DATE introduced: 8 October 1986
House: House of Representatives
Presented by: Hon. John Kerin, M.P., Minister for Primary Industry

DIGEST OF BILL

Purpose

To introduce a system of Plant Variety Rights (PVR's) which will enable a proprietary right to be granted in respect of certain new plant varieties.

Background

The concept of PVR's is to grant a proprietary right to the breeder of new varieties of certain plants that will give the owner of the right the ability to sell the new varieties in a restricted market. Such a right can most easily be compared to the principles that underline patent and copyright legislation and give protection to inventions.

A system of PVR's exists in many countries, including the UK, Japan, West Germany, the USSR, the US and New Zealand. PVR's were first introduced in the UK in 1964 and the first rights were issued in 1965. Under the system, rights can exist for between 15 and 25 years and can apply to agricultural crops, field crops, vegetables, fruits and ornamentals. In the US, PVR's were introduced in 1970 and the first rights were granted in 1973. The rights remain in force for 18 years and cover a similar range of plants as the UK. The system came into force in 1973 and the first rights were issued in 1977. In New Zealand, the rights remain in force for 18 years for trees, vines and rootstock and 15 years for all other varieties. The holder of a right is required to ensure that the material is available in reasonable quantities, in reasonable quality and at a reasonable price. If the holder of a right fails to comply with these requirements, a licence may be issued to a third party to produce and sell the variety.
In addition to being adopted by a number of countries, there is an international convention dealing with PVR's. The International Convention for the Protection of New Varieties of Plants was signed in December 1961 and aims to ensure international protection for new plant varieties developed in member countries and to encourage new varieties. Under the Convention, standards for the testing and examination of new varieties have been issued and the Convention specifies that protection is to be a minimum of 18 years for grapevines, rootstock and trees and 15 years for all other plants.

There are a number of arguments both for and against PVR's. The major arguments in favour of the system are that it will encourage increased plant breeding in Australia as breeders will be able to recoup the funds necessary to create new varieties; that it will facilitate access to new varieties bred in countries that have a PVR system and that it will assist the development of an export industry. The major arguments against PVR's concerns their effect on less developed countries and the genetic stock. It is argued that the systems of PVR's adversely effects less developed countries as they will become reliant on seed stock that has to be imported from the more developed countries or, if they refuse to pay, will be deprived of the more productive crops. The concern over the genetic stock is that the range available for future use will be drastically reduced and much of the genetic stock that has been developed by nature will cease to be available. As mentioned in the Second Reading Speech, India had approximately 30,000 varieties of rice in use at the turn of the century while only 30 varieties are now in use. However, much of the genetic stock is preserved for future use by national and international bodies such as the International Board of Plant Genetic Resources.

In recent years PVR's have been much discussed in Australia. In 1976 the Industries Assistance Commission recommended that a system of PVR's be introduced. In 1979 a draft Bill was circulated by the Department of Primary Industry for comment. Following consideration of various suggestions, a Bill was introduced in the House of Representatives on 7 May 1981 to establish PVR's. The Bill passed the House of Representatives in early 1982 and was referred to the Senate Standing Committee on Natural Resources. The Bill lapsed following the dissolution of Parliament in February 1983. The Committee's report, titled Plant Variety Rights, was delivered in May 1984 and contained a number of criticisms and recommendations, the
principal being that a PVR scheme be established. The Committee also noted the historical development of plant breeding in Australia and, specifically, the concentration of plant breeding in the public sector and the concentration on wheat.[1]

The Committee also recommended that the evidence presented to it that was critical of the 1981 Bill be examined by the Department of Primary Industry before further legislation was introduced. The Committee further recommended that the Department hold discussions with relevant people where necessary. In July 1985 the Minister commissioned Professor Lazenby, the Vice-Chancellor of the University of Tasmania, to report on Australia's plant breeding needs and the alternatives to PVR's. The report, titled Australia's Plant Breeding Needs, was delivered in February 1986 and contained the following statement:

Having carefully considered all the arguments, my view coincides with that of the large majority of public breeders; on balance, the benefits for Australia stemming from a PVR scheme are likely to outweigh considerably any adverse effects which may arise from PVR. Further, it is neither desirable nor logical for Australia to stand outside the mainstream of developed countries in the hope of providing intangible benefits to Third World countries. Accordingly, I recommend that legislation for a Plant Variety Rights Scheme be enacted in Australia and that it should be framed such that no crops are excluded from potential coverage.[2]

Following discussions with various concerned bodies, including the Australian Agricultural Council and State Ministers, this Bill was introduced to establish a system of PVR's in Australia.

Outline

Briefly, the system will work as follows: Breeders will be able to apply for the exclusive right to produce and sell, other than for sales that do not involve production of the plant, new varieties that form part of a genus or species declared by regulation to be covered by this Bill. The rights will last for 20 years and the Bill contains a public interest protection provision.
Main Provisions

New plant variety is defined in clause 3 to be a new plant variety that is originated by a person, is homogenous and stable and is distinguishable from other plant varieties.

A register of plant variety rights is to be created (clause 9).

Plant variety rights are defined in clause 12 as the exclusive rights to sell, or licence others to sell, plants of that variety; to sell reproductive material of such plants and to produce plants of that variety, or their reproductive material, for sale.

Plant variety rights will only apply to a genus or species declared by regulation (clause 13) and may not be granted in respect of varieties already sold in Australia or overseas if the overseas sale occurred earlier than six years before the application (clause 14).

Overseas breeders will be able to apply for PVR's and the rights may be granted for plants bred overseas (clause 15).

The Secretary of the Department of Primary Industry is to grant PVR's if satisfied that the criteria contained in clause 26, which include that the plant is of a new variety, rights have not been granted to another person and the Bill has been complied with, have been complied with.

PVR's will be capable of being transferred, including by will, though the instrument of transfer must be in writing (clause 30).

PVR's will exist for 20 years running from the day on which the application is accepted (clause 32).

The Secretary of the Department of Primary Industry will be able to require a breeder to deliver, at their expense, a quantity of the reproductive material of the new variety to a specified genetic resources centre and a sample of the variety to be kept in a herbarium (clause 33).

The Minister may, if satisfied that it is in the public interest, impose conditions relating to the assignment of the rights, the licencing of people to sell the variety or other conditions (clause 34).
The Secretary of the Department of Primary Industry will be able to revoke a right if satisfied that the holder of the right has not complied with the requirements of clause 33 or any conditions imposed under clause 34 or has failed to pay the prescribed fee (clause 35).

A holder of PVR's will be able to surrender those rights (clause 36).

Even though PVR's have been granted in respect of a variety, others will be able to grow and use such varieties other than for commercial purposes, sell them or their reproductive material for food or other uses that do not involve their production, or use the variety for the development of new varieties (clause 38).

Clause 39 deals with the protection of public interests. Plants and reproductive material must be available in sufficient quantity to meet demand, at reasonable prices and the holder of rights will be required to take all reasonable steps to ensure that the reasonable requirements of the public are satisfied. To ensure that public's requirements are met the Secretary of the Department of Primary Industry will be able to licence, on behalf of the holder of the rights, others to produce or sell the plants or their reproductive material.

Infringements of PVR's will be actionable in the courts by the holder of the rights (clause 41).

A Plant Variety Rights Advisory Committee will be established to advise the Minister on whether a genus or species should be declared to be subject to this Bill and to advise the Secretary of the Department of Primary Industry on technical and administrative matters (clause 44).

Most decisions under the Bill will be subject to appeal to the Administrative Appeals Tribunal (clause 53).

The International Convention for the Protection of New Varieties of Plants appears in the Schedule to the Bill.

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

2. Ibid., p.6.

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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