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**Australian Horticultural Corporation (Transitional Provisions and Consequential Amendments) Act 1987**

**No. 165 of 1987**

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**Australian Horticultural Corporation (Transitional Provisions and Consequential Amendments) Act 1987**

**No. 165 of 1987**

**An Act to enact certain transitional provisions and make certain amendments in consequence of the enactment of the *Australian Horticultural Corporation Act 1987*,and for other 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* (*Transitional Provisions and Consequential Amendments*) *Act 1987.*

**Commencement**

**2.** This Act shall come into operation on the day fixed under subsection 2 (2) of the *Australian Horticultural Corporation Act 1987.*

**PART II—PROVISIONS CONSEQUENTIAL ON ABOLITION OF THE AUSTRALIAN APPLE AND PEAR CORPORATION**

**Interpretation**

**3.** In this Part, unless the contrary intention appears:

“abolished Corporation” means the Australian Apple and Pear Corporation;

“Apple and Pear Corporation Act” means the *Australian Apple and Pear Corporation Act 1973*;

“assets” means property of every kind and, without limiting the generality of the foregoing, includes:

(a) choses in action; and

(b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“authorised person” means:

(a) a member of the new Corporation; or

(b) an employee of the new Corporation;

“commencing day” means the day on which this Act comes into operation;

“Export Charge Act” means the *Apple and Pear Export Charge Act 1976*;

“Export Charge Collection Act” means the *Apple and Pear Export Charge Collection Act 1976*;

“instrument” means an instrument of any kind and, without limiting the generality of the foregoing, includes a contract, guarantee or agreement (whether express or implied and whether made or given orally or in writing), bond, authority, order, power of attorney, mortgage, transfer, conveyance or other assurance, charge, lien, bill of lading, bill of exchange, letter of credit and security;

“Levy Act” means the *Apple and Pear Levy Act 1976*;

“Levy Collection Act” means the *Apple and Pear Levy Collection Act 1976*;

“liabilities” means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“new Corporation” means the Australian Horticultural Corporation;

“transferred instrument” means an instrument subsisting immediately before the commencing day:

(a) to which the abolished Corporation was a party;

(b) that was given to or in favour of the abolished Corporation;

(c) in which a reference is made to the abolished Corporation; or

(d) under which:

(i) money is, or may become, payable to or by the abolished Corporation; or

(ii) any other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the abolished Coporation.

**Transfer of assets and liabilities**

**4.** On the commencing day, the assets and liabilities of the abolished Corporation become, by force of this section, assets and liabilities of the new Corporation.

**Transferred instruments**

**5.** A transferred instrument continues, by force of this section, in full force and effect after the commencement of this Act but, in its operation in relation to acts or things done, entered into or occurring on or after the commencing day, has effect as if references to the abolished Corporation were references to the new Corporation.

**Certificates in relation to assets, liabilities and instruments**

**6.** (1) An authorised person may certify, in writing:

(a) that an asset or liability specified or described in the certificate became, by force of section 4, an asset or liability, as the case may be, of the new Corporation; or

(b) that an instrument specified or described in the certificate is a transferred instrument.

**(2)** A certificate under subsection (1) is *prima facie* evidence of the matters certified in the certificate.

**(3)** A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

**Exemption of certain instruments from taxation**

**7. (1)** Where an authorised person certifies, in writing, that an instrument specified or described in the certificate was made or given by reason of, or for a purpose connected with or arising out of, the operation of this Part, the instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory.

**(2)** A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

**Pending proceedings**

**8.** Where, immediately before the commencing day, proceedings to which the abolished Corporation was a party were pending in any court or before any tribunal, the new Corporation is, by force of this section, substituted for the abolished Corporation as a party to the proceedings.

**Final report of operations of abolished Corporation**

**9.** **(1)** The new Corporation shall, as soon as practicable after the commencing day, prepare and furnish to the Minister a report of the operations of the abolished Corporation during the period that commenced at the end of the last period in relation to which a report of the operations of the abolished Corporation was furnished to the Minister under section 37 of the Apple and Pear Corporation Act and ended immediately before the commencing day, together with financial statements in respect of that period in such form as the Minister for Finance approves.

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

(a) particulars of any directions given to the abolished Corporation by the Minister with respect to the performance of that Corporation’s functions or the exercise of its powers; and

(b) a statement of the principal objectives of the abolished Corporation in the period to which the report relates and of the strategies pursued by the abolished Corporation to achieve those objectives in that period.

**(3)** Before submitting the financial statements to the Minister under subsection (1), the new Corporation shall submit them to the Auditor-General, who shall report to the Minister:

(a) whether, in the Auditor-General’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-General’s opinion, show fairly the financial transactions and state of affairs of the abolished Corporation;

(c) whether, in the Auditor-General’s opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the abolished Corporation during the period to which the report relates were in accordance with the Apple and Pear Corporation Act; and

(d) as to such other matters arising out of the statements as the Auditor-General 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 Auditor-General’s report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

**Officers and employees of abolished Corporation**

**10.** **(1)** A person who, immediately before the commencing day, was an officer or employee of the abolished Corporation shall be deemed to have been engaged by the new Corporation as an employee on that day.

**(2)** The new Corporation shall be deemed to have determined, on the commencing day, terms and conditions of employment of persons to whom subsection (1) applies that are the same as those that were the terms and conditions of service or employment of those persons immediately before that day.

**Payment of amounts of levy and charge to new Corporation**

**11.** **(1)** Subject to subsection (3), there shall be paid to the new Corporation amounts equal to:

(a) amounts of levy received by the Commonwealth under the Levy Act; and

(b) amounts received by the Commonwealth by way of penalty under section 7 of the Levy Collection Act.

**(2)** Subject to subsection (3), there shall be paid to the new Corporation amounts equal to:

(a) amounts of charge received by the Commonwealth under the Export Charge Act; and

(b) amounts received by the Commonwealth by way of penalty under section 6 of the Export Charge Collection Act.

**(3)** Subsections (1) and (2) do not apply in relation to amounts that have been paid to the abolished Corporation under section 29 of the Apple and Pear Corporation Act.

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

**(5)** The reference in paragraph (1) (a) to amounts of levy received by the Commonwealth under the Levy Act includes a reference to amounts received by the Commonwealth under section 6 of the Levy Collection Act, and the reference in paragraph (2) (a) to amounts of charge received by the Commonwealth under the Export Charge Act includes a reference to amounts received by the Commonwealth under section 5 of the Export Charge Collection Act.

**PART III—AMENDMENTS OF THE APPLE AND PEAR EXPORT UNDERWRITING ACT 1981**

**Principal Act**

**12.** The *Apple and Pear Export Underwriting Act 1981*1is in this Part referred to as the Principal Act.

**Interpretation**

**13.** Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “Corporation” and substituting the following definition:

“ ‘Corporation’ means the Australian Horticultural Corporation;”.

**Directions by Minister with respect to overseas price of fruit**

**14.** Section 14 of the Principal Act is amended by omitting “regulations in force under the *Australian Apple and Pear Corporation Act 1973* authorize” and substituting “a regulation in force under the *Australian Horticultural Corporation Act 1987*,or an order in force under such a regulation, authorises”.

**PART IV—AMENDMENT OF THE APPLE AND PEAR EXPORT CHARGE ACT 1976**

**Principal Act**

**15.** The *Apple and Pear Export Charge Act 1976*2is in this Part referred to as the Principal Act.

**Imposition of charge**

**16.** Section 6 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1a) Charge is not imposed on fruit that is exported from Australia on or after the day fixed under subsection 2 (2) of the *Australian Horticultural Corporation Act 1987*.”.

**PART V—AMENDMENT OF THE APPLE AND PEAR LEVY ACT 1976**

**Principal Act**

**17.** The *Apple and Pear Levy Act 1976*3is in this Part referred to as the Principal Act.

**Imposition of levy**

**18.** Section 5 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1a) Levy is not imposed on:

(a) fruit that is sold in Australia by the grower on or after the day fixed under subsection 2 (2) of the *Australian Horticultural Corporation Act 1987*;or

(b) fruit that is used by the grower on or after the day referred to in paragraph (a).”.

**PART VI—REPEALS**

**Repeals**

**19.** The following Acts are repealed:

*Apple and Pear Stabilization Act 1971*

*Apple and Pear Stabilization Act 1972*

*Apple and Pear Stabilization Act 1973*

*Apple and Pear Stabilization Amendment Act 1976*

*Apple and Pear Stabilization Amendment Act 1977*

*Apple and Pear Stabilization Amendment Act* (*No. 2*) *1977*

*Apple and Pear Stabilization Amendment Act 1978*

*Apple and Pear Stabilization Amendment Act 1981.*

**NOTES**

1. No. 14, 1981, as amended. For previous amendments, see No. 15, 1986.

2. No. 197, 1976, as amended. For previous amendments, see No. 147, 1981.

3. No. 195, 1976, as amended. For previous amendments, see No. 146, 1981; No. 19, 1982; and No. 28, 1984.

[*Minister’s second reading speech made in—*

*House of Representatives on 18 September 1987*

*Senate on 17 November 1987*]