



# **Pig Industry Act 2001**

**No. 30, 2001**



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**An Act relating to the pig industry**

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# Pig Industry Act 2001

No. 30, 2001

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## An Act relating to the pig industry

[Assented to 28 April 2001]

The Parliament of Australia enacts:

### Part 1—Preliminary

#### 1 Short title

This Act may be cited as the *Pig Industry Act 2001*.

#### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Schedule 1 (other than item 3) commences immediately after the transfer time.

Note: *Transfer time* is defined in section 7.

- (3) Item 3 of Schedule 1 commences at the later of the following times:

- (a) immediately after the commencement of section 39;
- (b) the commencement of Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal.

Note: The short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

### **3 Schedule(s)**

Subject to section 2, each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Crown to be bound**

This Act binds the Crown in all its capacities.

### **5 External Territories**

This Act extends to all the external Territories.

### **6 Extraterritorial operation**

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

## Part 2—Interpretation

### 7 Definitions

In this Act, unless the contrary intention appears:

***asset*** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

***award*** has the same meaning as in the *Workplace Relations Act 1996*.

***combined service period***, in relation to an employee, means the total of:

- (a) the period that is, immediately before the transfer time, the employee's period of service for the purposes of the Long Service Leave Act; and
- (b) the period during which the employee continues to be an employee of the industry services body.

***DFRDB Act*** means the *Defence Force Retirement and Death Benefits Act 1973*.

***eligible body*** has the meaning given by subsection 9(1).

***employee***:

- (a) in relation to the Australian Pork Corporation, means a person who was an officer or employee immediately before the transfer time; and
- (b) in relation to the Pig Research and Development Corporation, means a person who was an officer or employee (including the Executive Director) immediately before the transfer time.

***funding contract*** means a contract under section 9.

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**industry services body** means the body declared as the industry services body under section 11.

**instrument** means:

- (a) an Act or any instrument under an Act; or
- (b) any other document.

**Levies Collection Act** means the *Primary Industries Levies and Charges Collection Act 1991*.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**Long Service Leave Act** means the *Long Service Leave (Commonwealth Employees) Act 1976*, as in force immediately before the transfer time.

**marketing payments** means payments referred to in paragraph 9(1)(a).

**matching payments** means payments referred to in paragraph 9(1)(c).

**Maternity Leave Act** means the *Maternity Leave (Commonwealth Employees) Act 1973*, as in force immediately before the transfer time.

**Presiding Officer** means:

- (a) in relation to the House of Representatives—the Speaker of the House of Representatives; and
- (b) in relation to the Senate—the President of the Senate.

**R&D payments** means payments referred to in paragraph 9(1)(b).

**SRC Act** means the *Safety, Rehabilitation and Compensation Act 1988*, as in force immediately before the transfer time.

**statutory authority** means:

- (a) the Australian Pork Corporation; or
- (b) the Pig Research and Development Corporation.

**successor body** has the meaning given by section 14.

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***transferring employee*** means a person who:

- (a) was an employee of a statutory authority immediately before the transfer time; and
- (b) becomes an employee of the successor body at the transfer time.

***transfer time*** means the time declared as the transfer time under section 13.

## **Part 3—Provision of pig industry services**

### **Division 1—Transitional functions of statutory authorities**

#### **8 Functions of statutory authorities**

- (1) It is a function of each statutory authority to plan, facilitate and participate in:
  - (a) its abolition under this Act; and
  - (b) the implementation of this Act.
- (2) Each statutory authority also has the function of providing funds to another entity in order to:
  - (a) meet expenses or liabilities that the entity incurs in participating in processes of the kind mentioned in subsection (1); or
  - (b) reimburse the entity for such expenses.
- (3) The Minister may give a written direction to a statutory authority about the performance of its functions under this section. The statutory authority must comply with the direction.
- (4) The Minister must cause a copy of a direction to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.
- (5) In this section:

***entity*** means any person or body (including the Commonwealth).

## Division 2—Funding contract

### 9 Funding contract

- (1) The Minister, on behalf of the Commonwealth, may enter into a contract with an eligible body (or with an eligible body and other persons) that provides for the Commonwealth to make payments of the following kinds to the body:
- (a) payments referred to as *marketing payments*;
  - (b) payments referred to as *R&D payments*;
  - (c) payments made in respect of particular financial years, referred to as *matching payments*.

For this purpose, *eligible body* means a body that is registered under the Corporations Law as a company limited by guarantee.

Note: After a contract has been entered into, the eligible body can be declared as the industry services body under section 11.

- (2) Before entering into the contract, the Minister must be satisfied that the terms of the contract make adequate provision to ensure that:
- (a) marketing payments are spent by the body on marketing, promotion, strategic policy development or other activities, for the benefit of the Australian pig industry; and
  - (b) R&D payments are spent by the body on research and development activities for the benefit of the Australian pig industry; and
  - (c) matching payments are spent by the body on research and development activities for the benefit of the Australian pig industry and the Australian community generally.
- (3) The contract does not have to oblige the Commonwealth to pay the full amounts that could be paid out of the money appropriated under section 10.
- (4) The contract may include provisions relating to assets and liabilities that are transferred to the eligible body under Division 4. This subsection does not impliedly limit the matters that may be included in the contract.

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- (5) This section does not impliedly limit the executive power of the Commonwealth to enter into agreements.

**10 Appropriation for payments under funding contract**

- (1) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under section 9.

*Overall limit for marketing payments*

- (2) For marketing payments, the total limit on the appropriation is the total amount of marketing levy received by the Commonwealth after 30 June 2000, less amounts that have been paid by the Commonwealth to the Australian Pork Corporation before the transfer time in respect of that levy.
- (3) In subsection (2):

**marketing levy** means any of the following:

- (a) levy (**new levy**) covered by paragraph 3(b) of Schedule 22 to the *Primary Industries (Excise) Levies Act 1999*;
- (b) amounts received under section 7 of the Levies Collection Act in relation to new levy;
- (c) amounts payable by way of penalty under section 15 of the Levies Collection Act in relation to new levy;
- (d) levy (**old levy**) received under paragraph 6(1)(b) of the repealed *Pig Slaughter Levy Act 1971*;
- (e) amounts received under section 7 of the Levies Collection Act in relation to old levy;
- (f) amounts payable by way of penalty under section 15 of the Levies Collection Act in relation to old levy;
- (g) amounts received under section 6 of the repealed *Pig Slaughter Levy Collection Act 1971* in relation to old levy;
- (h) amounts payable by way of penalty under section 7 of the repealed *Pig Slaughter Levy Collection Act 1971* in relation to old levy.

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*Overall limit for R&D payments*

- (4) For R&D payments, the total limit on the appropriation is the total amount of R&D levy received by the Commonwealth after 30 June 2000, less amounts that have been paid by the Commonwealth to the Pig Research and Development Corporation before the transfer time in respect of that levy.
- (5) In subsection (4):

**R&D levy** means any of the following:

- (a) levy (**new levy**) covered by paragraph 3(a) of Schedule 22 to the *Primary Industries (Excise) Levies Act 1999*;
- (b) amounts received under section 7 of the Levies Collection Act in relation to new levy;
- (c) amounts payable by way of penalty under section 15 of the Levies Collection Act in relation to new levy;
- (d) levy (**old levy**) received under paragraph 6(1)(a) of the repealed *Pig Slaughter Levy Act 1971*;
- (e) amounts received under section 7 of the Levies Collection Act in relation to old levy;
- (f) amounts payable by way of penalty under section 15 of the Levies Collection Act in relation to old levy;
- (g) amounts received under section 6 of the repealed *Pig Slaughter Levy Collection Act 1971* in relation to old levy;
- (h) amounts payable by way of penalty under section 7 of the repealed *Pig Slaughter Levy Collection Act 1971* in relation to old levy.

*Overall limit for matching payments*

- (6) For matching payments, the total limit on the appropriation is the total amount of levy received by the Commonwealth (either before or after the commencement of this section), less amounts that have been paid by the Commonwealth to the Pig Research and Development Corporation before the transfer time, in respect of that levy, under paragraph 30(1)(b) of the *Primary Industries and Energy Research and Development Act 1989*.
- (7) In subsection (6):

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**levy** means any of the following:

- (a) levy (**new levy**) covered by paragraph 3(a) of Schedule 22 to the *Primary Industries (Excise) Levies Act 1999*;
- (b) amounts received under section 7 of the Levies Collection Act in relation to new levy;
- (c) levy (**old levy**) received under paragraph 6(1)(a) of the repealed *Pig Slaughter Levy Act 1971*;
- (d) amounts received under section 7 of the Levies Collection Act in relation to old levy;
- (e) amounts received under section 6 of the repealed *Pig Slaughter Levy Collection Act 1971* in relation to old levy.

*Annual limit for matching payments*

- (8) For matching payments in respect of a particular financial year, the limit on the appropriation is the lesser of:
  - (a) 0.5% of the amount determined by the Minister to be the gross value of pig meat production in Australia in that financial year; and
  - (b) 50% of the amount spent by the eligible body in that financial year on activities that qualify, under the funding contract, as research and development activities.
- (9) For the purposes of subsection (8), the regulations may prescribe the manner in which the Minister is to determine the gross value of pig meat production in Australia in a financial year.

## **Division 3—Industry services body**

### **11 Declaration of industry services body**

- (1) If a funding contract has been made that provides for payments to be made to an eligible body, the Minister may, in writing, declare that body to be the industry services body for the purposes of this Act.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) A declaration under this section must specify the day on and after which the relevant body is to be the industry services body. That day must not be earlier than the day after the day, or the later of the days (as the case may be), that paragraph (3)(a) is complied with.
- (3) The Minister must cause a copy of each declaration under this section to be:
  - (a) laid before each House of the Parliament or, if a House is not sitting, presented to the Presiding Officer of that House for circulation to the members of that House and tabling on the next sitting day, within 5 days after the declaration is made; and
  - (b) published in the *Gazette* within 14 days after the declaration is made.
- (4) For the purposes of subsection (3), if a House has been dissolved and the newly-elected House has not met when a declaration is provided to the Presiding Officer, circulation to the persons who were members of that House immediately before the dissolution is taken to be circulation to the members of the House.
- (5) To avoid doubt, the function of a Presiding Officer of receiving, circulating and tabling a declaration under subsection (3) is a function of the Presiding Officer for the purposes of the *Parliamentary Presiding Officers Act 1965*.
- (6) The declaration is not invalid merely because it has not been published as required under subsection (3).

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### **12 Ministerial directions to industry services body**

- (1) The Minister may give a written direction to the industry services body if:
  - (a) the Minister:
    - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
    - (ii) is satisfied that the direction would not require the body to incur expenses greater than amounts paid to the body under this Act; and
    - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsection (3) on the body's commercial activities; and
  - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
- (2) The industry services body must comply with any direction given to it under subsection (1).
- (3) Subject to subsection (3A), where the Minister gives a direction to the industry services body under subsection (1):
  - (a) the Minister must cause a copy of the direction:
    - (i) to be published in the *Gazette* as soon as practicable after giving the direction; and
    - (ii) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction; and
  - (b) the annual reports of the body applicable to periods in which the direction has effect must include:
    - (i) particulars of the direction; and
    - (ii) an assessment of the impact that the direction has had on the operations of the body during the period.
- (3A) Subsection (3) does not apply in relation to a particular direction if:
  - (a) the Minister, on the recommendation of the industry services body, determines, in writing, that compliance with the subsection would, or would be likely to, prejudice the commercial activities of the body; or

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- (b) the Minister determines, in writing, that compliance with the subsection would be contrary to the public interest.
- (4) The Minister is not to be taken to be a director of the industry services body for the purposes of the Corporations Law merely because of the power conferred on the Minister by this section.
- (5) The Commonwealth is not to be taken to be in a position to exercise control over the industry services body merely because of the power conferred on the Minister by this section.

## **Division 4—Transfer of assets etc. of statutory authorities**

### **13 Transfer time**

The Minister must, in writing, declare the beginning of a specified day to be the *transfer time* for the purposes of this Act.

### **14 Successor body**

The first body that is declared as the industry services body automatically becomes the *successor body*.

### **15 Transfer of assets of statutory authorities**

- (1) This section provides for an asset of a statutory authority (the *transferor*) to become an asset of:
  - (a) the successor body (the *transferee*); or
  - (b) the Commonwealth (the *transferee*).
- (2) The Minister may, in writing, make any or all of the following declarations in relation to the asset:
  - (a) a declaration that the asset vests in the transferee at the transfer time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to the asset continues to have effect after the transfer time as if a reference in the instrument to the transferor were a reference to the transferee;
  - (c) a declaration that the transferee becomes the transferor's successor in law in relation to the asset immediately after the transfer time.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) The declaration has effect accordingly.
- (4) The Minister, on behalf of the Commonwealth, may sell any asset that vests in the Commonwealth under this section.

## **16 Transfer of liabilities of statutory authorities**

- (1) This section provides for a liability of a statutory authority (the *transferor*) to become a liability of:
  - (a) the successor body (the *transferee*); or
  - (b) the Commonwealth (the *transferee*).
- (2) The Minister may, in writing, make any or all of the following declarations in relation to the liability:
  - (a) a declaration that the liability vests in the transferee at the transfer time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to the liability continues to have effect after the transfer time as if a reference in the instrument to the transferor were a reference to the transferee;
  - (c) a declaration that the transferee becomes the transferor's successor in law in relation to the liability immediately after the transfer time.
- (3) The declaration has effect accordingly.

Note: For the purposes of this section, a liability or instrument may be specified by name, by inclusion in a specified class or in any other way.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth for, or in connection with, the discharge of any liabilities that become liabilities of the Commonwealth under this section.

## **17 Adjustment payments by Commonwealth**

- (1) The Minister may authorise payments by the Commonwealth to the successor body.
- (2) The Consolidated Revenue Fund is appropriated for payments under this section.
- (3) The limit on the appropriation is the sum of the following amounts:
  - (a) the amount of any money that becomes an asset of the Commonwealth under section 15;

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- (b) the proceeds of sale of any other asset that becomes an asset of the Commonwealth under section 15;
  - (c) interest, dividends or other amounts derived from money covered by paragraph (a) or (b) or from assets that become assets of the Commonwealth under section 15;
- reduced by the sum of payments referred to in subsection 45(1).

### **18 Registration of land transfers**

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in the successor body or the Commonwealth under this Division; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the right, title or interest has become vested in the successor body or the Commonwealth under this Division.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) The *Lands Acquisition Act 1989* does not apply in relation to anything done under this section.
- (4) In this section:

***land registration official***, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

### **19 Certificates in relation to assets other than land**

- (1) This section applies if:
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- (a) an asset other than land vests in the successor body or the Commonwealth under this Division; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the successor body or the Commonwealth under this Division.
- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary having regard to the effect of this Division.
- (3) In this section:

***assets official*** means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

## **20 Exemption from stamp duty etc.**

- (1) No stamp duty or other tax is payable under a law of a State or Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) The Minister may certify in writing:
  - (a) that a specified matter is an exempt matter; or
  - (b) that a specified thing was done in connection with a specified exempt matter.
- (3) In all courts, and for all purposes, a certificate under subsection (2) is evidence of the matter stated in the certificate.
- (4) In this section:

***exempt matter*** means any of the following:

- (a) the transfer or sale of an asset under section 15;

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- (b) the transfer of a liability under section 16;
- (c) the discharge of a liability referred to in subsection 16(4);
- (d) the operation of this Division in any other respect.

**21 Operation of GST Law**

- (1) For the purposes of the GST Law, the transfer of assets to the successor body under section 15 of this Act is taken to be consideration provided by the Commonwealth to the successor body for entering into obligations under the funding contract that was entered into by the successor body under section 9 of this Act.
- (2) An expression that is used in this section and defined in the *A New Tax System (Goods and Services Tax) Act 1999* has the same meaning in this section as it has in that Act.

## **Division 5—Transferring employees of statutory authorities**

### **Subdivision A—Leave entitlements and continuity of service**

#### **22 Leave entitlements and continuity of service**

- (1) This section has effect for the purposes of applying a law or an award to the employment by the successor body of a transferring employee.
- (2) The service of the transferring employee as an employee of the successor body is taken, for all purposes, to be continuous with his or her service as an employee of a statutory authority.
- (3) At the transfer time, the transferring employee is taken to have accrued an entitlement to Long Service Leave Act benefits, recreation leave benefits and sickness leave benefits, in connection with his or her employment by the successor body, that is equivalent to the entitlement that the employee had as an employee of the statutory authority immediately before the transfer time.
- (4) At the transfer time, the transferring employee is taken to have an entitlement to recognition by the successor body of years of service, in connection with his or her employment by the successor body, that is equivalent to the entitlement that the employee had as an employee of the statutory authority immediately before the transfer time.

### **Subdivision B—Safety, Rehabilitation and Compensation Act**

#### **23 Expressions defined in SRC Act**

Expressions that are defined in the SRC Act and used in this Subdivision have the same meanings as in that Act.

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**24 Continued application of SRC Act**

The SRC Act continues to apply after the transfer time in relation to:

- (a) injuries suffered before that time by an employee of a statutory authority; and
- (b) loss of, or damage to, property incurred before that time by an employee of a statutory authority.

**25 Commonwealth liability to meet certain SRC Act liabilities**

After the transfer time, the Commonwealth:

- (a) is liable to pay the liabilities of the Australian Pork Corporation under section 128A of the SRC Act; and
- (b) subject to section 26 of this Act, is taken to have been the employer of the employees of the Australian Pork Corporation before the transfer time for the purposes of the application of the SRC Act in relation to those liabilities.

**26 Rehabilitation provisions**

- (1) If a transferring employee had, before the transfer time, suffered an injury resulting in an incapacity for work or an impairment, the industry services body must, after that time, provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the SRC Act in relation to the transferring employee.
- (2) After the transfer time, the industry services body is, for the purposes of section 40 of the SRC Act, taken to be the relevant employer of each transferring employee.
- (3) After the transfer time, the industry services body is, for the purposes of applying section 71 of the SRC Act in relation to each transferring employee, taken to be a Commonwealth authority.

## 27 Premiums under the SRC Act

- (1) The Safety, Rehabilitation and Compensation Commission must, as soon as practicable after the transfer time, determine the amount (if any) by which the confirmed estimate of premium for each statutory authority for the transitional financial year should be reduced.
- (2) If:
  - (a) an amount equal to the confirmed estimate of premium for a statutory authority for the transitional financial year has been paid to the Commonwealth under section 96G of the SRC Act; and
  - (b) the amount of the confirmed estimate of premium is reduced as a result of a determination under subsection (1);the Minister may, in writing, direct that an amount equal to the refund amount, or amounts that together add up to the refund amount, be paid to the industry services body in accordance with the direction.
- (3) A direction by the Minister may be given subject to such conditions (if any) about the use or expenditure of the amount or amounts to which it relates as are set out in the direction.
- (4) If the Minister gives a direction, the amount or amounts to which it relates are payable to the industry services body out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (5) The payment of an amount under subsection (4) must be made in accordance with the direction, and is subject to the conditions (if any) set out in the direction.
- (6) A copy of each direction must be published in the *Gazette* within 14 days after the direction is given.
- (7) Failure to comply with subsection (6) does not affect the validity of a direction.
- (8) In this section:  
***refund amount*** means the amount equal to the difference between:

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- (a) the amount of the confirmed estimate of premium for a statutory authority for the transitional financial year; and
- (b) the amount of that confirmed estimate as reduced because of a determination under subsection (1).

*transitional financial year* means the financial year in which the transfer time occurs.

**Subdivision C—Deferred DFRDB Act benefits**

**28 Saving of deferred benefits**

- (1) This section applies to a transferring employee if, immediately before the transfer time, the employee was a person to whom deferred benefits were applicable under section 78 of the DFRDB Act.
- (2) For the purposes of Division 3 of Part IX of the DFRDB Act, the employee is taken to continue in public employment after the transfer time while the employee continues to be employed by the industry services body.
- (3) This section is subject to Division 3 of Part IX of the DFRDB Act.

**Subdivision D—Maternity leave**

**29 Maternity leave starting before transfer time**

- (1) This section applies in relation to a transferring employee if:
  - (a) immediately before the transfer time, the employee was a female employee of a statutory authority who was on leave granted under the Maternity Leave Act; and
  - (b) the employee would have been entitled to have remained on that leave after the transfer time if the employee had continued to be an employee of the statutory authority.
- (2) After the transfer time, the Maternity Leave Act continues to apply to the employee in relation to the confinement in respect of which the leave was granted as if the industry services body were a prescribed authority for the purposes of that Act.

### **30 Maternity leave starting after transfer time**

- (1) This section applies in relation to a transferring employee if:
  - (a) immediately before the transfer time, the employee was a female employee of a statutory authority; and
  - (b) within 9 months after the transfer time, the employee would have been entitled to start leave granted under the Maternity Leave Act if the employee had continued to be an employee of the statutory authority.
- (2) After the transfer time, the Maternity Leave Act continues to apply to the employee in relation to the confinement in respect of which she would have been entitled to leave as if the industry services body were a prescribed authority for the purposes of that Act.

### **Subdivision E—Long service leave**

#### **31 Expressions defined in Long Service Leave Act**

Expressions that are defined in the Long Service Leave Act and used in this Subdivision have the same meanings as in that Act.

#### **32 Long service leave for employees with less than 10 years service**

- (1) This section applies in relation to a transferring employee whose period of service for the purposes of the Long Service Leave Act immediately before the transfer time was less than 10 years.
- (2) This section does not apply in relation to an employee who dies.
- (3) If the employee continues to be employed by the industry services body until his or her combined service period is at least 10 years, the industry services body may grant the employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 35(1).
- (4) If:
  - (a) the employee stops being an employee of the industry services body on or after reaching the minimum retiring age, or because of retrenchment; and

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- (b) the employee's combined service period at the time when he or she stops being an employee of the industry services body is at least one year;

the industry services body may grant the employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 35(1).
- (5) If a period of long service leave may be granted to an employee under subsection (3) or (4), the industry services body may, if the employee asks in writing, grant the employee long service leave on half salary for a period not longer than twice the first-mentioned period.
- (6) Long service leave granted in the circumstances set out in subsection (4) must be taken so as to end immediately before the employee stops being an employee.
- (7) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 20 of the Long Service Leave Act if:
  - (a) that section applied to the employee; and
  - (b) for the expression "section 16 or 17" in that section there were substituted the expression "section 32 of the *Pig Industry Act 2001*".

**33 Payments in lieu of long service leave for employees with less than 10 years service**

- (1) This section applies to a transferring employee whose period of service for the purposes of the Long Service Leave Act immediately before the transfer time was less than 10 years.
- (2) This section does not apply in relation to an employee who dies.
- (3) If the employee stops being an employee of the industry services body on or after the day on which his or her combined service period reaches 10 years, the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 35(2).

- (4) If:
- (a) the employee stops being an employee of the industry services body on or after reaching the minimum retiring age, or because of retrenchment; and
  - (b) at that time the employee's combined service period is at least one year;
- the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 35(2).
- (5) If:
- (a) the employee stops being an employee of the industry services body; and
  - (b) the industry services body is satisfied that the employee left the industry services body's employment because of ill-health that justified his or her so leaving; and
  - (c) when the employee left, his or her combined service period was at least one year;
- the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 35(2).
- (6) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 21 of the Long Service Leave Act if:
- (a) that section applied to the employee; and
  - (b) for the expression "sections 16 and 17" in that section there were substituted the expression "section 33 of the *Pig Industry Act 2001*".

### **34 Payments on the death of an employee**

- (1) This section applies to a transferring employee whose period of service for the purposes of the Long Service Leave Act immediately before the transfer time was less than 10 years.
- (2) If the employee dies after the transfer time and, immediately before his or her death:

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- (a) the employee was an employee of the industry services body;  
and
  - (b) the employee's combined service period was at least one  
year; and
  - (c) the employee had one or more dependants;  
the industry services body must make a payment to the dependant  
or dependants.
- (3) The total amount of the payment or payments is the amount that  
would have been payable to the employee under section 33 if, on  
the day of his or her death, the employee had instead stopped being  
an employee of the industry services body on or after reaching the  
minimum retiring age.
- (4) If subsection (2) applies, section 23 of the Long Service Leave Act  
has effect as if:
  - (a) that section applied to an employee of the industry services  
body; and
  - (b) a reference in that section to the approving authority were a  
reference to the industry services body; and
  - (c) for the expression "this Act" in that section there were  
substituted the expression "section 34 of the *Pig Industry Act*  
*2001*"; and
  - (d) for the expression "subsection 16(7) or 17(5)" there were  
substituted the expression "section 34 of the *Pig Industry Act*  
*2001*".

**35 Employee's long service leave credit for the purposes of  
sections 32 and 33**

- (1) For the purposes of section 32, an employee's long service leave  
credit is equal to the long service leave credit that the employee  
would have had under the Long Service Leave Act for the period:
  - (a) beginning when the employee began his or her period of  
service; and
  - (b) ending at the transfer time;  
if the employee had been retrenched at the transfer time.

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- (2) For the purposes of section 33, an employee's long service leave credit is the employee's long service leave credit worked out under subsection (1) reduced by any long service leave credit used under section 32.

**36 Employees with at least 10 years service**

- (1) This section applies to a transferring employee whose period of service for the purposes of the Long Service Leave Act immediately before the transfer time was at least 10 years.
- (2) Even though the employee ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee's accrued rights under that Act continue. However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.
- (3) The Long Service Leave Act has effect after the transfer time, in relation to the employee's rights under that Act that accrued before the transfer time, as if the industry services body were an approving authority for the purposes of that Act.

**37 Division not to affect post-commencement long service leave rights**

- (1) This Division does not affect an employee's post-commencement long service leave rights.
- (2) In this section:

***law*** means:

- (a) a law of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

***post-commencement long service leave rights*** means any long service leave rights the employee acquires after the transfer time under an award, determination, industrial agreement or law (other than this Act).

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**Subdivision F—Miscellaneous**

**38 Cessation of mobility rights**

If a transferring employee had rights under section 6 or 7 of the *Public Employment (Consequential and Transitional) Amendment Act 1999* immediately before the transfer time, the employee ceases to have those rights, and ceases to be an APS employee, at the transfer time.

**39 Transferring employees who accept employment with equivalent terms and conditions**

- (1) A transferring employee who is employed by the successor body on equivalent terms and conditions is not entitled to receive any payment or other benefit merely because his or her employment by a statutory authority was terminated by the operation of this Act.
- (2) For the purposes of this section, the question whether the terms and conditions of employment of a person are, when taken as a whole, at least equivalent to other terms and conditions of employment, taken as a whole, that applied to the person at a particular time is to be determined in writing by the Minister.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection (2).
- (4) In this section:

***equivalent terms and conditions*** means terms and conditions that, taken as a whole, are at least equivalent to the terms and conditions of employment, taken as a whole, that applied to the transferring employee at the time when he or she agreed to be employed by the successor body.

## **Division 6—Miscellaneous**

### **40 Operation of Archives Act**

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the National Archives of Australia has given permission under paragraph 24(2)(b) of that Act.

### **41 Certificates, declarations etc. taken to be authentic etc.**

A document that appears to be a certificate, declaration or other document made or issued under this Part:

- (a) is taken to be such a certificate, declaration or other document; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

### **42 Publication of declarations**

- (1) A copy of each declaration made by the Minister under this Part must be published in the *Gazette* not later than the 14th day after the day on which the declaration is made.
- (2) Failure to comply with this section does not affect the validity of a declaration.

## Part 4—Miscellaneous

### 43 Delegation

- (1) The Minister may delegate all or any of his or her powers and functions under this Act to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

### 44 Compensation for acquisition of property

- (1) If:
  - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**45 Commonwealth expenses in connection with abolition of statutory bodies etc.**

- (1) The Consolidated Revenue Fund is appropriated for the purpose of the following payments by the Commonwealth:
  - (a) payments for the purpose of meeting expenses or liabilities that the Commonwealth incurs in participating in processes of the kind mentioned in subsection 8(1);
  - (b) payments to another person or body in order to reimburse that person or body for expenses that the person or body incurs in participating in those processes.
- (2) The limit on the appropriation is the sum of the amounts referred to in paragraphs 17(3)(a), (b) and (c), reduced by the sum of payments made under subsection 17(1).

**46 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for matters of a transitional or saving nature arising from the amendments or repeals made by this Act.

## **Schedule 1—Amendments and repeals**

### **Part 1—Amendments and repeals of Acts**

#### ***Freedom of Information Act 1982***

##### **1 Division 1 of Part II of Schedule 2**

Omit “Australian Pork Corporation, in relation to documents in respect of its commercial activities”.

#### ***Pig Industry Act 1986***

##### **2 The whole of the Act**

Repeal the Act.

#### ***Pig Industry Act 2001***

##### **3 Subsection 39(3)**

Omit “Appeals”, substitute “Review”.

#### ***Primary Industries (Excise) Levies Act 1999***

##### **4 Clause 1 of Schedule 22 (definition of *Corporation*)**

Repeal the definition.

##### **5 Clause 1 of Schedule 22**

Insert:

*industry services body* has the same meaning as in the *Pig Industry Act 2001*.

##### **6 Clause 1 of Schedule 22 (definition of *R&D authority*)**

Repeal the definition.

##### **7 Clause 1 of Schedule 22 (definition of *R&D Corporation*)**

Repeal the definition.

##### **8 Clause 1 of Schedule 22 (definition of *R&D Council*)**

Repeal the definition.

**9 Clause 1 of Schedule 22 (definition of *R&D Fund*)**

Repeal the definition.

**10 Clause 3 of Schedule 22 (notes 1 and 2)**

Repeal the notes, substitute:

Note 1: Paragraph (a) identifies amounts that are available for *R&D payments* under section 9 of the *Pig Industry Act 2001*.

Note 2: Paragraph (b) identifies amounts that are available for *marketing payments* under section 9 of the *Pig Industry Act 2001*.

**11 Subclause 5(1) of Schedule 22**

Omit “R&D authority”, substitute “industry services body”.

**12 Subclause 5(1) of Schedule 22**

Omit “that authority”, substitute “that body”.

**13 Subclause 5(2) of Schedule 22**

Omit “Corporation” (first occurring), substitute “industry services body”.

**14 Subclause 5(2) of Schedule 22**

Omit “Corporation” (last occurring), substitute “body”.

***Safety, Rehabilitation and Compensation Act 1988***

**15 Subsection 128A(4) (paragraph (m) of the definition of *prescribed Commonwealth authority*)**

Repeal the paragraph.

## **Part 2—Repeal of regulations**

### ***Pig Research and Development Corporation Regulations***

#### **16 The Pig Research and Development Corporation Regulations**

Repeal the regulations.

## Part 3—Transitional and savings

### 17 Final annual reports for abolished bodies

- (1) For the final reporting period, the final directors of the Australian Pork Corporation must, in relation to that Corporation, prepare the report referred to in section 9 of the *Commonwealth Authorities and Companies Act 1997*. The report must include the matters mentioned in section 34 of the *Pig Industry Act 1986*.
- (2) For the final reporting period, the final directors of the Pig Research and Development Corporation must, in relation to that Corporation, prepare the report referred to in section 9 of the *Commonwealth Authorities and Companies Act 1997*. The report must include the matters mentioned in section 28 of the *Primary Industries and Energy Research and Development Act 1989*.
- (3) For the purposes of this item, the final reporting period is to be treated as a financial year.
- (4) For the purposes only of preparing the report, the final directors are to be treated as continuing to be directors, and are entitled to receive the remuneration and allowances they would have been entitled to receive if the Corporation concerned had not been abolished.
- (5) The expenses (including remuneration and allowances) of preparation of the final reports are to be paid or discharged by the Commonwealth. The Consolidated Revenue Fund is appropriated for that purpose.
- (6) In this item:
  - director** has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.
  - final director** means a person who was a director immediately before the transfer time.
  - final reporting period** means the period that:
    - (a) starts at the beginning of the financial year in which the transfer time occurred; and
    - (b) ends immediately before the transfer time.

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*[Minister's second reading speech made in—  
House of Representatives on 30 November 2000  
Senate on 8 March 2001]*

(195/00)