

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VOTES AND PROCEEDINGS

No. 85

WEDNESDAY, 21 APRIL 1982

- 1 The House met, at 1.45 p.m., pursuant to adjournment. Mr Speaker (the Right Honourable Sir Billy Snedden) took the Chair, and read Prayers.
- 2 **DEATH OF FORMER MEMBER (MR H. J. GARRICK):** Mr Fraser (Prime Minister) referred to the death of Mr H. J. Garrick, and moved—That this House expresses its deep regret at the death on 6 April 1982 of Mr Horace James Garrick, a Member of this House for the Division of Batman from 1969 to 1977, places on record its appreciation of his long and meritorious public service and tenders its profound sympathy to his family in their bereavement.
And Mr Hayden (Leader of the Opposition) having seconded the motion, and other Members having addressed the House in support thereof, and all Members present having risen, in silence—
Question—passed.
- 3 **QUESTIONS:** Questions without notice were asked.
- 4 **PAPERS:** The following papers were presented:
By command of his Excellency the Governor-General:
Aborigines of the Northern Territory—Social impact of uranium mining—Australian Institute of Aboriginal Studies—
Report for period 1 April to 30 September 1981.
Statement by Senator Baume (Minister for Aboriginal Affairs).
Alligator Rivers Stage II Land Claim—Report to the Minister for Aboriginal Affairs and the Administrator of the Northern Territory by the Aboriginal Land Commissioner, dated 2 July 1981.
Finance—Advance to Minister for Finance—Statement for February 1982.
Pursuant to statute:
Aboriginal Land Rights (Northern Territory) Act—Aboriginal Land Commissioner—Annual Report, for year 1980-81.
- 5 **DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—STEEL INDUSTRY:** Mr Deputy Speaker informed the House that Mr Hurford had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The Fraser Government's inadequate response to the grave problems of the Australian steel industry".
The proposed discussion having received the necessary support—
Mr Hurford addressed the House.
Discussion ensued.
Discussion concluded.
- 6 **PETITIONS:** The Clerk announced that the following Members had each lodged petitions for presentation, viz.:
Mr Falconer, Mr Jacobi, Mr Johnson and Mr Kerin—from certain citizens praying that Australia call on the Canadian Government to end the harp seal hunt and halt the importation of products derived from the harp seal.

- Dr Cass and Mr Wallis—from certain electors of the Electoral Division of Maribyrnong and certain residents of the Electoral Division of Grey, respectively, in similar terms.
- Mr Burr, Mr Fry and Mr Sainsbury—from certain citizens praying that laws be passed to outlaw discrimination in employment and in the provision of unemployment benefits, based upon race, ethnic origin, marital status and sex.
- Dr Blewett and Mr Burr—from certain citizens praying that steps be taken to allow child care expenses as a deductible item from taxpayers' assessable income.
- Dr Blewett and Mrs Child—from certain citizens praying that the Sex Discrimination Bill 1981 be passed.
- Mr Fisher and Mr Lloyd—from certain electors of the Electoral Divisions of Mallee and Murray, respectively, praying that the liquefied petroleum gas subsidy be extended for a further 3 years and that a specific appropriation be included in the 1982-83 Budget.
- Mr Fisher and Mr Shack—from certain citizens praying that the proposed sales tax on books, magazines and newspapers be withdrawn from the Budget proposals.
- Mr Milton and Mr Peacock—from certain citizens praying that certain proposed sales tax legislation not be enacted and existing sales tax on all household goods be removed.
- Mr Braithwaite—from certain residents of north Queensland praying that sufficient expenditure be allocated to raise the standard of the national highway in north Queensland to Department of Transport standards.
- Mr Coleman—from certain citizens praying that funds not be allocated for the development of roads or dams in South-West Tasmania but be provided instead for the preservation of the area.
- Mr Cross—from certain citizens praying that the Government's sales tax legislation be withdrawn or repealed.
- Mr Cross—from certain citizens praying that the Commonwealth's constitutional and legislative powers be used to grant full land rights and self-management to the Aboriginal people of Queensland.
- Mr Duffy—from certain residents of Victoria praying that home loans on the same terms as those offered to certain Members of Parliament be extended to young couples in Victoria.
- Dr Edwards—from certain citizens praying that plans to means test users of child care services be discontinued and funding of children's services be restored, in real terms, to 1975-76 levels.
- Mr Falconer—from certain citizens praying that any industries assistance recommendations that may subject hearing aids to import duty be rejected.
- Mr Goodluck—from certain citizens praying that the trade union system be revised to encompass the secret ballot and be restricted to negotiating for fair wages and conditions.
- Mr Kerin—from certain citizens praying that any proposal to legislate for the establishment of plant breeders' rights in Australia be rejected.
- Sir Phillip Lynch—from certain citizens praying that the imperial system of weights and measures be restored.
- Sir Phillip Lynch—from certain residents of Victoria praying that the Institute of Early Childhood Development be allowed to continue operating as an independent and autonomous institution.
- Mr MacKenzie—from certain citizens praying that no further tax be imposed on those items needed for the educational progress of Australia's students.
- Mr Maher—from certain citizens praying that there be no sales tax on books.
- Mr Maher—from certain citizens praying that funding of children's services be restored to at least 1975-76 levels, budget allocations for children's services be spent in full for the purposes designated and a means test not be imposed on the users of child care services.
- Mr Mountford—from certain citizens praying that disabled people be recognised as citizens who should have equal rights and that certain actions be taken to enable

adequate planning of services needed by partially or totally disabled people to be undertaken.

Mr Sainsbury—from certain citizens praying that the recent 1 per cent increase in home loan interest rates be cancelled, interest rates be frozen and home loan repayments be indexed to a maximum of 25 per cent of the average weekly wage.

Mr West—from certain citizens praying that funding to public hospitals, community health and ambulance services be restored to the 1981 level of funding and a genuine National Health Scheme be introduced.

Petitions received.

- 7 **EXCISE TARIFF (PETROLEUM) AMENDMENT BILL 1982:** Mr N. A. Brown (Minister for Business and Consumer Affairs) presented a Bill for an Act to amend the *Excise Tariff Act 1921*.

Bill read a first time.

Mr N. A. Brown moved—That the Bill be now read a second time.

Debate adjourned (Mr Kerin), and the resumption of the debate made an order of the day for the next sitting.

- 8 **PLANT VARIETY RIGHTS BILL 1981:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—*Statement by Minister:* Mr Nixon (Minister for Primary Industry), by leave, made a statement relating to proposed Government amendments to the Bill.

Debate adjourned (Mr Kerin), and the resumption of the debate made an order of the day for a later hour this day.

- 9 **CUSTOMS TARIFF PROPOSALS NOS. 10 AND 11 (1982):** Mr N. A. Brown (Minister for Business and Consumer Affairs) moved Customs Proposals Nos. 10 and 11 (1982).

Debate adjourned (Mr Kerin), and the resumption of the debate made an order of the day for the next sitting.

- 10 **PAPERS:** Mr N. A. Brown (Minister for Business and Consumer Affairs), by command of His Excellency the Governor-General, presented the following papers:

Industries Assistance Commission—Reports—

Fruit and fruit products, dated 24 August 1981 (No. 276).

Miscellaneous edible foodstuffs, dated 7 September 1981 (No. 278).

Miscellaneous manufacturing—Group G: Writing and marking equipment, dated 15 December 1981 (No. 291).

- 11 **PLANT VARIETY RIGHTS BILL 1981:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed by Mr Kerin who moved, as an amendment—That all words after “That” be omitted with a view to substituting the following words: “the Bill be withdrawn and re-submitted when it and other relevant matters have been considered by a select committee of the House of Representatives because the Bill does not meet Australia’s plant breeding needs, will cause disruption to, if not a diminution in, public plant breeding, will pose dangers to Australia’s agricultural producing and marketing institutions, will subject Australia’s primary producers to inadequately tested ‘new’ and introduced varieties, will not meet scientific and practical objections to existing forms of plant variety rights systems and may affect Australia’s role in the preservation of the world’s food and genetic plant resources”.

Debate continued.

Question—That the words proposed to be omitted stand part of the question—put.
The House divided (the Deputy Speaker, Mr Millar, in the Chair)—

AYES, 64

Mr Adermann	Mr Cowan	Mr Hyde	Mr O'Keefe
Mr Baume	Mr Dean	Mr Jarman	Mr Peacock
Mr Birney	Mr Dobie	Mr Jull	Mr Porter
Mr Bourchier	Dr Edwards	Mr Katter	Mr Ruddock
Mr Bradfield	Mr Falconer	Mr Killen	Mr Sainsbury
Mr Braithwaite	Mr Fife	Mr Lloyd	Mr Shack
Mr N. A. Brown	Mr Fisher*	Mr Lusher	Mr Shipton
Mr Burr	Mr Giles	Sir Phillip Lynch	Mr Sinclair
Mr Cadman	Mr Goodluck	Mr MacKellar	Mr Spender
Mr D. M. Cameron	Mr Groom	Mr MacKenzie	Mr Street
Mr E. C. Cameron	Mr Hall	Mr McLean	Mr Tambling
Mr I. M. D. Cameron	Mr Harris	Mr McVeigh	Mr Thomson
Mr Carlton	Mr Hicks	Mr Macphee	Mr Tuckey
Mr Chapman	Mr Hodges*	Mr Moore	Mr Viner
Mr Coleman	Mr Hodgman	Mr Newman	Mr White
Mr Connolly	Mr Howard	Mr Nixon	Mr Wilson

NOES, 46

Mr Armitage	Mr Dawkins	Dr Jenkins	Mr Morrison
Mr Beazley	Mr Duffy	Mr Johnson*	Mr Mountford
Dr Blewett	Dr Everingham	Mr B. O. Jones	Mr Scholes
Mr Bowen	Mr Free	Mr C. K. Jones	Mr Scott
Mr J. J. Brown	Mr Fry	Mrs Kelly	Dr Theophanous
Mr R. J. Brown	Mr Hawke	Mr Kent	Mr Uren
Mr Campbell	Mr Holding	Mr Kerin	Mr Wallis
Mrs Child	Mr Howe	Dr Klugman	Mr West
Mr Cohen	Mr Humphreys*	Mr Maher	Mr Willis
Mr Cross	Mr Hurford	Mr Mildren	Mr Young
Mr Cunningham	Mr Innes	Mr Milton	
Mrs Darling	Mr Jacobi	Mr Morris	

* Tellers

And so it was resolved in the affirmative.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

In the committee

Clauses 1 and 2, by leave, taken together, and agreed to.

Clause 3—

Mr Kerin moved the following amendment: Page 1, before the definition of "applicant" insert the following definition:

" 'Advisory Committee' means the group of persons established in pursuance of section 5A;".

Debate continued.

Question—That the amendment be agreed to—put.

The committee divided (the Deputy Chairman, Dr Jenkins, in the Chair)—

AYES, 46

Mr Armitage	Mrs Darling	Mr Jacobi	Mr Morrison
Mr Beazley	Mr Dawkins	Mr Johnson*	Mr Mountford
Dr Blewett	Mr Duffy	Mr B. O. Jones	Mr Scholes
Mr Bowen	Dr Everingham	Mr C. K. Jones	Mr Scott
Mr J. J. Brown	Mr Free	Mrs Kelly	Dr Theophanous
Mr R. J. Brown	Mr Fry	Mr Kent	Mr Uren
Mr Campbell	Mr Hawke	Mr Kerin	Mr Wallis
Dr Cass	Mr Holding	Dr Klugman	Mr West
Mrs Child	Mr Howe	Mr Maher	Mr Willis
Mr Cohen	Mr Humphreys*	Mr Mildren	Mr Young
Mr Cross	Mr Hurford	Mr Milton	
Mr Cunningham	Mr Innes	Mr Morris	

NOES, 63

Mr Adermann	Mr Dean	Mr Jarman	Mr Peacock
Mr Baume	Mr Dobie	Mr Jull	Mr Porter
Mr Birney	Dr Edwards	Mr Katter	Mr Ruddock
Mr Bouchier	Mr Falconer	Mr Killen	Mr Sainsbury
Mr Bradfield	Mr Fife	Mr Lloyd	Mr Shack
Mr Braithwaite	Mr Fisher*	Mr Lusher	Mr Shipton
Mr Burr	Mr Giles	Sir Phillip Lynch	Mr Sinclair
Mr Cadman	Mr Goodluck	Mr MacKellar	Mr Spender
Mr D. M. Cameron	Mr Groom	Mr MacKenzie	Mr Street
Mr E. C. Cameron	Mr Hall	Mr McLean	Mr Tambling
Mr I. M. D. Cameron	Mr Harris	Mr McVeigh	Mr Thomson
Mr Carlton	Mr Hicks	Mr Macphee	Mr Tuckey
Mr Chapman	Mr Hodges*	Mr Moore	Mr Viner
Mr Coleman	Mr Hodgman	Mr Newman	Mr White
Mr Connolly	Mr Howard	Mr Nixon	Mr Wilson
Mr Cowan	Mr Hyde	Mr O'Keefe	

* Tellers

And so it was negatived.

Mr Kerin moved the following amendment: Page 2, after the definition of "Department" insert the following definition:

" 'description' means a comprehensive botanical cataloguing of attributes as well as a quantitative and qualitative assessment of the variety's characteristics from a commercial, environmental and nutritional point of view, where appropriate;".

Debate continued.

Question—That the amendment be agreed to—put.

The committee divided (the Deputy Chairman, Dr Jenkins, in the Chair)—

AYES, 48

Mr Armitage	Mrs Darling	Mr Jacobi	Mr Milton
Mr Beazley	Mr Dawkins	Mr Johnson*	Mr Morris
Dr Blewett	Mr Duffy	Mr B. O. Jones	Mr Morrison
Mr Bowen	Dr Everingham	Mr C. K. Jones	Mr Mountford
Mr J. J. Brown	Mr Free	Mrs Kelly	Mr Scholes
Mr R. J. Brown	Mr Fry	Mr Kent	Mr Scott
Mr Campbell	Mr Hawke	Mr Kerin	Dr Theophanous
Dr Cass	Mr Holding	Dr Klugman	Mr Uren
Mrs Child	Mr Howe	Mr McLeay	Mr Wallis
Mr Cohen	Mr Humphreys*	Mr McMahan	Mr West
Mr Cross	Mr Hurford	Mr Maher	Mr Willis
Mr Cunningham	Mr Innes	Mr Mildren	Mr Young

NOES, 63

Mr Adermann	Mr Dean	Mr Jarman	Mr Peacock
Mr Baume	Mr Dobie	Mr Jull	Mr Porter
Mr Birney	Dr Edwards	Mr Katter	Mr Ruddock
Mr Bouchier	Mr Falconer	Mr Killen	Mr Sainsbury
Mr Bradfield	Mr Fife	Mr Lloyd	Mr Shack
Mr Braithwaite	Mr Fisher*	Mr Lusher	Mr Shipton
Mr Burr	Mr Giles	Sir Phillip Lynch	Mr Sinclair
Mr Cadman	Mr Goodluck	Mr MacKellar	Mr Spender
Mr D. M. Cameron	Mr Groom	Mr MacKenzie	Mr Street
Mr E. C. Cameron	Mr Hall	Mr McLean	Mr Tambling
Mr I. M. D. Cameron	Mr Harris	Mr McVeigh	Mr Thomson
Mr Carlton	Mr Hicks	Mr Macphee	Mr Tuckey
Mr Chapman	Mr Hodges*	Mr Moore	Mr Viner
Mr Coleman	Mr Hodgman	Mr Newman	Mr White
Mr Connolly	Mr Howard	Mr Nixon	Mr Wilson
Mr Cowan	Mr Hyde	Mr O'Keefe	

* Tellers

And so it was negatived.

On the motion of Mr Nixon (Minister for Primary Industry), the following amendment was made: Page 2, line 14, after "clone" insert ", hybrid".

Mr Kerin, by leave, moved the following amendments together:

Page 2, after sub-clause (1) insert the following sub-clause:

"(1A) For the purposes of this Act, the meaning of—

- (a) 'reasonable';
- (b) 'significant'; and
- (c) 'sufficient',

particularly as the words are used in section 33, shall be assessed by the Advisory Committee."

Page 3, after sub-clause (5) insert the following sub-clause:

"(5A) The Secretary may grant a right to a variety originated overseas, where such overseas legislation allows the registration of discoveries, on the advice of the Advisory Committee."

Debate continued.

Amendments negatived.

On the motion of Mr Nixon, the following amendment was made:

Page 3, lines 11-20, omit sub-clause (6), substitute the following sub-clauses:

"(6) Where, for the purposes of this Act, the Secretary or another person (including a court and the Administrative Appeals Tribunal) is required to be satisfied that a plant variety in respect of which an application has been made is a new plant variety, that person shall, for the purpose of deciding whether he is so satisfied, assume—

- (a) that all the plant varieties whose existence was a matter of common knowledge when the variety was originated were constituted by, and constituted only by, the plant varieties that were in existence at the time when the application was made; and
- (b) that the only plant varieties that were in existence at the time when the application was made were the plant varieties of the existence of which at that time that person is aware after making such enquiries, and consulting such publications readily available in Australia, as that person considers appropriate.

(6A) A reference in this Act to a test growing of a plant variety is a reference to a test involving—

- (a) the growing, or the production and growing, of plants, or of 2 or more generations of plants, of that variety at a place that is, and under conditions that are, appropriate for the growing of plants of that variety;
- (b) the observation of the characteristics, and the condition, of the plants grown at the various stages in their growth; and
- (c) the recording of those observations."

Clause, as amended, agreed to.

Clause 4 agreed to.

New clause—

On the motion of Mr Nixon, the following new clause was inserted in the Bill:

Extent of Act

"4A. Nothing in this Act requires or permits the grant of plant variety rights in respect of a new plant variety unless the origination of that new plant variety constituted an invention for the purposes of paragraph 51 (xviii) of the Constitution."

Clause 5 agreed to.

Proposed new clause—

Mr Kerin moved—That the following new clause be inserted in the Bill:

Advisory Committee

"5A. (1) There shall be an Advisory Committee of 13 people appointed by the Minister.

(2) The Advisory Committee shall consist of representatives of Australian agriculturists, plant breeders, botanists and/or relevant academic disciplines, State

Departments of Agriculture, the Commonwealth Scientific and Industrial Research Organization, consumers and environmentalists.

(3) The Advisory Committee will—

- (a) advise the Minister on general policy matters, the selection of crops which warrant recommendation to the Australian Agricultural Council for inclusion in the scheme by amendment of the Act, in the formulation of regulations under the Act and will assist the Registrar and Secretary on any other appropriate policy matter or matter under dispute where seen to be appropriate by the Registrar or Secretary; and
- (b) review and report to the Minister on international trends in plant breeders or plant variety rights systems.”.

Debate ensued.

Proposed new clause negatived.

Clause 6 agreed to.

Clause 7—

On the motion of Mr Kerin, the following amendment was made, after debate:

Page 4, line 9, omit “, except by gift.”.

Clause, as amended, agreed to.

Clause 8—

Mr Kerin moved—That the clause be omitted, and the following clause be substituted:

Register of Plant Variety Rights

“8. The Registrar shall keep at each State Department of Agriculture office and the relevant offices in the Northern Territory and the Australian Capital Territory a register to be known as the Register of Plant Variety Rights in which shall be entered particulars required to be entered by this Act or by the regulations.”.

Debate continued.

Question—That the clause proposed to be omitted stand part of the Bill—put and passed.

It being 10 p.m.—Progress to be reported.

The House resumed; Dr Jenkins reported accordingly.

Adjournment negatived: The question was accordingly proposed—That the House do now adjourn.

Mr Nixon requiring the question to be put forthwith without debate—

Question—put and negatived.

The House again resolved itself into a committee of the whole.

In the committee

Clause 9—

Mr Kerin moved the following amendment: Page 4, after sub-clause (1) insert the following sub-clause:

“(1A) Notwithstanding the provisions of sub-section (1) no person shall be prevented, by a person or persons having rights, from selling reproductive material in the form of fodder.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 10—

On the motion of Mr Nixon, the following amendment was made, after debate: Page 4, lines 36-40, omit sub-clause (1).

Mr Kerin, by leave, moved the following amendments together:

Page 5, line 3, omit “the regulations”, substitute “amendment of this Act”.

Page 5, at the end of sub-clause (3) add “by a two-thirds majority”.

Debate continued.

Question—That the amendments be agreed to—put.
The committee divided (the Deputy Chairman, Mr Giles, in the Chair)—

AYES, 49

Mr Armitage	Mr Dawkins	Mr Johnson*	Mr Morrison
Mr Beazley	Mr Duffy	Mr B. O. Jones	Mr Mountford
Dr Blewett	Dr Everingham	Mr C. K. Jones	Mr Scholes
Mr Bowen	Mr Free	Mrs Kelly	Mr Scott
Mr J. J. Brown	Mr Fry	Mr Kent	Dr Theophanous
Mr R. J. Brown	Mr Hawke	Mr Kerin	Mr Uren
Mr Campbell	Mr Holding	Dr Klugman	Mr Wallis
Dr Cass	Mr Howe	Mr McLeay	Mr West
Mrs Child	Mr Humphreys*	Mr McMahon	Mr Willis
Mr Cohen	Mr Hurford	Mr Maher	Mr Young
Mr Cross	Mr Innes	Mr Mildren	
Mr Cunningham	Mr Jacobi	Mr Milton	
Mrs Darling	Dr Jenkins	Mr Morris	

NOES, 63

Mr Adermann	Mr Cowan	Mr Jarman	Mr Peacock
Mr Baume	Mr Dean	Mr Jull	Mr Porter
Mr Birney	Mr Dobie	Mr Katter	Mr Ruddock
Mr Bouchier	Dr Edwards	Mr Killen	Mr Sainsbury
Mr Bradfield	Mr Falconer	Mr Lloyd	Mr Shack
Mr Braithwaite	Mr Fife	Mr Lusher	Mr Shipton
Mr N. A. Brown	Mr Fisher*	Sir Phillip Lynch	Mr Sinclair
Mr Bungey	Mr Goodluck	Mr MacKellar	Mr Spender
Mr Burr	Mr Groom	Mr MacKenzie	Mr Street
Mr Cadman	Mr Hall	Mr McLean	Mr Tambling
Mr D. M. Cameron	Mr Harris	Mr McVeigh	Mr Thomson
Mr E. C. Cameron	Mr Hicks	Mr Macphee	Mr Tuckey
Mr I. M. D. Cameron	Mr Hodges*	Mr Moore	Mr Viner
Mr Chapman	Mr Hodgman	Mr Newman	Mr White
Mr Coleman	Mr Howard	Mr Nixon	Mr Wilson
Mr Connolly	Mr Hyde	Mr O'Keefe	

* Tellers

And so it was negatived.
Clause, as amended, agreed to.

Clause 11—

Mr Nixon moved—That the clause be omitted, and the following clause be substituted:

“11. Where an application is made for plant variety rights in respect of a plant variety, those rights shall not be granted if there has been a sale of a plant, or reproductive material of a plant, of that variety by, or with the consent of, the breeder or a breeder, or a successor of the breeder or of a breeder, of the variety, and—

- (a) the sale took place in Australia before the making of the application; or
- (b) where the application is made later than 2 years after the relevant genus or species was declared by the regulations to be a genus or species to which this Act applies, the sale took place in another country earlier than—
 - (i) in the case of any variety of grape-vine, forest tree, fruit tree or ornamental tree—6 years; or
 - (ii) in any other case—4 years, before the making of the application.”

Question—That the clause proposed to be omitted stand part of the Bill—put and negatived.

Question proposed—That the clause proposed to be inserted be so inserted.

Mr Kerin, by leave, moved the following amendments to the clause proposed to be inserted, together:

Paragraph (b), omit “the regulations”, substitute “an amendment of this Act”.

Sub-paragraph (b) (i), omit “6”, substitute “10”.

Debate continued.

Amendments to the clause proposed to be inserted negatived.

Question—That the clause proposed to be inserted be so inserted—put and passed.

Clause 12 agreed to.

Clause 13—

Mr Kerin moved the following amendment: Page 6, after paragraph (h) insert the following paragraph:

“(ha) particulars of any tests carried out showing commercial, environmental and nutritional characteristics and qualities, where appropriate;”.

Debate continued.

Amendment negatived.

On the motion of Mr Nixon, the following amendment was made: Page 6, after paragraph (j) insert the following paragraph:

“(ja) in the case of a plant variety originated outside Australia, particulars of any test growing of that variety carried out for the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic;”.

Clause, as amended, agreed to.

Clause 14—

On the motion of Mr Nixon, the following amendment was made: Page 6, line 42, omit “of letters not constituting a word or of figures.”, substitute:

“of—

(a) a letter or letters not constituting a word;

(b) a figure or figures; or

(c) both a letter or letters not constituting a word and a figure or figures.”.

Clause, as amended, agreed to.

Clause 15—

On the motion of Mr Nixon, the following amendment was made: Page 7, lines 26-28, omit paragraph (a), substitute the following paragraph:

“(a) if the Secretary is satisfied that—

(i) the application complies with the requirements of section 13; and

(ii) the name of the variety complies with sub-section 14 (1) and does not contravene paragraph 14 (2) (c),

he shall accept the application; or”.

On the motion of Mr Kerin, by leave, the following further amendments were made together, after debate:

Page 7, line 30, omit “forthwith”, substitute “within 30 days”.

Page 7, line 34, omit “forthwith”, substitute “within 30 days”.

Clause, as amended, agreed to.

Clause 16—

On the motion of Mr Nixon, by leave, the following amendments were made together:

Page 8, after sub-clause (2) insert the following sub-clauses:

(2A) Where the Secretary complies with a request under sub-section (1) or (2) to vary an application, he shall forthwith give written notice to the person who made the request stating that the application has been varied in accordance with the request.

(2B) Where the Secretary rejects a request under sub-section (1) or (2) to vary an application, he shall forthwith give written notice to the person who made the request stating that the request has been rejected and setting out the grounds on which the request has been rejected.

(2C) Where the Secretary complies with a request under sub-section (2) to vary an application so that a person who claims to have been assigned the right to make the application is shown as the person making the application, the Secretary shall forthwith give written notice of particulars of the variation to the person who was the applicant before the variation was made.

(2D) Where the Secretary rejects a request under sub-section (2) to vary an application so that a person who claims to have been assigned the right to make the application would be shown as the person making the application, the Secretary shall forthwith give written notice to the applicant—

(a) setting out particulars of the request;

(b) stating that the request has been rejected; and

(c) setting out the grounds on which the request has been rejected.”.

Page 8, omit sub-clause (4), substitute the following sub-clause:

“(4) A request by a person under sub-section (2) shall give an address in Australia for the service of documents on him for the purposes of this Act and—

- (a) where the Secretary complies with the request and the address so given is different from the address contained in the application in accordance with paragraph 13 (k)—the Secretary shall vary the application so that the address so given is shown as the address for the service of documents on the applicant for the purposes of this Act; or
- (b) where the Secretary rejects the request—the notice to that person under sub-section (2B) shall be given by being posted by pre-paid post as a letter addressed to the person at the address so given.”.

Clause, as amended, agreed to.

Clause 17—

On the motion of Mr Nixon, by leave, the following amendments were made together:

Page 8, line 28, omit “3”, substitute “6”.

Page 8, line 29, after “*Gazette*” insert “or any further time before the application is disposed of that is allowed by the Registrar”.

Mr Kerin, by leave, moved the following further amendments together:

Page 8, sub-clause (2), omit “3 months” (4 times occurring), substitute “6 months”.

Page 9, sub-clause (3), omit “3 months”, substitute “6 months”.

Debate continued.

Amendments negatived.

On the motion of Mr Nixon, the following further amendment was made:

Page 8, lines 33-41 and page 9, lines 1-12, omit sub-clauses (2), (3) and (4).

Clause, as amended, agreed to.

Clause 18—

Mr Kerin moved the following amendment: Page 9, at the end of the clause add the following sub-clause:

“(2) All applications shall be available in each State Department of Agriculture and the relevant offices in the Northern Territory and the Australian Capital Territory within 21 days of lodgement.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 19 agreed to.

New clause—

Mr Nixon moved—That the following new clause be inserted in the Bill:

Characteristics of plant varieties originated outside Australia

“19A. For the purposes of this Act, where a plant variety in respect of which an application has been made was originated outside Australia, the variety shall not be taken to have a particular characteristic unless—

- (a) a test growing of the variety carried out in Australia has demonstrated that the variety has that characteristic;
- (b) the Secretary is satisfied that—
 - (i) a test growing of the variety carried out at a place outside Australia has demonstrated that the variety has that characteristic; and
 - (ii) the test growing of the variety carried out at that place is equivalent to a test growing of the variety carried out in Australia; or
- (c) the Secretary is satisfied that—
 - (i) a test growing of the variety carried out outside Australia has demonstrated that the variety has that characteristic;
 - (ii) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and
 - (iii) if there were to be carried out in Australia a test growing of the variety that would be sufficient to demonstrate whether the variety has that characteristic, that test growing would take longer than 2 years.”.

Mr Kerin, by leave, moved the following amendments to the proposed new clause, together:

Omit "a particular characteristic unless", substitute "particular characteristics with respect to commercial, environmental and nutritional attributes unless".

Paragraph (a), after "variety" (first occurring) insert "at cost to the applicant".

Paragraph (a), omit "that characteristic", substitute "these characteristics".

Omit paragraphs (b) and (c).

Debate continued.

Amendments to the proposed new clause negatived.

Question—That the new clause proposed to be inserted be so inserted—put and passed.

Proposed new clause—

Mr Kerin moved—That the following new clause be inserted in the Bill:

Characteristics of plant varieties originated in Australia

"19B. For the purposes of this Act, where a plant variety in respect of which an application has been made was originated in Australia, the variety shall not be taken to have particular characteristics with respect to commercial, environmental and nutritional attributes unless a test growing of the variety at cost to the applicant carried out in Australia, taking 2 years as a minimum, has demonstrated that the variety has these characteristics."

Proposed new clause negatived.

Clause 20—

Mr Nixon moved—That the clause be omitted, and the following clause be substituted:

Test growing of plant varieties

"20. Where, in dealing with an application in respect of a plant variety, the Secretary considers it necessary that there should be a test growing, or a further test growing, of the variety for—

(a) the purpose of determining whether the plant variety is homogeneous or stable; or

(b) the purpose of determining whether the variety will, if grown in Australia, have a particular characteristic,

he shall give written notice to the applicant—

(c) stating that he considers that a test growing, or a further test growing, as the case may be, of the variety is necessary;

(d) specifying the purpose of the test growing; and

(e) either—

(i) requiring the applicant to supply him with sufficient plants, or sufficient reproductive material of plants, of the variety, as the case requires, and with any necessary information, to enable the variety to be test grown for the purpose specified; or

(ii) requiring the applicant to have the variety test grown for the purpose specified and to give the Secretary a copy of the records of observations made during the test growing,

and, if the notice makes the requirement referred to in sub-paragraph (e) (i) and the applicant complies with the requirement, shall arrange to have the variety test grown."

Question—That the clause proposed to be omitted stand part of the Bill—put and negatived.

Question proposed—That the clause proposed to be inserted be so inserted.

Mr Kerin, by leave, moved the following amendments to the clause proposed to be inserted, together:

Omit "a test growing, or" (first occurring).

Omit paragraph (a), substitute the following paragraph:

"(a) the purpose of determining whether the plant variety is distinct, homogeneous or stable; and"

Paragraph (b), omit "a particular characteristic", substitute "particular characteristics with respect to commercial, environmental and nutritional attributes".

Omit paragraph (c), substitute the following paragraph:

“(c) stating that he considers that a further test growing of the variety at cost to the applicant is necessary;”.

Debate continued.

Amendments to the clause proposed to be inserted negatived.

Question—That the clause proposed to be inserted be so inserted—put and passed.

Clause 21 agreed to.

Clause 22—

Mr Kerin, by leave, moved the following amendments together:

Page 11, after sub-paragraph (1) (a) (vii) insert the following sub-paragraph:

“(viiia) the variety meets the provisions of section 13, 19, or 20; and”.

Page 11, sub-clause (2), omit “6 months” (twice occurring), substitute “12 months”.

Debate continued.

Amendments negatived.

On the motion of Mr Nixon, the following amendment was made:

Page 11, line 38, omit “making of the application”, substitute “date of publication in the *Gazette* of the notice of the application”.

Mr Kerin moved the following further amendment: Sub-clause (2), omit all words after “application” (first occurring).

Debate continued.

Amendment negatived.

On the motion of Mr Nixon, the following further amendment was made:

Page 11, lines 40 and 41, omit “application was so varied, or last so varied”, substitute “date of publication in the *Gazette* of the notice of particulars of the variation, or of the last such variation”.

Mr Kerin moved the following further amendment:

Page 12, after sub-clause (7) add the following sub-clause:

“(8) Where the Secretary grants plant variety rights following objection to the grant, he shall give written notice to the person making the objection that the right was granted.”.

Debate continued.

Amendment negatived.

Clause, as amended, agreed to.

Clause 23—

Mr Kerin moved the following amendment:

Page 12, after paragraph (a) insert the following paragraph:

“(aa) an itemisation of the particular characteristics of that variety which demonstrate its yield and other commercial attributes where appropriate, and its environmental and nutritional attributes as required under the provisions of sections 13, 19, and 20.”.

Amendment negatived.

Clause agreed to.

Clause 24—

On the motion of Mr Kerin, the following amendment was made, after debate: Page 12, line 34, omit “forthwith”, substitute “within 7 days”.

Clause, as amended, agreed to.

Clauses 25 and 26, by leave, taken together, and agreed to.

Clause 27—

On the motion of Mr Kerin, the following amendment was made, after debate: Page 13, line 29, omit “forthwith”, substitute “within 7 days”.

Mr Nixon moved the following further amendment:

Page 13, lines 34–38, omit sub-clause (2), substitute the following sub-clauses:

“(2) Where, in accordance with sub-section (1), the Registrar enters on the Register as the grantee of plant variety rights the name of a person who claims to have acquired those rights, the Registrar shall forthwith give written notice to that person and to the person who was the grantee before the entry was made stating that the entry has been made.

(3) Where the Registrar is not satisfied that plant variety rights have been assigned or transmitted to a person (in this sub-section referred to as the 'claimant') who has informed him in accordance with sub-section (1) that those rights have been assigned or transmitted to him, the Registrar shall forthwith—

- (a) give written notice to the claimant—
 - (i) stating that he is not so satisfied; and
 - (ii) setting out the grounds on which he is not so satisfied; and
- (b) give written notice to the grantee of those rights—
 - (i) setting out particulars of the information given by the claimant;
 - (ii) stating that he is not so satisfied; and
 - (iii) setting out the grounds on which he is not so satisfied.

(4) A person who informs the Registrar in accordance with sub-section (1) that plant variety rights have been assigned or transmitted to him shall give written notice to the Registrar of an address in Australia for the service of documents on him in accordance with this Act and—

- (a) where the Registrar enters the name of that person on the Register in accordance with sub-section (1) and that address is different from the address entered in the Register in accordance with paragraph 23 (e)—the Registrar shall amend the Register so that the address so given is entered in the Register as the address for service of documents on the grantee for the purposes of this Act; or
- (b) where the Registrar is not satisfied that those rights have been assigned or transmitted to that person—the notice to that person under paragraph (3) (a) shall be given by being posted by pre-paid post as a letter addressed to the person at that address.”

On the motion of Mr Kerin, the following amendment to sub-clause (2) proposed to be inserted was made: Omit “forthwith”, substitute “within 7 days”.

Further amendment, as amended, agreed to.

Clause, as amended, agreed to.

Clause 28—

Mr Kerin moved the following amendment: Page 13, line 41, after “years” insert “for grape vines, forest trees, fruit trees or ornamental trees and 10 years for all other plant varieties,”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 29—

Mr Kerin moved the following amendment: Page 14, line 2, after “interest” insert “or where the Minister has been advised by the Advisory Committee that it considers it is necessary in the public interest”.

Amendment negatived.

Clause agreed to.

Clause 30—

On the motion of Mr Kerin, the following amendment was made, after debate: Page 14, at the end of sub-clause (3) add “within 7 days of that decision being taken”.

Clause, as amended, agreed to.

Clause 31—

On the motion of Mr Nixon, the following amendment was made, after debate: Page 15, lines 28-30, omit paragraphs (a) and (b), substitute the following paragraphs:

- “(a) sell plants of that variety for a use that does not involve the growing of the plants or the production of plants of that variety;
- (b) sell reproductive material of plants of that variety for a use that does not involve the production of plants of that variety;”.

Mr Kerin moved the following further amendment: Page 15, after sub-clause (1) insert the following sub-clause:

- “(1A) The Advisory Committee will make recommendations to the Secretary, Registrar and Minister on the practical working of this section at yearly intervals.”.

Debate continued.

Amendment negatived.

On the motion of Mr Nixon, the following further amendment was made: Page 15, at the end of the clause add the following sub-clause:

“(3) Without limiting the generality of paragraph (1) (b), for the purposes of that paragraph, the use of reproductive material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of food, before it has developed further shall not be taken to be a use that involves the production of a plant.”.

Clause, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole.

On the motion of Mr Nixon, by leave, the following amendments were made together, after debate:

Amendments—

Clause 32, omit the clause.

Clause 35, page 18, omit sub-clause (2), substitute the following sub-clauses:

“(2) A defendant in an action or proceeding for an infringement of plant variety rights in respect of a plant variety may apply by way of counter-claim in the action or proceeding for the revocation of the plant variety rights—

(a) on the ground that the plant variety is not a new plant variety; or

(b) on the ground that facts exist which, if known before the grant of those rights, would have resulted in the refusal of the grant.

(2A) If, in an action or proceeding for an infringement of plant variety rights in respect of a plant variety in which a defendant has applied by way of counter-claim for the revocation of those rights on a ground referred to in paragraph (2) (a) or (b), the Court is satisfied that the ground exists, the Court may revoke those rights.”.

New clause—

After clause 40 insert the following new clause:

Agents may act in plant variety rights matters

“40A. Subject to any other law of the Commonwealth, including the High Court Rules and the Federal Court Rules, any person is entitled to prepare or lodge an application, a written submission or any other document, or to transact any business, for the purposes of this Act on behalf of another person.”.

Amendments—

Clause 41, page 21, at the end of the clause add the following sub-clause:

“(2) Where the Secretary or the Registrar is required by this Act to give a written notice or other document to a person who has been an applicant for, or a grantee of, plant variety rights, that document shall be given by being posted by pre-paid post as a letter addressed to that person at the address for service of that person that was formerly shown on the application for those rights or entered in the Register in respect of those rights, as the case may be.”.

Clause 42, omit the clause.

Clause 43, page 21, line 32, omit “\$500”, substitute “\$1,000 or imprisonment for 6 months, or both”.

Clause 44—

Page 21, after paragraph (1) (c) insert the following paragraph:

“(ca) a requirement by the Secretary under section 20;”.

Page 22, after paragraph (1) (e) insert the following paragraph:

“(ea) the imposition by the Minister of conditions under sub-section 29 (1);”.

Clause 45, page 22, line 34, omit “section 20”, substitute “sections 19A and 20”.

Remainder of Bill, as amended, agreed to.

Bill to be reported with amendments.

The House resumed; Mr Giles reported accordingly.

On the motion of Mr Nixon, by leave, the House adopted the report, and, by leave, the Bill was read a third time.

12 **ADJOURNMENT:** Mr Nixon (Minister for Primary Industry) moved—That the House do now adjourn.

Question—put and passed.

And then the House, at 11.27 p.m., adjourned until tomorrow at 10 a.m.

PAPERS: The following papers were deemed to have been presented on 21 April 1982, pursuant to statute:

Lands Acquisition Act—Statements (2) of lands acquired by agreement authorised under sub-section 7 (1).

MEMBERS PRESENT: All Members were present (at some time during the sitting) except Mr Anthony, Mr Charles, Mr Hunt, Mr Keating, Mr Robinson and Mr Rocher.

J. A. PETTIFER,
Clerk of the House of Representatives