



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

**Statutory Rules No. 352, 1994**

made under the

*Plant Breeder's Rights Act 1994*

## **Compilation No. 17**

**Compilation date:** 1 October 2020

**Includes amendments up to:** F2020L00997

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Plant Breeder's Rights Regulations 1994* that shows the text of the law as amended and in force on 1 October 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part 1—Preliminary**

### **1 Name of regulations**

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

### **3 Interpretation**

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

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

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

*expedited dispatch* means a means of supplying copies or documents that can reasonably be expected usually to be faster than ordinary post.

- (2) In Schedule 1, a reference to a section or subsection, is a reference to that section or subsection of the Act.

#### **3AA Extension of Act to Norfolk Island**

For the purposes of section 9B of the Act, this regulation prescribes that the Act extends to Norfolk Island.

## Part 2—Application for plant breeder's right

### 3A Authorised testing establishment

- (1) For the purposes of conducting a test growing of a plant variety under section 37 of the Act, the Registrar may authorise, in writing, an establishment to conduct the test growing.
- (2) An establishment may be authorised only if the Registrar 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 Registrar must notify the operator of the establishment of:
  - (a) the Registrar'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 Registrar to refuse to authorise an establishment.

### 3BA Essential derivation for non-PBR protected varieties—publication of notification of application in Journal

For the purposes of subsection 41B(1) of the Act, a notification in the *Plant Varieties Journal* of an application under section 41A of the Act for a declaration of essential derivation must include the following information about the applicant and the application:

- (a) a description of the initial variety and the second variety;
- (b) details, as stated in the application, of:
  - (i) the eligible person (within the meaning of section 41A of the Act) making the application; and
  - (ii) any person (or persons) the applicant reasonably believes to be the breeder of the second variety;
- (c) any other information about those plant varieties, or the application, that the Registrar considers appropriate to publish, other than information that the Registrar is satisfied is commercial-in-confidence;
- (d) details of the opportunity for a person (an *interested person*) claiming to be the breeder of the second variety, or to have another interest in the second variety, to be heard in relation to the application under section 41C of the Act, including the requirement under subsection 41C(2) of the Act to give the Registrar an address for service;
- (e) a statement to the effect that the Registrar may draw an inference in deciding the application that is unfavourable to an interested person's interest if:
  - (i) the interested person does not provide an address for service, within the hearing period, under subsection 41C(2) of the Act; or

- (ii) the interested person declines the opportunity to be heard under subsection 41C(6) of the Act.

### **3BB Essential derivation for non-PBR protected varieties—opportunity to be heard**

#### *Scope*

- (1) This regulation is made for the purposes of subsection 41C(4) of the Act.

#### *When information is given in accordance with an opportunity to be heard*

- (2) Information is given by an interested person in accordance with the person's opportunity to be heard in relation to an application under section 41A of the Act for a declaration of essential derivation if:
- (a) the person gives the information:
    - (i) in a written submission made in accordance with a request of the Registrar under paragraph (3)(a); or
    - (ii) in the course of a hearing convened by the Registrar under subregulation (4); and
  - (b) the person pays the fee (if any) prescribed under subsection 80(2) of the Act in relation to the opportunity to be heard; and
  - (c) the person complies with any other requirements under this regulation.

#### *Notification to give written submissions or to appear at a hearing*

- (3) The Registrar must, unless the interested person declines the opportunity to be heard by giving notice to the Registrar under paragraph 41C(6)(a) of the Act, give a notification to the interested person including any or all of the following:
- (a) a request to the interested person to give written submissions in relation to the application to the Registrar within a period, stated in the notification, of no less than 10 business days after the notification is given;
  - (b) a statement that, on request to the Registrar, a hearing may be convened in relation to the application, beginning at a place, at a time and on a date determined by the Registrar by a further notification (a **hearing notice**) to the person no less than 10 business days after the hearing notice is given;
  - (c) a statement (a **hearing notice**) that a hearing will be convened by the Registrar in relation to the application beginning at a notified time and place, and on a notified date no less than 10 business days after the notification is given.

Note: A hearing notice mentioned in paragraph (b) or (c) may include requirements for the interested person in relation to the hearing (see paragraph (5)(d) and subregulation (6)).

#### *Hearings*

- (4) The Registrar may convene a hearing in relation to the application as mentioned in paragraph (3)(b) or (c).
- (5) For the purposes of the hearing:

Regulation 3BB

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- (a) the interested person may appear in person, or participate by telephone or another means of telecommunication reasonably allowed by the Registrar; and
  - (b) the Registrar may adjourn the hearing from time to time or from place to place by notice to each interested person taking part; and
  - (c) the interested person must, if directed by the Registrar in a hearing notice, provide a written summary of submissions to be made at the hearing; and
  - (d) the interested person must, if required by a hearing notice, take reasonable steps to do any of the following before or at the hearing:
    - (i) perform an act;
    - (ii) file a document;
    - (iii) produce evidence; and
  - (e) the interested person must comply with any reasonable directions of the Registrar in relation to practice and procedure during the hearing.
- (6) The Registrar may include a requirement for the purposes of paragraph (5)(d) in a hearing notice only if the Registrar reasonably believes it is necessary for the proper conduct of the hearing.



## **Part 3—Administration**

### **3B Employees to whom Registrar may delegate (Act s 59(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 s 59(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.

## Part 4—Miscellaneous

### Division 1—General provisions

#### 3DA Service of documents

Service by post is a prescribed means by which a document may be served on, or given or sent to, a person for the purposes of section 73 of the Act.

#### 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: (a) is an SES employee of IP Australia; and (b) acts with the agreement of the Director General of IP Australia
4	Another person who: (a) is an SES employee of IP Australia; and (b) acts with the agreement of the Deputy Director General of IP Australia
5	Another person who: (a) is an SES employee of IP Australia; and

Regulation 3G

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Item	Person
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(b) acts with the agreement of another SES employee of IP Australia

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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.

## Division 2—Fees

### 4 Schedule 1

Schedule 1 has effect.

Note: Schedule 1 prescribes fees, as mentioned in subsection 80(2) of the Act.

#### 4AA Failure to pay: fees for requesting expedited dispatch

- (1) This regulation applies if a request is made for a copy, or for the supply of documents, as mentioned in item 8, 12 or 12A of the table in clause 1 of Schedule 1.
- (2) The Registrar must not supply the copy or documents by means of expedited dispatch unless:
  - (a) a request is made that the copy or document be supplied by means of expedited dispatch; and
  - (b) the fee mentioned in item 13 of that table for the request for expedited dispatch is paid.

#### 4A Exemption from fees

The Registrar may exempt specified classes of persons from the payment of the whole or a part of a fee prescribed by Schedule 1 if the Registrar is reasonably satisfied that the exemption is justified, having regard to all the circumstances.

### 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 Registrar 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 Registrar 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 Registrar 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 Registrar must notify each person to whom subregulation (1) or (2) applies of:
  - (a) the Registrar'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 Registrar:
- (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

## Part 5—Application, transitional and saving provisions

### 6 Application, saving and transitional provisions—*Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018*

#### *Amendments made by Part 2 of Schedule 2*

- (1) The amendments of regulations 3A and 5 made by Part 2 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018* apply in relation to notifications occurring on or after the commencement of that Part.

#### *Amendments made by Part 3 of Schedule 2*

- (2) The repeal of regulation 4A, and the amendment of items 4 and 15 of the table in clause 1 of Schedule 1, made by Part 3 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018* apply in relation to fees paid on or after the commencement of that Part.

#### *Amendments made by Part 11 of Schedule 2*

- (3) A thing done by, or in relation to, the Secretary under these Regulations before the commencement of Part 11 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018* has effect on and after that commencement as if it had been done by, or in relation to, the Registrar.

## Schedule 1—Fees

Note: See regulation 4.

### 1 Table of fees

The following table prescribes fees that are payable in relation to matters specified in the table.

Item	Act, service or occasion in respect of which fee is payable	Fee
1A	Designation of an approved person under section 8	\$240
1B	Renewal of designation of an approved person	\$240
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
4	On lodgment of an application under section 26:	
	(a) fee paid by preferred means;	\$345
	(b) fee paid by another means	\$545
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 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
9	On lodgment of an application for a declaration of essential derivation under section 40 or 41A	\$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
12A	On making a request for the supply of 4 or more documents relating to a single application for PBR in a plant variety or a single PBR in a plant variety	\$200 for each request

## Schedule 1 Fees

### Clause 1

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<b>Item</b>	<b>Act, service or occasion in respect of which fee is payable</b>	<b>Fee</b>
13	If a request is made for a copy, or for the supply of documents, as mentioned in item 8, 12 or 12A—on making a request that the copy or documents be supplied by means of expedited dispatch	\$20 for each request for a copy, or for supply of documents
15	For annual maintenance of a PBR—on each anniversary of the grant:	
	(a) fee paid by preferred means;	\$400
	(b) fee paid by another means	\$450



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
352, 1994	18 Oct 1994	10 Nov 1994 (r 2)	
353, 1994	18 Oct 1994	1 Jan 1995 (r 1.1)	—
290, 1995	10 Oct 1995	10 Oct 1995	—
83, 1999	4 June 1999	4 June 1999 (r 2)	—
355, 2006	15 Dec 2006 (F2006L03971)	Sch 3: 1 Mar 2007 (r 2)	—
40, 2007	23 Mar 2007 (F2007L00650)	Sch 5: 27 Mar 2007 (r 2(a))	—
62, 2011	16 May 2011 (F2011L00773)	Sch 5: 1 July 2011 (r 2)	—
217, 2011	29 Nov 2011 (F2011L02480)	Sch 1 (Pt 4): 27 Dec 2011 (r 2(a))	—
66, 2012	14 May 2012 (F2012L01031)	Sch 4 (Pt 1): 1 July 2012 (s 2(a)(v)) Sch 4 (Pt 2): 1 Oct 2012 (s 2(b))	—

  

Name	Registration	Commencement	Application, saving and transitional provisions
Intellectual Property Legislation Amendment (Fee Review) Regulation 2016	19 Aug 2016 (F2016L01306)	Sch 1 (items 52–59): 10 Oct 2016 (s 2(1) item 1)	—
Intellectual Property Legislation Amendment (Single Economic Market and Other Measures) Regulation 2016	14 Nov 2016 (F2016L01754)	Sch 3 (item 6): 24 Feb 2017 (s 2(1) item 2) Sch 6 (item 9): 1 July 2017 (s 2(1) item 5)	—
Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018	16 Oct 2018 (F2018L01435)	Sch 1 (items 1, 2) and Sch 2 (items 59, 60, 139–141, 223–229): 24 Feb 2019 (s 2(1) items 2, 6, 7, 13) Sch 2 (item 235): 17 Oct 2018 (s 2(1) item 14)	—
Intellectual Property Laws Amendment (Fee Exemptions) Regulations 2020	12 June 2020 (F2020L00703)	Sch 1 (item 1): 13 June 2020 (s 2(1) item 1)	—
Intellectual Property Laws Amendment (Fee Amounts and Other Measures) Regulations 2020	7 Aug 2020 (F2020L00997)	Sch 1 (items 36–49): 1 Oct 2020 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 1</b>	
Part 1 heading.....	ad F2020L00997
r 1 .....	rs No 83, 1999
r 2 .....	rep LA s 48D
r 3 .....	am No 290, 1995; No 66, 2012; F2016L01306; F2018L01435; F2020L00997
r 3AA.....	ad F2016L01754
<b>Part 2</b>	
Part 2 heading.....	ad F2020L00997
r 3A .....	ad No 290, 1995 am No 83, 1999; F2018L01435
r 3BA.....	ad F2018L01435
r 3BB.....	ad F2018L01435
<b>Part 3</b>	
Part 3 heading.....	ad F2020L00997
r 3B.....	ad No 40, 2007
r 3C.....	ad No 40, 2007
r 3D .....	ad No 40, 2007 rep F2018L01435
<b>Part 4</b>	
Part 4 heading.....	ad F2020L00997
<b>Division 1</b>	
Division 1 heading.....	ad F2020L00997
r 3DA.....	ad F2016L01754
r 3E.....	ad No 40, 2007
r 3F .....	ad No 40, 2007 am No 62, 2011; No 217, 2011
r 3G .....	ad No 40, 2007
<b>Division 2</b>	
Division 2 heading.....	ad F2020L00997
r 4 .....	am F2016L01306 rs F2020L00997
r 4AA.....	ad F2020L00997
r 4 (second occurring).....	ad No 290, 1995 rep No 83, 1999
r 4A .....	ad No 66, 2012 am F2016L01306 rep F2018L01435

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## Endnote 4—Amendment history

Provision affected	How affected
	ad F2020L00703
	am F2020L00997
r 5 .....	ad No 83, 1999
	am F2018L01435
<b>Part 5</b>	
Part 5 heading.....	ad F2020L00997
r 6 .....	ad F2018L01435
<b>Schedule 1</b>	
Schedule heading.....	rs F2016L01306
	renum F2016L01306
Schedule .....	rs No 353, 1994
	am No 290, 1995; No 355, 2006
	rs No 66, 2012
Schedule 1 heading..... (prev Schedule heading)	ad F2016L01306
Schedule 1 .....	am F2016L01306; F2018L01435; F2020L00997