



Horticulture Marketing and Research and Development Services Act 2000

No. 162, 2000 as amended

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Horticulture Marketing and Research and Development Services Act 2000* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act to reform the provision of marketing, research and development services to the horticultural industry, and for related purposes

Part 1—Preliminary

1 Short title

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

2 Commencement

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

3 Simplified outline

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

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

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

It also requires the industry services body and the industry export control body to act in accordance with a deed of agreement, which

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imposes obligations on the body and contains details about the body's accountability to the Commonwealth.

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

The *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* abolishes the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and the Australian Dried Fruits Board. It also deals with matters arising from the transition to the new bodies, such as transfer of staff and assets from the Corporations and a 2 year period to phase in the new export control system provided for in Part 4 of this Act.

4 Definitions

In this Act, unless the contrary intention appears:

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

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

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

Australia includes the external Territories.

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

deed of agreement means:

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

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

export means export from Australia.

horticultural industry means any industry carried on in Australia in connection with:

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

horticultural product means:

- (a) fruits, including processed fruits; and
- (b) vegetables, including:
 - (i) processed vegetables; and
 - (ii) mushrooms and other edible fungi; and
 - (iii) processed mushrooms and other processed edible fungi; and
- (c) nuts, including processed nuts; and
- (d) nursery products, including:
 - (i) trees, shrubs, plants, seeds, bulbs, corms and tubers; and

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- (ii) propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers and foliage; and
- (e) cut flowers and foliage, including processed cut flowers and foliage; and
- (f) products prescribed for the purposes of this paragraph.

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

- (a) the statutory records of the body; and
- (b) the assets and liabilities of the body that are determined to be the industry assets and liabilities of the body in accordance with the deed of agreement entered into between the body and the Commonwealth under section 12.

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

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

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

levy & charge collector means a person:

- (a) who is responsible for the collection of amounts for payment to the Commonwealth under:
 - (i) section 7 or 7A of the repealed *Horticultural Levy Collection Act 1987*; or
 - (ii) section 7 or 7A of the repealed *Horticultural Export Charge Collection Act 1987*; or
 - (iii) section 7 or 9 of the *Primary Industries Levies and Charges Collection Act 1991*; or
- (b) who has agreed to collect amounts on behalf of the Commonwealth under:

- (i) subsection 7B(1) of the repealed *Horticultural Levy Collection Act 1987*; or
- (ii) subsection 7B(1) of the repealed *Horticultural Export Charge Collection Act 1987*; or
- (iii) subsection 10(1) or 11(1) of the *Primary Industries Levies and Charges Collection Act 1991*.

market means a specified place.

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

marketing amounts means:

- (a) amounts of levy imposed under subclause 2(1) of Schedule 15 to the *Primary Industries (Excise) Levies Act 1999* at a rate set under subclause 4(1) of that Schedule and received by the Commonwealth on or after the transfer day; and
- (b) amounts of charge imposed by subclause 2(1) of Schedule 10 to the *Primary Industries (Customs) Charges Act 1999* at a rate set under subclause 3(3) of that Schedule and received by the Commonwealth on or after the transfer day; and
- (ba) amounts a person is liable to pay under subsection 7(1) of the *Primary Industries Levies and Charges Collection Act 1991* and received by the Commonwealth on or after the transfer day; and
- (c) amounts a person is liable to pay under subsection 7(2) of the *Primary Industries Levies and Charges Collection Act 1991* and received by the Commonwealth on or after the transfer day; and
- (d) amounts a person is liable to pay under subsection 7(3) of the *Primary Industries Levies and Charges Collection Act 1991* and received by the Commonwealth on or after the transfer day; and
- (e) amounts payable by way of penalty under section 15 of the *Primary Industries Levies and Charges Collection Act 1991*

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in relation to amounts referred to in paragraph (a), (b), (ba), (c) or (d); and

(f) amounts:

- (i) equal to amounts that are received by the Commonwealth after the transfer day; and
- (ii) that were payable to the Australian Horticultural Corporation under section 47 of the repealed *Australian Horticultural Corporation Act 1987* as in force immediately before the transfer day; and
- (iii) not covered by another paragraph of this definition; and

(g) amounts:

- (i) equal to amounts that are received by the Commonwealth after the transfer day; and
- (ii) that were payable to a Board under section 115Q of the repealed *Australian Horticultural Corporation Act 1987* as in force immediately before the transfer day; and
- (iii) not covered by another paragraph of this definition.

officer of the industry export control body means any of the following:

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

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

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

Presiding Officer means:

- (a) in relation to the House of Representatives—the Speaker of the House of Representatives; and
- (b) in relation to the Senate—the President of the Senate.

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

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

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

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

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

research and development amounts means:

- (a) amounts of levy imposed by subclause 2(1) of Schedule 15 to the *Primary Industries (Excise) Levies Act 1999* at a rate set under subclause 4(3) of that Schedule and received by the Commonwealth on or after the transfer day; and
- (b) amounts of charge imposed by subclause 2(1) of Schedule 10 to the *Primary Industries (Customs) Charges Act 1999* at a rate set under subclause 3(5) of that Schedule and received by the Commonwealth on or after the transfer day; and
- (ba) amounts a person is liable to pay under subsection 7(1) of the *Primary Industries Levies and Charges Collection Act 1991* and received by the Commonwealth on or after the transfer day; and
- (c) amounts a person is liable to pay under subsection 7(2) of the *Primary Industries Levies and Charges Collection Act 1991* and received by the Commonwealth on or after the transfer day; and
- (d) amounts a person is liable to pay under subsection 7(3) of the *Primary Industries Levies and Charges Collection Act 1991*

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and received by the Commonwealth on or after the transfer day; and

- (e) amounts payable by way of penalty under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to amounts referred to in paragraph (a), (b), (ba), (c) or (d); and
- (f) amounts:
 - (i) equal to amounts that are received by the Commonwealth after the transfer day; and
 - (ii) that were payable to the Horticultural Research and Development Corporation under section 45 of the repealed *Horticultural Research and Development Corporation Act 1987* as in force immediately before the transfer day; and
 - (iii) not covered by another paragraph of this definition.

Secretary means the Secretary of the Department.

statutory record means:

- (a) any record that was transferred to an industry services body on the transfer day; and
- (b) any record that:
 - (i) is the property of the industry services body; and
 - (ii) relates to the use of a marketing amount, a research and development amount or an amount payable under subsection 16(2); and
- (c) any record that:
 - (i) is the property of the industry export control body; and
 - (ii) relates to the exercise of powers and functions of the industry export control body under Part 4.

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

5 Crown to be bound

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

6 Application of this Act

This Act applies both within and outside Australia.

7 Application of the *Criminal Code*

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

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

Division 1—Simplified outline

8 Simplified outline

The following is a simplified outline of this Part.

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).

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).

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

Division 2—Declarations

9 Declaration of the industry services body and the industry export control body

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

The declaration must be by notice in writing.

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

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

The declaration must be by notice in writing.

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

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Minister must not declare more than one industry services body, or more than one industry export control body, at any one time.

- (4) A notice under this section must specify the day on and after which the relevant body is to be the industry services body or the industry export control body. That day must not be earlier than the day after the day, or the later of the days (as the case may be), that paragraph (6)(a) is complied with.
- (5) The declaration has effect accordingly.
- (6) The Minister must cause a copy of each declaration under this section to be:
 - (a) laid before each House of the Parliament or, if a House is not sitting, presented to the Presiding Officer of that House for circulation to the members of that House, within 5 sitting days after the declaration is made; and
 - (b) published in the *Gazette* within 14 days after the declaration is made.
- (6A) For the purposes of subsection (6), if a House has been dissolved and the newly-elected House has not met when a declaration is provided to the Presiding Officer, circulation to the persons who were members of that House immediately before the dissolution is taken to be circulation to the members of the House.
- (6B) To avoid doubt, the function of a Presiding Officer of receiving and circulating a declaration under subsection (6) is a function of the Presiding Officer for the purposes of the *Parliamentary Presiding Officers Act 1965*.
- (7) The declaration is not invalid merely because it has not been published as required under subsection (6).

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

- (1) The Minister may declare:
 - (a) that the body that is the industry services body ceases to be the industry services body; or
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- (b) that the body that is the industry export control body ceases to be the industry export control body;
if the Minister has grounds, under subsection (2), for making the declaration. The declaration must be by notice in writing.
- (2) The Minister has grounds for making the declaration if:
- (a) the body gives the Minister a written request that the declaration be made; or
 - (b) the Minister has reasonable grounds to believe that the body has engaged in actionable conduct; or
 - (c) the Minister has reasonable grounds to believe that:
 - (i) the body's constitution is no longer appropriate for a body performing the functions of the industry services body; or
 - (ii) the body has failed to comply with its constitution; or
 - (d) an administrator of the body is appointed; or
 - (e) the body commences to be wound up or ceases to carry on business; or
 - (f) a receiver, or a receiver and manager, of property of the body is appointed, whether by a court or otherwise; or
 - (g) the body enters into a compromise or arrangement with its creditors or a class of them; or
 - (h) the following circumstances exist:
 - (i) the Secretary gave the body a written notice requesting its consent to a proposed variation under section 13 of the deed of agreement in relation to the body;
 - (ii) the body did not give its written consent to the variation within the period of 3 months after the day the notice was given, or such longer period as was specified in the notice;
 - (iii) the Minister considers that without the proposed variation being made, it would not be appropriate for the body to perform the functions of the industry services body or the industry export control body.

Note: For the meanings of *actionable conduct* and *deed of agreement*, see section 4.

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- (3) The notice under subsection (1) must specify the day on which the body is to cease to be the industry services body. That day must not be earlier than the day after the day, or the later of the days (as the case may be), that paragraph (5)(a) is complied with.
- (4) The declaration has effect accordingly.
- (5) The Minister must cause a copy of each declaration under this section to be:
 - (a) laid before each House of the Parliament or, if a House is not sitting, presented to the Presiding Officer of that House for circulation to the members of that House, within 5 sitting days after the declaration is made; and
 - (b) published in the *Gazette* within 14 days after the declaration is made.
- (5A) For the purposes of subsection (5), if a House has been dissolved and the newly-elected House has not met when a declaration is provided to the Presiding Officer, circulation to the persons who were members of that House immediately before the dissolution is taken to be circulation to the members of the House.
- (5B) To avoid doubt, the function of a Presiding Officer of receiving and circulating a declaration under subsection (5) is a function of the Presiding Officer for the purposes of the *Parliamentary Presiding Officers Act 1965*.
- (6) The declaration is not invalid merely because it has not been published as required under subsection (5).

11 Transfer of industry assets and liabilities after cessation of declaration

- (1) If the Minister has made a declaration under section 10 that a body ceases to be the industry services body or the industry export control body, the Minister may declare that the body's industry assets and liabilities are to be transferred (under regulations specified for the purposes of subparagraph (2)(d)(i)) to:

- (a) a body that the Minister has declared, or proposes to declare, to be the next industry services body under section 9; or
- (b) a trustee of a trust, or a body, that the Minister is satisfied has an objective of furthering the horticulture industry's marketing and research and development interests; or
- (c) in the case of statutory records of the body—the Commonwealth.

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

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

Division 3—Deeds of agreement

12 The Minister may enter into deeds of agreement

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

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

- (3) Subsections (1) and (2) do not, by implication, limit the executive power of the Commonwealth to enter into agreements.
- (4) Nothing in this Act is to be taken, by implication, to prevent the enforcement of a deed of agreement as a contract.

13 The Minister may vary deeds of agreement

- (1) The Minister and a body that has entered into a deed of agreement under section 12 may, by written agreement, vary the deed of agreement. The variation must be in writing.
- (2) The variation must specify the day on which it takes effect. The day must be after the day on which the variation is made.
- (3) The Minister must publish a notice in the *Gazette* within 14 days after the variation is made. This notice must:
 - (a) state that the variation has been made; and
 - (b) briefly summarise the effect of the variation.
- (4) The variation is not invalid merely because a notice about it has not been published as required under subsection (3).

14 Public access to deeds of agreement

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

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

- (2) The copy must be available for inspection at the registered office on request, without charge, whenever the body's registered office is required to be open to the public.
- (3) The industry services body and the industry export control body must give a person a copy of the deed of agreement in relation to the body if the person:
 - (a) requests the copy; and
 - (b) pays any fee determined by the body in accordance with the deed of agreement.
- (4) If a deed of agreement in relation to the industry services body or the industry export control body is available on the internet, the body must inform a person seeking a copy of that fact. (However, informing the person of that fact does not affect the body's obligations under this section.)

Part 3 Expenditure and funding of the industry services body

Division 1 Simplified outline

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Part 3—Expenditure and funding of the industry services body

Division 1—Simplified outline

15 Simplified outline

The following is a simplified outline of this Part.

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

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

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

Note 2: See also subsection 7(2) of the *Plant Health Australia (Plant Industries) Funding Act 2002*, which provides that this Act applies to certain amounts of levy or charge (and related late payment penalty) to which that Act applies.

“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.

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

Payments to be in accordance with deed of agreement

- (6) Amounts payable under subsections (1) and (2) are to be paid:

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- (a) at the times and in the manner specified in relation to the payments in the deed of agreement; and
- (b) subject to any conditions specified in this Act or in the deed of agreement.

Conditions on payments

- (7) It is a condition of each payment of an amount under subsection (1) or (2) that if the Commonwealth incurs an expense, or pays a refund, mentioned in paragraph 17(1)(d) or 17(2)(d) the industry services body must pay to the Commonwealth an amount equal to the amount of the expense or refund.
- (7A) Payments made to the industry services body during a particular financial year under subsection (2) are subject to the condition that, if:
 - (a) before the end of 31 October next following the financial year, the Secretary determines the amount of the gross value of production of the horticultural industry for the financial year; and
 - (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the industry services body during the financial year exceeds 0.5% of the amount of the gross value of production of the horticultural industry for the financial year as determined by the Secretary;the industry services body will pay to the Commonwealth an amount equal to the excess.

Note 1: This ensures that the sum of the matching payments that are retained by the industry services body in relation to the financial year does not exceed 0.5% of the amount of the gross value of production of the horticultural industry for the financial year as determined by the Secretary.

Note 2: For the meaning of *horticultural industry*, see section 4.

- (7B) If:
 - (a) before the end of 31 October next following a financial year, the Secretary has not determined under subsection (7A) the

amount of the gross value of production of the horticultural industry for the financial year; and

- (b) the Secretary has determined under subsection (7A) the amount of the gross value of production of the horticultural industry for the previous financial year;

the Secretary is taken to have made, immediately before the end of that 31 October, a determination under subsection (7A) that the amount of the gross value of production of the horticultural industry for the financial year is equal to the amount of the gross value of production of the horticultural industry determined under subsection (7A) for the previous financial year.

- (7C) A determination made under subsection (7A) is not a legislative instrument.
- (7D) 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.
- (8) The industry services body must comply with any condition imposed on it by:
- (a) this Act; or
 - (b) the deed of agreement;
- in respect of a payment of an amount under subsection (1) or (2).

Recovery

- (8A) An amount payable under subsection (7A) by the industry services body:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Set off

- (8B) If:
- (a) an amount (the **first amount**) is payable by the industry services body under subsection (7A); and

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- (b) another amount (the *second amount*) is payable by the Commonwealth to the industry services body under subsection (1) or (2);

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Amounts are paid from the Consolidated Revenue Fund

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

17 Expenditure of Commonwealth payments by the industry services body

Marketing

- (1) Marketing amounts paid to the industry services body may only be applied by the body:
- (a) in making payments for, or in relation to, marketing related to the horticultural industry; and
 - (b) for administrative purposes, in accordance with the deed of agreement in relation to the body; and
 - (c) in paying remuneration and allowances to directors, staff, consultants and agents of the body; and
 - (d) in paying to the Commonwealth amounts equal to:
 - (i) the expenses incurred by the Commonwealth in relation to collecting or recovering marketing amounts or administering provisions relating to marketing amounts; and
 - (ii) refunds paid by the Commonwealth in respect of marketing amounts; and
 - (e) in paying a levy & charge collector for the collection of marketing amounts; and
 - (f) in making any other payments that the body is authorised or required to make under this Act or another Act; and

- (g) in making any other payments that are prescribed on any prescribed conditions.

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

Research and development

- (2) Research and development amounts, and amounts paid under subsection 16(2), paid to the industry services body may only be applied by that body:
- (a) in making payments for, or in relation to, research and development related to the horticultural industry; and
 - (b) for administrative purposes, in accordance with the deed of agreement in relation to the body; and
 - (c) in paying remuneration and allowances to directors, staff, consultants and agents of the body; and
 - (d) in paying to the Commonwealth amounts equal to:
 - (i) the expenses incurred by the Commonwealth in relation to collecting or recovering research and development amounts or administering provisions relating to research and development amounts; and
 - (ii) refunds paid by the Commonwealth in respect of research and development amounts or amounts of levy or charge referred to in subsection 16(2); and
 - (e) in paying a levy & charge collector for the collection of research and development amounts; and
 - (f) in making any other payments that the body is authorised or required to make under this Act or another Act; and
 - (g) in making any other payments that are prescribed on any prescribed conditions.

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

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

Part 4—Export control

Division 1—Simplified outline

18 Simplified outline

The following is a simplified outline of this Part.

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).

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).

Division 2—Export control

19 Regulated horticultural products and regulated horticultural markets

- (1) The Secretary may make an order specifying that, on and after a specified day:
- (a) a specified horticultural product is a regulated horticultural product; and
 - (b) a specified market is a regulated horticultural market in respect of the product.

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

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

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

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

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

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

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

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

20 Revocation of orders

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

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

- (2) The revocation must be by notice published in the *Gazette* and has effect from a day specified in the notice.
- (3) The day specified in the notice must be a later day than the day on which the notice is published.
- (4) The Secretary must cause a copy of the notice to be published in a newspaper circulating in each region where the specified horticultural products are grown or exported. The copy must be published within 14 days of the notice being published in the *Gazette*.

21 Prohibitions on certain exports of regulated horticultural products to regulated horticultural markets

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

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

Maximum penalty: 180 penalty units.

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

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

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

Maximum penalty: 60 penalty units.

22 Licences to export regulated horticultural products to regulated horticultural markets

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

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

- (2) Regulations made for the purposes of subsection (1) may make provision for and in relation to:
- (a) granting and assigning of a licence; and
 - (b) granting a licence subject to compliance with conditions (being conditions applying either before or after the export of the products) by the person to whom the licence is granted or any person to whom the licence is assigned (see also subsection (3)); and
 - (c) varying a licence or a condition of a licence; and
 - (d) surrendering a licence, including in exchange for granting another licence to the holder of the surrendered licence; and
 - (e) revoking or suspending a licence that is granted subject to a person complying with a condition, for breach by the person of the condition (whether or not the person is charged with an offence in respect of the contravention); and
 - (f) review of decisions made under the regulations.

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

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

Section 23

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

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

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

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

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

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

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

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

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

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

- (1) No action, suit or other proceeding for damages lies against the industry export control body or officers of the body for any loss or injury directly or indirectly suffered as a result of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of:

Section 26

- (a) powers under section 22 or 23; or
 - (b) powers under regulations, and orders, made for the purposes of section 22;
- unless the act or omission was in bad faith.

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

- (2) However, this section does not affect the operation of the *Privacy Act 1988*.

26 Operation of certain laws not affected

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

26A Access to customs information

Horticulture Australia Limited, in its capacity as the industry export control body, is taken to be a Commonwealth agency for the purposes of section 16 of the *Customs Administration Act 1985*.

Note: Section 16 of the *Customs Administration Act 1985* allows Customs to disclose information to Commonwealth agencies in certain circumstances.

Part 5—Miscellaneous provisions

27 Injunctions for actionable conduct

Applications for injunctions

- (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.

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

Prohibitory injunctions

- (2) The Federal Court may grant an injunction restraining the industry services body or the industry export control body from engaging in actionable conduct:
 - (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
 - (b) whether or not the body has previously engaged in actionable conduct;

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

Additional orders with prohibitory injunctions

- (3) The Federal Court may make an order requiring the industry services body or the industry export control body to do something if:
 - (a) the Federal Court grants an injunction restraining the body from engaging in actionable conduct; and
 - (b) in the Federal Court's opinion it is desirable to make the order.

Section 27

Mandatory injunctions

- (4) The Federal Court may grant an injunction requiring the industry services body or the industry export control body to do an act:
- (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
 - (b) whether or not the body has previously refused or failed to do the act or thing;
- 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.

Interim injunctions

- (5) The Federal Court may grant an interim injunction:
- (a) restraining the industry services body or the industry export control body from engaging in conduct; or
 - (b) requiring the industry services body or the industry export control body to do an act;
- before deciding an application for an injunction under this section.

Discharge of injunctions

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

No undertakings as to damages

- (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.

Powers conferred in addition to other powers of the Federal Court

- (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 Commonwealth recovery of amounts payable under the deed of agreement

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

- (a) this Act; or
 - (b) the deed of agreement in relation to the industry services body or the industry export control body;
- as a debt due to the Commonwealth by action in a court of competent jurisdiction.

29 Ministerial directions

- (1) The Minister may give a written direction to the industry services body or the industry export control body if:
 - (a) the Minister:
 - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
 - (ii) is satisfied that the direction would not require the body to incur expenses greater than amounts paid to the body under this Act; and
 - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsection (3) on the body's commercial activities; and
 - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
- (2) If a body is given a direction under subsection (1), it must comply with it.
- (3) Subject to subsection (3A), where the Minister gives a direction to a body under subsection (1):
 - (a) the Minister must cause a copy of the direction:
 - (i) to be published in the *Gazette* as soon as practicable after giving the direction; and

Section 30

- (ii) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction; and
- (b) the annual reports of the body applicable to periods in which the direction has effect must include:
 - (i) particulars of the direction; and
 - (ii) an assessment of the impact that the direction has had on the operations of the body during the period.
- (3A) Subsection (3) does not apply in relation to a particular direction if:
 - (a) the Minister, on the recommendation of the industry services body or the industry export control body, determines, in writing, that compliance with the subsection would, or would be likely to, prejudice the commercial activities of the body; or
 - (b) the Minister determines, in writing, that compliance with the subsection would be contrary to the public interest.
- (4) The Minister is not to be taken to be a director of the industry services body or the industry export control body for the purposes of the Corporations Law merely because of the power conferred on the Minister by this section.
- (5) The Commonwealth is not to be taken to be in a position to exercise control over the industry services body or the industry export control body merely because of the power conferred on the Minister by this section.

30 Commonwealth access to information etc.

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

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

- (2) The Secretary may, by written notice given to a person, require the person to do either or both of the following:
- (a) give to the Secretary copies of documents:
 - (i) in the person's possession or control; and
 - (ii) that are, or were, related to the current or former industry body;within the period and in the manner specified in the notice; and
 - (b) give to the Secretary information about specified matters relating to the body, within the period and in the manner specified in the notice.
- The period specified in the notice must end at least 14 days after the notice was given.
- (3) The person must:
- (b) comply with any notice given to it under subsection (2); and
 - (c) give the Secretary any information, explanation or assistance reasonably required to understand any copies or information given under subsection (2).
- (4) Copies and information given under subsection (2) may only be used for one or more of the following purposes:
- (a) investigating, or assisting in the investigation, of suspected actionable conduct by the current or former industry body;
 - (b) a purpose related to this Act, the regulations or orders, or the deed of agreement relating to the body.

31 Application of the *Archives Act 1983*

- (1) The *Archives Act 1983* applies to a body that is the industry services body or the industry export control body as if:
- (a) the body were an authority of the Commonwealth; and
 - (b) only the body's statutory records were Commonwealth records.

Note: For the meanings of *statutory record* and *Commonwealth record*, see section 4.

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- (2) The *Archives Act 1983* applies to a body that was the industry services body or the industry export control body as if the reference in section 28A of that Act to records of the body were a reference to the statutory records of the body.

32 Delegations

- (1) The Minister may, in writing, delegate all or any of his or her powers and functions under this Act (other than section 29) to:
- (a) the Secretary; or
 - (b) an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position, in the Department.
- (2) The Secretary may, in writing, delegate all or any of his or her powers under this Act to an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position, in the Department.

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

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Horticulture Marketing and Research and Development Services Act 2000	162, 2000	21 Dec 2000	Parts 1, 2 and 5: Royal Assent Remainder: 1 Feb 2001 (see <i>Gazette</i> 2001, No. GN6)	
Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000	163, 2000	21 Dec 2000	Schedule 3: (a) Schedule 4: 21 Dec 2001 (a)	[see Endnote 8]
Horticulture Marketing and Research and Development Services (Amendment) Act 2002	36, 2002	26 June 2002	26 June 2002	—
Plant Health Australia (Plant Industries) Funding Act 2002	80, 2002	8 Oct 2002	ss. 1 and 2: Royal Assent Remainder: 1 Jan 2003	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 36): 23 May 2009	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (b)	—
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Schedule 1 (items 67–71): 29 June 2012	Sch. 1 (items 70, 71)
Rural Research and Development Legislation Amendment Act 2013	146, 2013	13 Dec 2013	Sch 7 (item 2): Royal Assent	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 19): 24 June 2014	—

Horticulture Marketing and Research and Development Services Act 2000 41

Endnotes

Endnote 3—Legislation history

(a) The *Horticulture Marketing and Research and Development Services Act 2000* was amended by Schedules 3 and 4 only of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, subsections 2(3)(a) and (4)(a) of which provide as follows:

(3) Schedule 3 (references to Administrative Appeals Tribunal) commences at the later of:

(a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and

(4) Schedule 4 (operation of the Privacy Act) commences at the later of:

(a) the time when Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000* commences; and

Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000* commenced on 21 December 2001.

The *Administrative Review Tribunal Bill* has not been enacted. Therefore these amendments do not commence.

(b) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Pt 1	
s 4	am No 31, 2014
Part 2	
Division 3	
s. 14	am. No. 8, 2010
Part 3	
Division 2	
s. 16	am. No. 82, 2012
Note to s. 16(1)	
Renumbered Note 1	No. 80, 2002
Note 2 to s. 16(1)	ad. No. 80, 2002
Part 4	
Division 2	
s. 25	am. No. 163, 2000
s. 26A.....	ad. No. 36, 2002
Note to s. 26A.....	am. No. 33, 2009
Part 5	
s 32	rs No 146, 2013

Endnotes

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous

For transitional provisions relating to the implementation of this Act *see* the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* (No. 163, 2000) (as amended).