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REGISTRAR'S REMARKS

Response to the first edition of the Plant Varieties Journal has been enthusiastic and it is now into its second printing.

There has been strong interest from potential applicants for new varieties of the genera to be included on 1 July 1988 and we have received the first applications for the genera/species already included.

HFD, MA, and DJD Bell, from Hidden Valley Plantations, have submitted the first application for PVR in Australia. They are seeking protection for two new varieties of Macadamia bred on their property at Beerwah in Queensland. This is a particularly exciting development as most commercial varieties have been bred in Hawaii despite the fact that Macadamia is native to Australia.

As we progress with the implementation of PVR many interesting issues are being raised. One of the major points for discussion is the effectiveness of the section of the PVR Act allowing propagation of a new variety for the production of a commercial crop. The Plant Variety Rights Advisory Committee is seeking detailed comment on the impact of the present provisions to determine whether or not amendments are required (see Section 1.5 of this Journal). This is of major importance particularly for breeders of vegetatively propagated varieties and I urge you to respond.

This edition of the Journal clarifies some of the other issues raised in the first edition, highlights specific points and provides details of the first applications received.

The ability of the PVR Office to deal with such matters has been greatly enhanced by the appointment of Ben Loudon as acting Examiner and Miriam Nauenburg to assist with administration.

If you have any comments, letters or contributions that you would like published, please send them in for the next issue as this Journal should also become a forum for discussion.

Kathryn Adams
Registrar of Plant Variety Rights

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ADMINISTRATION/GENERAL 062 723725

PART 1 — ITEMS OF GENERAL INTEREST

1.1 WHAT IS PVR?

As stated in the first issue of the Journal, Plant Variety Rights (PVR) is an extension of the principle allowing ownership of invention commonly found in patents and copyright legislation.

Breeders of a **NEW** plant variety can claim the exclusive rights to sell, or license others to sell, plants or seed of that variety for a period of 20 years. Their new plant varieties are protected as they cannot be sold without the authority of the original breeder. PVR protection does not extend to the sale of the product of the new variety. For example, the grantee of PVR cannot control the sale of the fruit from a protected variety.

PVR is designed specifically for plant varieties and takes into account the fact that genetic variation is the basis for development of all new varieties. To encourage exchange of germplasm for this purpose, PVR protection does not extend to the use of the new variety as a source for the development of other new varieties.

In return for PVR protection the grantee is responsible for ensuring that reasonable quantities of the variety are available at a reasonable price.

PVR only applies to **CULTIVATED PLANTS**, not to selections from the wild which have not been further developed in cultivation.

1.2 WHY HAVE PVR

PVR has been available in Europe, USA and New Zealand for many years and is the accepted mechanism for controlling the sale of new varieties. PVR is a tool used to facilitate the marketing of a new variety. The major advantages are that:

- Breeders can control the sale of their new varieties and obtain a royalty for the sale of plants, seed or other reproductive material.
- PVR establishes ownership of the new variety; other mechanisms such as contracts do not establish legal title and if the variety is sold by a third party it is more difficult to establish original ownership than if PVR has been granted.
- PVR indicates to potential users of the variety that this one is distinct (not necessarily better) from existing known varieties.

The advantage to the users of the new plant varieties is that breeders are able to obtain a return on their investment and are therefore encouraged to continue developing new varieties based directly on the needs of their client group. If the new varieties do not meet these needs and cannot compete with non protected varieties the users will not buy them and the breeder will not receive the necessary returns.

1.3 IMPLEMENTATION OF PVR — PROGRESS

New plant varieties are not eligible for PVR unless the genus or species is listed in the regulations to the *Plant Varieties Act 1987*. Appendix 1 outlines the proposed timetable and interested parties are invited to make comment up to 5 months prior to the given date for inclusion (see Section 1.4 below).

Since the last edition of the PV Journal the first regulations under the *Plant Variety Rights Act 1987* have come into force. The regulations specify the genera/species included in the scheme in April and July 1988 (as listed in Appendix 1), and the fees payable.

Application forms are available from the PVR Office and comment from users of these forms is being sought so that future versions can be streamlined.

The PVR Office has received the first applications and these are detailed in Part 2 of this Journal. Many more applications are expected from 1 July when a much larger range of plants become eligible.

The Registrar has been invited to meet with many organisations interested in PVR and these face to face discussions have been of significant benefit to both parties. Clarification of issues is much easier in such a forum particularly in the initial stages of evolution of a new system. There are still many questions to be asked and answered and the Registrar would welcome any opportunity to meet and discuss these with interested organisations and individuals.

1.4 AMENDMENTS TO THE PROPOSED SCHEDULE FOR IMPLEMENTATION

The proposed schedule at Appendix 1 is designed to give advance notice of the inclusion of plants under PVR to allow potential applicants to plan their breeding programs. However, the schedule may be varied if a valid need can be demonstrated. To allow time for adequate notice of any changes, submissions seeking an amendment can be made up to 5 months before the date of implementation.

Therefore, comments on the genera proposed for inclusion from January 1989 can still be submitted.

How to read the Schedule

The latin names of the genera and species in the schedule are important as they will be used in the regulations. The plant groups have been included in the schedule for convenience. In some cases a particular genus or species could fit into more than one plant group (e.g. *Grevillea* can have ornamental or forestry species but the latin name included in the regulations will cover all *Grevillea* regardless).

Proposed Amendments to the Schedule

Following the last edition of the Journal the PVR Advisory Committee received a number of applications to amend the schedule.

As a result the PVR Advisory Committee is seeking comment on the proposed inclusion of the following genera in January 1989 instead of March 1990:

Cyphomandra, Streptocarpus, Impatiens, Cyclamen, Begonia, Achimenes, Choysia, Limonium and *Cuphea*

and in July 1989 instead of March 1990:

Hemerocallis, Bougainvillea and *Ilex*

Comments should be sent to the Registrar (address on page 1 of this Journal) by **10 August 1988.**

Other submissions seeking delay, deletion and inclusion of genera/species were considered by the Advisory Committee but were not sufficiently substantiated to warrant a change to the schedule.

1.5 PROPAGATION FOR NON COMMERCIAL PURPOSES

If a variety has PVR protection, plants of that variety cannot be propagated or reproduced for sale without the authorisation of the owner. For example a person cannot go into a nursery and buy six rose plants, propagate 100 new ones from the original six, and sell the rose plants. However, the roses (cut flowers) could be sold as they are considered to be product. Similarly an orchardist can buy 10 peach trees from the nursery, propagate 100 trees and sell the peaches. PVR in Australia only stops him selling the trees.

PVR in Australia does not extend to the propagation of a new variety for non commercial purposes. This allows people to buy reproductive material of a new variety and propagate large areas to produce commercial quantities of product (cut flowers, fruit, etc.) without any return to the breeder.

This provision was put into the Act to take into account the Australian farming practice of saving seed and replanting it the following season.

The horticulture, forestry and ornamental industries have indicated that PVR will only give breeders a worthwhile return if it covers propagation for sale of the final product as vegetative propagation is the usual method of increasing stock in the industry.

Throughout the world most PVR legislation extends the protection to cover the propagation of fruit or cut flower varieties for the production of a product which is sold commercially. The Australian legislation is unusual in not covering this process.

As the Minister said when introducing PVR legislation, its objective is to stimulate plant breeding in Australia, increase access to overseas varieties and encourage the development of new plant varieties for the benefit of the community. For this to occur breeders must have sufficient incentive.

The Plant Variety Rights Advisory Committee is investigating the need to change the legislation relating to **propagation** (S12 and S38 of the PVR Act — Appendix 4) to better meet the above objectives. The Committee is seeking detailed information (either on a company basis or industry basis) using specific examples such as rose or peach etc on:

- the number of plants sold each year;
- the percentage of plants sold destined for propagation for production of commercial product;
- the value of product sold from the propagation of the variety for production of a commercial product;
- the estimated annual return from a variety covered by PVR using existing provisions of S38 of the PVR Act; and
- the estimated annual return from a variety with PVR if protection is extended to cover propagation to produce a commercial crop.

The above information is directed towards vegetative propagation as this appears to be the major area of concern. The main options are:

a) to leave the provisions relating to propagation as they are;

b) to extend the coverage of PVR to prevent unauthorised propagation of protected varieties for production of a commercial product for prescribed genera/species (e.g. fruit and cut flowers); and

c) as in b) above but limit the extension to vegetative propagation.

Responses will be treated as **CONFIDENTIAL** and evidence obtained from overseas experience should be included where possible.

There is **NO INTENTION** to stop people propagating protected varieties for their own use i.e. in gardens or for their own consumption. However, propagation **and sale** of the product would not be permitted without the approval of the grantee of PVR.

Initial responses should reach the Registrar of Plant Variety Rights, GPO Box 858, Canberra 2601 by **10 August 1988.** If this does not provide sufficient time to complete the submission, please send an interim reply and an indication of a final response date.

If you wish to discuss any aspect of this matter, please contact the Registrar on 062 71 6472.

THIS IS AN IMPORTANT ISSUE WHICH COULD AFFECT YOU. PLEASE RESPOND AS SOON AS POSSIBLE.

1.6 HOW TO APPLY

Applications for PVR must be made on the application forms available from the PVR Office. There are three parts to the form and each one must be **COMPLETED** before an application can be accepted.

Applicants do not need the assistance of a Patent Attorney to complete an application form. However, test results must be certified by a tertiary qualified plant breeder, geneticist, taxonomist, horticulturalist or equivalent to ensure that acceptable scientific techniques have been used. The PVR Office is encouraging applicants to discuss potential applications as early as possible so that time schedules can be determined.

Completed application forms with the application fee should be forwarded to the Registrar. Before an application can be accepted it must comply with Sections 16 and 17 of the PVR Act (Appendix 2). Applicants should note that a written description or matrix similar to those in Part 2 of this Journal should be submitted with the application to avoid delays in publication. These must distinguish your variety from closest known varieties as the reason for publication is to allow peer assessment of the validity of the claim for PVR.

The Registrar will notify the applicant of acceptance or rejection of the application. If the

application is accepted, **PROVISIONAL PROTECTION** will apply unless the applicant sells plants or reproductive material of the variety other than for bulking up or scientific purposes.

In such cases there will not be any provisional protection but the application will be processed in the normal manner and PVR will be granted if the criteria are met.

The PVR Office will want **to examine the variety in the field** at a time when the differences are apparent. This will require comparative trials to be maintained after the application has been submitted. If this is not possible the Examiner will come to the trial site prior to application but will charge at the hourly rate. If the application proceeds, the amount will be deducted from the examination fee.

There has been some concern about the information required to demonstrate distinctness, uniformity and stability (DUS). As these are the basic requirements for a new variety they will be discussed in more detail below. Individual applicants should also discuss their particular variety with the PVR Office.

1.7 DISTINCTNESS

1) A new variety must be distinct from other known varieties. For convenience, Section 1.11c of this Journal gives a working definition of varieties of common knowledge. Currently descriptions of these varieties are not in a standard format. The PVR Office will develop a database of descriptions but this will take some time.
2) Applicants will be required to demonstrate that the new variety is different (statistically significant at the 99 per cent confidence level) from the varieties of common knowledge. One way to do this is to carry out pair-wise comparisons with the closest known varieties (identified by the applicant) so that data is not affected by environmental differences. The varieties must be grown side by side using the same growing conditions.

   If objections are raised as a result of publication in the Journal, applicants may be asked to further demonstrate distinctness and therefore it is to their advantage to have as much comparative data as they can.
3) In theory, demonstrated difference in any important characteristic is sufficient for PVR. Therefore performance characters such as yield, drought resistance etc. are eligible as long as the applicant can demonstrate that characters are not season specific and are reproducible at the reference location. As a general rule a characteristic such as yield would need to be at least 5 per cent better than other varieties consistently over three seasons.
4) Experience in other countries with PVR schemes shows that differences in performance characteristics are usually manifested in some **visual** difference and therefore precise measurements of plant characteristics are required. It is in the applicant's interest to identify visual differences as they make the new variety easily identifiable. It is therefore easier to convince the PVR Office, potential buyers and those infringing the rights that it is a new variety.
5) Other objective tests such as total protein, isozyme analysis, chemical tests etc., where clear varietal differences can be demonstrated, would also be accepted as further evidence of the distinctness of the variety.
6) Applicants should note that if a variety similar to theirs is already the subject of a PVR application they may be required to demonstrate that their variety is different from the one submitted prior to theirs. This could involve an extra season of comparative trials.
7) Distinctness characteristics do not have to be demonstrated in different environments. The original locality becomes the reference centre and if there is a dispute the varieties would be grown side by side at the reference site. The characteristics must be reproducible at that site (see stability below). Nevertheless, it would be to the applicant's advantage to nominate the characteristics demonstrated by the new variety in various environments to minimise the chance of dispute.
8) **PHOTOGRAPHS** can often be used effectively to illustrate differences between varieties. The photograph on the next page illustrates the distinct characteristics of rose varieties. The quality of such photographs is important. Applicants should aim to illustrate several differences on the one photograph and should include comparative photographs of the closest known variety(ies).
9) **NOTE** The more differences identified by the applicant, the the less chance there is of a challenge and the better the base for comparison with future varieties.

1.8 UNIFORMITY

Uniformity was considered in Section 2.4 of the first edition of the Journal. The number of off types allowed is given below.

Sample Size	*Max No. Off-types*
5	0
6– 35	1
36– 82	2
83–137	3

There are concerns that these criteria are difficult to meet. However, this is not the case if you consider the following points:

1) The above table only applies to vegetatively propagated or truly self-pollinating varieties
2) The number of off-types is doubled for partially self-pollinated varieties.
3) For **CROSS-POLLINATED** varieties the variance of a measured characteristic can be 1.6 times the average of the variance for the known varieties used for comparison. Therefore if a species is inherently variable, the degree of variability allowed for the new variety is directly related.

Experience in New Zealand has indicated that demonstrating uniformity is not usually a problem except with some synthetic varieties.

Extremely variable characteristics in some species may be excluded from the uniformity provisions.

1.9 STABILITY

There are also concerns about the need to demonstrate stability particularly with tree species where each generation takes several years.

The PVR Act states that a variety is stable if it remains true to description after repeated propagation or reproduction. This requires results from at least one propagation. However, if the variety is to be vegetatively propagated then it is considered to be stable by definition.

1.10 IMPORTANT POINTS TO REMEMBER

1) To be eligible for PVR a plant variety must be:
   - new (not sold in Australia at all or sold overseas for more than six years)
   - originated by a person
   - distinct from other **KNOWN** varieties, uniform and stable.
2) The name of the variety must conform with S17 of the PVR Act (Appendix 2).
3) Grantees of PVR must make reasonable quantities of the variety available at a reasonable price after two years.
4) PVR does not extend to the propagation of a new variety for non commercial purposes (see Section 1.5 above).

1.11 CLARIFICATION OF POINTS IN THE PVR ACT

a) SELECTIVE BREEDING (S3[3])

Two forms of plant breeding are defined in the scientific literature:
- introduction and selection
- controlled crossing and selection.

Both these methods are accepted as 'selective breeding' techniques. The basis of selection from introductions is that a large number of variants are introduced and grown in cultivation. They are selected through several generations until a variety with required characteristics is identified.

Therefore, under S3(3) varieties which have been introduced as part of a selective breeding program and grown in cultivation through a minimum of four generations or propagation cycles will be considered to have been originated by the breeder. The variety must then meet the DUS criteria.

b) SALE OF THE VARIETY AFTER APPLICATION — PROVISIONAL PROTECTION

Once an application has been accepted by the PVR Office, the applicant has provisional protection. However, if the applicant then sells plants or reproductive material of the variety the provisional protection is withdrawn but the examination of the application continues. The applicant is only without protection until the rights are granted.

c) VARIETIES OF COMMON KNOWLEDGE

If a plant variety is eligible for PVR it must be distinct from all **OTHER** known varieties. These varieties of common knowledge will be defined as:
- varieties registered for PVR in Australia,
- varieties for which an application for PVR has been lodged in Australia;
- varieties in commerce in Australia;
- varieties listed on an existing Australian register (e.g. Herbage Plant Register, Australian Cultivar Register);
- other varieties positively identified (reproductive material available) as a result of publication of the application in the Plant Varieties Journal; and
- other varieties considered relevant by the PVR Office.

Applicants will be required to demonstrate distinctness from the closest known varieties as outlined in Section 1.7 above.

d) INBRED HYBRID PARENTS

PVR provides protection for inbred hybrid parents as S38(1e) of the Act specifies that a person may not use a protected variety as a source of variation for a new variety if repeated use is made of the protected variety for the commercial production of the other variety. Therefore someone is not allowed to use a protected hybrid parent to produce the hybrid for commercial production. This provision is part of the UPOV Convention and included in most PVR legislation internationally.

e) INFRINGEMENT OF PVR

It is the responsibility of the grantee to enforce PVR. Therefore S43(3) of the Act should be highlighted as it allows the Court to refuse to award damages etc., if the person charged with infringing the PVR satisfies the Court that he/she was unaware that the variety was protected.

Grantees of PVR should ensure that plants and reproductive material are clearly labelled so that a purchaser or user is easily made aware of the protection.

1.12 STAFF — PLANT VARIETIES OFFICE

The Plant Varieties Office has now reached full strength — three people.

The recent additions are Ben Loudon, the acting Examiner of PVR and Miriam Nauenburg, the Administrative Services Officer.

(Courtesy of Meilland Roses and Peter Lee.)

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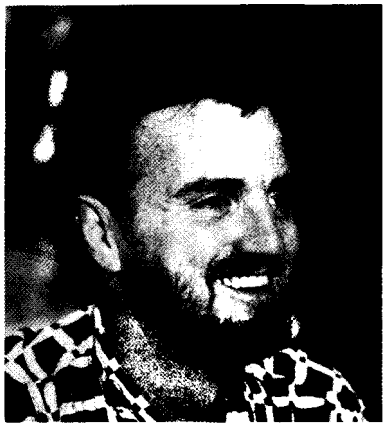


BEN LOUDON

Ben has worked with the NSW Department of Agriculture at Rydalmere, followed by some time as a biologist with the Australian Quarantine Inspection Service (AQIS). He has a science degree majoring in genetics, giving him broad background for dealing with the wide range of PVR applications.

Ben's main role will be examining applications for PVR and seeking comment from 'experts' in each species to ensure that the new variety meets the criteria for PVR.

Any queries relating to specific applications or application forms should be directed to Ben on 062 71 6476.

MIRIAM NAUENBURG

Miriam joined the Public Service in 1978 after working in private industry. Since then she has specialised in information management, a skill that is of prime importance to the PVR Office.

To add to those skills Miriam also has a Certificate of Horticulture from Woden TAFE to complement a life long interest in succulent plants. Miriam is a valuable asset for the PVR Office and will deal with any administrative inquiries you may have. (062 72 3725).

PART 2 — MATTERS FOR PUBLIC NOTICE

2.1 — APPLICATIONS

The PVR applications listed below have been accepted under S18 of the *Plant Variety Rights Act 1987*.

The PVR Office will accept comment from people who do not have a direct commercial interest in the variety but believe that the variety is ineligible for PVR under S26 of the Act (Appendix 3 of this Journal). Any submission must contain evidence to support the claim. This does not constitute a formal objection and there is no charge.

Formal objections (S20 of the Act) can be lodged by a person who:

- considers their commercial interests would be affected by the grant of PVR to the applicant; **AND**
- considers that the provisions of S26(1) cannot be met.

A fee of $60 is payable at the time of lodging a formal objection and $50/hr will be charged if the examination of the objection by the PVR Office takes longer than 2 hours.

A person lodging a formal objection must provide supporting evidence to substantiate the claim. A copy will also be sent to the applicant who will be asked to demonstrate why the objection should not be upheld.

All comments or formal objections to the following applications must be lodged with the Registrar by close of business on **31 December 1988.**

Macadamia integrifolia x tetraphylla

variety ***Hidden Valley A4*** (Application No. 88/001)

Applicants: **HFD, MA & DJD Bell** of Hidden Valley Plantations Beerwah, Qld.

This variety is distinct from all other known varieties in having the following combination of characters: more leaf serrations per cm and a ratio of 50:50 between 3-leaf and 4-leaf whorls (axis). All characteristics and comparisons are made from trees grown at Beerwah, Queensland and represent measurements of samples of a minimum of 100 specimens.

VARIETIES USED FOR COMPARISON

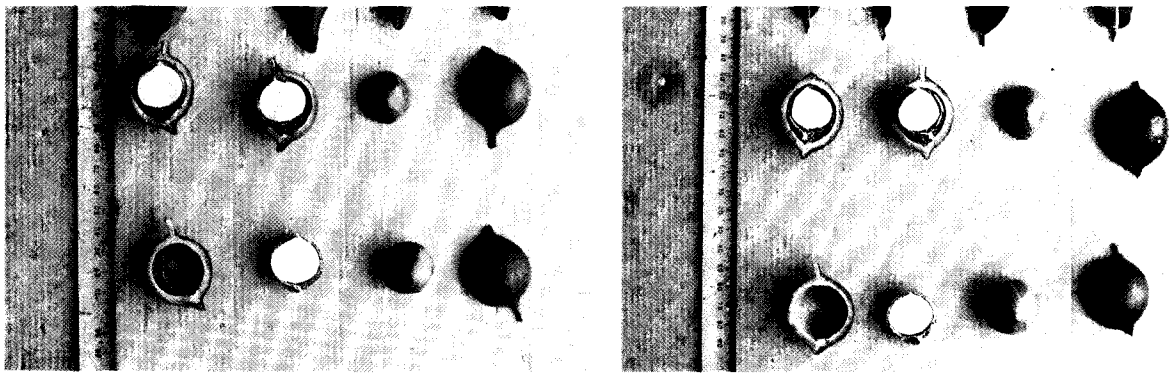
Keauhou (HAES 246), Kau (HAES 344), Own Choice, Nutty Glen (Nambour not Beerwah), *Renown* and *Hidden Valley A16.*

ORIGIN

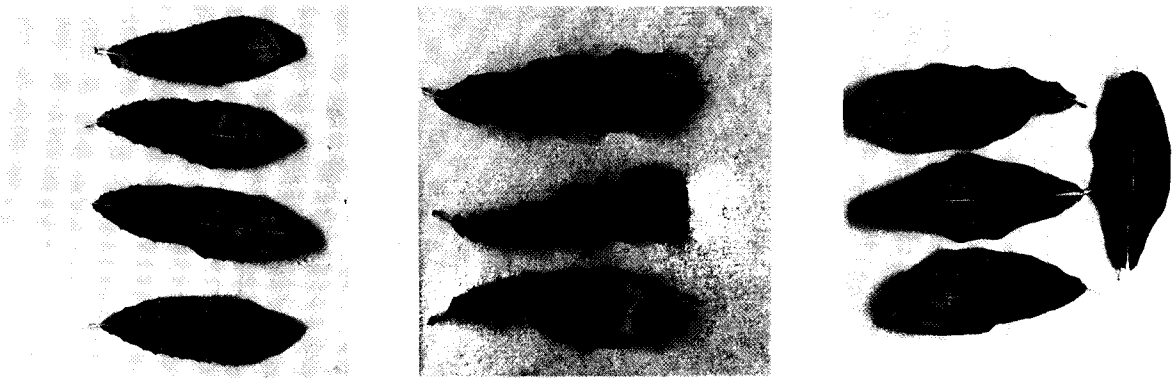
This variety arises from a seedling resulting in 1977 from the open pollination of the female parent variety *Renown*, a hybrid of *integrifolia x tetraphylla*. This variety could have arisen from self- or cross-pollination, the nearest pollinators being *Own Choice, Keauhou, Kakea* and *N.R.G.* The male parent is unknown, but is believed to be *Own Choice* on morphological evidence. The resultant seedling has been grafted on to both seedling and mature rootstock of various varieties. The cultivar

Applicant with mature HVA4 tree showing growth habit.

Nuts on HVA4.



Comparison of fruit and nuts for HVA4 (left) and HVA16 (right).



Comparison of leaves of HVA4 (left), HVA16 (right) and Keauhou (centre). *(Photos supplied by applicant.)*

has maintained its characteristics irrespective of rootstock. This variety has been selected on the basis of recording many yield, performance and quality characteristics since 1980; seeking maximum yield while sustaining kernel quality and beneficial growth characteristics.

MORPHOLOGY — See comparison table on page 10.

Tree

Tree is semi-erect in habit (more than *Keauhou* but less than *Nutty Glen*), moderately branching with a medium density canopy (more dense than *HV A16* but less than *Keauhou* or *Own Choice*). Branches are more drooping than *Keauhou*. Leaves are arranged both 3 and 4 leaves per node in 50:50 ratio throughout the tree, unlike *Keauhou* and *Kau* which have predominantly 3 per node and *Renown* with predominantly 4 per node. The grafted material is strongly vigorous in growth, (more than *Keauhou*). Shoots are of medium thickness, (thinner than *Own Choice* but thicker than *HV A16*) with an average of 4.2 mm between nodes, with sparse pubescence and weak anthocyanin colouration (RHS 152A*) on new flushes. There is a short juvenile phase (shorter than *Keauhou* or *Kau*) and a higher tolerance observed to *Cercospora* husk spot than observed for *Own Choice*.

Leaf

Leaves are narrow elliptical, 3.69 times longer than broad, broader than *Nutty Glen* or Renown but narrower than *Keauhou* or *Kau* with an acutely pointed tip, similar to Renown.

Length: 144.54 mm mean with std. dev. of 22.6.
Width: 39.23 mm mean with std dev. of 5.84.
Petiole length: 8.3 mm mean with std dev. of 1.48.

Leaf margins are serrate with 1.36 spines per cm which is more than any known variety. Serrations are more shallow than *Nutty Glen* and spines are shorter than *Renown*. Leaves are only weakly undulated and weakly rolled compared with *Keauhou*. The young leaves are pale green (RHS 137B), mature leaves are dark green (RHS 139A) and dull surfaced (similar to *Nutty Glen*) with distinctly lighter margins (RHS 10A).

Flowering — further flower details to be provided.

Racemes are cream flowered, long (longer than *Keahou* or *Kau*) and very dense on the tree compared with *Keauhou*. The tree has a shorter flowering period than *Keauhou*, which starts earlier and finishes later, but a longer flowering period than *HV A16*. There is a tendency for a second late flowering in seasons with favourable rainfall.

Fruit

Length: 50.04 mm mean; range 44 — 58 mm; std dev. 2.82. (including the pedicel and hilum end point).
Width: 33.76 mm mean; range 31 — 44 mm; std dev. 1.76.
The husk is of medium thickness (thinner than *Renown* and about the same as *Keauhou*) with a medium hilum end point (smaller than *Renown* and larger than *Kau*) and a mildly shouldered pedicel (less than *Own Choice)*. Husk dehiscence is partly on the tree (less than *Nutty Glen* or *Renown*) but mainly on the ground. There is an average of 1.7 nuts per raceme. There is no pre-germination on the tree observed (as in *Nutty Glen*) and very low incidence of 'stick tights' (remaining on tree) or 'twins' (double embryo); lower than observed for *Own Choice*.

Nut

The nuts are oval in shape, 1.04 times taller than round, less oval and more even than *Renown* but less round than *Keauhou*.
Diameter: range 22 — 30 mm; mean 26.27; std dev. 1.38.
Weight: 7.5 gm mean.
The shell is light brown (RHS 164A), smooth surfaced (smoother than *Nutty Glen* or *Renown* but coarser than *Kau*) and with a moderate sheen (more than *Nutty Glen* but less than *Keauhou*). The shell is thinner at the micropyle end (thinner than *Kau* but thicker than *Nutty Glen*). The suture is about the same colour as the shell, the micropyle is barely visible and no twin mark is evident. There is moderate (less than *Renown or Nutty Glen*) pale flecking (RHS 165C) in radial streaks from the micropyle end.

Kernel

The kernel is ovoid, creamy white with very little upper/lower colour difference and a mean weight of 3.5 gm. Its percentage weight of the nut is about 45 per cent (recovery measured at 1.5 per cent moisture content). All kernels have an oil accumulation above 72 per cent (100 per cent first grade 'floaters' recorded).

YIELD CHARACTERISTICS

Recorded nut yields to date have been estimated to be higher per hectare than for *Keauhou* and *Own Choice*. This is based on trials recording yield (Kg) per tree divided by tree silhouette area in sq metres.

Macadamia integrifolia x tetraphylla

variety ***Hidden Valley A16*** (Application No. 88/002)

Applicants: **HFD, MA & DJD Bell**, of Hidden Valley Plantations.

This variety is distinct from any other known variety in having the following combination of characteristics: a low density canopy, a very short flowering period, an elliptical leaf which has smooth, lightly undulated and rolled margins, medium pale racemes, setting an average of 4.4 nuts per raceme and a nut which is smooth oval and thin shelled (45 per cent recovery). All characteristics and comparisons are made from trees grown at Beerwah, Queensland and represent measurements of samples of 100 or more specimens.

VARIETIES USED FOR COMPARISON

Keauhou (HAES 246), Kau (HAES 344), Own Choice, Nutty Glen (Nambour not Beerwah), *Renown* and *Hidden Valley A16.*

* Royal Horticultural Society Colour Chart number.

(Continued on page 12)

Table for Comparison of Macadamia Varieties

Tree

Variety	*HV A4*	*HV A16*	*Keauhou*	*Kau*	*Own Choice*	*Nutty Glen*	*Renown*
Growth habit	semi-erect	erect	spreading	erect	spreading	semi-erect	semi-erect
Canopy density	medium low	low	medium	high	high	low	medium
Lower branch attitude	drooping	rising	level	strongly rising	drooping	rising	drooping
Vigour, grafts	v-strong	strong	medium	med-weak	strong	—	strong
Shoot thickness	medium	med-thin	medium	med-thin	thin	med-thin	medium
Anthocyanin colouration	weak RHS 152A	weak RHS 152A-B	absent	absent	weak	—	med-weak
Juvenile phase	v-short	short	medium	long	med-short	—	—

Leaf

Variety	*HV A4*	*HV A16*	*Keauhou*	*Kau*	*Own Choice*	*Nutty Glen*	*Renown*
No. per axis	3,4 (50%)	3	3	3	3	4	4
Shape	Narrow Elliptical	Elliptical	Obovate	Obovate	Narrow Elliptical	Narrow Obovate	Broad Lanceolate
Tip	acute pointed	obtuse rounded	obtuse rounded	obtuse pointed	obtuse rounded	acute either	acute pointed
Length/breadth	3.69	2.64	3.25	3.42	2.81	4.53	3.91
length (mm)	144.54	126.59	138.82	125.09	128.16	153.40	169.93
Petiole length	8.28	6.78	10.43	9.24	8.65	4.77	7.33
Marg: Spines/cm mid portion	1.36	0.12	0.12	0.17	0.09	0.90	0.78
Undulation	weak	medium	med-strong	med- weak	medium	weak	weak
Rolling	med-weak	medium	med- weak	med- weak	med strong	weak	med-weak
Mature colour RHS Chart no.	dark green 139A	dark green 147A	dark green 139A	dark green 139A	dark green 139A	dark green —	dark green 147A
Immature colour RHS Chart no.	green 137B	green 137B	green 137A-B	green 141A	green 137B	green —	green 143A
Margin colour	paler	paler	paler	similar	paler	paler	paler
Leaf sheen	medium	low	med-high	med-high	low	medium	low-med
Vein colour	153 B or C	153A	152D	152C	152D	—	153D

Flowering and Fruit

Variety	*HV A4*	*HV A16*	*Keauhou*	*Kau*	*Own Choice*	*Nutty Glen*	*Renown*
Flowering time	med-late	med-late	medium	v-early	early	late	med-late
duration	short	very short	medium	long	—	—	—
Nuts/raceme	1.7	4.4	1.5 (est.)	2.5 (est.)	2.0 (est.)	—	1.5 (est.)
Raceme density on tree	very dense	very light	dense	medium	dense	—	med-dense
Raceme length	long	medium	short	short-med	medium	long	long
Husk colour	137A-B	137A	137A	137B	137A		138A
Husk thickness *% nut diameter*	3.7 mm 14.1%	3 mm 12%	3 mm 11.7%	2.7 mm 10.6%	3.2 mm 12.1%	4.3 mm 15.4%	4.4 mm 16.4%
Hilum endpoint	medium	med-small	medium	small	med-small	small	large
Pedicel shoulder	weak	absent	absent	—	absent	absent	weak
Dehiscence(1-5) *Splitting (1-5)*	off-tree 1 both 3	off-tree 1 off-tree 4	off-tree 1 off-tree 5	off-tree 1 off-tree 5	both 2 off-tree 4	— on-tree 1	on-tree 3 on-tree 2

Nuts

Variety	*HV A4*	*HV A16*	*Keauhou*	*Kau*	*Own Choice*	*Nutty Glen*	*Renown*
Nut shape	oval	oval	round	round	round	round	oval
length/breadth	1.04	1.04	0.98	0.99	1.04	0.99	1.12
Nut diameter	26.27	24.97	25.55	25.00	25.96	28.04	26.85
Range	22–30	19–28	21–30	22–28	21–30	23–34	23–30
Std deviation	1.38	1.27	1.46	1.37	1.57	2.02	1.45
Kernel weight	3.6–3.8	2.9–3.5	2.3–2.7	2.2–2.5	2.5–2.7	4.0	3.2–3.6
% of Nut	43–47	44–47	34–38	32–34	33–36	46.47	39–41
Shell texture	smooth	smooth	mild-rough	smooth	smooth	rough	rough
Shell sheen	medium	medium	dull	dull	dull	med-shiny	shiny
Shell flecking	moderate	mod-slight	slight	moderate	mod-heavy	mod-slight	mod-heavy
Micropyle	v-slight	v-slight	obvious	v-slight	v-slight	v-slight	v-slight
Shell colour (dried)	164A	164A	165B	165B	165A-B	165A-B	165B
Suture colour	same	darker	same	lighter	same	same	lighter

ORIGIN

This variety arises from a seedling resulting in 1978 from the open pollination of the female parent variety *Renown*, a hybrid of *integrifolia x tetraphylla*. This variety could have arisen from self pollination or cross pollination, with the nearest pollinators being, *Own Choice, Keauhou, Kakea* and *N.R.G.* The male parent is unlikely to be self and is believed to be an *integrifolia* variety (*Kakea* or *Keauhou* or *Own Choice*) on morphological evidence. The resultant seedling has been bud-grafted on to both seedling and mature rootstock of various varieties. The cultivar has maintained its characteristics irrespective of rootstock. This variety has been selected on the basis of recording many yield, performance and quality characteristics since 1981; seeking maximum yield while sustaining kernel quality and beneficial growth characteristics.

Tree

Tree is erect in habit (slightly more than *Kau*), moderately branching with a low density canopy (less than *Keauhou* or *Own Choice*. Leaves are arranged predominantly 3 per node unlike *Renown* with predominantly 4 per node and *HV A4* with 50:50 mixture. The grafted material is vigorous in growth, (more than *Keauhou* but less than *HV A4*). Shoots are of medium thickness, (thinner than *HV A4*) with an average of 4.4 mm between nodes, with sparse pubescence and weak anthocyanin colouration (RHS 153A) on the new flush. There is an average juvenile phase (slightly shorter than *Keauhou* or *Kau* but longer than *HV A4*).

Leaf

Leaves are elliptical, 2.64 times longer than broad, broader than *Own Choice* or *Keauhou* with an obtuse angled rounded tip, similar to *Kau*.
Length: 126.59 mm mean with std dev. of 15.29.
Width: 48.24 mm mean with std dev. of 5.46.
Petiole length: 6.8 mm mean with std dev. of 1.52.
Leaf margins are smooth with 0.01 spines per cm and are less undulated than *Keauhou* and rolled (similar to *Own Choice*). The young leaves are pale green (RHS 137B), mature leaves are dark green (RHS 137A), dull surfaced (similar to *Nutty Glen*) with distinctly lighter margins (RHS 15D).

Flowering — further detail on flowers to be provided.

Racemes are white, medium length (shorter than *Renown*) and sparse on the tree compared to *Keauhou*. The tree has a shorter and lighter flowering period than *Keauhou*, which starts earlier and finishes later. Flowering is mid-season and shorter than any other known variety. The reduced flowering is believed to contribute to an observed light post-anthesis nut drop.

Fruit

Length: 45.07 mm mean; range 40 — 50 mm; std dev. 2.47. (including the pedicel and hilum end point)
Width: 30.95 mm mean; range 26 — 34 mm; std dev. 1.26.
The husk is thin (thinner than *Renown* and about the same as *Keauhou*) with a small hilum end point (about the same as than *Kau*) and an unshouldered pedicel (same as *Kau*). Husk dehiscence is partly on the tree (less than *Nutty Glen* or *Renown*) but mainly on the ground. There is an average of 4.4 nuts per raceme. There is no pre-germination on the tree observed (as in *Nutty Glen*) and very low incidence of 'stick tights' (remaining on tree) or 'twins' (double embryo); lower than observed for *Own Choice*.

Nut

The nuts are oval in shape, 1.04 times taller than round, less oval and more even than *Renown* but less round than *Keauhou*.
Diameter: range 19 — 28 mm; mean 24.97; std dev. 1.27.
Weight: 6.5 gm mean.
The shell is light brown (RHS 164A), smooth surfaced (smoother than *Nutty Glen or Renown* but coarser than *Kau*) and with a moderate sheen (less than *Nutty Glen* but more than *Keauhou*). The shell is thinner at the micropyle end (thinner than *Keauhou* or *Kau* but slightly thicker than *Nutty Glen*). The suture is darker than the shell (RHS 165A), the micropyle is barely visible and there is no twin mark evident. There is moderate pale flecking (RHS 164C), more than *Keauhou* but less than *Renown* or *Nutty Glen*.

Kernel

The kernel is ovoid, creamy white with very little upper/lower colour difference and a mean weight of 2.9 gm. Its percentage weight of the nut is about 45 per cent (recovery measured at 1.5 per cent moisture content). Ninety-nine per cent of kernels have an oil accumulation above 72 per cent (first grade 'floaters' recorded)

YIELD CHARACTERISTICS

Recorded nut yields to date have been estimated in trials to be the highest of the tested varieties, based on the yield of the original tree. This estimate is based on recording yield in Kg per tree divided by tree silhouette area in sq metres.

The original tree's yield estimate is boosted by its relatively small size for its age. The nut yield has grown proportionately faster than the tree. Other trees of this variety are too young, as yet, to assess for this growth characteristic.

Rosa hybrida

Variety: ***Young at Heart*** (Application No. 88/003)

Applicant: **Swane Bros. Pty Ltd**, of Dural NSW, under licence from Bear Creek Gardens Inc of California, USA.

This variety is distinct from all other known varieties in having the following combination of characters: an apricot pink high-centred flower and an erect bush with large foliage and red thorns. The variety is classified as a hybrid tea rose. All characteristics and comparisons are made from material grown at Narromine, New South Wales on *Dr Huey* root stock and represent measurements of samples of a minimum of 20 specimens.

VARIETIES USED FOR COMPARISON

Sonia (Meillands), *Bridal Pink* (Boerner), *Tiffany* (Lindquist) and *Touch of Class* (Kriloff); all with similar coloured flowers.

ORIGIN

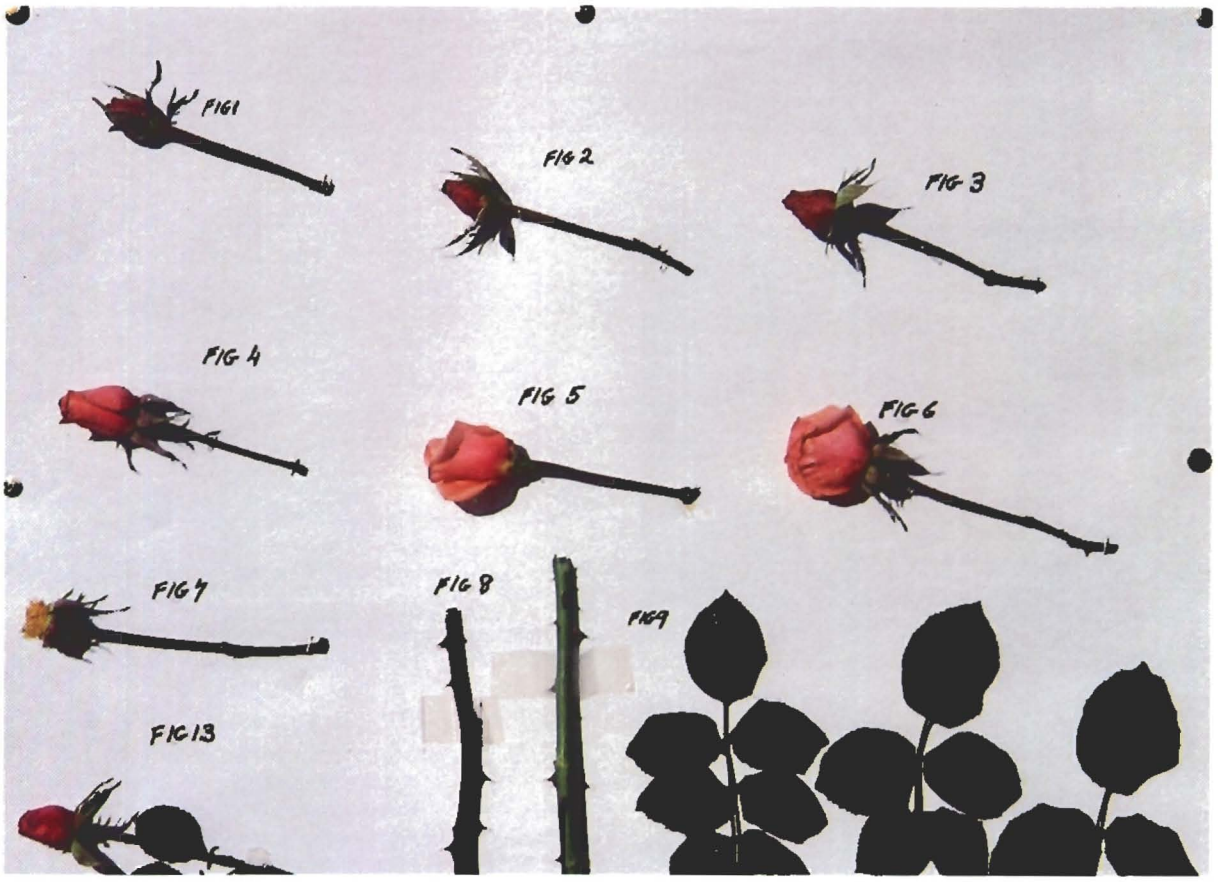
This variety arises from the controlled pollination of variety *Coquette* (Warriner) by pollen from variety *Zorina* (Boerner), made in 1981 by Armstrong Nurseries in California, USA. A single plant was selected for flower colour and form and six further plants were budded from it on to *Dr Huey* root stock. Cuttings from these plants were then forwarded to Swane's Nurseries in Australia for further growing and evaluation.

MORPHOLOGY

Erect growth habit, more erect than *Sonia*, similar to *Tiffany*, more vigorous than *Sonia* similar to *Tiffany* with many lateral branches. Stems are smooth, almost non-pubescent, red (RHS 53A-B) becoming dark green (RHS 143A) with age, armed with irregularly spaced red (RHS 53A-B) thorns. The bush has a medium incidence of basal growth, higher than *Sonia* and similar to *Tiffany*. Mature foliage is dark green (RHS 139A) with red (RHS 53B) veins visible, of medium-glossy sheen, similar to *Touch of Class* but shinier than *Tiffany* or *Sonia*. Immature foliage is red (RHS 53A). Leaves are moderately large, 16.3 mm (16-20) long by 12.3 mm (11-13) wide, slightly larger than *Bridal Pink* and with 3, 5 or 7 leaflets which are serrated and pointed ovate in outline.

Flowering is recurrent with a short interval between blooms (38-45 days), less than *Sonia* (45-60 days). Flowers are borne both singly and in multiples (4-5) on stems. Petal drop at bloom maturity is slow (slower than *Tiffany* or*Sonia*).

The buds are pointed ovate in profile, shorter than *Tiffany* and similar to *Sonia* but with a less pointed tip. Mature flowers are high centred reflexing but less so than *Touch of class*, ovate in outline and medium sized (larger than *Bridal Pink* and similar to *Sonia*). Perfume is weak (weaker than *Sonia*). Stamen are numerous (more than 60). Petals are numerous, with a count of 55-60, compared to



'Young at Heart' — some distinguishing features *(Photo supplied by applicant).*

Tables for Comparison of Rose Varieties

Flower

Variety	*Young at Heart*	*Sonia*	*Tiffany*	*Touch of Class*	*Bridal Pink*
Flower size (scale 1–9)	medium 6–7	medium 5	medium 7	med-large 8	med-small 4–5
Bud shape	pointed ovate	pointed ovate	pointed ovate	pointed urn-shape	pointed ovate
Flower scent	unscented	mild	strong fruity	mild 'tea'	mild
Stamen count	numerous	numerous	numerous	numerous	numerous
Petal count	55–60	30–35	25–30	30–35	30–35
Petal width	5.3	5.3	5.5	5.5	5.3
Petal shape	pointed ovate	pointed ovate	pointed ovate	pointed urn-shape	pointed ovate
Petal thickness	medium	thick	thin	thick	thin
Petal drop	slow	fast	fast	med-slow	fast

Foliage

Variety	*Young at Heart*	*Sonia*	*Tiffany*	*Touch of Class*	*Bridal Pink*
Growth habit	erect	bushy	very erect erect	erect	bushy-erect
Vigour (scale 1–9)	strong 9	med-strong 6	strong 8	strong 8	med-strong 6
Leaf Size (scale 1–9)	medium 7	medium 6	medium 5	medium 7	medium 5
Venation	red	green	green	green	green

'Young at Heart' *(Photo supplied by applicant).*

Sonia with a count of 30-35. Petals are broad ovate with a pointed tip on inner petals and are 5.6 mm (5-6) wide, slightly broader than *Sonia* (5.3 mm), measuring the widest undamaged petal. Petals are of medium thickness (thicker than *Bridal Pink* but thinner than *Touch of Class*) and reflexed with maturity. Petal colour is apricot pink (RHS 49C), blushing to salmon pink (RHS 37A) when grown in stronger light, with a crescent of yellow (RHS 20A) at the basal quarter. Petal texture is moderately soft, softer than *Touch of Class* but firmer than *Bridal Pink*. Fruit does not form readily.

2.2 PROVISIONAL PROTECTION

The following varieties have provisional protection under S22 of the *Plant Variety Rights Act 1987*:

Macadamia — *Hidden Valley A4*
Macadamia — *Hidden Valley A16*

Provisional protection has been withdrawn (see para 1.11 b of this Journal) from 30 June 1988 until the examination of the application is completed (due to a sale after acceptance of the application) for the following variety:

Rose — *Young at Heart*

PROPOSED SCHEDULE FOR INCLUDING GENERA/SPECIES IN THE PLANT VARIETY RIGHTS REGULATIONS

PLANT GROUP	APRIL 88	JULY 88	JAN 89	JULY 89	MARCH 90
STONE FRUIT		Prunus	All Stone Fruit		
CITRUS		All Citrus			
OTHER FRUIT	Malus (apple)	Fragaria (strawberry) Vitis (grape) Carica (paw paw) Rubus (raspberry) Persea americana (avocado)	Pyrus (pear) Actinidia (kiwifruit)		All Fruit
VEGETABLES	Phaseolus vulgaris (bean)	Solanum tuberosum (potato) Lycopersicon (tomato) Lactuca sativa (lettuce) Pisum (pea)	Allium cepa (onion) Daucus carota (carrot) Brassica oleracea (cabbage, cauliflower etc)	All vegetables	
NUTS	Macadamia	Prunus amygdalus (almond)	Juglans (walnut)	All nuts	
HERBAGE AND TURF GRASS	Phalaris	Lolium (ryegrass) Agrostis (bent) Festuca (tall fescue) Cynodon (bermuda grass) Zoysia Stenotaphrum	Dactylus (cocksfoot) Bromus Lotus Paspalum	All herbage and turf grasses	
OILSEEDS	Brassica sp (oilseeds) (rape, mustard etc)	Glycine max (soybean) Helianthus annuus (sunflower)	Sesamum indicum (sesame) Carthamus tinctorius (safflower) Linum usitatissimum (linseed)	All oilseeds	
PASTURE AND GRAIN LEGUMES		Trifolium (clover) Medicago Ornithopus (serradella) Stylosanthes	Lupinus Desmanthus Vigna (mungbean) Cicer arietinum (chickpea) Indigofera	All pasture and grain legumes	
GRAINS		Setaria Avena (oats) Panicum Pisum (pea) Zea mays (corn)	Hordeum (barley) Pennisetum (pearl millet) Sorghum		All grains
AUST. NATIVE ORNAMENTALS	Anigozanthus (Kangaroo paw)	Grevillea Chamelaucium (Geraldton wax) Lechenaultia Melaleuca Decaspermum Artanema	Macropidia (Black Kangaroo Paw) Piper Callistemon Thryptomene Telopea Dryandra	Boronia Banksia Verticordia Darwinia Pimelea	All native ornamentals
OTHER ORNAMENTALS	Rosa (Rose)	Orchids (all genera) Dianthus (carnation) Alstroemeria Schlumbergera (Zygocactus) Lilium (Lily) Metrosideros carminea Freesia Rhododendron Gerbera	Rhipsalis Kalanchoe Euphorbia (Poinsettia) Chrysanthemum Zantedeschia		All ornamentals
FORESTRY		Eucalyptus	Pinus Acacia Casuarina		All forestry
OTHER	Gossypium (cotton)		Duboisia	Humulus lupulus	All species
PROPOSED ADDITIONS		Cuphea Limonium Cyphomandra Streptocarpus Impatiens Cyclamen Begonia Achimenes Choysia	Hemerocallis Bougainvillea Ilex		

SECTIONS 16 AND 17 OF THE PVR ACT

Form of application

16. An application for plant variety rights in respect of a plant variety shall be in writing in a form approved by the Secretary, shall be lodged with the Secretary in the prescribed manner and shall contain —

(a) the name of the person making the application;

(b) where the applicant is the breeder of the variety, a statement that the applicant is the breeder of the variety;

(c) where the applicant is not the breeder of the variety, the name and address of the breeder from whom the applicant derived the right to make an application and particulars of all relevant assignments and transmissions of the right to make the relevant applications;

(d) a description, or a description and photograph, of a plant of the variety sufficient to identify plants of that variety;

(e) particulars of the characteristics that distinguish the variety from other varieties;

(f) particulars of the manner in which the variety was originated;

(g) the name of the variety;

(h) particulars of any application for, or approval of a grant of, rights of any kind in respect of the variety in any other country;

(j) particulars of any tests carried out to establish that the variety is homogeneous and stable (including particulars of any cycle of reproduction or multiplication for the purposes of paragraph 3(2)(b));

(k) 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;

(m) an address in Australia for the service of documents on the applicant for the purposes of this Act; and

(n) such other particulars (if any) as are prescribed.

Names of new plant varieties

17.(1) The name of a new plant variety shall consist of a word or words (which may be an invented word or words) with or without the addition 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.

2. A new plant variety shall not have —

(a) a name the use of which would be likely to deceive or cause confusion, including a name that is the same as, or is likely to be mistaken for, the name of another plant variety;

(b) a name the use of which would be contrary to law;

(c) a name that comprises or contains scandalous or offensive matter; or

(d) a name, or name of a kind, that is, at the time when the application is made, prohibited by the regulations.

(3) The name of a new plant variety in respect of which an application is made shall comply with any recommendations of the International Code of Nomenclature for Cultivated Plants, as in force when the application is made, formulated and adopted by the International Commission for Nomenclature of Cultivated Plants of the International Union of Biological Sciences that are accepted by Australia.

(4) The name of a new plant variety in respect of which an application is made shall not consist of, or include —

(a) the name of a natural person living at the time of the application, other than a person who has given written consent to the name of the plant variety;

(b) the name of a natural person who died within the period of 10 years immediately preceding the application, other than a person who has given, or whose legal personal representative has given, written consent to the name of the plant variety; or

(c) the name of a corporation, organisation or institution, other than a corporation, organisation or institution that has given its written consent to the name of the plant variety.

SECTION 26 OF THE PVR ACT

Grant of plant variety rights

26.(1) Subject to this section, where an application for plant variety rights in respect of a plant variety is accepted —

(a) if the Secretary is satisfied that —

(i) there is such a plant variety;

(ii) the plant variety is a new plant variety;

(iii) the applicant is entitled to make the application;

(iv) the grant of those rights to the applicant is not prohibited by this Act;

(v) those rights have not been granted to another person;

(vi) there has been no earlier application for

those rights that has not been withdrawn or otherwise disposed of;

(vii) the name of the variety would comply with section 17; and

(viii) all fees payable under this Act in relation to the application and the grant have been paid,

the Secretary shall grant those rights to the applicant; or

(b) if the Secretary is not so satisfied — the Secretary shall refuse to grant those rights to the applicant.

(2) The Secretary shall not grant, or refuse to grant, plant variety rights in respect of a plant variety unless a period of at least 6 months has elapsed since the giving of public notice of the application, or, if the application has been varied in pursuance of a request under sub-section 19(1) in a manner that the Secretary considers to be significant, a period of 6 months has elapsed since the giving of public notice of particulars of the variation, or of the last such variation, as the case requires.

(3) The Secretary shall not refuse to grant plant variety rights unless the Secretary has given the applicant for the rights a reasonable opportunity to make a written submission to the Secretary in relation to the application.

(4) Where an objection to the grant of plant variety rights has been lodged under section 20, the Secretary shall not grant the rights unless the Secretary has given the person who lodged the objection a reasonable opportunity to make a written submission to the Secretary in relation to the objection.

(5) Plant variety rights shall be granted to a person by the issue to that person by the Secretary of a certificate, signed by the Secretary or by the Registrar, in a form approved by the Secretary and containing such particulars of the plant variety to which the rights relate as the Secretary considers appropriate.

(6) Where plant variety rights are granted to persons who made a joint application for those rights, those rights shall be granted to those persons jointly.

(7) Where the Secretary refuses to grant plant variety rights in respect of a plant variety, the Secretary shall, within 30 days after refusing, give written notice of the refusal to the applicant for the rights setting out the grounds for the refusal.

SECTIONS 12 AND 38 OF THE PVR ACT

Plant variety rights

12.(1) Plant variety rights, in respect of a new plant variety, are —

(a) the exclusive rights to sell, including the right to license other persons to sell, plants of that variety;

(b) the exclusive right to sell, including the right to license other persons to sell, reproductive material of plants of that variety;

(c) the exclusive right to produce, including the right to license other persons to produce, plants of that variety for sale; and

(d) the exclusive right to produce, including the right to license other persons to produce, reproductive material of plants of that variety for sale.

(2) Plant variety rights in respect of a plant variety are subject to conditions imposed in respect of those rights by section 33 or under section 34.

Plant variety rights not to restrict sales for food, fibre, fuel, &c.

38.(1) Notwithstanding that plant variety rights subsist in respect of a plant variety, any person may —

(a) propagate, grow and use plants of that variety for purposes other than commercial purposes;

(b) sell plants of that variety for use as food or for another use that does not involve the growing of the plants or the production of plants of that variety;

(c) sell reproductive material of plants of that variety for use as food or for another use that does not involve the production of plants of that variety;

(d) sell with a farm or other place at which plants of that variety are grown any plants or reproductive material of plants of that variety at that place; or

(e) use, and do anything necessary or desirable for the purpose of using, plants or reproductive material of plants of the variety as an initial source of variation for the purpose of originating another new plant variety except where the person makes repeated use of plants or reproductive material of plants of the first-mentioned variety for the commercial production of the other variety.

(3) The right of a person under paragraph (1)(c) to sell reproductive material of plants of a plant variety in respect of which plant variety rights subsist include —

(a) the right of the person to use plants, or reproductive material of plants, of that variety purchased or otherwise acquired by the person without any infringement of those plant variety rights to —

(i) produce reproductive material of plants for the sale; or

(ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived; and

(b) the right of the person to use plants, or reproductive material of plants derived by the person from plants, or reproductive material of plants, of that variety, purchased or otherwise acquired by the person without

any infringement of those plant variety rights to —

(i) produce reproductive material of plants for the sale; or

(ii) produce plants, or reproductive material of plants, from which reproductive material of plants for the sale may be derived.

(4) Without limiting the generality of paragraph (1)(c), for the purposes of that paragrah, 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.

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PLANT VARIETY RIGHTS SCHEDULE OF FEES — 1988

FUNCTION	FEE ($)
APPLICATION	300
EXAMINATION OF APPLICATION	1000
COPY OF APPLICATION	50
VARIATION TO APPLICATION	55
*EXAMINATION OF OBJECTION	60
COPY OF OBJECTION	50
CERTIFICATE OF PVR	200
ANNUAL RENEWAL FEE	200
RE-EXAMINATION (IF REQUIRED)	600
COMPULSORY LICENCE	100
TRANSFER OF RIGHTS	100
PUBLICATIONS	HOURLY RATE

* HOURLY RATE = $50/hr; EXAMINATION OF OBJECTIONS EXCEEDING 2 HOURS WILL BE CHARGED AT THE HOURLY RATE FOR THE EXTRA TIME

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