

Clause 9 specifies PVRs as being the exclusive right to sell or produce for sale, or license others to sell or produce for sale, plants or the reproductive material of plants of the variety in question, subject to any special conditions made under cl. 29 (see below).
Under clause 10 the PVRs scheme would apply only to ornamental, horticultural and pasture and fodder species. Even then PVRs will apply only to genera and species declared under regulations (sub. cl. 10(2)). Provision is made for the Australian Agricultural Council to veto the inclusion of any genus or species in the regulations (sub. cl. 10(3)). PVRs will not be granted in cases where the plant in question, or its seeds etc, have been on the market prior to the making of an application for PVRs. However, PVRs may be granted within 4 years of the relevant plant having appeared overseas, or within 6 years in the case of grape-vines, forest, fruit or ornamental trees (cl.11).

Clause 12 provides for the making of applications for PVRs by individuals (who may be overseas residents). The rights to apply for PVRs may be transferred to other individuals (sub. cl. 12(3)). Clause 13 specifies the information which must be furnished in making an application for PVRs. Among other things the applicant must supply a description of the plant, details of its distinguishing characteristic(s), the manner in which the variety was originated, and the particulars of tests carried out to establish the homogeneity and stability of the new variety. Clause 14 specifies, among other things, that the name of the new variety must not be such as would lead it to be confused with or mistaken for other varieties.

Clauses 15 and 16 respectively provide for the Secretary of the Department to decide whether to accept or reject applications, or variations to applications, for PVRs. Provision is also made for interested persons to object to PVRs applications within 3 months or, under special circumstances up to 6 months if the PVRs Registrar grants an extension (cl. 17). Any-one is entitled to inspect PVRs applications or objections (cl. 18). Applicants are granted provisional PVRs upon the lodging of an application, however, they are not permitted to institute proceedings for infringements of PVRs until actually granted (cl. 19).

Upon receiving an application for PVRs the Secretary may, if considered necessary, require the applicant to supply material and the necessary information for test growing (cl. 20). The Secretary may grant PVRs if satisfied that, among other things, the variety is new, the rights have not already been granted or applied for, the appropriate fee has been paid (cl. 22(1)), and a period of 6 months since receiving the application or any variation has elapsed (sub.cl. 22(2)). If any objection has been received the Secretary cannot grant PVRs unless the objecting person has been given reasonable opportunity to make a written submission (sub. cl. 22(4)). PVRs are granted by the issue
of a certificate setting out the particulars and signed by the Secretary (sub. cl. 22(5)). The Secretary is also required to give written notice of any refusal to grant PVRs (sub. cl. 22(7)). After granting PVRs the Registrar is required to enter the details in the PVRs Register, including among other things, the variety's name, description, and the address of the holder of the rights to that variety (cl. 23). In addition the Secretary is required to give public notice of the grant of PVRs (cl. 24).

PVRs are the personal property of the holder of PVRs and may be sold or otherwise transferred to other persons (cl. 26) who must inform the PVRs Registrar who, in turn, will amend the Register (cl. 27). PVRs are granted for a period of 20 years (cl. 28). However, the Minister may impose special conditions relating to the assignment of PVRs or the licensing of people to produce or sell that plant variety. These conditions will be entered in the Register (cl. 29). Under clause 30 the Secretary is empowered to revoke PVRs if the special conditions or notification of transfer requirements are not met. However, the revocation of PVRs will only take place after the PVRs holder has been given the opportunity to appeal to the Secretary, or the Administrative Appeals Tribunal. Interested persons can apply to the Secretary to have PVRs revoked (sub. cl. 30(8)). The Secretary is required to give public notice of any revocation of PVRs (para. 30(7)(b)).

PVRs themselves do not include the production or sale of plants, seeds etc. for food or fuel or as part of a property sale (cl. 31). Otherwise the PVRs holder may impose such terms and conditions as he sees fit subject to any special conditions imposed by the Secretary and other provisions of the Act (cl. 32). In particular the PVRs holder must ensure that plants and seeds are made available at "reasonable prices" and in sufficient quantities to meet the public's demand (sub-cl. 33(1) and (2)). If the Secretary believes that the PVRs holder fails to fulfill these obligations the Secretary may license a person or persons to produce and/or sell plants, seeds etc. (sub-cl. 33(3)). Sub-clause 33(4) allows an interested person to request the Secretary to assume its powers over licensing after two years following the granting of PVRs if that person considers that the PVRs holder is not meeting the obligations to the public. Persons making such a request are required to give reasons why the PVRs holder is not meeting the holder's obligations and the manner in which the interests of the person making the request are disadvantaged (sub. cl. 33(5)). The Secretary is then required to give the PVRs holder a copy of the request and invite the holder to make a statement giving reasons why the Secretary should
be satisfied that the holder is complying or will comply with the requirements of the Act (sub. cl. 33(6)). After considering the request the Secretary will make a decision regarding the licencing of other people and notify the PVRs holder and the initiator of the request (sub. cl. 33(7)), and give public notice of the decision (sub. cl. 33(8)). After a further month the Secretary can license persons to produce and sell the plants, seeds etc. (sub. cl. 33(9)) under such terms and conditions as the Secretary determines, having regard to normal business practices (sub. cl. 33(10)).

Clause 34 specifies that an infringement of PVRs occurs when:

- an unlicensed person sells or produces or offers to sell or produce plants, seeds etc. other than as food, fuel or part of a property sale
- a licensed person fails to comply with the PVRs holder's terms and conditions
- a person misrepresents a plant variety as being a registered variety.

A PVRs holder may institute action in a Court against alleged infringements (cl. 35).

Clause 36 allows a person desiring to sell a registered plant, seed etc. to seek an admission from the PVRs holder that there is no infringement of the latter's rights. If the PVRs holder fails to give an admission to that effect the person desiring that admission may obtain a Court declaration to the effect that PVRs would not be infringed.

Clause 40 allows any person to inspect the Register and copy, subject to the payment of a prescribed fee, any item in the Register.

Clause 42 allows for payments by the States to share in the administration of the PVRs system, subject to agreements entered into by the Commonwealth and the States.

Clause 45 provides for regulations to be made for imposing PVRs application fees, PVRs holders' fees, and for fees to meet variety testing costs.

For further information, if required, contact:

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