



Australian Horticultural Corporation Act 1987

No. 164 of 1987

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Australian Horticultural Corporation Act 1987

No. 164 of 1987

An Act to establish an Australian Horticultural Corporation, and for related purposes

[Assented to 26 December 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Horticultural Corporation Act 1987*.

Commencement

2. (1) Parts I, III and VI shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining Parts shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

“appoint” includes re-appoint;

“Australian horticultural industry” means any industry carried on in Australia in connection with:

- (a) producing horticultural products by:
 - (i) growing or harvesting; or
 - (ii) processing Australian horticultural products; or
- (b) handling, storing, transporting, processing or marketing Australian horticultural products;

“Australian horticultural products” means:

- (a) horticultural products grown or harvested in Australia;
- (b) horticultural products produced by the processing in Australia of products referred to in paragraph (a); or
- (c) products in a class of products prescribed for the purposes of this definition;

“authorised auditor” means:

- (a) the Corporation auditor; or
- (b) a person authorised, in writing, by the Corporation auditor;

“Chairperson” means:

- (a) in relation to the Corporation—the Chairperson of the Corporation;
- (b) in relation to the Corporation Selection Committee—the Chairperson of the Corporation Selection Committee;
- (c) in relation to a product group committee—the Chairperson of the product group committee; and
- (d) in relation to a product group selection committee—the Chairperson of the product group selection committee;

“company auditor” means a firm or person carrying on the business of auditing accounts;

“Corporation” means the Australian Horticultural Corporation;

“Corporation auditor” means:

- (a) if an appointment under subsection 57 (6) of a company auditor as the auditor of the Corporation is in effect—that company auditor; or
- (b) in any other case—the Auditor-General;

“Corporation Selection Committee” means the Australian Horticultural Corporation Selection Committee;

“cut flowers and foliage” includes processed cut flowers and foliage;

“Deputy Chairperson” means:

- (a) in relation to the Corporation—the Deputy Chairperson of the Corporation;

(b) in relation to the Corporation Selection Committee—the Deputy Chairperson of the Corporation Selection Committee; and

(c) in relation to a product group selection committee—the Deputy Chairperson of the product group selection committee;

“eligible industry body” means a body prescribed by the regulations for the purposes of the provision in which the expression is used;

“Export Charge Act” means the *Horticultural Export Charge Act 1987*;

“Export Charge Collection Act” means the *Horticultural Export Charge Collection Act 1987*;

“fruits” includes processed fruits;

“government member” means the government member of the Corporation;

“horticultural products” means:

(a) fruits;

(b) vegetables;

(c) nuts;

(d) nursery products;

(e) cut flowers and foliage; and

(f) products in a class of products prescribed for the purposes of this paragraph;

but does not include products in a class of products that are declared by the regulations not to be horticultural products for the purposes of this definition;

“joint venture” means an undertaking carried on by 2 or more persons in common otherwise than as partners;

“Levy Act” means the *Horticultural Levy Act 1987*;

“Levy Collection Act” means the *Horticultural Levy Collection Act 1987*;

“Managing Director” means the Managing Director of the Corporation;

“member” includes:

(a) in relation to the Corporation—the Chairperson of the Corporation, the Deputy Chairperson of the Corporation, the government member and the Managing Director;

(b) in relation to the Corporation Selection Committee—the Chairperson and Deputy Chairperson of the Corporation Selection Committee;

(c) in relation to a product group committee—the Chairperson of the product group committee; and

(d) in relation to a product group selection committee—the Chairperson and Deputy Chairperson of the product group selection committee;

“nominated member” means:

- (a) in relation to the Corporation—a member of the Corporation other than the Chairperson, the government member and the Managing Director;
- (b) in relation to a product group committee—a member of the committee other than the Chairperson;
- (c) in relation to the Corporation Selection Committee—a member of the Corporation Selection Committee other than the Chairperson; or
- (d) in relation to a product group selection committee—a member of the committee appointed on the nomination of eligible industry bodies;

“nursery products” includes trees, shrubs, plants, seeds, bulbs, corms, tubers, propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts, or cut flowers or foliage;

“nuts” includes processed nuts;

“order” means an order made under the regulations;

“Parliament”, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;

“prescribed” includes prescribed by an order;

“process”, in relation to a product, means the performance of any operation in relation to the product, and includes the chilling, freezing, drying, bottling, packing, canning or preserving of the product, but does not include the performance of an operation included in a class of operations prescribed for the purposes of this definition, either generally or in relation to the product or a class of products in which the product is included;

“product” includes a thing occurring naturally;

“product group committee” means a committee established under section 59;

“product group selection committee” means the selection committee established under section 100 for a product group committee;

“regulations” includes orders;

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments and documents;

“share” means a share in the share capital of a corporation, and includes stock;

“State” includes the Northern Territory;

“this Act” includes the regulations;

“vegetables” includes:

- (a) mushrooms and other edible fungi; and
- (b) processed vegetables (including mushrooms and other edible fungi).

(2) A reference in this Act to dealing with securities includes a reference to:

- (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing and reselling securities;
- (b) creating, selling, purchasing and reselling rights and options in relation to securities; and
- (c) entering into agreements and other arrangements in relation to securities.

Act binds Crown

4. (1) This Act binds the Crown in right of the Commonwealth, of each of the States and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, or of a State or Norfolk Island, liable to be prosecuted for an offence.

Application of Act

5. This Act applies both within and outside Australia.

PART II—THE AUSTRALIAN HORTICULTURAL CORPORATION

Division 1—Establishment, functions and powers of Corporation

Establishment

6. A corporation by the name of the Australian Horticultural Corporation is established by this section.

Objects

7. (1) The principal object of the establishment of the Corporation is to assist Australian horticultural industries to achieve their full potential in overseas markets.

(2) The objects of the establishment of the Corporation also include assisting the development of Australian horticultural industries.

(3) It is the intention of the Parliament that the principal object of the establishment of the Corporation should be achieved through the Corporation acting, to the greatest extent practicable:

- (a) in co-operation with all segments of Australian horticultural industries; and
- (b) in conjunction with Commonwealth, State and Territory authorities concerned with the export of Australian horticultural products.

Functions

8. The functions of the Corporation are:

- (a) to encourage, assist, facilitate, promote and co-ordinate the export of Australian horticultural products;

- (b) to improve:
 - (i) the efficiency and competitiveness of Australian horticultural industries;
 - (ii) the quality of Australian horticultural products;
 - (iii) the producing of Australian horticultural products, whether by:
 - (A) growing or harvesting; or
 - (B) processing Australian horticultural products; and
 - (iv) the handling, storing, transporting, processing or marketing of Australian horticultural products;particularly with a view to enhancing the exportability of Australian horticultural products;
- (c) to promote the consumption and sale, both in Australia and overseas, of Australian horticultural products;
- (d) to encourage, assist, facilitate and promote the marketing in Australia of Australian horticultural products, particularly between the States, between States and Territories, between Territories and in the Territories;
- (e) to co-operate with:
 - (i) persons and bodies representative of Australian horticultural industries; and
 - (ii) Commonwealth, State and Territory authorities concerned with:
 - (A) Australian horticultural industries; or
 - (B) the export of Australian horticultural products; and
- (f) such other functions in relation to Australian horticultural industries as are conferred on the Corporation by or under this Act or any other Act.

Powers

9. (1) The Corporation has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:

- (a) negotiate contracts for the carriage of horticultural products to be exported from Australia (including the carriage of such products within Australia);
- (b) negotiate insurance contracts in relation to horticultural products;
- (c) obtain and disseminate market intelligence;
- (d) collect and publish statistics in relation to horticultural products;
- (e) make charges for work done, services rendered, and goods and information supplied, by it;
- (f) with the written approval of the Minister:
 - (i) form, and participate in the formation of, companies;

- (ii) subscribe for and purchase shares in, and debentures and other securities of, companies;
- (iii) enter into partnerships; and
- (iv) participate in joint ventures and arrangements for the sharing of profits;
- (g) enter into contracts;
- (h) appoint agents and attorneys, and act as an agent for other persons;
- (j) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust;
- (k) do such other things as it is authorised to do by or under this Act or any other Act; and
- (m) do anything incidental to any of its powers.
- (2) An approval under paragraph (1) (f):
 - (a) may be of general or particular application; and
 - (b) may be given subject to specified conditions and restrictions.

Export trading powers

10. (1) Without limiting the generality of subsection 9 (1), the Corporation may, to the extent that it considers it necessary in the interests of Australian horticultural industries and with the written approval of the Minister:

- (a) engage in the export of Australian horticultural products; and
- (b) do all things necessary or convenient to be done for, or in connection with, the export of Australian horticultural products;

and, in particular, may:

- (c) buy and sell horticultural products for export;
- (d) enter into contracts for the carriage of horticultural products to be exported from Australia (including the carriage of such products within Australia);
- (e) enter into insurance contracts in relation to the export of horticultural products; and
- (f) enter into and deal with currency futures contracts, interest rate futures contracts, and horticultural products futures contracts, at futures markets for hedging purposes in relation to the export of horticultural products.

- (2) An approval under subsection (1):
 - (a) may be of general or particular application; and
 - (b) may be given subject to specified conditions and restrictions.

Consultations with industry representatives etc.

11. (1) Without limiting the generality of subsection 9 (1), the Corporation may make arrangements for consultations between it or a product group committee and:

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- (a) persons and bodies representative of Australian horticultural industries; and
 - (b) Commonwealth, State and Territory authorities concerned with:
 - (i) Australian horticultural industries; or
 - (ii) the export of Australian horticultural products.
- (2) Arrangements made by the Corporation under subsection (1) may provide for:
- (a) the Corporation's agreeing to meet travel expenses reasonably incurred by a person in connection with consultations with the Corporation or a product group committee; and
 - (b) subject to written guidelines given to the Corporation by the Minister, the Corporation's agreeing to meet expenses (other than travel expenses) reasonably incurred by an eligible industry body, or a member of an eligible industry body, in connection with consultations with the Corporation or a product group committee.

Division 2—Constitution and meetings of Corporation

Corporation is body corporate etc.

12. (1) The Corporation:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) The common seal of the Corporation shall be kept in such custody as the Corporation directs and shall not be used except as authorised by the Corporation.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Corporation appearing on a document and shall presume that it was duly affixed.

Constitution of Corporation

13. (1) The Corporation consists of the following members:

- (a) the Chairperson;
- (b) the government member;
- (c) the Managing Director;
- (d) 6 other members.

(2) The performance of the functions, and the exercise of the powers, of the Corporation are not affected by reason only of vacancies in the membership of the Corporation.

Chairperson

14. The Chairperson of the Corporation may be referred to as the Chairman or Chairwoman, as the case requires.

Deputy Chairperson

15. (1) The Minister shall appoint a nominated member of the Corporation to be the Deputy Chairperson of the Corporation.

(2) The Minister shall, before appointing a person to be the Deputy Chairperson, consult with the Chairperson of the Corporation.

(3) The Minister may at any time terminate an appointment made under subsection (1).

(4) A person appointed as Deputy Chairperson ceases to hold the office if the person ceases to be a nominated member of the Corporation.

(5) A person appointed as Deputy Chairperson may resign the office by writing signed by the person and delivered to the Minister.

(6) During any period when:

- (a)** the office of Chairperson of the Corporation is vacant (whether or not an appointment has previously been made to the office); or
- (b)** the Chairperson of the Corporation is absent from Australia or is, for any reason, unable to perform the duties of the office;

the Deputy Chairperson shall act as Chairperson.

(7) The Deputy Chairperson has, when acting as Chairperson, all the powers, duties, rights and entitlements of the Chairperson of the Corporation.

(8) The Deputy Chairperson of the Corporation may be referred to as the Deputy Chairman or Deputy Chairwoman, as the case requires.

(9) Anything done by or in relation to a person purporting to act as Chairperson under subsection (6) is not invalid because:

- (a)** there was a defect or irregularity in connection with the appointment of the person as Deputy Chairperson;
- (b)** the appointment of the person as Deputy Chairperson had ceased to have effect; or
- (c)** the occasion for the person to act as Chairperson had not arisen or had ceased.

Appointment of members

16. (1) The members of the Corporation (other than the Managing Director) shall be appointed by the Minister.

(2) The Minister shall not appoint a person to be the government member unless the Minister is satisfied that the person has experience in, and knowledge of:

- (a)** the formulation of government policy; and
- (b)** public administration.

(3) The nominated members of the Corporation shall be appointed from persons nominated by the Corporation Selection Committee under section 80.

(4) The Minister shall not appoint a person who has attained 65 years of age as a member of the Corporation unless the Minister is satisfied that the person has expertise required by the Corporation.

(5) The appointment of a person as a member of the Corporation is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

Members of executive of eligible industry bodies not eligible for appointment etc.

17. Subject to the regulations, a person who is a member of the executive of an eligible industry body shall not be appointed as a member of the Corporation, and a member of the Corporation who becomes a member of the executive of an eligible industry body ceases to hold office as a member of the Corporation.

Term of office

18. (1) A member of the Corporation (other than the Managing Director):

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act:
 - (i) in the case of a member other than the government member—for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act; and
 - (ii) in the case of the government member—during the Minister's pleasure.

(2) If a member of the Corporation (other than the government member or the Managing Director) ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

(3) The Minister shall not appoint a person as a member of the Corporation for a term that extends beyond the day on which the person will attain 65 years of age unless the Minister is satisfied that the person has expertise required by the Corporation.

Members (other than Managing Director) hold office on part time basis

19. The members of the Corporation (other than the Managing Director) hold office on a part time basis.

Remuneration and allowances

20. (1) A member of the Corporation shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member of the Corporation shall be paid such allowances as are prescribed.

(3) Where:

- (a) a person who is a member of the Corporation is a member of, or a candidate for election to, the Parliament of a State; and
- (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person shall not be paid remuneration or allowances under this Act, but shall be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

(4) Where a person who is a member of the Corporation:

- (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person;
- (b) is in the service or employment of a State, or an authority of a State, on a full time basis; or
- (c) holds or performs the duties of an office or position established by or under a law of a State on a full time basis;

it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

(5) An amount payable under subsection (4) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.

(6) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(7) This section does not apply in relation to the Managing Director.

Leave of absence

21. (1) The Minister may grant leave of absence to the Chairperson of the Corporation on such terms and conditions as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another member of the Corporation (other than the Managing Director) on such terms and conditions as the Chairperson considers appropriate.

Resignation

22. A member of the Corporation (other than the Managing Director) may resign by writing signed and delivered to the Minister.

Disclosure of interests

23. (1) Where:

- (a) a member of the Corporation has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Corporation; and

(b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter; the member shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Corporation.

Termination of appointment

24. (1) The Minister may terminate the appointment of the Chairperson or a nominated member of the Corporation for misbehaviour or physical or mental incapacity.

(2) If:

- (a) the Chairperson or a nominated member of the Corporation becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) the Chairperson or a nominated member of the Corporation, without reasonable excuse, contravenes section 23;
- (c) the Chairperson of the Corporation is absent, except with the leave of the Minister, from 3 consecutive meetings of the Corporation; or
- (d) a nominated member of the Corporation is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Corporation;

the Minister shall terminate the member's appointment.

Terms and conditions of appointment not provided for by Act

25. A member of the Corporation (other than the Managing Director) holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Meetings

26. (1) Subject to subsection (2), meetings of the Corporation shall be held at such times and places as the Corporation from time to time determines.

(2) The Chairperson of the Corporation may at any time convene a meeting of the Corporation.

(3) The Chairperson of the Corporation shall preside at all meetings of the Corporation at which the Chairperson is present.

(4) If the Chairperson and Deputy Chairperson of the Corporation are not present at a meeting of the Corporation, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of the Corporation:

- (a) 5 members constitute a quorum;

- (b) a question shall be decided by a majority of the votes of the members present and voting; and
 - (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) The Corporation shall keep minutes of its proceedings.
- (7) The Corporation may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Division 3—Corporate plan and annual operational plans

Corporate plan

27. (1) The Corporation shall, as soon as practicable after the commencement of this Part, prepare a corporate plan.

(2) The Corporation shall, in each financial year to which the corporate plan relates and not later than 1 April, review and revise the plan.

(3) The Corporation:

- (a) may, at any other time, revise the corporate plan; and
- (b) shall revise the corporate plan if the Minister requests it, in writing, to revise the corporate plan and gives reasons for the request.

(4) The corporate plan as prepared under subsection (1) shall include a statement of the objectives of the Corporation, and an assessment of the market and economic outlook for Australian horticultural industries, for:

- (a) if the plan is prepared in the first 9 months of a financial year, the financial year in which the plan is prepared and the 4 subsequent financial years; or
- (b) if the plan is prepared in the last 3 months of a financial year, the next financial year and the 4 subsequent financial years.

(5) The corporate plan as revised under subsection (2) shall include a statement of the objectives of the Corporation, and an assessment of the market and economic outlook for Australian horticultural industries, for the financial year immediately following the financial year in which the corporate plan is revised and the 4 subsequent financial years.

(6) The corporate plan shall also outline the strategies and policies that the Corporation intends to adopt in order to achieve its objectives.

(7) The corporate plan, and a revision of the corporate plan:

- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b) has no effect until it is approved, in writing, by the Minister.

(8) Before preparing or revising the corporate plan, the Corporation shall consult with eligible industry bodies.

Annual operational plans

28. (1) When the Corporation is preparing the corporate plan under subsection 27 (1) or revising the corporate plan under subsection 27 (2), it shall prepare an annual operational plan for the earliest financial year to which the corporate plan or the corporate plan as so revised, as the case may be, will relate.

(2) The annual operational plan for a financial year shall:

- (a)** contain an estimate of its receipts and expenditure for the financial year; and
- (b)** specify:
 - (i)** the programs that the Corporation proposes to carry out; and
 - (ii)** the resources that the Corporation proposes to allocate to each such program;

in giving effect to the corporate plan during the financial year.

(3) If the Minister is of the opinion that the annual operational plan is inconsistent with the corporate plan, the Minister may, in writing, request the Corporation to revise the annual operational plan.

(4) The Corporation may, at any time, revise the annual operational plan, and shall revise the plan if the Minister requests it under subsection (3) to do so and gives written reasons for the request.

(5) An annual operational plan, and a revision of an annual operational plan:

- (a)** shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b)** has no effect until it is approved, in writing, by the Minister.

(6) The Minister shall approve an annual operational plan, or a revision of an annual operational plan, unless the Minister is of the opinion that the plan, or the plan as proposed to be revised, as the case may be, is inconsistent with the corporate plan.

Corporation to comply with corporate plan and annual operational plans

29. To the extent that it is practicable to do so, the Corporation shall ensure that the performance of its functions, and the exercise of its powers, is consistent with, and designed to give effect to, the corporate plan and the applicable annual operational plan.

Division 4—Accountability

Annual report

30. (1) The Corporation shall, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during that year, together with financial statements for that year in such form as the Minister for Finance approves, in writing.

(2) Without limiting the generality of subsection (1), the Corporation shall include in the report:

(a) an assessment of the extent to which its operations during the year have:

- (i) achieved the objectives stated in the corporate plan; and
- (ii) implemented the annual operational plan applicable to the year; and

(b) particulars of:

- (i) export trading activities undertaken by the Corporation during the year;
- (ii) significant capital works programs (if any) undertaken by the Corporation during the year;
- (iii) significant acquisitions and dispositions of real property by the Corporation during the year;
- (iv) companies formed by the Corporation, and companies in whose formation the Corporation participated, during the year;
- (v) shares and securities subscribed for, purchased and disposed of by the Corporation during the year;
- (vi) partnerships entered into by the Corporation during the year;
- (vii) joint ventures, and arrangements for the sharing of profits, entered into by the Corporation during the year;
- (viii) currency futures contracts, interest rate futures contracts and horticultural products futures contracts entered into by the Corporation during the year; and
- (ix) variations to the corporate plan, and to the applicable annual operational plan, agreed to by the Minister during the year.

(3) Before submitting financial statements to the Minister under subsection (1), the Corporation shall submit them to the Corporation auditor, who shall report to the Minister:

- (a) whether, in the auditor's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the auditor's opinion, show fairly the financial transactions and state of the affairs of the Corporation;
- (c) whether, in the auditor's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Corporation during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the auditor considers should be reported to the Minister.

(4) The Minister shall cause a copy of the report and financial statements, together with a copy of the Corporation auditor's report, to be laid before

each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(5) If this Part does not commence at the beginning of a financial year, this section has effect in relation to the period commencing on the commencement of this Part and ending on the next 30 June as if:

- (a) in a case where the period is less than 6 months—the period were included in the next financial year; or
- (b) in any other case—the period were a financial year.

Accountability to horticultural industries

31. The Chairperson of the Corporation shall, as soon as practicable after an annual report of the Corporation has been given to the Minister, provide copies of the report to each eligible industry body and:

- (a) make arrangements with each eligible industry body to which this paragraph applies to attend the next annual conference of the body or a meeting of the executive of the body; and
- (b) convene a meeting with representatives of the other eligible industry bodies;

for the purpose of enabling:

- (c) the annual report to be considered;
- (d) the Chairperson to deliver an address in relation to:
 - (i) the activities of the Corporation in the period to which the report relates; and
 - (ii) the intended activities of the Corporation in the financial year following the end of the period; and
- (e) the Chairperson to be questioned in relation to those activities.

Minister may give directions in exceptional circumstances

32. (1) Subject to subsection (2), the Minister may give written directions to the Corporation in relation to the performance of its functions and the exercise of its powers, and the Corporation shall comply with the directions.

(2) The Minister shall not give a direction to the Corporation under subsection (1) unless the Minister:

- (a) has informed the Corporation, in writing, that the Minister is considering giving the direction;
- (b) has given the Chairperson of the Corporation an opportunity to discuss the need for the proposed direction with the Minister; and
- (c) is satisfied that, because of the existence of exceptional circumstances, it is necessary to give the direction to the Corporation in order to ensure that the performance of the functions, or the exercise of the powers, of the Corporation does not conflict with major government policies.

(3) Subject to subsection (4), where the Minister gives a direction to the Corporation under subsection (1):

- (a) the Minister shall 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 laid before each House of the Parliament within 15 sitting days of that House after giving the direction; and
 - (b) the annual reports of the Corporation applicable to periods in which the direction has effect shall include:
 - (i) particulars of the direction; and
 - (ii) an assessment of the impact that the direction has had on the operations of the Corporation during the period.
- (4) Subsection (3) does not apply in relation to a particular direction if:
- (a) the Minister, on the recommendation of the Corporation, determines, in writing, that compliance with the subsection would, or would be likely to, prejudice the commercial activities of the Corporation; or
 - (b) the Minister determines, in writing, that compliance with the subsection would be contrary to the public interest.

Division 5—Managing Director

Managing Director

33. There shall be a Managing Director of the Corporation.

Duties

34. (1) The Managing Director shall conduct the affairs of the Corporation.

(2) The Managing Director shall act in accordance with any policies determined by, and any directions given by, the Corporation.

(3) All acts and things done in the name of, or on behalf of, the Corporation by the Managing Director shall be deemed to have been done by the Corporation.

Appointment

35. (1) The Managing Director shall be appointed by the Corporation.

(2) The Chairperson, the government member or a nominated member of the Corporation shall not be appointed as the Managing Director.

(3) The Corporation shall not appoint a person who has attained 65 years of age as Managing Director.

(4) The appointment of a person as Managing Director is not invalid because of a defect or irregularity in connection with the person's appointment.

Term of appointment etc.

36. (1) The Managing Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Corporation's pleasure.

(2) The Managing Director ceases to hold office on attaining 65 years of age.

Terms and conditions of appointment

37. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Corporation with the written approval of the Minister.

Application of Remuneration Tribunals Act

38. The office of Managing Director is not a public office within the meaning of the *Remuneration Tribunals Act 1973*.

Managing Director not to engage in other paid employment

39. The Managing Director shall not engage in paid employment outside the duties of the office except with the approval of the Corporation.

Leave of absence

40. The Chairperson of the Corporation may grant leave of absence to the Managing Director on such terms and conditions, whether as to remuneration or otherwise, as are determined by the Corporation with the written approval of the Minister.

Resignation

41. The Managing Director may resign by writing signed and delivered to the Chairperson of the Corporation.

Disclosure of interests

42. The Managing Director shall give written notice to the Chairperson of the Corporation of all direct or indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

Acting Managing Director

43. (1) The Corporation may appoint a person (other than a member of the Corporation) to act as Managing Director:

- (a) during a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) An appointment under subsection (1) may be expressed to have effect only in specified circumstances.

(3) Where:

(a) a person is acting under paragraph (1) (b); and

(b) the office of Managing Director becomes vacant;

then, subject to subsection (2) and paragraph (5) (b), the person may continue to act until the vacancy is filled.

(4) A person acting as Managing Director has all the powers and duties of the Managing Director.

(5) The Corporation may:

(a) with the written approval of the Minister, determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Managing Director; and

(b) terminate the appointment at any time.

(6) A person appointed to act as Managing Director may resign the appointment by writing signed by the person and delivered to the Chairperson of the Corporation.

(7) Anything done by or in relation to a person purporting to act as Managing Director is not invalid because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act as Managing Director had not arisen or had ceased.

Exclusion of Managing Director etc. from certain deliberations

44. (1) The Managing Director shall not be present during any deliberation of the Corporation or a committee of the Corporation, or take part in any decision of the Corporation or a committee of the Corporation, with respect to:

(a) the appointment of a person as Managing Director;

(b) the determination or application of any terms and conditions on which a person appointed as Managing Director holds office or may be granted leave;

(c) the termination of the appointment of the Managing Director; or

(d) the giving or refusing of approval for the Managing Director to engage in paid employment outside the duties of the office.

(2) A person appointed to act as Managing Director shall not be present during any deliberation of the Corporation or a committee of the Corporation, or take part in any decision of the Corporation or a committee of the Corporation, with respect to:

(a) the appointment of a person as Managing Director or to act as Managing Director;

- (b) the determination or application of any terms and conditions on which the Managing Director, or a person appointed to act as Managing Director, holds office or may be granted leave;
- (c) the termination of the appointment of the person or the Managing Director; or
- (d) the giving or refusing of approval for the Managing Director, or a person acting as Managing Director, to engage in paid employment outside the duties of the office.

Division 6—Employees and consultants

Employees

45. (1) The Corporation may engage such employees as it considers necessary for the performance of its functions and the exercise of its powers.

(2) The terms and conditions of employment shall be determined by the Corporation.

(3) A person shall not be employed by the Corporation on terms and conditions more favourable than those applying to the Managing Director.

Consultants

46. (1) The Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.

(2) The terms and conditions of engagement shall be determined by the Corporation.

Division 7—Finance

Payment of amounts of levy and charge to Corporation

47. (1) There shall be paid to the Corporation amounts equal to:

- (a) amounts of levy received by the Commonwealth by virtue of section 8 of the Levy Act; and
- (b) amounts received by the Commonwealth by way of penalty under section 8 of the Levy Collection Act in relation to amounts of levy referred to in paragraph (a).

(2) There shall be paid to the Corporation amounts equal to:

- (a) amounts of charge received by the Commonwealth by virtue of section 8 of the Export Charge Act; and
- (b) amounts received by the Commonwealth by way of penalty under section 8 of the Export Charge Collection Act in relation to amounts of charge referred to in paragraph (a).

(3) Amounts payable under subsections (1) and (2) shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(4) The reference in paragraph (1) (a) to amounts of levy received by the Commonwealth by virtue of section 8 of the Levy Act includes a

reference to amounts received by the Commonwealth under paragraph 7 (1) (a) of the Levy Collection Act in relation to amounts of such levy, and the reference in paragraph (2) (a) to amounts of charge received by the Commonwealth by virtue of section 8 of the Export Charge Act includes a reference to amounts received by the Commonwealth under paragraph 7 (1) (a) of the Export Charge Collection Act in relation to amounts of such charge.

(5) The reference in paragraph (1) (b) to amounts received by the Commonwealth by way of penalty under section 8 of the Levy Collection Act includes a reference to amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act, and the reference in paragraph (2) (b) to amounts received by the Commonwealth under section 8 of the Export Charge Collection Act includes a reference to amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act.

Expenditure of money of Corporation

48. (1) The money of the Corporation may be expended only:

- (a) in payment or discharge of the expenses and liabilities incurred by:
 - (i) the Corporation; or
 - (ii) the Corporation Selection Committee on behalf of the Commonwealth;
- (b) in payment of remuneration and allowances payable under this Act; and
- (c) in making any other payments that the Corporation is authorised or required to make by or under this Act or another Act.

(2) The Corporation is liable to pay the expenses, and discharge the liabilities, incurred by the Corporation Selection Committee on behalf of the Commonwealth.

Accounts and records

49. (1) The Corporation shall:

- (a) cause to be kept proper accounts and records of its transactions and affairs in accordance with the accounting principles generally applied in commercial practice; and
- (b) do all things necessary to ensure:
 - (i) that all payments by it are correctly made and properly authorised; and
 - (ii) that adequate control is maintained over:
 - (A) the assets of, or in the custody of, the Corporation; and
 - (B) the incurring of liabilities by the Corporation.

(2) The regulations may require the Corporation to keep separate accounts in relation to specified classes of horticultural products, and may specify the amounts to be credited and debited to such an account and the manner in which such amounts are to be calculated.

(3) Where the regulations require the Corporation to keep a separate account in relation to a class of horticultural products, the regulations may make provision in relation to the expenditure of money standing to the credit of the account, including the application of money standing to the credit of the account if, and when, the account ceases to exist.

Bank accounts

50. (1) The Corporation may open and maintain accounts with banks and shall at all times maintain at least one such account.

(2) The Corporation shall pay all money of the Corporation into an account maintained with a bank.

Investment of money of Corporation

51. Money of the Corporation not immediately required for the purposes of the Corporation may be invested:

- (a) in securities of, or guaranteed by, the Commonwealth or a State;
- (b) on deposit with a bank; or
- (c) in any other manner that is consistent with sound commercial practice.

Borrowing and raising of money

52. (1) The Corporation may, with the written approval of the Minister:

- (a) borrow money; or
- (b) raise money otherwise than by borrowing;

on terms and conditions that are specified in, or consistent with, the approval.

(2) Without limiting the generality of subsection (1), the Corporation may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1) may be made, in whole or in part, in a currency other than Australian currency.

(4) An approval may be given under subsection (1) in relation to a particular transaction or transactions in a class of transactions.

(5) The Corporation may not borrow money, or raise money otherwise than by borrowing, except in accordance with this section.

(6) For the purposes of this section:

- (a) the issue by the Corporation of an instrument acknowledging a debt in consideration of:
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit;

otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Corporation, shall be

deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

Hedging in relation to borrowings and raisings

53. (1) Subject to subsection (3), the Corporation may, for hedging purposes, enter into and deal with currency futures contracts, and interest rate futures contracts, at futures markets in relation to:

- (a) a borrowing, or proposed borrowing, of money; or
- (b) a raising, or proposed raising, of money otherwise than by borrowing.

(2) A currency futures contract or interest rate futures contract shall, for the purposes of subsection (1), be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is for the purpose of minimising the risks of adverse variations in the costs of the transaction in relation to which the contract is entered into or dealt with.

(3) The Minister may give written guidelines to the Corporation for the exercise of its powers under subsection (1), and the Corporation shall comply with the guidelines.

Guarantee of borrowings and raisings

54. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract:

- (a) guaranteeing the repayment by the Corporation of money borrowed under paragraph 52 (1) (a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed; or
- (b) guaranteeing the payment by the Corporation of such amounts (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 52 (1) (b) as are specified in the contract.

(2) The Treasurer may, in writing, determine:

- (a) that the repayment by the Corporation of money borrowed under paragraph 52 (1) (a), and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed, are guaranteed by the Commonwealth; or
- (b) that the payment by the Corporation of such money (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 52 (1) (b) as is specified in the determination is guaranteed by the Commonwealth;

and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by force of this subsection, guaranteed by the Commonwealth.

(3) A contract may be entered into under subsection (1), and a determination may be made under subsection (2), in relation to a particular transaction or a class of transactions.

(4) A contract entered into under subsection (1) may include either or both of the following provisions:

- (a) a provision agreeing that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia;
- (b) a provision waiving the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

Corporation may give security

55. The Corporation may give security over the whole or any part of its land or other assets for:

- (a) the repayment of money borrowed under paragraph 52 (1) (a) and the payment of interest (including any interest on that interest) on money so borrowed;
- (b) the payment of amounts (which may be interest) that it is liable to pay with respect to money raised under paragraph 52 (1) (b); or
- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into under subsection 54 (1) or as a result of a determination made under subsection 54 (2).

Audit

56. (1) The Corporation auditor shall:

- (a) inspect and audit:
 - (i) the accounts and records of financial transactions of the Corporation; and
 - (ii) the records relating to assets of, or in the custody of, the Corporation; and
- (b) forthwith draw the Minister's attention to any irregularity disclosed by the inspection and audit that, in the opinion of the Corporation auditor, is of sufficient importance to justify doing so.

(2) The Corporation auditor may dispense with all or a part of the detailed inspection and audit of any accounts or records referred to in paragraph (1) (a).

(3) The Corporation auditor shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under paragraph (1) (a).

(4) An authorised auditor is entitled, at all reasonable times, to full and free access to all accounts, records and other documents of the Corporation, being accounts, records and other documents relating directly or indirectly to:

- (a) the receipt or payment of money by the Corporation; or
- (b) the acquisition, receipt, custody or disposal of assets by the Corporation.

(5) An authorised auditor may make copies of, or take extracts from, any accounts, records or other documents referred to in subsection (4).

(6) An authorised auditor may require any person to give such information in the possession of the person, or to which the person has access, as the authorised auditor considers necessary for the purposes of the functions of the Corporation auditor under this Act.

(7) A person who contravenes a requirement under subsection (6) is guilty of an offence punishable, on conviction, by a fine not exceeding:

- (a) if the person is a natural person—\$1,000; or
- (b) if the person is a body corporate—\$5,000.

Appointment of commercial auditor

57. (1) The Corporation may, after consulting with eligible industry bodies, request the Minister, in writing, to appoint a company auditor specified in the request to be the auditor of the Corporation.

(2) The Minister shall cause particulars of the request to be given to the Auditor-General.

(3) The Auditor-General shall:

- (a) consider whether the company auditor is suitable to be auditor of the Corporation; and
- (b) advise the Minister, in writing, of his or her opinion and of the reasons for the opinion.

(4) If the Auditor-General advises the Minister that he or she is of the opinion that the company auditor is suitable to be the auditor of the Corporation, the Minister shall cause particulars of the request, and of the Auditor-General's advice, to be given to the Joint Committee of Public Accounts.

(5) The Joint Committee of Public Accounts shall:

- (a) consider the Auditor-General's opinion; and
- (b) inform the Minister, in writing, whether it agrees to the appointment of the auditor.

(6) If the Joint Committee of Public Accounts informs the Minister that it agrees to the appointment, the Minister may, in writing, appoint the auditor to be the auditor of the Corporation.

(7) The Minister may, by writing, revoke an appointment made under subsection (6).

(8) The Minister shall inform the Corporation, in writing, of the outcome of a request made under subsection (1) and of the reasons for that outcome.

(9) Where the Minister revokes an appointment made under subsection (6), the Minister shall inform the Corporation, in writing, of the decision and of the reasons for the decision.

Liability to taxation

58. (1) The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to subsections (3) and (4), the Corporation is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that subsection (2) does not apply in relation to:

- (a) a specified law of a State or Territory; or
- (b) laws in a specified class of laws of a State or Territory.

(4) Stamp duty under the law of a State or a Territory is payable by the Corporation in respect of transactions entered into by, and instruments and documents executed by or on behalf of, the Corporation.

Division 8—Product Group Committees

Establishment of product group committees etc.

59. (1) The Corporation may establish product group committees to assist it in the performance of its functions, and the exercise of its powers, in relation to particular horticultural products.

(2) The Corporation may at any time abolish a product group committee or vary the products in relation to which it is established.

Functions of product group committee

60. A product group committee has such functions in relation to the horticultural products in relation to which it is established as the Corporation from time to time determines.

Powers of product group committee etc.

61. (1) A product group committee has power to do, on behalf of the Corporation, all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) All acts and things done in the name of, or on behalf of, the Corporation by a product group committee shall be deemed to have been done by the Corporation.

Product group committee to act in accordance with policies etc. of Corporation

62. A product group committee shall act in accordance with any policies determined by, and any directions given by, the Corporation.

Constitution of product group committee

63. (1) A product group committee consists of the following members:

- (a) the Chairperson;
- (b) such number of other members (not fewer than 3 or more than 5) as the Corporation determines from time to time after consultation with bodies representative of Australian horticultural industries concerned with horticultural products in relation to which the product group committee is established.

(2) The performance of the functions, and the exercise of the powers, of a product group committee are not affected by reason only of vacancies in the membership of the committee.

Chairperson

64. The Chairperson of a product group committee may be referred to as the Chairman or Chairwoman, as the case requires.

Acting Chairperson

65. (1) The Corporation may appoint a person (whether or not the person is a member of the Corporation) to act as the Chairperson of a product group committee:

- (a) during a vacancy in the office of Chairperson of the committee (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson of the committee is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) An appointment under subsection (1) may be expressed to have effect only in specified circumstances.

(3) Where:

- (a) a person is acting under paragraph (1) (b); and
- (b) the office of Chairperson of the relevant product group committee becomes vacant;

then, subject to subsections (2) and (5), the person may continue to act until the vacancy is filled.

(4) A person acting as Chairperson of a product group committee has all the powers, duties, rights and entitlements of the Chairperson.

(5) The Corporation may at any time terminate an appointment made under subsection (1).

(6) A person appointed to act as Chairperson of a product group committee may resign the appointment by writing signed by the person and delivered to the Chairperson of the Corporation.

(7) Anything done by or in relation to a person purporting to act as Chairperson of a product group committee is not invalid because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act as Chairperson had not arisen or had ceased.

Appointment of members

66. (1) The members of a product group committee shall be appointed by the Corporation.

(2) The Corporation shall not appoint a person to be the Chairperson of a product group committee unless the person is a member of the Corporation.

(3) The nominated members of a product group committee shall be appointed from persons nominated by the relevant product group selection committee under section 104.

(4) The Corporation shall not appoint a person who has attained 65 years of age as a member of a product group committee unless the Corporation is satisfied that the person has expertise required by the committee.

(5) The appointment of a person as a member of a product group committee is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

Members of executive of eligible industry bodies not eligible for appointment etc.

67. Subject to the regulations, a person who is a member of the executive of an eligible industry body shall not be appointed as a member of a product group committee, and a member of a product group committee who becomes a member of the executive of an eligible industry body ceases to hold office as a member of the product group committee.

Term of office

68. (1) A member of a product group committee:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act:
 - (i) in the case of the Chairperson—during the Corporation's pleasure; and

- (ii) in the case of a member other than the Chairperson—for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act.

(2) If a member of a product group committee (other than the Chairperson) ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

(3) The Corporation shall not appoint a person as a member of a product group committee for a term that extends beyond the day on which the person will attain 65 years of age unless the Corporation is satisfied that the person has expertise required by the committee.

Application of certain provisions to members of product group committees

69. Sections 19 to 24 (inclusive) and section 25 apply in relation to a product group committee as if:

- (a) a reference to a member of the Corporation were a reference to a member of the committee (whether or not the member of the committee is also a member of the Corporation);
- (b) a reference to the Minister were a reference to the Corporation;
- (c) a reference to the Chairperson of the Corporation were a reference to the Chairperson of the committee;
- (d) a reference to a nominated member of the Corporation were a reference to a nominated member of the committee; and
- (e) a reference to the Corporation were a reference to the committee.

Chairperson ceasing to be member of Corporation

70. If a person who is the Chairperson of a product group committee ceases to be a member of the Corporation, the person ceases to be Chairperson of the committee.

Meetings

71. (1) Without limiting the generality of section 62, the Corporation may from time to time determine the procedure to be followed at or in relation to meetings of a product group committee, including matters with respect to:

- (a) the convening of meetings of the committee;
- (b) the quorum for meetings of the committee (including requirements that particular members be present);
- (c) the member of the committee to preside at meetings of the committee at which the Chairperson of the committee is not present;
- (d) the manner in which questions arising at meetings are to be determined;
- (e) the keeping of minutes; and

- (f) the inviting of persons to attend meetings of the committee for the purpose of advising or informing the committee on any matter.

(2) Except in relation to matters determined by the Corporation under subsection (1) and subject to section 62, the committee may determine the procedure to be followed at or in relation to its meetings.

Arrangements relating to staff etc.

72. The Chairperson of a product group committee shall arrange with the Chairperson of the Corporation for the services of employees of, and consultants to, the Corporation, and for facilities of the Corporation, to be made available to the product group committee.

Division 9—Miscellaneous

General committees

73. (1) The Corporation may establish committees (other than product group committees) under this subsection to assist it in the performance of its functions and the exercise of its powers.

(2) A committee established under subsection (1) may be constituted wholly by members of the Corporation or partly by members of the Corporation and partly by other persons.

(3) The Corporation may fix the number of members of the committee required to constitute a quorum at a meeting of the committee.

(4) Section 20 applies in relation to a member of the committee who is not a member of the Corporation as if the member were a nominated member of the Corporation.

(5) Section 23 applies in relation to a member of the committee as if:

- (a) a reference to the Corporation were a reference to the committee; and
- (b) a reference to a member of the Corporation were a reference to the member of the committee (whether or not the member of the committee is also a member of the Corporation).

Delegation by Corporation

74. (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate all or any of its powers under this Act (other than this power of delegation) to:

- (a) a committee of the Corporation (including a product group committee);
- (b) a member of the Corporation; or
- (c) an employee of the Corporation.

(2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Corporation.

(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Corporation.

(4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Corporation.

Delegation by Managing Director

75. (1) The Managing Director may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to an employee of the Corporation all or any of his or her powers under this Act, other than this power of delegation.

(2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Managing Director.

(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Managing Director.

(4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Managing Director.

PART III—THE AUSTRALIAN HORTICULTURAL CORPORATION SELECTION COMMITTEE

Division 1—Establishment, function and powers of Corporation Selection Committee

Establishment

76. A committee by the name of the Australian Horticultural Corporation Selection Committee is established by this section.

Function

77. The function of the Corporation Selection Committee is to nominate, at the request of the Minister, persons to the Minister for appointment as nominated members of the Corporation.

Powers

78. The Corporation Selection Committee has power to do, on behalf of the Commonwealth, all things necessary or convenient to be done for, or in connection with, the performance of its function.

Division 2—Nominations for membership of Corporation

Minister may request nomination from Corporation Selection Committee

79. The Minister may, by notice in writing given to the Chairperson of the Corporation Selection Committee, request the Corporation Selection Committee to nominate to the Minister, within the period specified in the notice, a person for appointment as a nominated member of the Corporation.

Nominations

80. (1) Where the Minister requests the Corporation Selection Committee to nominate a person for appointment as a nominated member of the Corporation, the Corporation Selection Committee shall, within the period specified in the request, nominate a person, in writing, to the Minister.

(2) The nomination shall be accompanied by a statement setting out:

- (a)** details of the person's qualifications and experience; and
- (b)** such other information relating to the person as the Corporation Selection Committee considers will assist the Minister in considering whether or not to appoint the person.

(3) The Corporation Selection Committee shall nominate only one person for each appointment.

(4) The Corporation Selection Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person for another appointment or the Corporation Selection Committee has previously decided not to nominate the person.

Selection of persons by Corporation Selection Committee

81. (1) The Corporation Selection Committee shall not nominate a person unless the person appears to the Corporation Selection Committee to be suitably qualified for appointment by virtue of expertise in one or more of the following fields:

- (a)** the growing or harvesting of horticultural products;
- (b)** the exporting of horticultural products;
- (c)** the handling, storing, transporting, processing or marketing of horticultural products;
- (d)** business management;
- (e)** finance;
- (f)** marketing;
- (g)** product promotion.

(2) The Corporation Selection Committee shall not nominate a person if:

- (a)** the person is a member of the Corporation Selection Committee; or
- (b)** the person was a member of the Corporation Selection Committee during the year immediately preceding the making of the nomination.

(3) In selecting a person for nomination, the Corporation Selection Committee shall choose from the available candidates the person who will best ensure that the members of the Corporation collectively possess an appropriate balance of expertise.

Minister may request further information

82. Where the Minister considers the information contained in the statement accompanying a nomination by the Corporation Selection Committee to be inadequate, the Minister may, by notice in writing given to the Chairperson of the Corporation Selection Committee, request the Corporation Selection Committee, within the period specified in the notice, to provide the Minister with further specified information in relation to the person.

Minister may reject nomination

83. Where the Minister is not satisfied that a person nominated by the Corporation Selection Committee should be appointed as a member of the Corporation, the Minister may, by notice in writing given to the Chairperson of the Corporation Selection Committee, reject the nomination and request the nomination of another person.

Division 3—Constitution and meetings of Corporation Selection Committee

Constitution of Corporation Selection Committee

84. (1) The Corporation Selection Committee consists of the following members:

- (a) the Chairperson;
- (b) 7 other members.

(2) The performance of the functions, and the exercise of the powers, of the Corporation Selection Committee are not affected by reason only of vacancies in the membership of the Corporation Selection Committee.

Chairperson

85. The Chairperson of the Corporation Selection Committee may be referred to as the Chairman or Chairwoman, as the case requires.

Deputy Chairperson

86. (1) The Minister shall appoint a nominated member of the Corporation Selection Committee to be the Deputy Chairperson of the Corporation Selection Committee.

(2) The Minister shall, before appointing a person to be the Deputy Chairperson, consult with the Chairperson of the Corporation Selection Committee.

(3) The Minister may at any time terminate an appointment made under subsection (1).

(4) A person appointed as Deputy Chairperson ceases to hold the office if the person ceases to be a nominated member of the Corporation Selection Committee.

(5) A person appointed as Deputy Chairperson may resign the office by writing signed by the person and delivered to the Minister.

(6) During any period when:

- (a) the office of Chairperson of the Corporation Selection Committee is vacant (whether or not an appointment has previously been made to the office); or
- (b) the Chairperson of the Corporation Selection Committee is absent from Australia or is, for any reason, unable to perform the duties of the office;

the Deputy Chairperson shall act as Chairperson.

(7) The Deputy Chairperson has, when acting as Chairperson, all the powers, duties, rights and entitlements of the Chairperson of the Corporation Selection Committee.

(8) The Deputy Chairperson of the Corporation Selection Committee may be referred to as the Deputy Chairman or Deputy Chairwoman, as the case requires.

(9) Anything done by or in relation to a person purporting to act as Chairperson under subsection (6) is not invalid because:

- (a) there was a defect or irregularity in connection with the appointment of the person as Deputy Chairperson;
- (b) the appointment of the person as Deputy Chairperson had ceased to have effect; or
- (c) the occasion for the person to act as Chairperson had not arisen or had ceased.

Appointment of members

87. (1) The members of the Corporation Selection Committee shall be appointed by the Minister.

(2) The nominated members of the Corporation Selection Committee shall be appointed on the nomination, subject to and in accordance with the regulations, of eligible industry bodies.

(3) Where the Minister is not satisfied that a person nominated for appointment as a nominated member of the Corporation Selection Committee should be appointed as such a member, the Minister may reject the nomination and request the nomination of another person.

(4) The Minister shall not appoint a member of the Corporation as a member of the Corporation Selection Committee.

(5) The Minister shall not appoint a person who has attained 65 years of age as a member of the Corporation Selection Committee unless the Minister is satisfied that the person has expertise required by the Corporation Selection Committee.

(6) The appointment of a person as a member of the Corporation Selection Committee is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

Term of office of members

88. (1) A member of the Corporation Selection Committee:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act, for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act.

(2) If the member ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

(3) The Minister shall not appoint a person as a member of the Corporation Selection Committee for a term that extends beyond the day on which the person will attain 65 years of age unless the Minister is satisfied that the person has expertise required by the Corporation Selection Committee.

Members to hold office on part time basis

89. The members of the Corporation Selection Committee hold office on a part time basis.

Remuneration and allowances

90. (1) A member of the Corporation Selection Committee shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member of the Corporation Selection Committee shall be paid such allowances as are prescribed.

(3) Where:

- (a) a person who is a member of the Corporation Selection Committee is also a member of, or a candidate for election to, the Parliament of a State; and
- (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person shall not be paid remuneration or allowances under this Act, but shall be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

(4) Where a person who is a member of the Corporation Selection Committee:

- (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person;

- (b) is in the service or employment of a State, or an authority of a State, on a full time basis; or
- (c) holds or performs the duties of an office or position established by or under a law of a State on a full time basis;

it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

(5) An amount payable under subsection (4) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.

(6) Subject to subsection (7), this section has effect subject to the *Remuneration Tribunals Act 1973*.

(7) Subsection 7 (9) of the *Remuneration Tribunals Act 1973* does not apply in relation to a member of the Corporation Selection Committee.

Leave of absence

91. (1) The Minister may grant leave of absence to the Chairperson of the Corporation Selection Committee on such terms and conditions as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another member of the Corporation Selection Committee on such terms and conditions as the Chairperson considers appropriate.

Resignation of members

92. A member of the Corporation Selection Committee may resign by writing signed and delivered to the Minister.

Disclosure of interests

93. (1) Where:

- (a) a member of the Corporation Selection Committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Corporation Selection Committee; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Corporation Selection Committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Corporation Selection Committee.

Termination of appointment

94. (1) The Minister may terminate the appointment of a member of the Corporation Selection Committee for misbehaviour or physical or mental incapacity.

(2) If:

- (a) a member of the Corporation Selection Committee becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) a member of the Corporation Selection Committee, without reasonable excuse, contravenes section 93;
- (c) the Chairperson of the Corporation Selection Committee is absent, except with the leave of the Minister, from 3 consecutive meetings of the Corporation Selection Committee; or
- (d) a member of the Corporation Selection Committee (other than the Chairperson) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Corporation Selection Committee;

the Minister shall terminate the member's appointment.

(3) The Minister shall, at the request of the eligible industry bodies on whose nomination a nominated member of the Corporation Selection Committee was appointed, terminate the appointment of the member.

Terms and conditions of appointment not provided for by Act

95. A member of the Corporation Selection Committee holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Meetings

96. (1) Subject to subsection (2), meetings of the Corporation Selection Committee shall be held at such times and places as the Corporation Selection Committee from time to time determines.

(2) The Chairperson of the Corporation Selection Committee may at any time convene a meeting of the Corporation Selection Committee.

(3) The Chairperson of the Corporation Selection Committee shall preside at all meetings of the Corporation Selection Committee at which the Chairperson is present.

(4) If the Chairperson and Deputy Chairperson of the Corporation Selection Committee are not present at a meeting of the Corporation Selection Committee, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of the Corporation Selection Committee:

- (a) 5 members constitute a quorum;
- (b) a question shall be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Corporation Selection Committee shall keep minutes of its proceedings.

(7) The Corporation Selection Committee may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Division 4—Employees and consultants

Employees

97. (1) The Corporation Selection Committee may, on behalf of the Commonwealth, employ such persons as it considers necessary to perform administrative and clerical services in connection with the performance of its function and the exercise of its powers.

(2) The terms and conditions of employment of persons employed under subsection (1) shall be determined by the Corporation Selection Committee.

Consultants

98. (1) The Corporation Selection Committee may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Corporation Selection Committee.

(2) The terms and conditions of engagement shall be determined by the Corporation Selection Committee.

Division 5—Miscellaneous

Delegation

99. (1) The Corporation Selection Committee may, by resolution, either generally or as otherwise provided by the resolution, delegate to a member of the Corporation Selection Committee or the person occupying an office in the Department all or any of its powers under Division 4.

(2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Corporation Selection Committee.

(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Corporation Selection Committee.

(4) A delegation of a power under subsection (1):

- (a) may be revoked by resolution of the Corporation Selection Committee (whether or not constituted by the persons who constituted the Corporation Selection Committee at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Corporation Selection Committee; and
- (c) continues in force notwithstanding a change in the membership of the Corporation Selection Committee.

(5) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under subsection (1) as if the Corporation Selection Committee were a person.

(6) A certificate signed by the Chairperson of the Corporation Selection Committee stating any matter with respect to a delegation of a power under subsection (1) is *prima facie* evidence of the matter.

(7) A document purporting to be a certificate under subsection (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

PART IV—SELECTION COMMITTEES FOR PRODUCT GROUP COMMITTEES

Division 1—Establishment, function and powers of selection committees

Establishment of selection committees etc.

100. (1) Where the Corporation establishes a product group committee, it shall establish a selection committee for the product group committee.

(2) Where the Corporation abolishes a product group committee, it shall abolish the selection committee established for the product group committee.

Function

101. The function of a product group selection committee is to nominate, at the request of the Corporation, persons to the Corporation for appointment as nominated members of the product group committee for which it is established.

Powers

102. A product group selection committee has power to do, on behalf of the Corporation, all things necessary or convenient to be done for, or in connection with, the performance of its function.

Division 2—Nominations for membership of product group committees

Corporation may request nomination from selection committee

103. The Corporation may, by notice in writing given to the Chairperson of a product group selection committee, request the selection committee to nominate to the Corporation, within the period specified in the notice, a person for appointment as a nominated member of the product group committee.

Nominations

104. (1) Where the Corporation requests a product group selection committee to nominate a person for appointment as a nominated member of the product group committee, the selection committee shall, within the

period specified in the request, nominate a person, in writing, to the Corporation.

- (2) The nomination shall be accompanied by a statement setting out:
 - (a) details of the person's qualifications and experience; and
 - (b) such other information relating to the person as the selection committee considers will assist the Corporation in considering whether or not to appoint the person.

(3) The selection committee shall nominate only one person for each appointment.

(4) The selection committee may nominate a person for appointment even though the Corporation has previously rejected a nomination of that person for another appointment or the selection committee has previously decided not to nominate the person.

Selection of persons by selection committee

105. (1) A product group selection committee shall not nominate a person unless the person appears to the selection committee to be suitably qualified for appointment by virtue of expertise in one or more of the following fields:

- (a) the growing, harvesting or otherwise producing of horticultural products in relation to which the product group committee is established;
- (b) the exporting of such horticultural products;
- (c) the harvesting, handling, storing, transporting, processing or marketing of such horticultural products;
- (d) business management;
- (e) finance;
- (f) marketing;
- (g) product promotion.

(2) The selection committee shall not nominate a person if:

- (a) the person is a member of the selection committee; or
- (b) the person was a member of the selection committee during the year immediately preceding the making of the nomination.

(3) In selecting a person for nomination, the selection committee shall choose from the available candidates the person who will best ensure that the members of the product group committee collectively possess an appropriate balance of expertise.

Corporation may request further information

106. Where the Corporation considers the information contained in the statement accompanying a nomination by a product group selection committee to be inadequate, the Corporation may, by notice in writing given to the Chairperson of the selection committee, request the selection

committee, within the period specified in the notice, to provide the Corporation with further specified information in relation to the person.

Corporation may reject nomination

107. Where the Corporation is not satisfied that a person nominated by a product group selection committee should be appointed as a member of the product group committee, the Corporation may, by notice in writing given to the Chairperson of the selection committee, reject the nomination and may request the nomination of another person.

Division 3—Constitution and meetings of selection committees

Constitution of product group selection committees

108. (1) A product group selection committee consists of the following members:

- (a) the Chairperson of the Corporation Selection Committee;
- (b) 2 members of the Corporation;
- (c) such number of other members (not fewer than 3 or more than 6) as the Corporation determines from time to time after consultation with bodies representative of Australian horticultural industries concerned with horticultural products in relation to which the product group committee is established.

(2) The performance of the functions, and the exercise of the powers, of the selection committee are not affected by reason only of vacancies in the membership of the selection committee.

Chairperson

109. (1) The Chairperson of the Corporation Selection Committee is the Chairperson of each product group selection committee.

(2) The Chairperson of a product group selection committee may be referred to as the Chairman or Chairwoman, as the case requires.

Deputy Chairperson

110. Section 86 applies in relation to a product group selection committee as if:

- (a) a reference to the Minister were a reference to the Corporation;
- (b) a reference to a nominated member of the Corporation Selection Committee were a reference to a member of the product group selection committee (other than the Chairperson) who is also a member of the Corporation;
- (c) a reference to the Deputy Chairperson of the Corporation Selection Committee were a reference to the Deputy Chairperson of the product group selection committee; and
- (d) a reference to the Chairperson of the Corporation Selection Committee were a reference to the Chairperson of the product group selection committee.

Appointment of members

111. (1) The members of a product group selection committee (other than the Chairperson) shall be appointed by the Corporation.

(2) The nominated members of a product group selection committee shall be appointed on the nomination, subject to and in accordance with the regulations, of eligible industry bodies.

(3) Where the Corporation is not satisfied that a person nominated for appointment as a nominated member of the product group selection committee should be appointed as such a member, the Corporation may reject the nomination and request the nomination of another person.

(4) The Corporation shall not appoint a member of the product group committee as a nominated member of the product group selection committee.

(5) The Corporation shall not appoint a person who has attained 65 years of age as a member of the selection committee unless the Corporation is satisfied that the person has expertise required by the selection committee.

(6) The appointment of a person as a member of the selection committee is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

Term of office of members

112. (1) A member of a product group selection committee (other than the Chairperson):

- (a)** shall be appointed with effect from the day specified in the instrument of appointment; and
- (b)** holds office, subject to this Act, for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act.

(2) If the member ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

(3) The Corporation shall not appoint a person as a member of the selection committee for a term that extends beyond the day on which the person will attain 65 years of age unless the Corporation is satisfied that the person has expertise required by the selection committee.

Application of certain provisions to members of selection committees etc.

113. (1) Subject to subsection (2), sections 89 to 94 (inclusive) and section 95 apply in relation to a member of a product group selection committee as if:

- (a)** a reference to a member of the Corporation Selection Committee were a reference to a member of the product group selection committee;
- (b)** a reference to the Minister were a reference to the Corporation;

- (c) a reference to the Chairperson of the Corporation Selection Committee were a reference to the Chairperson of the product group selection committee; and
- (d) a reference to the Corporation Selection Committee were a reference to the product group selection committee.

(2) Sections 92 and 94 as applied by subsection (1) do not apply in relation to the Chairperson of the Corporation Selection Committee.

(3) If the Chairperson of the Corporation Selection Committee:

- (a) without reasonable excuse, contravenes section 93 as applied by subsection (1); or
- (b) is absent, except with the leave of the Corporation, from 3 consecutive meetings of a product group selection committee;

the Minister shall terminate the Chairperson's appointment as Chairperson of the Corporation Selection Committee.

(4) If a person who is a member of a product group selection committee (other than the Chairperson or a nominated member) ceases to be a member of the Corporation, the person also ceases to be a member of the selection committee.

Meetings

114. (1) Subject to subsection (2), meetings of a product group selection committee shall be held at such times and places as the selection committee from time to time determines.

(2) The Chairperson of a product group selection committee may at any time convene a meeting of the selection committee.

(3) The Chairperson of a product group selection committee shall preside at all meetings of the selection committee at which the Chairperson is present.

(4) If the Chairperson and Deputy Chairperson of a product group selection committee are not present at a meeting of the selection committee, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of a product group selection committee:

- (a) a quorum shall be constituted as the Corporation from time to time determines in relation to the selection committee;
- (b) a question shall be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) A product group selection committee shall keep minutes of its proceedings.

(7) A product group selection committee may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Arrangements relating to staff etc.

115. A product group selection committee shall arrange with the Corporation for the services of employees of, and consultants to, the Corporation, and for facilities of the Corporation, to be made available to the selection committee.

PART V—EXPORT CONTROLS

Object of Part

116. The object of this Part is to enable the Corporation to be given the powers necessary to ensure that Australian horticultural industries achieve their full potential in overseas markets.

Control of export of horticultural products

117. (1) The regulations may make provision for or in relation to empowering the Corporation to control the export from Australia of horticultural products and, in particular, may empower the Corporation to prohibit the export from Australia of horticultural products.

- (2)** Regulations made for the purposes of subsection (1) may:
 - (a)** empower the Corporation to prohibit the export of horticultural products absolutely;
 - (b)** empower the Corporation to prohibit the export of horticultural products to a specified place;
 - (c)** empower the Corporation to prohibit the export of horticultural products unless specified conditions or restrictions are complied with; or
 - (d)** empower the Corporation to prohibit the export of horticultural products to a specified place unless specified conditions or restrictions are complied with.
- (3)** Without limiting the generality of subsection (2), regulations made for the purposes of subsection (1):
 - (a)** may provide that the export of horticultural products, or the export of horticultural products to a specified place, is prohibited unless a licence, permission, consent or approval to export the products has been granted by the Corporation as prescribed by the regulations; and
 - (b)** may make provision for and in relation to:
 - (i)** the assignment of licences and permissions;
 - (ii)** the granting of a licence or permission to export horticultural products subject to compliance with conditions or restrictions, either before or after the export of the products, by the

person to whom the licence or permission is granted or any person to whom the licence or permission is assigned;

- (iii) the surrender of a licence or permission to export horticultural products and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export horticultural products in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission; and
- (iv) the revocation or suspension of a licence or permission, being a licence or permission that is granted subject to a condition or restriction to be complied with by a person, for contravention by the person of the condition or restriction, whether or not the person is charged with an offence in respect of the contravention.

(4) Without limiting the generality of paragraphs (2) (c) and (d) and subparagraph (3) (b) (ii), conditions or restrictions imposed under those provisions:

- (a) may require the purchaser of horticultural products, or a person to whom horticultural products are consigned as an agent or representative of the purchaser or exporter, to be a person approved by the Corporation;
- (b) may relate to:
 - (i) the price of horticultural products;
 - (ii) the quality of horticultural products, including their colour, shape, size and other characteristics;
 - (iii) the packaging, labelling or description of, or documentation relating to, horticultural products;
 - (iv) the form of consignments of horticultural products;
 - (v) the commission and fees charged by exporters and others;
 - (vi) the carriage or insurance of horticultural products, including contracts for carriage or insurance; and
- (c) may be required to be complied with in relation to matters or things not related to the horticultural products to which they apply.

(5) Without limiting the generality of subsection (1), the regulations may empower the Corporation to charge such fees as it considers necessary to enable it to recover costs that it incurs in controlling the export from Australia of horticultural products.

Export of horticultural products without required licence etc.

118. (1) Where:

- (a) the regulations provide that the export of horticultural products, or the export of horticultural products to a specified place, is prohibited unless a licence, permission, consent or approval to export the products has been granted by the Corporation as prescribed by the regulations; and

(b) a person contravenes that prohibition;
the person is guilty of an offence.

(2) The holder of a licence, permission, consent or approval granted by the Corporation under the regulations to export horticultural products (whether or not to a specified place) who, without reasonable excuse, contravenes a condition or restriction to which the licence, permission, consent or approval is subject is guilty of an offence.

Penalty:

- (a) if the person is a natural person—\$10,000; or
- (b) if the person is a body corporate—\$50,000.

Certificates for exported horticultural products

119. Subject to the regulations, where:

- (a) the Corporation is requested to certify as to any matter in connection with Australian horticultural products that have been, or are proposed to be, exported from Australia; and
 - (b) the Corporation is satisfied as to the matter;
- the Corporation may issue a certificate accordingly.

PART VI—MISCELLANEOUS

Conduct of directors, servants and agents

120. (1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by:

- (a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary to establish, for the purposes of this Act, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by:

- (a) a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

Regulations

121. The Governor-General may make regulations, not inconsistent with this Act, 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;

and, in particular:

- (c) requiring exporters of horticultural products, and such other persons as are prescribed, to make and keep accounts, accounting records and other records in relation to horticultural products;
- (d) requiring exporters of horticultural products, and such other persons as are prescribed, to give returns or information for the purposes of this Act;
- (e) providing for the registration of premises and other places for the purposes of this Act, and imposing fees in relation to the registration of premises and other places; and
- (f) prescribing penalties not exceeding, in the case of a natural person, a fine of \$1,000 and, in the case of a body corporate, a fine of \$5,000 for offences against the regulations.

Orders

122. (1) Subject to subsection (2), the regulations may make provision for or in relation to empowering the Minister to make orders, not inconsistent with this Act, with respect to any matter for or in relation to which provision may be made by the regulations.

(2) An order shall not be made prescribing any penalty.

(3) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders as if references to regulations were references to orders and references to an Act were references to regulations.

(4) An order shall not be taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule.

(5) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (4), the reference in the first-mentioned subsection to the Minister specified in that subsection shall be read as a reference to a Minister administering this Act.

(6) An order shall be deemed to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

PART VII—ABOLITION OF THE AUSTRALIAN APPLE AND PEAR CORPORATION

Repeals

123. The following Acts are repealed:

Australian Apple and Pear Corporation Act 1973

Australian Apple and Pear Corporation Amendment Act 1976

Australian Apple and Pear Corporation Amendment Act 1978

Australian Apple and Pear Corporation Amendment Act 1981

Australian Apple and Pear Corporation Amendment Act (No. 2) 1981

Australian Apple and Pear Corporation Amendment Act 1986.

[Minister's second reading speech made in—
House of Representatives on 18 September 1987
Senate on 17 November 1987]