



# **Plant Breeder's Rights Regulations 1994**

**Statutory Rules 1994 No. 352 as amended**

made under the

*Plant Breeder's Rights Act 1994*

---

This compilation was prepared on 1 October 2012  
taking into account amendments up to SLI 2012 No. 66

Prepared by the Office of Parliamentary Counsel, Canberra

---

**Contents**

|                 |   |           |
|-----------------|---|-----------|
| 1               | Name of regulations [see Note 1]  | 3         |
| 2               | Commencement [see Note 1]   | 3         |
| 3               | Interpretation  | 3         |
| 3A              | Authorised testing establishment  | 3         |
| 3B              | Employees to whom Registrar may delegate<br>(Act s59 (3))                   | 4         |
| 3C              | Employees to whom Minister's powers may be<br>subdelegated (Act s59 (4))    | 4         |
| 3D              | Employees to whom Secretary's powers may be<br>subdelegated (Act s59 (4))   | 4         |
| 3E              | Period for doing certain acts — office not open for<br>business             | 5         |
| 3F              | Days when office not open for business                                      | 5         |
| 3G              | Period for doing certain acts — acts to which<br>section 76A does not apply | 6         |
| 4               | Prescribed fees   | 6         |
| 4A              | Approved means  | 6         |
| 5               | Refund and remission of fees in specified<br>circumstances                  | 7         |
| <b>Schedule</b> | <b>Fees</b>   | <b>8</b>  |
| <b>Notes</b>    |   | <b>10</b> |

**1 Name of regulations** [see Note 1]

These regulations are the *Plant Breeder's Rights Regulations 1994*.

**2 Commencement** [see Note 1]

These Regulations commence on the date of commencement of the *Plant Breeder's Rights Act 1994*.

**3 Interpretation**

- (1) In these Regulations, unless the contrary intention appears:

*Act* means the *Plant Breeder's Rights Act 1994*.

*approved means*, for doing an action, means the means specified for the action by the Registrar in a notice made under regulation 4A and published by the Registrar.

*authorised testing establishment* means an establishment authorised under regulation 3A.

- (2) In the Schedule, a reference to a section or subsection, is a reference to that section or subsection of the Act.

**3A Authorised testing establishment**

- (1) For the purposes of conducting a test growing of a plant variety under section 37 of the Act, the Secretary may authorise, in writing, an establishment to conduct the test growing.
- (2) An establishment may be authorised only if the Secretary is satisfied that it is capable of conducting a test growing of a variety in a manner appropriate to give effect to the obligations of Australia under the Convention.
- (3) The Secretary must give the operator of the establishment written notice of:
- (a) the Secretary's decision whether to authorise the establishment; and
  - (b) if the decision is a refusal — the reasons for that decision.

- (4) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary to refuse to authorise an establishment.

**3B Employees to whom Registrar may delegate (Act s59 (3))**

For subsection 59 (3) of the Act, the Registrar may delegate all or any of the Registrar's powers or functions under the Act or these Regulations, to an employee of the PBR office:

- (a) holding, or performing the duties of, the position of Examiner of Plant Breeder's Rights; or
- (b) employed at any of the following levels:
  - (i) Executive level 1 or 2;
  - (ii) APS level 2, 3, 4, 5 or 6.

**3C Employees to whom Minister's powers may be subdelegated (Act s59 (4))**

For subsection 59 (4) of the Act, the class of employee to whom the Minister's powers or functions may be delegated is an employee employed at Executive level 2.

**3D Employees to whom Secretary's powers may be subdelegated (Act s59 (4))**

For subsection 59 (4) of the Act, the class of employee to whom the Secretary's powers or functions may be delegated is an employee:

- (a) holding, or performing the duties of, the position of Examiner of Plant Breeder's Rights; or
- (b) employed at any of the following levels:
  - (i) Executive level 1 or 2;
  - (ii) APS level 2, 3, 4, 5 or 6.

### 3E Period for doing certain acts — office not open for business

For subsection 76A (1) of the Act, the circumstance is that the act is done at:

- (a) the PBR office; or
  - (b) the PBR sub-office;
- that was not open for business.

*Note* Subsection 76A (1) provides as follows:

‘(1) If the last day of a period provided by this Act (except this section) or the regulations for doing an act is a day when the PBR office or a PBR sub-office is not open for business, the act may be done in prescribed circumstances on the next day when the office or sub-office is open for business.’

### 3F Days when office not open for business

- (1) For paragraph 76A (2) (a) of the Act, the days on which the PBR office or PBR sub-office is not open for business are:
  - (a) Saturday; and
  - (b) Sunday; and
  - (c) Australia Day; and
  - (d) Anzac Day.
- (2) For paragraph 76A (2) (b) of the Act, the table sets out prescribed persons.

| Item | Person  |
|------|---|
| 1    | The Director General of IP Australia  |
| 2    | The Deputy Director General of IP Australia   |
| 3    | Another person who: <ul style="list-style-type: none"> <li>(a) is an SES employee of IP Australia; and</li> <li>(b) acts with the agreement of the Director General of IP Australia</li> </ul>        |
| 4    | Another person who: <ul style="list-style-type: none"> <li>(a) is an SES employee of IP Australia; and</li> <li>(b) acts with the agreement of the Deputy Director General of IP Australia</li> </ul> |

## Regulation 3G

---

| Item | Person |
|------|--------|
|------|--------|

- |   |   |
|---|---|
| 5 | Another person who: <ul style="list-style-type: none"><li>(a) is an SES employee of IP Australia; and</li><li>(b) acts with the agreement of another SES employee of IP Australia</li></ul> |
|---|---|

*Note* **SES employee** is explained in section 34 of the *Public Service Act 1999*. That meaning is applied generally to Commonwealth legislation by section 2B of the *Acts Interpretation Act 1901*.

- (3) For paragraph 76A (2) (b) of the Act, the prescribed way of publishing a declaration is in the Plant Varieties Journal.

### **3G Period for doing certain acts — acts to which section 76A does not apply**

For subsection 76A (7) of the Act, an act done in relation to proceedings in a court or a tribunal is prescribed.

### **4 Prescribed fees**

The fee payable under subsection 80 (2) of the Act for a matter set out in the Schedule is the fee specified in the Schedule for that matter.

### **4A Approved means**

- (1) The Registrar may, by notice published by the Registrar, specify one or more means for doing an action mentioned in the Schedule.

*Examples of actions*

- 1 Making a request.
- 2 Lodging an application.

- (2) The means may be an electronic means or any other means.

*Note* The means become **approved means** when they are published.

**5 Refund and remission of fees in specified circumstances**

- (1) If a person has paid, in respect of a matter, an amount greater than the prescribed fee for the matter, the Secretary may refund to the person so much of the amount as is excess to the fee.
- (2) If a service in respect of which a person has paid a fee has not been provided, or has been provided only in part, the Secretary may refund the fee, or so much of the fee as is proportionate to the part of the service that has not been provided, as appropriate.
- (3) If a person to whom a refund could be made under subregulation (1) or (2) agrees, the Secretary may remit, against a fee that the person subsequently becomes liable to pay, an amount equal to the amount that could be refunded.
- (4) The Secretary must give each person to whom subregulation (1) or (2) applies written notice of:
  - (a) the Secretary's decision whether to refund or remit an amount, a fee or part of a fee (as the case may be); and
  - (b) if the decision is a refusal — the reasons for that decision.
- (5) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary:
  - (a) to refuse to refund:
    - (i) an amount paid in excess of a prescribed fee; or
    - (ii) a fee for a service that has not been provided; or
    - (iii) so much of a fee as is proportionate to the part of a service that has not been provided; or
  - (b) to refuse to remit an amount equal to an amount that could be refunded

**Schedule****Fees**

(regulations 4 and 4A)

| <b>Item</b> | <b>Act, service or occasion in respect of which fee is payable</b>  | <b>Fee</b> |
|-------------|---|------------|
| 1A          | Designation of an approved person under section 8   | \$50       |
| 1B          | Renewal of designation of an approved person  | \$50       |
| 1           | On making a request under subsection 19 (4), whether or not the request includes a request under subsection 19 (10)   | \$500      |
| 2           | On making a request for a certificate under subsection 19 (11)  | \$100      |
| 3           | Amendment of the register on notification of assignment under section 21  | \$100      |
| 4           | On lodgment of an application under section 26:   |            |
|             | (a) fee paid by approved means;   | \$345      |
|             | (b) fee paid by another means   | \$445      |
| 5           | On making a request for a variation of an application under subsection 31 (1)   | \$100      |
| 6           | On lodgment of a detailed description under section 34 for:   |            |
|             | (a) a variety tested under section 37 to establish that the variety is distinct, uniform and stable:  |            |
|             | (i) if the testing is conducted by an authorised establishment;   | \$920      |
|             | (ii) in any other case;   | \$1 610    |
|             | (b) a variety to which subsection 38 (3), (4) or (5) applies;   | \$1 610    |
|             | (c) each of 2 or more varieties of the same plant species tested simultaneously at the same site in Australia under section 37 to establish that the varieties are distinct, uniform and stable, for which a complete application and detailed description are lodged on the same day by the same approved person or applicant or agent of the applicant under section 34 | \$1 380    |
| 7           | On lodgment of an objection under section 35  | \$100      |
| 8           | On making a request for a copy of an application, an objection or a detailed description under subsection 36 (2)  | \$50       |



---

| <b>Item</b> | <b>Act, service or occasion in respect of which fee is payable</b>   | <b>Fee</b>                       |
|-------------|--|----------------------------------|
| 9           | On lodgment of an application for a declaration of essential derivation under subsection 40 (1)  | \$800                            |
| 10          | Grant of PBR in a plant variety under section 44   | \$345                            |
| 11          | On lodgment of an application for:   |                                  |
|             | (a) revocation of a PBR under subsection 50 (8); or  | \$500                            |
|             | (b) revocation of a declaration of essential derivation under subsection 50 (9)  | \$500                            |
| 12          | On making a request for a copy of an entry in the register under subsection 62 (2)   | \$50                             |
| 15          | For annual maintenance of a PBR—on each anniversary of the grant:  |                                  |
|             | (a) fee paid by approved means;  | \$345                            |
|             | (b) fee paid by another means  | \$395                            |
| 16          | For the undertaking, on request of a person, by the Secretary or the Registrar of any work required or authorised under the Act and for which a fee is not prescribed under any other item | \$75 per hour or part of an hour |

---

**Table of Instruments****Notes to the *Plant Breeder's Rights Regulations 1994*****Note 1**

The *Plant Breeder's Rights Regulations 1994* (in force under the *Plant Breeder's Rights Act 1994*) as shown in this compilation comprise Statutory Rules 1994 No. 352 amended as indicated in the Tables below.

**Table of Instruments**

| <b>Year and number</b> | <b>Date of notification in Gazette or FRLI registration</b> | <b>Date of commencement</b>  | <b>Application, saving or transitional provisions</b> |
|------------------------|---|--|---|
| 1994 No. 352           | 18 Oct 1994   | 10 Nov 1994 (see <i>Gazette</i> 1994, No. S392)  |   |
| 1994 No. 353           | 18 Oct 1994   | 1 Jan 1995   | —   |
| 1995 No. 290           | 10 Oct 1995   | 10 Oct 1995  | —   |
| 1999 No. 83            | 4 June 1999   | 4 June 1999  | —   |
| 2006 No. 355           | 15 Dec 2006 (see F2006L03971)                               | 1 Mar 2007   | —   |
| 2007 No. 40            | 23 Mar 2007 (see F2007L00650)                               | Rr. 1–10 and Schedules 1–3, 5 and 6: 27 Mar 2007<br>Schedules 4 and 8: 1 Apr 2007 (see r. 2 (b))<br>Schedule 7: 27 Mar 2007 (see r. 2 (c)) | —   |
| 2011 No. 62            | 16 May 2011 (see F2011L00773)                               | 1 July 2011  | —   |
| 2011 No. 217           | 29 Nov 2011 (see F2011L02480)                               | Schedule 1 (Part 4): 27 Dec 2011   | —   |
| 2012 No. 66            | 14 May 2012 (see F2012L01031)                               | Schedule 4 (Part 1): 1 July 2012<br>Schedule 4 (Part 2): 1 Oct 2012  | —   |

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| <b>Provision affected</b>  | <b>How affected</b>   |
|----------------------------|---|
| R. 1 .....                 | rs. 1999 No. 83   |
| R. 3 .....                 | am. 1995 No. 290; 2012 No. 66   |
| R. 3A.....                 | ad. 1995 No. 290<br>am. 1999 No. 83                                   |
| R. 3B.....                 | ad. 2007 No. 40   |
| R. 3C.....                 | ad. 2007 No. 40   |
| R. 3D.....                 | ad. 2007 No. 40   |
| R. 3E.....                 | ad. 2007 No. 40   |
| R. 3F.....                 | ad. 2007 No. 40<br>am. 2011 No. 62                                    |
| Note to r. 3F (2).....     | am. 2011 No. 217  |
| R. 3G .....                | ad. 2007 No. 40   |
| R. 4A.....                 | ad. 2012 No. 66   |
| R. 4 (2nd occurring) ..... | ad. 1995 No. 290<br>rep. 1999 No. 83                                  |
| R. 5 .....                 | ad. 1999 No. 83   |
| <b>Schedule</b>            |   |
| Schedule.....              | rs. 1994 No. 353<br>am. 1995 No. 290; 2006 No. 355<br>rs. 2012 No. 66 |