

1998-1999-2000

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Horticulture Marketing and Research and Development Services Bill 2000

No. , 2000

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to reform the provision of
marketing, research and development services to
the horticultural industry, and for related purposes**

ISBN: 0642 451869

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1 **A Bill for an Act to reform the provision of**
2 **marketing, research and development services to**
3 **the horticultural industry, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Horticulture Marketing and Research*
9 *and Development Services Act 2000*.

Section 2

1 **2 Commencement**

- 2 (1) Subject to this section, this Act commences on the day on which it
3 receives the Royal Assent.
- 4 (2) Parts 3 and 4 commence at the same time as Schedule 1 to the
5 *Horticulture Marketing and Research and Development Services*
6 *(Repeals and Consequential Provisions) Act 2000*.

7 **3 Simplified outline**

8 The following is a simplified outline of this Act and some related
9 material.

10 This Act provides for a company to be declared as the industry
11 services body for the Australian horticultural industry and a
12 company to be declared as the industry export control body. The
13 same company could be declared to be both bodies (see Part 2).

14 This Act provides for the industry services body to receive funding
15 from the Commonwealth (see Part 3).

16 It also requires the industry services body and the industry export
17 control body to act in accordance with a deed of agreement, which
18 imposes obligations on the body and contains details about the
19 body's accountability to the Commonwealth.

20 The Act and the deed provide consequences for breach of the deed.
21 These include ceasing to be declared (see section 10), being subject
22 to an injunction (see section 27) or, in the case of the industry
23 services body, suspension or recovery of funding (see section 16
24 and the deed). The text of the deed is not included in the Act but it
25 is publicly available (see section 14).

26 The *Horticulture Marketing and Research and Development*
27 *Services (Repeals and Consequential Provisions) Act 2000*
28 abolishes the Australian Horticultural Corporation, the
29 Horticultural Research and Development Corporation and the
30 Australian Dried Fruits Board. It also deals with matters arising

Section 4

1 from the transition to the new bodies, such as transfer of staff and
2 assets from the Corporations and a 2 year period to phase in the
3 new export control system provided for in Part 4 of this Act.

4 **4 Definitions**

5 In this Act, unless the contrary intention appears:

6 **acquisition of property** has the same meaning as in paragraph
7 51(xxxi) of the Constitution.

8 **actionable conduct** means conduct by the industry services body
9 or the industry export control body that constitutes a breach of:

- 10 (a) this Act; or
11 (b) the regulations; or
12 (c) orders made under this Act; or
13 (d) the deed of agreement.

14 **APS employee** has the same meaning as in the *Public Service Act*
15 *1999*.

16 **Australia** includes the external Territories.

17 **Commonwealth record** has the same meaning as in the *Archives*
18 *Act 1983*.

19 **deed of agreement** means:

- 20 (a) in relation to the industry services body:
21 (i) the deed of agreement that specifies that it is executed
22 for the purposes of subsection 12(1); and
23 (ii) any variations made to the deed of agreement under
24 section 13; and
25 (b) in relation to the industry export control body:
26 (i) the deed of agreement that specifies that it is executed
27 for the purposes of subsection 12(2); and
28 (ii) any variations made to the deed of agreement under
29 section 13.

Section 4

1 **eligible R&D expenditure** means the amount determined in
2 accordance with the deed of agreement in relation to the industry
3 services body to be the industry services body's eligible R&D
4 expenditure.

5 **export** means export from Australia.

6 **horticultural industry** means any industry carried on in Australia
7 in connection with:

- 8 (a) producing horticultural products by growing, harvesting or
9 processing horticultural products; or
10 (b) marketing and any other handling, storing, transporting,
11 processing or supplying of horticultural products.

12 **horticultural product** means:

- 13 (a) fruits, including processed fruits; and
14 (b) vegetables, including:
15 (i) processed vegetables; and
16 (ii) mushrooms and other edible fungi; and
17 (iii) processed mushrooms and other processed edible fungi;
18 and
19 (c) nuts, including processed nuts; and
20 (d) nursery products, including:
21 (i) trees, shrubs, plants, seeds, bulbs, corms and tubers; and
22 (ii) propagating material and plant tissue cultures, grown for
23 ornamental purposes or for producing fruits, vegetables,
24 nuts or cut flowers and foliage; and
25 (e) cut flowers and foliage, including processed cut flowers and
26 foliage; and
27 (f) products prescribed for the purposes of this paragraph.

28 **industry assets and liabilities**, in relation to a body that is, or was,
29 the industry services body or the industry export control body,
30 means:

- 31 (a) the statutory records of the body; and
32 (b) the assets and liabilities of the body that are determined to be
33 the industry assets and liabilities of the body in accordance

Section 4

1 with the deed of agreement entered into between the body
2 and the Commonwealth under section 12.

3 **industry export control body** means the body for the time being
4 declared to be the industry export control body under subsection
5 9(2).

6 **industry services body** means the body for the time being declared
7 to be the industry services body under subsection 9(1).

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

10 **levy & charge collector** means a person:

11 (a) who is responsible for the collection of amounts for payment
12 to the Commonwealth under:

13 (i) section 7 or 7A of the repealed *Horticultural Levy*
14 *Collection Act 1987*; or

15 (ii) section 7 or 7A of the repealed *Horticultural Export*
16 *Charge Collection Act 1987*; or

17 (iii) section 7 or 9 of the *Primary Industries Levies and*
18 *Charges Collection Act 1991*; or

19 (b) who has agreed to collect amounts on behalf of the
20 Commonwealth under:

21 (i) subsection 7B(1) of the repealed *Horticultural Levy*
22 *Collection Act 1987*; or

23 (ii) subsection 7B(1) of the repealed *Horticultural Export*
24 *Charge Collection Act 1987*; or

25 (iii) subsection 10(1) or 11(1) of the *Primary Industries*
26 *Levies and Charges Collection Act 1991*.

27 **market** means a specified place.

28 **marketing** means activities intended to improve the meeting of
29 customer needs (including processing, handling, transporting,
30 storing, promoting and selling) but does not include research and
31 development.

32 **marketing amounts** means:

Section 4

- 1 (a) amounts of levy imposed under subclause 2(1) of
2 Schedule 15 to the *Primary Industries (Excise) Levies Act*
3 *1999* at a rate set under subclause 4(1) of that Schedule and
4 received by the Commonwealth on or after the transfer day;
5 and
6 (b) amounts of charge imposed by subclause 2(1) of Schedule 10
7 to the *Primary Industries (Customs) Charges Act 1999* at a
8 rate set under subclause 3(3) of that Schedule and received
9 by the Commonwealth on or after the transfer day; and
10 (c) amounts a person is liable to pay under subsection 7(2) of the
11 *Primary Industries Levies and Charges Collection Act 1991*
12 and received by the Commonwealth on or after the transfer
13 day; and
14 (d) amounts a person is liable to pay under subsection 7(3) of the
15 *Primary Industries Levies and Charges Collection Act 1991*
16 and received by the Commonwealth on or after the transfer
17 day; and
18 (e) amounts payable by way of penalty under section 15 of the
19 *Primary Industries Levies and Charges Collection Act 1991*
20 in relation to amounts referred to in paragraph (a), (b), (c) or
21 (d); and
22 (f) amounts:
23 (i) equal to amounts that are received by the
24 Commonwealth after the transfer day; and
25 (ii) that were payable to the Australian Horticultural
26 Corporation under section 47 of the repealed *Australian*
27 *Horticultural Corporation Act 1987* as in force
28 immediately before the transfer day; and
29 (iii) not covered by another paragraph of this definition; and
30 (g) amounts:
31 (i) equal to amounts that are received by the
32 Commonwealth after the transfer day; and
33 (ii) that were payable to a Board under section 115Q of the
34 repealed *Australian Horticultural Corporation Act 1987*
35 as in force immediately before the transfer day; and
36 (iii) not covered by another paragraph of this definition.

Section 4

1 ***officer of the industry export control body*** means any of the
2 following:

- 3 (a) a director of the industry export control body;
4 (b) a staff member or consultant of the industry export control
5 body;
6 (c) an agent of the industry export control body.

7 ***officer of the industry services body*** means any of the following:

- 8 (a) a director of the industry services body;
9 (b) a staff member or consultant of the industry services body;
10 (c) an agent of the industry services body.

11 ***record*** has the same meaning as in the *Archives Act 1983*.

12 ***regulated horticultural market***, in relation to a regulated
13 horticultural product, means a market that is declared to be a
14 regulated horticultural market in relation to the product under
15 subsection 19(1).

16 ***regulated horticultural product*** means a horticultural product that
17 is declared to be a regulated horticultural product under subsection
18 19(1).

19 ***research and development*** means systematic experimentation or
20 analysis in any field of science, technology, economics or business
21 carried out with the object of:

- 22 (a) acquiring knowledge that may be of use for the purpose of
23 improving any aspect of the production, processing, storage,
24 transport or marketing of horticultural products; or
25 (b) applying knowledge for the purpose of improving any aspect
26 of the production, processing, storage, transport or marketing
27 of horticultural products.

28 ***research and development amounts*** means:

- 29 (a) amounts of levy imposed by subclause 2(1) of Schedule 15 to
30 the *Primary Industries (Excise) Levies Act 1999* at a rate set
31 under subclause 4(3) of that Schedule and received by the
32 Commonwealth on or after the transfer day; and

Section 4

- 1 (b) amounts of charge imposed by subclause 2(1) of Schedule 10
2 to the *Primary Industries (Customs) Charges Act 1999* at a
3 rate set under subclause 3(5) of that Schedule and received
4 by the Commonwealth on or after the transfer day; and
- 5 (c) amounts a person is liable to pay under subsection 7(2) of the
6 *Primary Industries Levies and Charges Collection Act 1991*
7 and received by the Commonwealth on or after the transfer
8 day; and
- 9 (d) amounts a person is liable to pay under subsection 7(3) of the
10 *Primary Industries Levies and Charges Collection Act 1991*
11 and received by the Commonwealth on or after the transfer
12 day; and
- 13 (e) amounts payable by way of penalty under section 15 of the
14 *Primary Industries Levies and Charges Collection Act 1991*
15 in relation to amounts referred to in paragraph (a), (b), (c) or
16 (d); and
- 17 (f) amounts:
- 18 (i) equal to amounts that are received by the
19 Commonwealth after the transfer day; and
- 20 (ii) that were payable to the Horticultural Research and
21 Development Corporation under section 45 of the
22 repealed *Horticultural Research and Development*
23 *Corporation Act 1987* as in force immediately before
24 the transfer day; and
- 25 (iii) not covered by another paragraph of this definition
- 26 ***Secretary*** means the Secretary of the Department.
- 27 ***statutory record*** means:
- 28 (a) any record that was transferred to an industry services body
29 on the transfer day; and
- 30 (b) any record that:
- 31 (i) is the property of the industry services body; and
- 32 (ii) relates to the use of a marketing amount, a research and
33 development amount or an amount payable under
34 subsection 16(2); and
- 35 (c) any record that:
-

Section 5

- 1 (i) is the property of the industry export control body; and
2 (ii) relates to the exercise of powers and functions of the
3 industry export control body under Part 4.

4 ***transfer day*** means the day specified by the Minister as the transfer
5 day in a determination under section 12 of the *Horticulture*
6 *Marketing and Research and Development Services (Repeals and*
7 *Consequential Provisions) Act 2000.*

8 **5 Crown to be bound**

- 9 (1) This Act binds the Crown in each of its capacities.
10 (2) This Act does not make the Crown liable to be prosecuted for an
11 offence.

12 **6 Application of this Act**

13 This Act applies both within and outside Australia.

14 **7 Application of the *Criminal Code***

15 Chapter 2 of the *Criminal Code* applies to all offences against this
16 Act.

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Part 2 The industry services body and the industry export control body

Division 1 Simplified outline

Section 8

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Part 2—The industry services body and the industry export control body

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Division 1—Simplified outline

5

8 Simplified outline

6

The following is a simplified outline of this Part.

7

A body may be declared by the Minister to be the industry services body and/or the industry export control body if the body is established as a company limited by guarantee under the Corporations Law and has an appropriate constitution (see section 9).

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The Secretary may enter into a deed of agreement with a declared body (see section 12). The public may obtain access to the deed of agreement (see section 14).

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14

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A declared body may cease to be declared in certain circumstances (see section 10).

16

1

2 **Division 2—Declarations**

3 **9 Declaration of the industry services body and the industry export**
4 **control body**

- 5 (1) The Minister may declare a body to be the industry services body
6 if:
- 7 (a) the body is a trading corporation to which paragraph 51(xx)
8 of the Constitution applies; and
 - 9 (b) the body is a company limited by guarantee incorporated
10 under the Corporations Law; and
 - 11 (c) the Minister has had regard to whether the body's
12 constitution is appropriate for a body performing the
13 functions of the industry services body; and
 - 14 (d) the body has entered into a deed of agreement with the
15 Commonwealth under subsection 12(1).

16 The declaration must be by notice in writing.

17 Note: For information about staff, assets, contracts and liabilities of the
18 industry services body following its declaration, see Part 2 of the
19 *Horticulture Marketing and Research and Development Services*
20 *(Repeals and Consequential Provisions) Act 2000*.

- 21 (2) The Minister may declare a body to be the industry export control
22 body if:
- 23 (a) the body is a trading corporation to which paragraph 51(xx)
24 of the Constitution applies; and
 - 25 (b) the body is a company limited by guarantee incorporated
26 under the Corporations Law; and
 - 27 (c) the Minister has had regard to whether the body's
28 constitution is appropriate for a body performing the
29 functions of the industry export control body; and
 - 30 (d) the body has entered into a deed of agreement with the
31 Commonwealth under subsection 12(2).

32 The declaration must be by notice in writing.

- 33 (3) The Minister may declare the same body to be both the industry
34 services body and the industry export control body. However, the

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Part 2 The industry services body and the industry export control body

Division 2 Declarations

Section 10

- 1 Minister must not declare more than one industry services body, or
2 more than one industry export control body, at any one time.
- 3 (4) A notice under this section must specify the day on and after which
4 the relevant body is to be the industry services body or the industry
5 export control body. That day must be the day on which the
6 declaration is made, or a day that is after that day.
- 7 (5) The declaration has effect accordingly.
- 8 (6) The Minister must cause a copy of each declaration under this
9 section to be published in the *Gazette* within 14 days after the
10 declaration is made.
- 11 (7) The declaration is not invalid merely because it has not been
12 published as required under subsection (6).

10 Cessation of declaration of the industry services body or the industry export control body

- 15 (1) The Minister may declare:
16 (a) that the body that is the industry services body ceases to be
17 the industry services body; or
18 (b) that the body that is the industry export control body ceases
19 to be the industry export control body;
20 if the Minister has grounds, under subsection (2), for making the
21 declaration. The declaration must be by notice in writing.
- 22 (2) The Minister has grounds for making the declaration if:
23 (a) the body gives the Minister a written request that the
24 declaration be made; or
25 (b) the Minister has reasonable grounds to believe that the body
26 has engaged in actionable conduct; or
27 (c) the Minister has reasonable grounds to believe that:
28 (i) the body's constitution is no longer appropriate for a
29 body performing the functions of the industry services
30 body; or
31 (ii) the body has failed to comply with its constitution; or
32 (d) an administrator of the body is appointed; or

Section 11

- 1 (e) the body commences to be wound up or ceases to carry on
2 business; or
3 (f) a receiver, or a receiver and manager, of property of the body
4 is appointed, whether by a court or otherwise; or
5 (g) the body enters into a compromise or arrangement with its
6 creditors or a class of them; or
7 (h) the following circumstances exist:
8 (i) the Secretary gave the body a written notice requesting
9 its consent to a proposed variation under section 13 of
10 the deed of agreement in relation to the body;
11 (ii) the body did not give its written consent to the variation
12 within the period of 3 months after the day the notice
13 was given, or such longer period as was specified in the
14 notice;
15 (iii) the Minister considers that without the proposed
16 variation being made, it would not be appropriate for the
17 body to perform the functions of the industry services
18 body or the industry export control body.
- 19 Note: For the meanings of *actionable conduct* and *deed of agreement*, see
20 section 4.
- 21 (3) The notice under subsection (1) must specify the day on which the
22 body is to cease to be the industry services body. That day must be
23 after the day on which the declaration is made.
- 24 (4) The declaration has effect accordingly.
- 25 (5) The Minister must cause a copy of each declaration under this
26 section to be published in the *Gazette* within 14 days after the
27 declaration is made.
- 28 (6) The declaration is not invalid merely because it has not been
29 published as required under subsection (5).

30 **11 Transfer of industry assets and liabilities after cessation of**
31 **declaration**

- 32 (1) If the Minister has made a declaration under section 10 that a body
33 ceases to be the industry services body or the industry export

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Part 2 The industry services body and the industry export control body

Division 2 Declarations

Section 11

- 1 control body, the Minister may declare that the body's industry
2 assets and liabilities are to be transferred (under regulations
3 specified for the purposes of subparagraph (2)(d)(i)) to:
4 (a) a body that the Minister has declared, or proposes to declare,
5 to be the next industry services body under section 9; or
6 (b) a trustee of a trust, or a body, that the Minister is satisfied has
7 an objective of furthering the horticulture industry's
8 marketing and research and development interests; or
9 (c) in the case of statutory records of the body—the
10 Commonwealth.

11 Note: For the meanings of *industry assets and liabilities* and *statutory*
12 *record*, see section 4.

- 13 (2) The declaration must:
14 (a) be by notice in writing; and
15 (b) specify each person or body to which industry assets and
16 liabilities (including statutory records) are to be transferred;
17 and
18 (c) specify a day (after the day on which the declaration is made)
19 as the day on which the transfer occurs; and
20 (d) specify regulations that have been made:
21 (i) providing for the vesting of the industry assets and
22 liabilities; and
23 (ii) setting out the processes governing the transfer of the
24 industry assets and liabilities; and
25 (iii) setting out the conditions to which the transfer of
26 industry assets and liabilities is to be subject; and
27 (iv) relating to arrangements for the transfer of statutory
28 records.
- 29 (3) The declaration has effect accordingly.
- 30 (4) The Minister must cause a copy of each declaration under this
31 section to be published in the *Gazette* within 14 days after the
32 declaration is made.
- 33 (5) The declaration is not invalid merely because it has not been
34 published as required under subsection (4).
-

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2 **Division 3—Deeds of agreement**

3 **12 The Minister may enter into deeds of agreement**

4 (1) The Minister may, on behalf of the Commonwealth, enter into a
5 deed of agreement with a body (which is proposed to be the
6 industry services body) for the purposes of this subsection.

7 (2) The Minister may, on behalf of the Commonwealth, enter into a
8 deed of agreement with a body (which is proposed to be the
9 industry export control body) for the purposes of this subsection.

10 Note: A single deed of agreement may be entered into for the purposes of
11 subsections (1) and (2) if the same body is declared to be the industry
12 services body and the export control body.

13 (3) Subsections (1) and (2) do not, by implication, limit the executive
14 power of the Commonwealth to enter into agreements.

15 (4) Nothing in this Act is to be taken, by implication, to prevent the
16 enforcement of a deed of agreement as a contract.

17 **13 The Minister may vary deeds of agreement**

18 (1) The Minister and a body that has entered into a deed of agreement
19 under section 12 may, by written agreement, vary the deed of
20 agreement. The variation must be in writing.

21 (2) The variation must specify the day on which it takes effect. The
22 day must be after the day on which the variation is made.

23 (3) The Minister must publish a notice in the *Gazette* within 14 days
24 after the variation is made. This notice must:

- 25 (a) state that the variation has been made; and
26 (b) briefly summarise the effect of the variation.

27 (4) The variation is not invalid merely because a notice about it has not
28 been published as required under subsection (3).

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Part 2 The industry services body and the industry export control body

Division 3 Deeds of agreement

Section 14

1 **14 Public access to deeds of agreement**

2 (1) The industry services body and the industry export control body
3 must keep a copy of the deed of agreement in relation to the body
4 at the body's registered office.

5 Note: The deed of agreement includes all variations made to it under
6 section 13.

7 (2) The copy must be available for inspection at the registered office
8 on request, without charge, whenever the body's registered office
9 is required to be open to the public.

10 (3) The industry services body and the industry export control body
11 must give a person a copy of the deed of agreement in relation to
12 the body if the person:
13 (a) requests the copy; and
14 (b) pays any fee determined by the body in accordance with the
15 deed of agreement.

16 (4) If a deed of agreement in relation to the industry services body or
17 the industry export control body is available on the Internet, the
18 body must inform a person seeking a copy of that fact. (However,
19 informing the person of that fact does not affect the body's
20 obligations under this section.)

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Expenditure and funding of the industry services body **Part 3**
Simplified outline **Division 1**

Section 15

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Part 3—Expenditure and funding of the industry services body

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Division 1—Simplified outline

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15 Simplified outline

6

The following is a simplified outline of this Part.

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The industry services body is to be paid certain amounts by the Commonwealth. The payments by the Commonwealth are conditional (see section 16).

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Those amounts may only be spent by the industry services body for particular purposes (see section 17).

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Part 3 Expenditure and funding of the industry services body

Division 2 Expenditure and funding of the industry services body

Section 16

Division 2—Expenditure and funding of the industry services body

16 Commonwealth payments to the industry services body

Payments equal to marketing amounts and research and development amounts

- (1) The Commonwealth must pay to the industry services body amounts equal to:
- (a) the marketing amounts; and
 - (b) the research and development amounts.

Note: For the meanings of *marketing amounts*, *research and development amounts* and *deed of agreement*, see section 4.

“Matching” payments

- (2) The Commonwealth must also pay to the industry services body amounts equal to one-half of the industry services body’s eligible R&D expenditure.

Note: For the meaning of *eligible R&D expenditure*, see section 4.

- (3) However, the total amount that, during a particular financial year, is paid to the industry services body under subsection (2) must not exceed an amount equal to 0.5% of the amount that the Secretary determines to be the gross value of production of the horticultural industry for the financial year.

Note: For the meaning of *horticultural industry*, see section 4.

- (4) The regulations may provide for the way in which the Secretary is to determine the amount of the gross value of production of the horticultural industry for a financial year.

Amounts not payable

- (5) Amounts are not payable under subsections (1) and (2):
- (a) in circumstances in which the deed of agreement specifies the amounts are not payable; or

Section 17

- 1 (b) if those amounts have previously been paid to a body that
2 was, at the time of the payment, an industry services body.

3 *Payments to be in accordance with deed of agreement*

- 4 (6) Amounts payable under subsections (1) and (2) are to be paid:
5 (a) at the times and in the manner specified in relation to the
6 payments in the deed of agreement; and
7 (b) subject to any conditions specified in this Act or in the deed
8 of agreement.

9 *Conditions on payments*

- 10 (7) It is a condition of each payment of an amount under subsection (1)
11 or (2) that if the Commonwealth incurs an expense, or pays a
12 refund, mentioned in paragraph 17(1)(d) or 17(2)(d) the industry
13 services body must pay to the Commonwealth an amount equal to
14 the amount of the expense or refund.
- 15 (8) The industry services body must comply with any condition
16 imposed on it by:
17 (a) this Act; or
18 (b) the deed of agreement;
19 in respect of a payment of an amount under subsection (1) or (2).

20 *Amounts are paid from the Consolidated Revenue Fund*

- 21 (9) Amounts payable under subsections (1) and (2) are to be paid out
22 of the Consolidated Revenue Fund, which is appropriated
23 accordingly.

24 **17 Expenditure of Commonwealth payments by the industry**
25 **services body**

26 *Marketing*

- 27 (1) Marketing amounts paid to the industry services body may only be
28 applied by the body:

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Part 3 Expenditure and funding of the industry services body

Division 2 Expenditure and funding of the industry services body

Section 17

- 1 (a) in making payments for, or in relation to, marketing related
2 to the horticultural industry; and
3 (b) for administrative purposes, in accordance with the deed of
4 agreement in relation to the body; and
5 (c) in paying remuneration and allowances to directors, staff,
6 consultants and agents of the body; and
7 (d) in paying to the Commonwealth amounts equal to:
8 (i) the expenses incurred by the Commonwealth in relation
9 to collecting or recovering marketing amounts or
10 administering provisions relating to marketing amounts;
11 and
12 (ii) refunds paid by the Commonwealth in respect of
13 marketing amounts; and
14 (e) in paying a levy & charge collector for the collection of
15 marketing amounts; and
16 (f) in making any other payments that the body is authorised or
17 required to make under this Act or another Act; and
18 (g) in making any other payments that are prescribed on any
19 prescribed conditions.

20 Note: For the meanings of *marketing amounts*, *horticultural industry*,
21 *marketing*, *deed of agreement* and *levy & charge collector*, see
22 section 4.

23 *Research and development*

- 24 (2) Research and development amounts, and amounts paid under
25 subsection 16(2), paid to the industry services body may only be
26 applied by that body:
27 (a) in making payments for, or in relation to, research and
28 development related to the horticultural industry; and
29 (b) for administrative purposes, in accordance with the deed of
30 agreement in relation to the body; and
31 (c) in paying remuneration and allowances to directors, staff,
32 consultants and agents of the body; and
33 (d) in paying to the Commonwealth amounts equal to:
34 (i) the expenses incurred by the Commonwealth in relation
35 to collecting or recovering research and development

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Expenditure and funding of the industry services body **Part 3**
Expenditure and funding of the industry services body **Division 2**

Section 17

- 1 amounts or administering provisions relating to research
2 and development amounts; and
3 (ii) refunds paid by the Commonwealth in respect of
4 research and development amounts or amounts of levy
5 or charge referred to in subsection 16(2); and
6 (e) in paying a levy & charge collector for the collection of
7 research and development amounts; and
8 (f) in making any other payments that the body is authorised or
9 required to make under this Act or another Act; and
10 (g) in making any other payments that are prescribed on any
11 prescribed conditions.

12 Note 1: A payment to facilitate the dissemination, adoption and
13 commercialisation of the results of horticultural research and
14 development is an example of a payment in relation to research and
15 development related to the horticultural industry.

16 Note 2: For the meanings of *research and development amounts*,
17 *horticultural industry*, *research and development* and *levy & charge*
18 *collector*, see section 4.

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Part 4 Export control

Division 1 Simplified outline

Section 18

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2 **Part 4—Export control**

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3 **Division 1—Simplified outline**

3

4 **18 Simplified outline**

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The following is a simplified outline of this Part.

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The Secretary may declare that a horticultural product is a regulated horticultural product and that a market is a regulated horticultural market in respect of the product (see section 19). The Secretary may also revoke such a declaration (see section 20).

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If the Secretary makes such a declaration, it is an offence for a person to export the product to the market unless the person has a licence and complies with any licence conditions (see section 21). The licensing scheme is administered by the industry export control body (see section 22).

1

2 **Division 2—Export control**

3 **19 Regulated horticultural products and regulated horticultural**
4 **markets**

5 (1) The Secretary may make an order specifying that, on and after a
6 specified day:

- 7 (a) a specified horticultural product is a regulated horticultural
8 product; and
9 (b) a specified market is a regulated horticultural market in
10 respect of the product.

11 Note 1: For further provisions about orders, see section 35.

12 Note 2: For the meanings of *horticultural product*, *market* and *horticultural*
13 *market*, see section 4.

14 (2) The order has effect from a date specified in the order, which must
15 be at least 14 days after the day on which the order is notified in
16 the *Gazette*.

17 Note: An order made under this section must be notified in the *Gazette*—see
18 section 35 of this Act and section 48 of the *Acts Interpretation Act*
19 *1901*.

20 (3) The Secretary must cause a copy of the order to be published in a
21 newspaper circulating in each region where the specified
22 horticultural products are grown or exported. The copy must be
23 published within 14 days of being notified in the *Gazette*.

24 (4) The Secretary must not make an order under this section unless the
25 Secretary is satisfied that the processes:

- 26 (a) set out in the deed of agreement relating to the industry
27 export control body; and
28 (b) specified as being for the purposes of this subsection;
29 have been complied with.

30 Note: For the meanings of *deed of agreement*, and *industry export control*
31 *body*, see section 4.

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Part 4 Export control

Division 2 Export control

Section 20

1 **20 Revocation of orders**

- 2 (1) The Secretary may revoke an order made under section 19 if the
3 Secretary is satisfied that the processes set out in the deed of
4 agreement relating to the industry export control body that are
5 specified as being made for the purposes of this subsection have
6 been complied with.

7 Note: For the meanings of *deed of agreement*, and *industry export control*
8 *body*, see section 4.

- 9 (2) The revocation must be by notice published in the *Gazette* and has
10 effect from a day specified in the notice.

- 11 (3) The day specified in the notice must be a later day than the day on
12 which the notice is published.

- 13 (4) The Secretary must cause a copy of the notice to be published in a
14 newspaper circulating in each region where the specified
15 horticultural products are grown or exported. The copy must be
16 published within 14 days of the notice being published in the
17 *Gazette*.

18 **21 Prohibitions on certain exports of regulated horticultural** 19 **products to regulated horticultural markets**

- 20 (1) A person commits an offence if:
21 (a) the person exports a regulated horticultural product to a
22 regulated horticultural market in respect of that product; and
23 (b) the person does not have a licence issued in accordance with
24 section 22 to export the product to the market.

25 Note: For the meanings of *export*, *regulated horticultural product* and
26 *regulated horticultural market*, see section 4.

27 Maximum penalty: 180 penalty units.

- 28 (2) A person commits an offence if:
29 (a) the person exports a regulated horticultural product to a
30 regulated horticultural market in respect of that product; and

Section 22

- 1 (b) the person has a licence issued in accordance with section 22
2 to export the product to the market but the export is not in
3 accordance with the conditions of that licence.

4 Note: For the meanings of *export*, *regulated horticultural product* and
5 *regulated horticultural market*, see section 4.

6 Maximum penalty: 60 penalty units.

7 **22 Licences to export regulated horticultural products to regulated**
8 **horticultural markets**

- 9 (1) The regulations may make provision for, or in relation to, the
10 licensing by the industry export control body of people to export
11 regulated horticultural products to regulated horticultural markets.

12 Note: For the meanings of *regulated horticultural product* and *regulated*
13 *horticultural market*, see section 4.

- 14 (2) Regulations made for the purposes of subsection (1) may make
15 provision for and in relation to:

16 (a) granting and assigning of a licence; and

17 (b) granting a licence subject to compliance with conditions
18 (being conditions applying either before or after the export of
19 the products) by the person to whom the licence is granted or
20 any person to whom the licence is assigned (see also
21 subsection (3)); and

22 (c) varying a licence or a condition of a licence; and

23 (d) surrendering a licence, including in exchange for granting
24 another licence to the holder of the surrendered licence; and

25 (e) revoking or suspending a licence that is granted subject to a
26 person complying with a condition, for breach by the person
27 of the condition (whether or not the person is charged with an
28 offence in respect of the contravention); and

29 (f) review of decisions made under the regulations.

30 Note 1: For example, the regulations may make provision for review by the
31 Administrative Appeals Tribunal of the decision.

32 Note 2: A person may seek review of certain decisions of the industry export
33 control body under the *Administrative Decisions (Judicial Review) Act*
34 *1977*.

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Part 4 Export control

Division 2 Export control

Section 23

- 1 (3) Conditions imposed under paragraph (2)(b) may include, but are
2 not limited to, conditions:
3 (a) requiring:
4 (i) the purchaser of horticultural products; or
5 (ii) a person to whom horticultural products are consigned
6 as an agent or representative of the purchaser or
7 exporter;
8 to be a person approved by the industry export control body;
9 (b) relating to:
10 (i) the quality of horticultural products, including their
11 colour, shape, size and other characteristics; or
12 (ii) the packaging, labelling or description of, or
13 documentation relating to, horticultural products; or
14 (iii) the form of consignments of horticultural products; or
15 (iv) the commission and fees charged by exporters and
16 others; or
17 (v) the carriage or insurance of horticultural products,
18 including contracts for carriage or insurance.

23 Issue of certificates for Australian horticultural products by the industry export control body

21 The industry export control body may issue a certificate certifying
22 a matter in connection with horticultural products if:

- 23 (a) the industry export control body is requested to certify as to
24 the matter; and
25 (b) the industry export control body is satisfied as to the matter.

26 Note: For the meaning of *horticultural product*, see section 4.

24 Powers the Secretary may exercise if there is no industry export control body

- 29 (1) If no body is the industry export control body, the Secretary may
30 exercise the powers of the industry export control body under
31 sections 22 and 23, and under regulations, and orders, made for the
32 purposes of section 22.

33 Note: For information about the power to make orders, see section 35.

Section 25

- 1 (2) While the Secretary exercises those powers:
2 (a) references to the industry export control body in regulations,
3 and orders, made for the purposes of section 22 are taken to
4 be references to the Secretary; and
5 (b) subsections 19(4) and 20(1) are taken to have no effect; and
6 (c) references in section 25 to the industry export control body
7 are taken to be references to the Secretary and any delegate
8 of the Secretary; and
9 (d) references in section 29:
10 (i) to the industry export body; and
11 (ii) to its directors;
12 are taken to be references to the Secretary.
- 13 (3) The regulations may make such provision as is necessary:
14 (a) for the efficient and effective exercise by the Secretary of the
15 powers of the industry export control body under sections 22
16 and 23, and under regulations, and orders, made for the
17 purposes of section 22; and
18 (b) for the payment of fees to the Commonwealth for licences to
19 export regulated horticultural products to regulated
20 horticultural markets; and
21 (c) for facilitating the transition from the exercise of those
22 powers by the Secretary to their exercise by the new industry
23 export control body (including the transfer to the industry
24 export control body of amounts in respect of fees paid to the
25 Commonwealth under regulations made in accordance with
26 paragraph (b)).

27 **25 Exemptions of the industry export control body and its officers**
28 **from liability for damages**

- 29 No action, suit or other proceeding for damages lies against the
30 industry export control body or officers of the body for any loss or
31 injury directly or indirectly suffered as a result of anything done, or
32 omitted to be done, in the exercise or performance, or the
33 purported exercise or performance, of:
34 (a) powers under section 22 or 23; or
-

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Part 4 Export control

Division 2 Export control

Section 26

1 (b) powers under regulations, and orders, made for the purposes
2 of section 22;
3 unless the act or omission was in bad faith.

4 Note: For the meaning of *officer of the industry export control body*, see
5 section 4.

6 **26 Operation of certain laws not affected**

7 This Part does not, by implication, affect the operation of any other
8 law relating to export.

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Part 5—Miscellaneous provisions

4

27 Injunctions for actionable conduct

5

Applications for injunctions

6

- (1) The Minister may apply to the Federal Court for an injunction if the industry services body or the industry export control body has engaged, engages or proposes to engage in actionable conduct.

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Note: For the meaning of *actionable conduct*, see section 4.

10

Prohibitory injunctions

11

- (2) The Federal Court may grant an injunction restraining the industry services body or the industry export control body from engaging in actionable conduct:

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- (a) whether or not it appears to the Federal Court that the body intends to engage again, or to continue to engage, in actionable conduct; and

15

16

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- (b) whether or not the body has previously engaged in actionable conduct;

18

19

if the body has engaged, engages or proposes to engage in actionable conduct.

20

21

Additional orders with prohibitory injunctions

22

- (3) The Federal Court may make an order requiring the industry services body or the industry export control body to do something if:

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25

- (a) the Federal Court grants an injunction restraining the body from engaging in actionable conduct; and

26

27

- (b) in the Federal Court's opinion it is desirable to make the order.

28

Section 27

1

Mandatory injunctions

2

(4) The Federal Court may grant an injunction requiring the industry services body or the industry export control body to do an act:

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(a) whether or not it appears to the Federal Court that the body intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and

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(b) whether or not the body has previously refused or failed to do the act or thing;

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if the body has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute actionable conduct.

10

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12

Interim injunctions

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(5) The Federal Court may grant an interim injunction:

14

(a) restraining the industry services body or the industry export control body from engaging in conduct; or

15

16

(b) requiring the industry services body or the industry export control body to do an act;

17

18

before deciding an application for an injunction under this section.

19

Discharge of injunctions

20

(6) The Federal Court may discharge, or vary, an injunction if an application for it to do so is made.

21

22

No undertakings as to damages

23

(7) The Federal Court must not require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

24

25

26

Powers conferred in addition to other powers of the Federal Court

27

(8) The powers conferred on the Federal Court by this section are in addition to (and do not limit) any other powers of the Federal Court.

28

29

Section 28

1 **28 Commonwealth recovery of amounts payable under the deed of**
2 **agreement**

3 The Commonwealth may recover an amount payable to the
4 Commonwealth under:

- 5 (a) this Act; or
6 (b) the deed of agreement in relation to the industry services
7 body or the industry export control body;

8 as a debt due to the Commonwealth by action in a court of
9 competent jurisdiction.

10 **29 Ministerial directions**

11 (1) The Minister may give a written direction to the industry services
12 body or the industry export control body if:

13 (a) the Minister:

- 14 (i) is satisfied that the direction is in Australia's national
15 interest because of exceptional and urgent
16 circumstances; and
17 (ii) is satisfied that the direction would not require the body
18 to incur expenses greater than amounts paid to the body
19 under this Act; and
20 (iii) has given the body's directors an adequate opportunity
21 to discuss with the Minister the need for the proposed
22 direction and the impact of compliance with
23 subsection (3) on the body's commercial activities; and

24 (b) the direction is made for a purpose that is within the
25 Commonwealth's legislative power.

26 (2) If a body is given a direction under subsection (1), it must comply
27 with it.

28 (3) The Minister must cause a copy of the direction to be laid before
29 each House of the Parliament within 15 sitting days of that House
30 after the direction is given, unless the Minister makes a written
31 determination that doing so would be likely to prejudice:

- 32 (a) the national interest of Australia; or
33 (b) the body's commercial activities.

Section 30

- 1 (4) The Minister is not to be taken to be a director of the industry
2 services body or the industry export control body for the purposes
3 of the Corporations Law merely because of the power conferred on
4 the Minister by this section.
- 5 (5) The Commonwealth is not to be taken to be in a position to
6 exercise control over the industry services body or the industry
7 export control body merely because of the power conferred on the
8 Minister by this section.

9 **30 Commonwealth access to information etc.**

- 10 (1) The Secretary may only exercise powers under subsection (2) if:
11 (a) the Secretary suspects actionable conduct by a body (the
12 ***current or former industry body***) that is the industry services
13 body, or is the industry export control body, or was formerly
14 the industry services body or was formerly the industry
15 export control body; and
16 (b) the powers are exercised for the purposes of investigating, or
17 assisting in the investigation, of suspected actionable conduct
18 by the current or former industry body.

19 Note: For the meaning of ***actionable conduct***, see section 4.

- 20 (2) The Secretary may, by written notice given to a person, require the
21 person to do either or both of the following:
22 (a) give to the Secretary copies of documents:
23 (i) in the person's possession or control; and
24 (ii) that are, or were, related to the current or former
25 industry body;
26 within the period and in the manner specified in the notice;
27 and
28 (b) give to the Secretary information about specified matters
29 relating to the body, within the period and in the manner
30 specified in the notice.

31 The period specified in the notice must end at least 14 days after
32 the notice was given.

- 33 (3) The person must:
-

Section 31

- 1 (b) comply with any notice given to it under subsection (2); and
2 (c) give the Secretary any information, explanation or assistance
3 reasonably required to understand any copies or information
4 given under subsection (2).
- 5 (4) Copies and information given under subsection (2) may only be
6 used for one or more of the following purposes:
7 (a) investigating, or assisting in the investigation, of suspected
8 actionable conduct by the current or former industry body;
9 (b) a purpose related to this Act, the regulations or orders, or the
10 deed of agreement relating to the body.

11 **31 Application of the *Archives Act 1983***

- 12 (1) The *Archives Act 1983* applies to a body that is the industry
13 services body or the industry export control body as if:
14 (a) the body were an authority of the Commonwealth; and
15 (b) only the body's statutory records were Commonwealth
16 records.
- 17 Note: For the meanings of *statutory record* and *Commonwealth record*, see
18 section 4.
- 19 (2) The *Archives Act 1983* applies to a body that was the industry
20 services body or the industry export control body as if the
21 reference in section 28A of that Act to records of the body were a
22 reference to the statutory records of the body.

23 **32 Delegations**

- 24 (1) The Minister may delegate all or any of the Minister's powers
25 under this Act (other than section 29), the regulations or orders to
26 the Secretary. The delegation must be in writing.
- 27 (2) The Secretary may delegate all or any of the Secretary's powers
28 under this Act, the regulations or orders to an APS employee in the
29 Department who has appropriate skills or experience. The
30 delegation must be in writing.
- 31 Note: For the meaning of *APS employee*, see section 4.

Section 33

33 Compensation for acquisition of property

(1) If:

(a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.

Note: For the meanings of *acquisition of property* and *just terms*, see section 4.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

34 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) that are required or permitted by this Act to be prescribed; or
- (b) that are necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and may, for example, make regulations prescribing penalties of not more than 30 penalty units for offences against the regulations.

35 Orders

(1) The Secretary may make orders with respect to any matter for or in relation to which provision may be made by the regulations. However, an order must not be made prescribing any penalty.

Note: The Secretary may also make orders under section 19.

(2) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders made under subsection (1) or

Section 35

- 1 section 19 as if references to regulations were references to orders
2 and references to an Act were references to regulations.
- 3 (3) An order made under subsection (1) or section 19 must not be
4 taken to be a statutory rule within the meaning of the *Statutory*
5 *Rules Publication Act 1903*, but subsections 5(3) to (3C)
6 (inclusive) of that Act apply in relation to an order in like manner
7 as they apply in relation to a statutory rule.
- 8 (4) For the purposes of the application of subsection 5(3B) of the
9 *Statutory Rules Publication Act 1903* in accordance with
10 subsection (3), the reference in subsection 5(3B) of the *Statutory*
11 *Rules Publication Act 1903* to the Minister specified in that
12 subsection shall be read as a reference to a Minister administering
13 this Act.
- 14 (5) An order made under subsection (1) or section 19 is taken to be an
15 enactment for the purposes of the *Administrative Appeals Tribunal*
16 *Act 1975*.