



Horticultural Policy Council Act 1987

No. 167 of 1987

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Horticultural Policy Council Act 1987

No. 167 of 1987

An Act to establish a Horticultural Policy Council

[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 *Horticultural Policy Council Act 1987*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. 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:

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- (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;

“Chairperson” means the Chairperson of the Council;

“Council” means the Horticultural Policy Council;

“Council report” means a report given to the Minister in the performance of a function referred to in paragraph 6 (a) or (b);

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

“Deputy Chairperson” means the Deputy Chairperson of the Council;

“ex officio member” means the Chairperson of the Australian Horticultural Corporation or the Chairperson of the Horticultural Research and Development Corporation;

“fruits” includes processed fruits;

“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;

“member” means a member of the Council, and includes the Chairperson and Deputy Chairperson;

“nominated member” means a member other than the Chairperson or an ex officio member;

“nominating bodies”, in relation to a person who is a nominated member, means the bodies on whose nomination the person was appointed as a nominated member;

“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;

“regulations” includes orders;

“State” includes the Northern Territory;

“vegetables” includes:

(a) mushrooms and other edible fungi; and

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

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF COUNCIL

Establishment

4. A council by the name of the Horticultural Policy Council is established by this section.

Object

5. The object of the establishment of the Council is to facilitate the development by the Commonwealth Government of sound, consistent and comprehensive policies in relation to Australian horticultural industries, through the active co-ordinated participation of those industries in the policy formulation process.

Functions

6. The functions of the Council are:

(a) to inquire into, and to report to the Minister on, matters affecting the well-being of Australian horticultural industries that, in the opinion of the Council, require investigation or action by, or at the request of, the Commonwealth or an authority of the Commonwealth;

(b) to inquire into, and to report to the Minister on, matters referred to it by the Minister in relation to Australian horticultural industries;

(c) to develop recommendations, guidelines and plans for measures designed to safeguard or further the interests of Australian

horticultural industries, and to submit these to the Minister for consideration by the Minister or for referral to other persons, bodies or authorities;

- (d) to consult and co-operate with persons, bodies and authorities in relation to matters affecting Australian horticultural industries; and
- (e) such other functions in relation to Australian horticultural industries as are conferred on the Council by or under this Act or any other Act.

Powers

7. The Council 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 functions.

Publication of Council reports etc.

8. (1) Where a Council report is given to the Minister, the Minister may cause it to be made public in such ways as he or she considers appropriate.

(2) The Council shall not make public a Council report, or any part of a Council report, that has not been made public by the Minister.

(3) Where a member disagrees with a finding or recommendation to be included in a Council report, the report shall:

- (a) identify the member; and
- (b) include a statement of the views of the member in relation to the finding or recommendation.

PART III—CONSTITUTION AND MEETINGS OF COUNCIL

Constitution of Council

9. (1) The Council consists of the following members:

- (a) the Chairperson;
- (b) 5 members to represent growers and producers of Australian horticultural products, appointed on the nomination, subject to and in accordance with the regulations, of bodies prescribed for the purposes of this paragraph;
- (c) 2 members to represent processors of Australian horticultural products, appointed on the nomination, subject to and in accordance with the regulations, of bodies prescribed for the purposes of this paragraph;
- (d) 1 member to represent persons engaged in the marketing of Australian horticultural products, appointed on the nomination, subject to and in accordance with the regulations, of bodies prescribed for the purposes of this paragraph;
- (e) 2 members nominated by the Australian Agricultural Council;
- (f) 2 members nominated by the Australian Council of Trade Unions;

- (g) the Chairperson of the Australian Horticultural Corporation;
- (h) the Chairperson of the Horticultural Research and Development Corporation.

(2) The regulations may amend subsection (1) (whether by inserting or omitting a paragraph or otherwise) and may make any necessary consequential amendment of paragraph 22 (5) (a).

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

Chairperson

10. The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

Deputy Chairperson

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

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

(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.

(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 is vacant (whether or not an appointment has previously been made to the office); or
- (b) the Chairperson 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.

(8) The Deputy Chairperson 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

12. (1) The Chairperson and the nominated members shall be appointed by the Minister.

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

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

Term of office

13. (1) The Chairperson or a nominated member:

- (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 Chairperson or a nominated member ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in his or her place until the end of the term.

Members hold office on part time basis

14. The members hold office on a part time basis.

Remuneration and allowances

15. (1) The Chairperson shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The Chairperson shall be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) A member of the Council shall be paid such allowances as are prescribed in relation to the performance of his or her duties as a member of the Council.

(5) A member of a committee or working group (whether or not a member of the Council) shall be paid such allowances as are prescribed in relation to the performance of his or her duties as a member of the committee or working group.

(6) Subsections (4) and (5) do not apply in relation to the Chairperson.

(7) The following offices are not public offices within the meaning of the *Remuneration Tribunals Act 1973*:

- (a) member of the Council (other than the Chairperson);
- (b) member of a committee;
- (c) member of a working group.

(8) Where:

- (a) a person who is a member of the Council, a committee or a working group 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.

(9) Where a person who is the Chairperson:

- (a) is a member of the Parliament of a State, but subsection (8) 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.

(10) An amount payable under subsection (9) 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.

Leave of absence

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

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

Resignation

17. The Chairperson or a nominated member may resign by writing signed and delivered to the Minister.

Disclosure of interests

18. (1) Where:

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

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

Termination of appointment

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

(2) If:

- (a) the Chairperson or a nominated member 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, without reasonable excuse, contravenes section 18;
- (c) the Chairperson is absent, except with the leave of the Minister, from 3 consecutive meetings of the Council; or
- (d) a nominated member is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Council;

the Minister shall terminate the member's appointment.

(3) The Minister shall, at the request of the nominating bodies of a nominated member, terminate the appointment of the member.

(4) If an ex officio member:

- (a) without reasonable excuse, contravenes section 18; or
- (b) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Council;

the Minister shall terminate his or her appointment under the *Australian Horticultural Corporation Act 1987* or the *Horticultural Research and Development Corporation Act 1987*, as the case requires.

Deputies of nominated members

20. (1) The Minister may, if requested to do so by the nominating bodies of a nominated member, appoint a person nominated by the bodies to be the deputy of the member.

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

(3) A person appointed as the deputy of a member ceases to hold office as the deputy of the member if the member ceases to be a nominated member.

(4) A person appointed as the deputy of a member may resign the office by writing signed by the person and delivered to the Minister.

(5) During any period when a member is unable, for any reason, to attend meetings of the Council, the deputy of the member shall act as a member.

(6) The deputy of a member has, when acting as a member, all the powers, duties, rights and entitlements of a member.

(7) Anything done by or in relation to a person purporting to act as a member under subsection (5) is not invalid because:

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

Terms and conditions of appointment not provided for by Act

21. A member 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

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

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

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

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

(5) At a meeting of the Council:

- (a) 8 members (of whom at least 2 are members referred to in paragraph 9 (1) (b), and at least one is a member referred to in paragraph 9 (1) (c), (d) or (g)) 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 Council shall keep minutes of its proceedings.

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

PART IV—COMMITTEES AND WORKING GROUPS

Executive committee and other committees

23. (1) The Council may establish an executive committee and other committees to assist it in the performance of its functions and the exercise of its powers.

(2) A committee may be constituted wholly by members of the Council or partly by members of the Council and partly by other persons.

(3) The Council shall appoint one of the members of a committee to be the Chairperson of the committee.

(4) The Council may, by resolution, determine:

- (a)** the manner in which a committee is to perform its functions; and
- (b)** the procedure to be followed at or in relation to meetings of a committee, including matters with respect to:
 - (i)** the convening of meetings of the committee;
 - (ii)** the quorum for meetings of the committee (including requirements that particular members be present);
 - (iii)** the member of the committee to preside at meetings of the committee at which the Chairperson of the committee is not present;
 - (iv)** the manner in which questions arising at a meeting of the committee are to be decided;
 - (v)** the keeping of minutes; and
 - (vi)** the inviting of persons to attend meetings of the committee for the purpose of advising or informing the committee on any matter.

(5) Except in relation to matters determined by the Council under subsection (4), a committee may determine the procedure to be followed at or in relation to its meetings.

(6) Where a member of a committee disagrees with a finding or recommendation to be included in a report of the committee, the report shall:

- (a)** identify the member; and
- (b)** include a statement of the views of the member in relation to the finding or recommendation.

(7) Section 18 applies in relation to a member of a committee as if:

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

Working groups of Council

24. (1) The Council may establish working groups to provide advice to it on any matter.

(2) Where the Council establishes a working group, the Council shall determine the period for which the working group is to remain in existence.

(3) A working group may be constituted wholly by members of the Council, wholly by other persons, or partly by members of the Council and partly by other persons.

(4) The Council shall appoint one of the members of a working group to be Chairperson of the working group.

(5) The Council may, by resolution, determine:

- (a)** the manner in which a working group is to perform its functions; and
- (b)** the procedure to be followed at or in relation to meetings of a working group, including matters with respect to:
 - (i)** the convening of meetings of the working group;
 - (ii)** the quorum for meetings of the working group (including requirements that particular members be present);
 - (iii)** the member of the working group to preside at meetings of the working group at which the Chairperson of the working group is not present;
 - (iv)** the manner in which questions arising at a meeting of the committee are to be decided;
 - (v)** the keeping of minutes; and
 - (vi)** the inviting of persons to attend meetings of the working group for the purpose of advising or informing the working group on any matter.

(6) Except in relation to matters determined by the Council under subsection (5), a working group may determine the procedure to be followed at or in relation to its meetings.

(7) Where a member of a working group disagrees with a finding or recommendation to be included in a report of a working group, the report shall:

- (a)** identify the member; and
- (b)** include a statement of the views of the member in relation to the finding or recommendation.

(8) Section 18 applies in relation to a member of a working group as if:

- (a)** a reference to the Council were a reference to the working group; and
- (b)** a reference to a member were a reference to a member of the working group (whether or not the member of the working group is also a member of the Council).

PART V—MISCELLANEOUS

Staff

25. (1) The Council shall arrange with the Secretary to the Department for the services of officers or employees of the Department to be made available to the Council.

(2) While a person is performing services for the Council under an arrangement under subsection (1), the person shall perform those services in accordance with the directions of the Council, and shall be deemed to be an employee of the Council for the purposes of paragraph 27 (1) (c).

Consultants

26. (1) The Council may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Council.

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

Delegation by Council

27. (1) The Council may, by resolution, either generally or as otherwise provided by the resolution, delegate all or any of its powers under this Act (other than this power of delegation) to:

- (a) a committee of the Council;
- (b) a member of the Council; or
- (c) an employee of the Council.

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

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

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

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

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

(6) A certificate signed by the Chairperson stating any matter with respect to a delegation of 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.

Annual report

28. (1) The Council 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.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(3) If this Act 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 Act 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.

Regulations

29. 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.

Orders

30. (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.

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