



Horticultural Legislation Amendment Act 1989

No. 46 of 1989

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Horticultural Legislation Amendment Act 1989

No. 46 of 1989

An Act to amend certain laws relating to horticultural products, and for related purposes

[Assented to 8 June 1989]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Horticultural Legislation Amendment Act 1989*.

Commencement

2. (1) Sections 1, 2, 3, 5, 6, 7 and 8, paragraphs 10 (a) and (b), sections 19 and 20, paragraphs 22 (a) and (b) and sections 31, 33 and 34 commence on the day on which this Act receives the Royal Assent.

(2) The following provisions shall also commence on the day on which this Act receives the Royal Assent:

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- (a) section 11, to the extent that it inserts a new section 7B in the *Horticultural Export Charge Collection Act 1987*;
 - (b) section 23, to the extent that it inserts a new section 7B in the *Horticultural Levy Collection Act 1987*.
- (3) Subject to subsection (5), sections 11 and 23 of this Act, to the extent that they make provision for other amendments, commence on a day or days to be fixed by Proclamation.
- (4) Subject to subsection (5), the remaining provisions of this Act also commence on a day or days to be fixed by Proclamation.
- (5) If a provision referred to in subsection (3) or (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

**PART 2—AMENDMENTS OF THE AUSTRALIAN
HORTICULTURAL CORPORATION ACT 1987**

Principal Act

3. In this Part, “Principal Act” means the *Australian Horticultural Corporation Act 1987*¹.

Interpretation

4. Section 3 of the Principal Act is amended:

- (a) by inserting in the definition of “State” in subsection (1) “the Australian Capital Territory and” after “includes”;
- (b) by omitting the definition of “Parliament” from subsection (1) and substituting the following definition:

“‘Parliament’ means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly of the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory.”.

Payment of amounts of levy and charge to Corporation

5. Section 47 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(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:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (a) of the Levy Collection Act, or by virtue of an agreement entered into under section 7B of that Act, in relation to such levy; and

- (b) amounts received by the Commonwealth under subsection 7A (1) of the Levy Collection Act on account of such levy.

“(5) 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:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (a) of the Export Charge Collection Act, or by virtue of an agreement entered into under section 7B of that Act, in relation to such charge; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of the Export Charge Collection Act on account of such charge.

“(6) 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:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of that Act, or by virtue of an agreement entered into under section 7B of that Act, in respect of penalty payable under that Act.

“(7) The reference in paragraph (2) (b) to amounts received by the Commonwealth by way of penalty under section 8 of the Export Charge Collection Act includes a reference to:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of that Act, or by virtue of an agreement entered into under section 7B of that Act, in respect of penalty payable under that Act.”.

6. After section 47 of the Principal Act the following section is inserted:

Corporation may enter into agreements with persons collecting levy, charge or penalty

“47A. (1) The Corporation may enter into an agreement, in writing, with any person who is responsible, under section 7 or 7A of the Levy Collection Act or of the Export Charge Collection Act, for the collection of amounts for payment to the Commonwealth, providing for payment by the Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

“(2) The Corporation may enter into an agreement, in writing, with any person who has agreed, in accordance with subsection 7B (1) of the Levy Collection Act or of the Export Charge Collection Act, to collect amounts on behalf of the Commonwealth, providing for payment by the

Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

“(3) The Corporation shall not, in exercising its powers under subsection (1) or (2):

- (a) discriminate between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
- (b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.”.

PART 3—AMENDMENTS OF THE HORTICULTURAL EXPORT CHARGE COLLECTION ACT 1987

Principal Act

7. In this Part, “Principal Act” means the *Horticultural Export Charge Collection Act 1987*².

Interpretation

8. Section 4 of the Principal Act is amended:

- (a) by omitting “or” (last occurring) from paragraph (a) of the definition of “examinable documents” in subsection (1);
- (b) by inserting after paragraph (b) of that definition the following word and paragraph:

“or (ba) the sale of prescribed goods or services in relation to chargeable horticultural products of any kind;”;

- (c) by adding at the end of that definition the following paragraph:

“(g) persons who sell prescribed goods or services in relation to chargeable horticultural products of any kind;”;

- (d) by inserting the following definitions:

“‘collecting authority’ means:

- (a) a State or Territory; or
- (b) an authority of a State or Territory;

that, by reason of an agreement entered into under section 7B, has agreed to collect money payable under this Act on behalf of the Commonwealth;

‘levy’ means levy imposed by the *Horticultural Levy Act 1987*;

‘Levy Collection Act’ means the *Horticultural Levy Collection Act 1987*;

‘premises’ includes:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises in the kind referred to in paragraph (a) or (b));

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‘prescribed goods or services’, in relation to chargeable horticultural products of a particular kind, means goods or services identified by the regulations as goods or services used in subjecting those products to a process in the course of their production or their preparation for export;”;

(e) by adding at the end the following subsections:

“(2) Chargeable horticultural products may be classified by reference to any process to which they are subjected in the course of their production or their preparation for export and the rate of charge payable on those products may be determined by reference to that process.

“(3) Where an agreement is entered into between the Commonwealth and a State or Territory concerning the collection of charge or penalty in respect of chargeable horticultural products of a particular kind, a reference to the collecting authority in respect of that agreement is a reference to:

- (a) unless paragraph (b) applies—that State or Territory; and
- (b) if it is provided in the agreement that an authority of that State or Territory shall collect the charge or penalty—that authority.”.

Act binds Crown

9. Section 5 of the Principal Act is amended:

- (a) by inserting in subsection (1) “of the Australian Capital Territory,” after “States,”;
- (b) by inserting in subsection (2) “the Australian Capital Territory,” after “State,”.

Liability of exporting agents

10. Section 7 of the Principal Act is amended:

- (a) by omitting from subsection (1) “to the Commonwealth” and substituting “in accordance with subsection (1A)”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Amounts required to be paid under subsection (1) in respect of chargeable horticultural products of a particular kind shall be paid:

- (a) unless paragraph (b) applies—to the Commonwealth; and
- (b) if an agreement has been entered into under section 7B between the Commonwealth and a State or Territory concerning the collection of amounts referred to in subsection (1) in respect of products of that kind—to the collecting authority under that agreement.”;

(c) by inserting after subsection (4) the following subsection:

“(4A) Where exporting agents export from Australia horticultural products on which an amount on account of charge has been paid to the Commonwealth, under section 7A, this section does not apply to those agents in respect of those products.”.

11. After section 7 of the Principal Act the following sections are inserted:

Liability of sellers of prescribed goods or services

“7A. (1) For better securing the payment of charge, a person who has been paid an amount on account of charge or in relation to penalty under subsection (2), shall, within a prescribed period after the receipt of that amount, pay that amount to the Commonwealth.

“(2) Subject to this section, a person to whom prescribed goods or services in relation to chargeable horticultural products of a particular kind are sold shall, within a prescribed period after the purchase of those goods or services, pay to the person selling those goods or services:

- (a) an amount on account of the charge that would be payable by that first-mentioned person on products of that kind on their exportation from Australia after being subjected to the process facilitated by those goods or services; and
- (b) an amount equal to the amount of any penalty payable by that first-mentioned person under section 8 in relation to charge by reason of a previous purchase of such prescribed goods or services.

“(3) A person is not required to make a payment under paragraph (2) (a) by reason of the purchase of prescribed goods or services in relation to chargeable horticultural products of a particular kind if he or she informs the person selling those goods or services, by notice in writing:

- (a) where chargeable horticultural products of that kind are not also leviable horticultural products:
 - (i) that he or she does not intend to use those goods or services in producing chargeable horticultural products of that kind; or
 - (ii) that he or she does intend to use those goods or services in producing chargeable horticultural products of that kind but does not intend to export those products from Australia; and
- (b) where chargeable horticultural products of that kind are also leviable horticultural products:
 - (i) that he or she does not intend to use those goods or services in producing chargeable horticultural products, or leviable horticultural products, of that kind; or
 - (ii) that he or she does intend to use those goods and services in producing chargeable horticultural products, or leviable horticultural products, of that kind but does not intend, in

the case of chargeable horticultural products, to export those products from Australia, or, in the case of leviable horticultural products, to sell those products or to use them in the production of other goods.

“(4) Where a person makes a payment to a seller of prescribed goods or services in relation to chargeable horticultural products of a particular kind on account of charge that would be payable on products of that kind if they were exported from Australia after being subjected to the process facilitated by those goods or services, the first-mentioned person is, on making that payment, discharged from liability to pay charge to the Commonwealth on chargeable horticultural products of that kind that are so exported after being subjected to the process facilitated by those goods or services but the liability of the seller under subsection (1) is not affected.

“(5) Where a person makes a payment of an amount of penalty to a seller of prescribed goods or services in relation to chargeable horticultural products of a particular kind, being penalty payable by reason of a previous purchase of such goods or services, the person is, on making that payment, discharged from liability to pay that penalty to the Commonwealth but the liability of the seller under subsection (1) is not affected.

“(6) Notwithstanding that horticultural products of a particular kind are both leviable horticultural products and chargeable horticultural products, those horticultural products shall be taken, subject to the operation of subsection 7A (7) of the Levy Collection Act, to be leviable horticultural products only, for all purposes relating to the operation of this section (other than subsection (3)).

“(7) Where a person has paid charge in respect of horticultural products, that person is not liable to pay an amount on account of charge in respect of those products under this section.

Collection agreements

“7B. (1) The Commonwealth may enter into an agreement with a State, the Australian Capital Territory or the Northern Territory with respect to the collection in that State or Territory, on behalf of the Commonwealth:

- (a) of charge from the owner of chargeable horticultural products of a particular kind; or
- (b) of amounts payable under subsection 7 (1) (in this section called ‘related amounts’) from the exporting agent of the owner of such products;

by that State or Territory or by an authority of that State or Territory that is specified in the agreement.

“(2) Without limiting the generality of the matters that may be provided for in an agreement entered into with a State or Territory, such an agreement may provide for:

- (a) the keeping by the collecting authority in respect of the agreement of accounts and records in relation to amounts of charge or related amounts collected by the collecting authority;
- (b) the payment by the collecting authority to the Commonwealth of amounts of charge or related amounts collected by the collecting authority;
- (c) the giving by the collecting authority to the Minister of information with respect to amounts of charge or related amounts collected by the collecting authority and of amounts paid by the collecting authority to the Commonwealth; and
- (d) the inspection and audit of accounts and records kept by the collecting authority with respect to amounts of charge or related amounts collected by the collecting authority.

“(3) While an agreement entered into under subsection (1) with a State or Territory is in force in relation to chargeable horticultural products of a particular kind:

- (a) payment of charge or related amounts in respect of products of that kind exported from Australia that are despatched for that purpose from a place in that State or Territory shall be made to the collecting authority in respect of the agreement; and
- (b) where the agreement provides that an authority of that State or Territory shall be the collecting authority in respect of the agreement—that authority may retain out of any money payable by it to any person an amount not exceeding an amount of charge or related amount that the person is liable to pay.

“(4) Where a person pays an amount of charge or a related amount in accordance with paragraph (3) (a), or an amount in respect of charge or of a related amount is deducted in accordance with paragraph (3) (b) from money payable to the person, the person is, to the extent of the amount so paid or deducted, discharged from liability to pay charge or a related amount, as the case requires, to the Commonwealth.

“(5) The *Audit Act 1901* does not apply in relation to charge or related amounts collected by a collecting authority but the operation of that Act in relation to money paid by a collecting authority to the Commonwealth is not affected.

“(6) The Commonwealth shall not, in exercising its powers under subsection (1):

- (a) discriminate between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
- (b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.”.

Penalty for non-payment

12. Section 8 of the Principal Act is amended:

- (a) by inserting in paragraph (2) (b) “or to a collecting authority” after “to the Commonwealth”;
- (b) by adding at the end the following subsections:

“(3) Where:

- (a) a person purchases prescribed goods or services in respect of a chargeable horticultural product of a particular kind; and
- (b) a person fails to pay to the seller of those goods or services an amount on account of charge (in this subsection called the ‘unpaid amount’) in accordance with subsection 7A (2) within the period prescribed for the purposes of that subsection;

there is payable to the Commonwealth by the person, by way of penalty, an amount calculated at the rate of 20% per annum on the unpaid amount computed from the end of that period until the unpaid amount is paid to the seller.

“(4) Where:

- (a) a person who sells prescribed goods and services has received an amount on account of charge; and
- (b) that person does not pay the amount received to the Commonwealth before the end of the period within which, under subsection 7A (1), it should have been so paid;

there is payable to the Commonwealth by that person, by way of penalty, an amount calculated at the rate of 20% per annum on the amount received, computed from the end of that period until the amount is so paid to the Commonwealth.”.

Recovery of charge and other amounts

13. Section 10 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) amounts payable under subsection 7A (1);”.

Refund of charge etc.

14. Section 11 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection:

“(1A) Subject to subsections (2) and (3), where an amount has been paid to the Commonwealth on account of charge, or as penalty, under subsection 7A (1) by reason of the sale of prescribed goods or services to a person and, on application in writing made to the Secretary by that person, the Secretary is satisfied that, for any reason:

- (a) those goods or services will not be used by that person in subjecting any chargeable horticultural products to a process

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in the course of their production or preparation for export;
or

- (b) if those goods and services have been used by that person in subjecting any chargeable horticultural products to a process in the course of their production or preparation for export, those chargeable horticultural products will not be exported by that person;

the Secretary shall, by determination in writing, order the amount paid to be refunded to that person and, upon the Secretary so doing, the amount paid shall be so refunded by the Commonwealth.”;

- (b) by inserting in paragraph (2) (a) “or (1A)” after “subsection (1)”;
- (c) by omitting from paragraph (2) (b) “subsection 48 (2)” and substituting “subsection 47 (2)”;
- (d) by inserting in paragraph (3) (a) “or (1A)” after “subsection (1)”;
- (e) by omitting from paragraph (3) (b) “subsection 46 (2)” and substituting “subsection 45 (2)”.

Powers of authorised person in relation to premises

15. Section 12 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or person in charge” after “occupier”;
- (b) by omitting from subsection (1) “exercising the powers of an authorised person under subsection (2)” and substituting “ascertaining whether a person has contravened or is contravening a provision of this Act”.

16. After section 12 of the Principal Act the following section is inserted:

Seizure

“12A. (1) An authorised person may seize anything that he or she believes on reasonable grounds will afford evidence of the contravention of a provision of this Act.

“(2) The authorised person may retain the thing seized:

- (a) for 60 days after the seizure; or
- (b) if proceedings in which the thing may afford evidence are commenced within that period, until the proceedings (including any appeal) are completed or terminated.

“(3) The Minister may authorise anything seized under subsection (1) to be released to the owner, or to the person from whose possession the thing was seized, either unconditionally or on such conditions as are specified in the authority.

“(4) Subsection (3) does not apply to anything while it is being held by a court as evidence in proceedings.”.

Warrant to enter premises

17. Section 13 of the Principal Act is amended:

- (a) by inserting after subparagraph (1) (a) (i) the following subparagraph:
“(ia) that prescribed goods are sold, or prescribed services are provided, on particular premises;”;
- (b) by omitting from paragraph (1) (b) “of this Act” and substituting “referred to in subsection 12 (1)”;
- (c) by inserting in subsection (3) “, not exceeding one month,” after “period”.

Review of decisions

18. (1) Section 19 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:
“(1) Application may be made to the Administrative Appeals Tribunal:
 - (a) for review of a decision to refuse to remit, under subsection 9 (1), the whole or a part of an amount; or
 - (b) for review of a decision to refuse to order, under subsection 11 (1A), the whole or a part of an amount paid to the Commonwealth to be refunded.”;
- (b) by omitting from subsection (2) “the Minister or an authorised person makes a decision under subsection 9 (1)” and substituting “a person makes a decision under subsection 9 (1) or 11 (1A)”.

(2) Any application made before the commencement of this section under subsection 19 (1) of the Principal Act shall be treated, on and after the commencement of this section, as if it had been made under subsection 19 (1) of the Principal Act as amended by this Act and shall be dealt with accordingly.

**PART 4—AMENDMENTS OF THE HORTICULTURAL LEVY
COLLECTION ACT 1987**

Principal Act

19. In this Part, “Principal Act” means the *Horticultural Levy Collection Act 1987*.

Interpretation

20. Section 4 of the Principal Act is amended:

- (a) by omitting “or” (last occurring) from paragraph (a) of the definition of “examinable documents” in subsection (1);
- (b) by inserting after paragraph (b) of that definition the following word and paragraph:
“or (ba) the sale of prescribed goods or services in relation to leviable horticultural products of any kind;”;

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- (c) by adding at the end of that definition the following paragraph:
 - “(g) persons who sell prescribed goods or services in relation to leviable horticultural products of any kind;”;
- (d) by inserting the following definitions:
 - “‘charge’ means charge imposed by the *Horticultural Export Charge Act 1987*;
 - ‘collecting authority’ means:
 - (a) a State or Territory; or
 - (b) an authority of a State or Territory;that, by reason of an agreement entered into under section 7B, has agreed to collect money payable under this Act on behalf of the Commonwealth;
 - ‘Export Charge Collection Act’ means the *Horticultural Export Charge Collection Act 1987*;
 - ‘premises’ includes:
 - (a) a structure, building, aircraft, vehicle or vessel;
 - (b) a place (whether enclosed or built on or not); and
 - (c) a part of premises (including premises in the kind referred to in paragraph (a) or (b));
 - ‘prescribed goods or services’, in relation to leviable horticultural products of a particular kind, means goods or services identified by the regulations as goods or services used in subjecting those products to a process in the course of their production or their preparation for sale or use in the production of other goods;”;
- (e) by adding at the end the following subsections:
 - “(2) Leviable horticultural products may be classified by reference to any process to which they are subjected in the course of their production or their preparation for sale and the rate of levy payable on those products may be determined by reference to that process.
 - “(3) Where an agreement is entered into between the Commonwealth and a State or Territory concerning the collection of levy or penalty in respect of leviable horticultural products of a particular kind, a reference to the collecting authority in respect of that agreement is a reference to:
 - (a) unless paragraph (b) applies—that State or Territory; and
 - (b) if it is provided in the agreement that an authority of that State or Territory shall collect the levy or penalty—that authority.”.

Act binds Crown

21. Section 5 of the Principal Act is amended:

- (a) by inserting in subsection (1) “of the Australian Capital Territory,” after “States,”;

- (b) by inserting in subsection (2) “the Australian Capital Territory,” after “State,”.

Liability of selling agents and first purchasers

22. Section 7 of the Principal Act is amended:

- (a) by omitting from subsection (1) “to the Commonwealth” and substituting “in accordance with subsection (1A)”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Amounts required to be paid under subsection (1) in respect of leviable horticultural products of a particular kind shall be paid:

- (a) unless paragraph (b) applies—to the Commonwealth; and
 - (b) if an agreement has been entered into under section 7B between the Commonwealth and a State or Territory concerning the collection of amounts referred to in subsection (1) in respect of products of that kind—to the collecting authority under that agreement.”;
- (c) by inserting after subsection (4) the following subsection:

“(4A) Where selling agents sell horticultural products, or first purchasers purchase horticultural products, on which an amount on account of levy has been paid to the Commonwealth, under section 7A, this section does not apply to those agents or those purchasers in respect of those products.”.

23. After section 7 of the Principal Act the following sections are inserted:

Liability of sellers of prescribed goods or services

“7A. (1) For better securing the payment of levy, a person who has been paid an amount on account of levy or in relation to penalty under subsection (2), shall, within a prescribed period after the receipt of that amount, pay that amount to the Commonwealth.

“(2) Subject to this section, a person to whom prescribed goods or services in relation to leviable horticultural products of a particular kind are sold shall, within a prescribed period after the purchase of those goods or services, pay to the person selling those goods or services:

- (a) an amount on account of the levy that would be payable by that first-mentioned person on products of that kind on their sale or use in the production of other goods after being subjected to the process facilitated by those goods or services; and
- (b) an amount equal to the amount of any penalty payable by that first-mentioned person under section 8 in relation to levy by reason of a previous purchase of such prescribed goods or services.

“(3) A person is not required to make a payment under paragraph (2) (a) by reason of the purchase of prescribed goods or services in relation

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to leviable horticultural products of a particular kind if he or she informs the person selling those goods or services, by notice in writing:

- (a) where leviable horticultural products of that kind are not also chargeable horticultural products:
 - (i) that he or she does not intend to use those goods or services in producing leviable horticultural products of that kind; or
 - (ii) that he or she does intend to use those goods or services in producing leviable horticultural products of that kind but does not intend to sell those products or use them in the production of other goods; and
- (b) where leviable horticultural products of that kind are also chargeable horticultural products:
 - (i) that he or she does not intend to use those goods or services in producing leviable horticultural products, or chargeable horticultural products, of that kind; or
 - (ii) that he or she does intend to use those goods and services in producing leviable horticultural products, or chargeable horticultural products, of that kind but does not intend, in the case of leviable horticultural products, to sell those products or use them in the production of other goods, or, in the case of chargeable horticultural products, to export those products from Australia.

“(4) Where a person makes a payment to a seller of prescribed goods or services in relation to leviable horticultural products of a particular kind on account of levy that would be payable on products of that kind if they were sold, or used in the production of other goods, after being subjected to the process facilitated by those goods or services, the first-mentioned person is, on making that payment, discharged from liability to pay levy on leviable horticultural products of that kind that are so sold or used after being subjected to the process facilitated by those goods or services but the liability of the seller under subsection (1) is not affected.

“(5) Where a person makes a payment of an amount of penalty to a seller of prescribed goods or services in relation to leviable horticultural products of a particular kind, being penalty payable by reason of a previous purchase of such goods or services, the person is, on making that payment, discharged from liability to pay that penalty to the Commonwealth but the liability of the seller under subsection (1) is not affected.

“(6) Notwithstanding that horticultural products of a particular kind are both leviable horticultural products and chargeable horticultural products, those horticultural products shall be taken, subject to subsection (7), to be leviable horticultural products only, for all purposes relating to the operation of this section (other than subsection (3)).

“(7) In the event that, after payment of an amount on account of levy under this Act to the seller of prescribed goods or services, those goods or

services are used in the production, or preparation for export from Australia, of chargeable horticultural products:

- (a) the amount paid to the seller shall be taken to have been paid on account of charge under paragraph 7A (2) (a) of the Export Charge Collection Act; and
- (b) any payment by the seller to the Commonwealth of an amount equal to the amount referred to in paragraph (a) shall be taken to have been made by the seller to the Commonwealth under subsection 7A (1) of the Export Charge Collection Act.

“(8) Where a person has paid levy in respect of horticultural products, that person is not liable to pay an amount on account of levy in respect of those products under this section.

Collection agreements

“7B. (1) The Commonwealth may enter into an agreement with a State, the Australian Capital Territory or the Northern Territory with respect to the collection in that State or Territory, on behalf of the Commonwealth:

- (a) of levy from a producer of leviable horticultural products of a particular kind; or
- (b) of amounts payable under subsection 7 (1) (in this section called ‘related amounts’) from a selling agent of, or a first purchaser from, a producer of such products;

by that State or Territory or by an authority of that State or Territory that is specified in the agreement.

“(2) Without limiting the generality of the matters that may be provided for in an agreement entered into with a State or Territory, such an agreement may provide for:

- (a) the keeping by the collecting authority in respect of the agreement of accounts and records in relation to amounts of levy or related amounts collected by the collecting authority;
- (b) the payment by the collecting authority to the Commonwealth of amounts of levy or related amounts collected by the collecting authority;
- (c) the giving by the collecting authority to the Minister of information with respect to amounts of levy or related amounts collected by the collecting authority and of amounts paid by the collecting authority to the Commonwealth; and
- (d) the inspection and audit of accounts and records kept by the collecting authority with respect to amounts of levy or related amounts collected by the collecting authority.

“(3) While an agreement entered into under subsection (1) with a State or Territory is in force in relation to leviable horticultural products of a particular kind:

- (a) payment of levy or related amounts in respect of products of that kind that are sold in that State or Territory or used in that State or

Territory in the production of other goods shall be made to the collecting authority in respect of the agreement; and

- (b) where the agreement provides that an authority of that State or Territory shall be the collecting authority in respect of the agreement—that authority may retain out of any money payable by it to any person an amount not exceeding an amount or levy or related amount that the person is liable to pay.

“(4) Where a person pays an amount of levy or a related amount in accordance with paragraph (3) (a), or an amount in respect of levy or of a related amount is deducted in accordance with paragraph (3) (b) from money payable to the person, the person is, to the extent of the amount so paid or deducted, discharged from liability to pay levy or a related amount, as the case requires, to the Commonwealth.

“(5) The *Audit Act 1901* does not apply in relation to levy or related amounts collected by a collecting authority but the operation of that Act in relation to money paid by a collecting authority to the Commonwealth is not affected.

“(6) The Commonwealth shall not, in exercising its powers under subsection (1):

- (a) discriminate between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
- (b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.”.

Penalty for non-payment

24. Section 8 of the Principal Act is amended:

- (a) by inserting in paragraph (2) (b) “or to a collecting authority” after “to the Commonwealth”;
- (b) by adding at the end the following subsections:

“(3) Where:

- (a) a person purchases prescribed goods or services in respect of a leviable horticultural product of a particular kind; and
- (b) a person fails to pay to the seller of those goods or services an amount on account of levy (in this subsection called the ‘unpaid amount’) in accordance with subsection 7A (2) within the period prescribed for the purposes of that subsection;

there is payable to the Commonwealth by the person, by way of penalty, an amount calculated at the rate of 20% per annum on the unpaid amount computed from the end of that period until the unpaid amount is paid to the seller.

“(4) Where:

- (a) a person who sells prescribed goods and services has received an amount on account of levy; and

(b) that person does not pay the amount received to the Commonwealth before the end of the period within which, under subsection 7A (1), it should have been so paid; there is payable to the Commonwealth by that person, by way of penalty, an amount calculated at the rate of 20% per annum on the amount received, computed from the end of that period until the amount is so paid to the Commonwealth.”.

Recovery of levy and other amounts

25. Section 10 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) amounts payable under subsection 7A (1);”.

Refund of levy etc.

26. Section 11 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) Subject to subsections (2) and (3), where an amount has been paid to the Commonwealth on account of levy, or as penalty, under subsection 7A (1) by reason of the sale of prescribed goods or services to a person and, on application in writing made to the Secretary by that person, the Secretary is satisfied that, for any reason:

- (a) those goods or services will not be used by that person in subjecting any leviable horticultural products to a process in the course of their production or of their preparation for sale or use in the production of other goods; or
- (b) if those goods and services have been used by that person in subjecting any leviable horticultural products to a process in the course of their production or of their preparation for sale or use in the production of other goods, those products will not be sold by that person or used by that person in the production of other goods;

the Secretary shall, by determination in writing, order the amount paid to be refunded and, upon the Secretary so doing, the amount paid shall be refunded by the Commonwealth.”;

- (b) by inserting in paragraph (2) (a) “or (1A)” after “subsection (1)”;
- (c) by omitting from paragraph (2) (b) “subsection 48 (1)” and substituting “subsection 47 (1)”;
- (d) by inserting in paragraph (3) (a) “or (1A)” after “subsection (1)”;
- (e) by omitting from paragraph (3) (b) “subsection 46 (1)” and substituting “subsection 45 (1)”.

Power of authorised person in relation to premises

27. Section 12 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or person in charge” after “occupier”;
- (b) by omitting from subsection (1) “exercising the powers of an authorised person under subsection (2)” and substituting “ascertaining

whether a person has contravened or is contravening a provision of this Act”.

28. After section 12 of the Principal Act the following section is inserted:

Seizure

“12A. (1) An authorised person may seize anything that he or she believes on reasonable grounds will afford evidence of the contravention of a provision of this Act.

“(2) The authorised person may retain the thing seized:

- (a) for 60 days after the seizure; or
- (b) if proceedings in which the thing may afford evidence are commenced within that period, until the proceedings (including any appeal) are completed or terminated.

“(3) The Minister may authorise anything seized under subsection (1) to be released to the owner, or to the person from whose possession the thing was seized, either unconditionally or on such conditions as are specified in the authority.

“(4) Subsection (3) does not apply to anything while it is being held by a court as evidence in proceedings.”.

Warrant to enter premises

29. Section 13 of the Principal Act is amended:

- (a) by inserting after subparagraph (1) (a) (i) the following subparagraph:

“(ia) that prescribed goods are sold, or prescribed services are provided, on particular premises;”;
- (b) by omitting from paragraph (1) (b) “of this Act” and substituting “referred to in subsection 12 (1)”;
- (c) by inserting in subsection (3) “,not exceeding one month,” after “period”.

Review of decisions

30. (1) Section 19 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Application may be made to the Administrative Appeals Tribunal:

 - (a) for review of a decision to refuse to remit, under subsection 9 (1), the whole or a part of an amount; or
 - (b) for review of a decision to refuse to order, under subsection 11 (1A), the whole or a part of an amount paid to the Commonwealth to be refunded.”;
- (b) by omitting from subsection (2) “the Minister or an authorised person makes a decision under subsection 9 (1)” and substituting “a person makes a decision under subsection 9 (1) or 11 (1A)”.

(2) Any application made before the commencement of this section under subsection 19 (1) of the Principal Act shall be treated, on and after the commencement of this section, as if it had been made under subsection 19 (1) of the Principal Act as amended by this Act and shall be dealt with accordingly.

PART 5—AMENDMENTS OF THE HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION ACT 1987

Principal Act

31. In this Part, “Principal Act” means the *Horticultural Research and Development Corporation Act 1987*⁴.

Interpretation

32. Section 3 of the Principal Act is amended:

- (a) by inserting in the definition of “State” in subsection (1) “the Australian Capital Territory and” after “includes”;
- (b) by omitting the definition of “Parliament” from subsection (1) and substituting the following definition:

“ ‘Parliament’ means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly of the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory.”.

Payment of amounts of levy and charge to Corporation

33. Section 45 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(4) The reference in paragraph (1) (a) to amounts of levy received by the Commonwealth by virtue of section 9 of the Levy Act includes a reference to:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (a) of the Levy Collection Act, or by virtue of an agreement entered into under section 7B of that Act, in relation to such levy; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of the Levy Collection Act on account of such levy.

“(5) The reference in paragraph (2) (a) to amounts of charge received by the Commonwealth by virtue of section 9 of the Export Charge Act includes a reference to:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (a) of the Export Charge Collection Act, or by virtue of an agreement entered into under section 7B of that Act, in relation to such charge; and

- (b) amounts received by the Commonwealth under subsection 7A (1) of the Export Charge Collection Act on account of such charge.

“(6) 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:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of that Act, or by virtue of an agreement entered into under section 7B of that Act, in respect of penalty payable under that Act.

“(7) The reference in paragraph (2) (b) to amounts received by the Commonwealth by way of penalty under section 8 of the Export Charge Collection Act includes a reference to:

- (a) amounts received by the Commonwealth under paragraph 7 (1) (b) of that Act; and
- (b) amounts received by the Commonwealth under subsection 7A (1) of that Act, or by virtue of an agreement entered into under section 7B of that Act, in respect of penalty payable under that Act.”.

34. After section 45 of the Principal Act the following section is inserted:

Corporation may enter into agreements with persons collecting levy, charge or penalty

“45A. The Corporation may enter into an agreement, in writing, with any person who is responsible, under section 7 or 7A of the Levy Collection Act or of the Export Charge Collection Act, for the collection of amounts for payment to the Commonwealth, providing for payment by the Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

“(2) The Corporation may enter into an agreement, in writing, with any person who has agreed, in accordance with subsection 7B (1) of the Levy Collection Act or of the Export Charge Collection Act, to collect amounts on behalf of the Commonwealth, providing for payment by the Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

“(3) The Corporation shall not, in exercising its powers under subsection (1) or (2):

- (a) discriminate between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
- (b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.”.

Horticultural Legislation Amendment No. 46, 1989

NOTES

1. No. 164, 1987, as amended. For previous amendments, see Nos. 51 and 99, 1988.
2. No. 171, 1987, as amended. For previous amendments, see No. 99, 1988.
3. No. 169, 1987, as amended. For previous amendments, see No. 99, 1988.
4. No. 166, 1987, as amended. For previous amendments, see Nos. 51 and 99, 1988.

[*Minister's second reading speech made in—
House of Representatives on 4 May 1989
Senate on 25 May 1989*]