

HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION ACT 1987

Horticultural Research and Development Corporation Act 1987 Act
No. 166 of 1987 as amended

This compilation was prepared on 21 March 2000
taking into account amendments up to Act No. 156 of 1999
The text of any of those amendments not in force
on that date is appended in the Notes section
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Long Title

An Act to establish a Horticultural Research and Development Corporation, and for related purposes

Part I; Preliminary

- SECT 1
Short title [see Note 1]

This Act may be cited as the Horticultural Research and Development
Corporation Act 1987.

- SECT 2
Commencement [see Note 1]

- (1) This Act (other than Part II) shall come into operation on the day on which it receives the Royal Assent.
- (2) Part II shall come into operation on a day to be fixed by Proclamation.

- SECT 3
Interpretation

(1)

In this Act, unless the contrary intention appears:

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

- (a) producing horticultural products by:
 - (i) growing or harvesting; or
 - (ii) processing Australian horticultural products; or
- (b) handling, storing, transporting, processing or marketing Australian horticultural products.

Australian horticultural products means:

- (a) horticultural products grown or harvested in Australia;
- (b) horticultural products produced by the processing in Australia of products referred to in paragraph (a); or
- (c) products in a class of products prescribed for the purposes of this definition.

Chairperson means the Chairperson of the Corporation.

Corporation means the Horticultural Research and Development Corporation.

Corporation's component of charge has the meaning given by section 44B.

Corporation's component of levy has the meaning given by section 44A.

cut flowers and foliage includes processed cut flowers and foliage.

Deputy Chairperson means the Deputy Chairperson of the Corporation.

eligible industry body means a body prescribed by the regulations for the purposes of the provision in which the expression is used.

Executive Director means the Executive Director of the Corporation.

fruits includes processed fruits.

government member means the government member of the Corporation.

horticultural products means:

- (a) fruits;
- (b) vegetables;
- (c) nuts;
- (d) nursery products;
- (e) cut flowers and foliage; and
- (f) products in a class of products prescribed for the purposes of this paragraph;

but does not include products in a class of products that are declared by the regulations not to be horticultural products for the purposes of this definition.

horticultural research and development means:

- (a) systematic experimentation or analysis in any field of science, technology, marketing or economics carried out with the object of acquiring knowledge that might be useful in improving the efficiency and competitiveness of Australian horticultural industries; or
- (b) the application of knowledge (whether or not acquired by activities referred to in paragraph (a)) for the purpose of improving the efficiency and competitiveness of Australian horticultural industries;

and, without limiting the generality of paragraphs (a) and (b), includes:

- (c) research in relation to, and the development of:
 - (i) methods of:

(A) growing, harvesting or otherwise producing horticultural products; or
(B) handling, storing, transporting, processing or marketing horticultural products; and

- (ii) equipment and techniques for doing activities referred to in subparagraph (i);
- (d) the dissemination of information, and the provision of advice and assistance, to Australian horticultural industries for the purpose of encouraging the adoption of scientific and technological developments to improve their efficiency and competitiveness;
- (e) the publication of reports, periodicals, books and papers containing scientific, technical, marketing or economic information that might be useful in improving the efficiency and competitiveness of Australian horticultural industries; and
- (f) any activity incidental to an activity referred to in paragraphs (a) to
- (e) (inclusive).

Levies and Charges Collection Act means the Primary Industries Levies and Charges Collection Act 1991.

member includes:

- (a) in relation to the Corporation; the Chairperson of the Corporation, the Deputy Chairperson, the government member and the Executive Director; and
- (b) in relation to a Selection Committee; the Presiding Member.

nominated member means:

- (a) in relation to the Corporation; a member of the Corporation other than the Chairperson, the government member or the Executive Director; or
- (b) in relation to a Selection Committee; a member of the Selection Committee appointed on the nomination of an eligible industry body or bodies, or a member appointed under subsection 67(3A).

nursery products includes trees, shrubs, plants, seeds, bulbs, corms, tubers, propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts, or cut flowers or foliage.

nuts includes processed nuts.

old Export Charge Act means the repealed Horticultural Export Charge Act 1987.

old Export Charge Collection Act means the repealed Horticultural Export Charge Collection Act 1987.

old Levy Act means the repealed Horticultural Levy Act 1987.

old Levy Collection Act means the repealed Horticultural Levy Collection Act 1987.

order means an order made under the regulations.

Parliament means:

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

prescribed includes prescribed by an order.

Presiding Member means a person appointed as the Presiding Member of Selection Committees under section 57.

process, in relation to a product, means the performance of any operation in relation to the product, and includes the chilling, freezing, drying, bottling, packing, canning or preserving of the product, but does not include the performance of an operation included in a class of operations prescribed for the purposes of this definition, either generally or in relation to the product or a class of products in which the product is included.

product includes a thing occurring naturally.

regulations includes orders.

securities includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments and documents.

Selection Committee means a Selection Committee established under section 67.

State includes the Australian Capital Territory and the Northern Territory.

this Act includes the regulations.

vegetables includes:

- (a) mushrooms and other edible fungi; and
 - (b) processed vegetables (including mushrooms and other edible fungi).
- (2) A reference in this Act to dealing with securities includes a

reference to:

- (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing and reselling securities;
- (b) creating, selling, purchasing and reselling rights and options in relation to securities; and
- (c) entering into agreements and other arrangements in relation to securities.

Part II; The Horticultural Research and Development Corporation

Division 1; Establishment, functions and powers of Corporation

- SECT 4
Establishment

A corporation by the name of the Horticultural Research and Development Corporation is established by this section.

- SECT 5
Objects

The objects of the establishment of the Corporation are:

- (a) to improve the efficiency and competitiveness of Australian horticultural industries by:
 - (i) identifying priority areas of horticultural research and development;
 - (ii) improving the efficiency and effectiveness of horticultural research and development;
 - (iii) making more effective use of the resources available for horticultural research and development; and
 - (iv) making more effective use of the skills available in the community in general, and in the scientific community in particular, for horticultural research and development;

- (b) to develop in Australian horticultural industries an awareness of the contribution that can be made by horticultural research and development in improving their efficiency and competitiveness; and
- (ba) to further the sustainable use and sustainable management of natural resources; and
- (bb) to increase the economic, environmental and social benefits to members of the Australian horticultural industries and the community in general by improving the production, processing, storage, transport and marketing of the products of horticultural industries; and
- (c) to ensure sound accountability for expenditure on horticultural research and development.

- SECT 6
Functions

The functions of the Corporation are:

- (a) to investigate and evaluate the requirements for horticultural research and development and, on the basis of such investigation and evaluation:
 - (i) to prepare a research and development plan under section 26; and
 - (ii) to review and revise the research and development plan;
- (b) to prepare a research and development program under section 27 for each financial year;
- (c) to carry out, and co-ordinate and fund the carrying out of, horticultural research and development projects;
- (d) to monitor, and to report to the Parliament, the Minister and Australian horticultural industries on, horticultural research and development projects that are carried out or funded, in whole or in part, by the Corporation;
- (da)

to facilitate the dissemination, adoption and commercialisation of the results of horticultural research and development; and

- (e) such other functions in relation to Australian horticultural industries as are conferred on the Corporation by or under this Act or any other Act.

- SECT 7
Powers

(1)

The Corporation has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:

- (a) make applications, including joint applications, for patents;
- (b) deal with patents vested in the Corporation or in the Corporation and other persons;
- (c) make charges for work done, services rendered, and goods and information supplied, by it;
- (d) enter into agreements under section 8 for the carrying out of horticultural research and development projects by other persons;
- (e) enter into agreements under section 9 for the carrying out of horticultural research and development projects by the Corporation and other persons;
- (f) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust;
- (fa) acquire, hold and dispose of real and personal property for the purposes of this Act;
- (fb) join in the formation of a company; and
- (g) do any thing incidental to any of its powers.

- SECT 8

Agreements for carrying out horticultural research and development projects by other persons

(1) Without limiting the generality of subsection 7(1), the Corporation may enter into an agreement with a person for the carrying out of a horticultural research and development project by the person.

(2) Without limiting the matters that may be included in the agreement, the agreement may:

(a) provide for:

(i) the money provided under the agreement, and any property acquired or goods produced with that money, or with money that includes that money, to be used for the purposes specified in the agreement; and

(ii) the payment by the person to the Corporation of an amount equal to the whole, or such part as the Corporation determines, of the money provided under the agreement if any of the money provided under the agreement, or any of the property or goods referred to in subparagraph (i), is or are used for a purpose not specified in the agreement;

(b) make provision with respect to:

(i) the assigning of inventions and interests in inventions;

(ii) the applying for patents for inventions;

(iii) the making, using, exercising and vending of patented inventions; and

(iv) the granting of licences under patented inventions;

being inventions made in the course of undertaking the horticultural research and development project or doing any other act or thing with that money or with money that includes that money;

(c) provide for the payment by the person to the Corporation of an amount equal to the whole, or such part as the Corporation determines, of any net income

derived by the person from:

- (i) property acquired or goods produced with money provided under the agreement or with money that includes that money; or
 - (ii) patents for, or interests in, inventions made, or interests in any other property acquired, in the course of undertaking the horticultural research and development project or doing any other act or thing with that money or with money that includes that money;
- (d) provide for the assignment by the person to the Corporation of any property or goods referred to in subparagraph (c)(i) or of any patents or interests referred to in subparagraph (c)(ii); and
- (e) provide for the payment by the person to the Corporation, in the event of the disposal (otherwise than to the Corporation) of any property, goods, patents or interests referred to in paragraph (c), of an amount equal to the whole, or such part as the Corporation determines, of:
- (i) in the case of a disposal by way of sale or assignment for value; the net proceeds of the sale or assignment; and
 - (ii) in any other case; the value of the property, goods, patents or interests as determined by the Corporation.

- SECT 9

Agreements for carrying out horticultural research and development projects with other persons

- (1) Without limiting the generality of subsection 7(1), the Corporation may enter into an agreement with a person for the carrying out of a horticultural research and development project by the Corporation and the person.
- (2) Without limiting the matters that may be included in the agreement, the agreement shall specify:
- (a) the objectives of the project;

- (b) the expected duration of the project;
- (c) the nature and extent of the contribution to be made by the Corporation towards the project; and
- (d) the basis for the distribution of profits and other benefits derived from the project.

- SECT 10

Consultations with industry representatives etc.

(1)

Without limiting the generality of subsection 7(1), the Corporation may make arrangements for consulting:

- (a) persons and bodies representative of Australian horticultural industries; and
- (b) Commonwealth, State and Territory authorities concerned with:
 - (i) Australian horticultural industries; or
 - (ii) the export of Australian horticultural products.

(2)

Arrangements made by the Corporation under subsection (1) may provide for:

- (a) the Corporation's agreeing to meet travel expenses reasonably incurred by a person in connection with consultations with the Corporation; and
- (b) subject to written guidelines given to the Corporation by the Minister, the Corporation's agreeing to meet expenses (other than travel expenses) reasonably incurred by an eligible industry body, or a member of an eligible industry body, in connection with consultations with the Corporation.

Division 2; Constitution and meetings of Corporation

- SECT 11

Corporation is body corporate etc.

(1)

The Corporation:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note: The Commonwealth Authorities and Companies Act 1997 applies to the Corporation. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

(2)

The common seal of the Corporation shall be kept in such custody as the Corporation directs and shall not be used except as authorised by the Corporation.

(3)

All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Corporation appearing on a document and shall presume that it was duly affixed.

- SECT 12

Constitution of Corporation

(1)

The Corporation consists of the following members:

- (a) the Chairperson;
- (b) the government member;

- (c) the Executive Director;
 - (d) 6 other members.
- (2) The performance of the functions, and the exercise of the powers, of the Corporation are not affected by reason only of vacancies in the membership of the Corporation.

- SECT 13
Chairperson

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

- SECT 14
Deputy Chairperson

- (1) The Minister shall appoint a nominated member of the Corporation to be the Deputy Chairperson of the Corporation.
- (2) The Minister shall, before appointing a person to be the Deputy Chairperson, consult with the Chairperson of the Corporation.
- (3) The Minister may at any time terminate an appointment made under subsection (1).
- (4) A person appointed as Deputy Chairperson ceases to hold the office if the person ceases to be a nominated member of the Corporation.
- (5) A person appointed as Deputy Chairperson may resign the office by writing signed by the person and delivered to the Minister.
- (6) During any period when:
 - (a) the office of Chairperson of the Corporation is vacant (whether or not an appointment has previously been made to the office); or
 - (b) the Chairperson of the Corporation is absent from Australia or is, for any reason, unable to perform the duties of the office;

the Deputy Chairperson shall act as Chairperson.

- (7) The Deputy Chairperson has, when acting as Chairperson, all the powers, duties, rights and entitlements of the Chairperson of the Corporation.
- (8) The Deputy Chairperson of the Corporation may be referred to as the Deputy Chairman or Deputy Chairwoman, as the case requires.
- (9) Anything done by or in relation to a person purporting to act as Chairperson under subsection (6) is not invalid because:
 - (a) there was a defect or irregularity in connection with the appointment of the person as Deputy Chairperson;
 - (b) the appointment of the person as Deputy Chairperson had ceased to have effect; or
 - (c) the occasion for the person to act as Chairperson had not arisen or had ceased.

- SECT 15

Appointment of members

- (1) The members of the Corporation (other than the Executive Director) shall be appointed by the Minister.
- (2) The Minister shall not appoint a person to be the government member unless the Minister is satisfied that the person has experience in, and knowledge of:
 - (a) the formulation of government policy; and
 - (b) public administration.
- (3) The nominated members of the Corporation shall be appointed from persons nominated by the Selection Committee under section 61.
- (5) The appointment of a person as a member of the Corporation is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

- SECT 16

Members of executive of eligible industry bodies not eligible for appointment etc.

Subject to the regulations, a person who is a member of the executive of an eligible industry body shall not be appointed as a member of the Corporation, and a member of the Corporation who becomes a member of the executive of an eligible industry body ceases to hold office as a member of the Corporation.

- SECT 17

Term of office

(1)

A member of the Corporation (other than the Executive Director):

(a)

shall be appointed with effect from the day specified in the instrument of appointment; and

(b)

holds office, subject to this Act:

(i)

in the case of a member other than the government member; for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Act; and

(ii)

in the case of the government member; during the Minister's pleasure.

(2)

If a member of the Corporation (other than the government member or the Executive Director) ceases to hold office before the end of the term of appointment, another person may, in accordance with this Act, be appointed in the member's place until the end of the term.

- SECT 18

Members (other than Executive Director) hold office on part time basis

The members of the Corporation (other than the Executive Director) hold office on a part time basis.

- SECT 19

Remuneration and allowances

(1)

A member of the Corporation shall be paid such remuneration as is determined by the Remuneration Tribunal.

- (2) A member of the Corporation shall be paid such allowances as are prescribed.
- (6) This section has effect subject to the Remuneration Tribunal Act 1973.
- (7) This section does not apply in relation to the Executive Director.

- SECT 20
Leave of absence

- (1) The Minister may grant leave of absence to the Chairperson of the Corporation on such terms and conditions as the Minister considers appropriate.
- (2) The Chairperson may grant leave of absence to another member of the Corporation (other than the Executive Director) on such terms and conditions as the Chairperson considers appropriate.

- SECT 21
Resignation

A member of the Corporation (other than the Executive Director) may resign by writing signed and delivered to the Minister.

- SECT 23
Termination of appointment

- (1) The Minister may terminate the appointment of the Chairperson or a nominated member of the Corporation for misbehaviour or physical or mental incapacity.
- (2) If:
 - (a) the Chairperson or a nominated member of the Corporation becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b)

the Chairperson or a nominated member of the Corporation, without reasonable excuse, contravenes section 27F or 27J of the Commonwealth Authorities and Companies Act 1997;

- (c) the Chairperson of the Corporation is absent, except with the leave of the Minister, from 3 consecutive meetings of the Corporation; or
- (d) a nominated member of the Corporation is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Corporation;

the Minister shall terminate the member's appointment.

- SECT 24

Terms and conditions of appointment not provided for by Act

A member of the Corporation (other than the Executive Director) holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

- SECT 25

Meetings

- (1) Subject to subsection (2), meetings of the Corporation shall be held at such times and places as the Corporation from time to time determines.
- (2) The Chairperson of the Corporation may at any time convene a meeting of the Corporation.
- (3) The Chairperson of the Corporation shall preside at all meetings of the Corporation at which the Chairperson is present.
- (4) If the Chairperson and Deputy Chairperson of the Corporation are not present at a meeting of the Corporation, the members present shall appoint one of their number to preside at the meeting.
- (5) At a meeting of the Corporation:
 - (a) 5 members constitute a quorum;
 - (b) a question shall be decided by a majority of the

- votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (5A) The Corporation may, subject to this section, regulate proceedings at its meeting as it considers appropriate.
- (5B) Without limiting subsection (5A), the Corporation may permit a member to participate in a meeting by telephone or any other means of communications.
- (5C) A member who is permitted to participate in a meeting under subsection (5B) is to be regarded as being present at that meeting.
- (6) The Corporation shall keep minutes of its proceedings.
- (7) The Corporation may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

- SECT 25A
Resolutions without meetings

Where the Corporation so determines, a resolution is to be taken to have been passed at a meeting of the Corporation if:

- (a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with a method determined by the Corporation; and
- (b) that majority would, if present at a meeting of the Corporation and entitled to vote on the resolution at that meeting, have constituted a quorum under paragraph 25(5)(a).

Division 3; Research and development plan and annual programs

- SECT 26
Research and development plan

- (1) The Corporation shall, as soon as practicable after the commencement of this Part, prepare a research and development plan, and prepare a research and development plan for each

successive period referred to in subsection (5).

- (4) The research and development plan as prepared under subsection (1) shall include a statement of the objectives of the Corporation for:
- (a) if the plan is prepared in the first 9 months of a financial year, the financial year in which the plan is prepared and the 4 subsequent financial years; or
 - (b) if the plan is prepared in the last 3 months of a financial year, the next financial year and the 4 subsequent financial years.
- (5) Each subsequent research and development plan must include a statement of the objectives of the Corporation for the period of 5 years commencing at the end of the period to which the immediately preceding research and development plan relates.
- (6) A research and development plan shall also outline the strategies and policies that the Corporation intends to adopt in order to achieve its objectives.
- (6A) The Corporation must, as soon as practicable after each subsequent 30 June occurring before the day of expiration of a research and development plan, review the plan, and consider whether a revision of it is necessary.
- (6B) The Corporation may, at any other time, review a research and development plan (whether or not the plan has come into operation) and consider whether a revision of it is necessary.
- (6C) Where the Minister gives to the Corporation a notice requesting that the Corporation revise a research and development plan, and setting out the reasons for making the request, it must consider, having regard to the reasons, whether the requested revision is appropriate.
- (6D) Where the Corporation considers that:
- (a) a revision of a research and development plan is necessary; or
 - (b) a revision of a research and development plan, requested by the Minister, is appropriate;

it may revise the plan and submit it for the Minister's approval in accordance with subsection (7).

- (7) A research and development plan, and a revision of a research and development plan:
- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
 - (b) has no effect until it is approved, in writing, by the Minister.
- (8) Before preparing or revising a research and development plan, the Corporation shall consult with eligible industry bodies.

- SECT 26A

Approval for revised research and development plan to run for 4 years from next 1 July

- (1) Where the Corporation submits a revision of a research and development plan to the Minister for approval, and that plan is in force, the Corporation may also request the Minister's approval for the plan as revised to be in force until the end of 4 years beginning on the next 1 July after the day on which the revision takes effect.
- (2) When making a request under subsection (1), the Corporation must provide the Minister with:
- (a) a statement of its reasons for making the request; and
 - (b) such other information as the Minister requests.
- (3) Where:
- (a) a request is made under subsection (1); and
 - (b) the Minister approves a revision of the plan under subsection 26(7); and
 - (c) the Minister is satisfied that it is appropriate for the request under subsection (1) to be granted;

the Minister may, by notice in writing given to the Corporation, give his or her approval for the plan as revised to be in force until the

end of 4 years beginning on the next 1 July after the day on which the revision takes effect.

- SECT 27

Annual research and development programs

- (1) The Corporation must, for each financial year during which a research and development plan is in force, prepare, in written form, an annual research and development program that is expressed to relate to that financial year.
- (2) The research and development program for a financial year must:
 - (a) specify the broad groupings of horticultural research and development activities that the Corporation proposes to fund, wholly or partly, during the financial year; and
 - (b) describe how and to what extent funding those activities will:
 - (i) give effect to the research and development plan in force during that financial year; and
 - (ii) in particular, pursue the strategies outlined in the research and development plan and help to achieve the objectives described in the research and development plan; and
 - (c) provide an estimate of:
 - (i) the total amounts likely to be spent by the Corporation in respect of each broad grouping of horticultural research and development activities the Corporation proposes to fund during the financial year; and
 - (ii) the total of the amounts likely to be spent by the Corporation during the financial year otherwise than in respect of broad groupings of such horticultural research and development activities; and
 - (iii) the total of the amounts referred to in subparagraphs (i) and (ii); and

- (iv) the total of the amounts likely to be paid to the Corporation during the financial year (other than the amounts paid under section 45).

(2A) A reference in this section to horticultural research and development activities that the Corporation proposes to fund includes a reference to horticultural research and development activities that the Corporation is prepared, subject to its examination of specific proposals, to fund.

(3) If the Minister is of the opinion that the research and development program is inconsistent with the research and development plan in force during the period to which the program is expressed to relate, the Minister may, in writing, request the Corporation to revise the program.

(4) The Corporation may, at any time, revise the research and development program, and shall revise the program if the Minister requests it under subsection (3) to do so and gives written reasons for the request.

(5) Before preparing or revising a research and development program, the Corporation shall consult with eligible industry bodies.

(6) A research and development program, and a revision of a research and development program:

- (a) must be submitted to the Minister no later than one month, or such shorter period as the Minister in special circumstances allows, before the intended day of commencement of the period to which the program relates; and

- (b) has no effect until it is approved, in writing, by the Minister.

(7) The Minister shall approve a research and development program, or a revision of a research and development program, unless the Minister is of the opinion that the program, or the program as proposed to be revised, as the case may be, is inconsistent with the research and development plan in force during the period to which the program is expressed to relate.

- SECT 28

Corporation to comply with plan and programs

To the extent that it is practicable to do so, the Corporation shall ensure that the performance of its functions, and the exercise of its powers, is consistent with, and designed to give effect to, the applicable research and development plan and the applicable research and development program.

Division 4; Accountability

- SECT 29

Annual report

(1)

The members of the Corporation must include in a report on the Corporation prepared under section 9 of the Commonwealth Authorities and Companies Act 1997:

(a)

particulars of:

(i)

the horticultural research and development projects that it carried out or funded, in whole or in part, during the period;

(ii)

the amount that it expended during the period in relation to each of those projects;

(iii)

revisions of the applicable research and development plan agreed to by the Minister during the period;

(iv)

significant acquisitions and dispositions of real property by it during the period;

(v)

the entering into of agreements under sections 8 and 9 during the period;

(vi)

its activities during the period in relation to agreements entered into under sections 8 and 9 during or before the period;

(vii)

its activities during the period in relation to applying for patents for inventions,

- commercially exploiting patented inventions and granting licences under patented inventions;
 - (viii) the activities of any companies in which the Corporation has an interest; and
 - (ix) any activities relating to the formation of a company;
- (b) an assessment of the extent to which its operations during the period have:
 - (i) achieved its objectives as stated in the applicable research and development plan; and
 - (ii) implemented each research and development program applicable to the period; and
- (c) an assessment of the extent to which the Corporation has, during the period, contributed to the attainment of the objects set out in section 5.

- SECT 30

Accountability to horticultural industries

The Chairperson of the Corporation shall, as soon as practicable after an annual report of the Corporation has been given to the Minister, provide copies of the report to each eligible industry body and:

- (a) make arrangements with each eligible industry body to which this paragraph applies for the Chairperson or another member of the Corporation (the nominated member) to attend the next annual conference of the body or a meeting of the executive of the body; and
- (b) convene a meeting with representatives of the other eligible industry bodies;

for the purpose of enabling:

- (c) the annual report to be considered;
- (d) the Chairperson or the nominated member, as the case requires, to deliver an address in relation to:

- (i) the activities of the Corporation in the period to which the report relates; and
 - (ii) the intended activities of the Corporation in the financial year following the end of the period; and
- (e) the Chairperson or the nominated member, as the case requires, to be questioned in relation to those activities.

Division 5; Executive Director

- SECT 31 Executive Director

There shall be an Executive Director of the Corporation.

- SECT 32 Duties

- (1) The Executive Director shall conduct the affairs of the Corporation.
- (2) The Executive Director shall act in accordance with any policies determined by, and any directions given by, the Corporation.
- (3) All acts and things done in the name of, or on behalf of, the Corporation by the Executive Director shall be deemed to have been done by the Corporation.

- SECT 33 Appointment

- (1) The Executive Director shall be appointed by the Corporation.
- (2) The Chairperson, the government member or a nominated member of the Corporation shall not be appointed as the Executive Director.
- (4) The appointment of a person as Executive Director is not invalid because of a defect or irregularity in connection with

the person's appointment.

- SECT 34
Term of appointment etc.

(1)
The Executive Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Corporation's pleasure.

- SECT 35
Executive Director not to engage in other paid employment
The Executive Director shall not engage in paid employment outside the duties of the office except with the approval of the Corporation.

- SECT 36
Terms and conditions of appointment

The Executive Director is to be appointed on such terms and conditions, including remuneration and allowances, as are determined, in writing, by the Corporation.

- SECT 37
Leave of absence

The Chairperson of the Corporation may grant leave of absence to the Executive Director on such terms and conditions, whether as to remuneration or otherwise, as are determined by the Corporation.

- SECT 38
Resignation

The Executive Director may resign by writing signed and delivered to the Chairperson of the Corporation.

- SECT 39
Disclosure of interests

The Executive Director shall give written notice to the Chairperson of the Corporation of all direct or indirect pecuniary interests that the Executive Director has or acquires in any business or in any body corporate carrying on any business.

- SECT 40
Acting Executive Director

(1) The Corporation may appoint a person (other than a member of the Corporation) to act as Executive Director:

- (a) during a vacancy in the office of Executive Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Executive Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) An appointment under subsection (1) may be expressed to have effect only in specified circumstances.

(3) Where:

- (a) a person is acting under paragraph (1)(b); and
- (b) the office of Executive Director becomes vacant;

then, subject to subsection (2) and paragraph (5)(b), the person may continue to act until the vacancy is filled.

(4) A person acting as Executive Director has all the powers and duties of the Executive Director.

(5) The Corporation may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Executive Director; and
- (b) terminate the appointment at any time.

(6)

A person appointed to act as Executive Director may resign the appointment by writing signed by the person and delivered to the Chairperson of the Corporation.

(7)

Anything done by or in relation to a person purporting to act as Executive Director is not invalid because:

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

- SECT 41

Exclusion of Executive Director etc. from certain deliberations

(1)

The Executive Director shall not be present during any deliberation of the Corporation or a committee of the Corporation, or take part in any decision of the Corporation or a committee of the Corporation, with respect to:

- (a) the appointment of a person as Executive Director;
- (b) the determination or application of any terms and conditions on which a person appointed as Executive Director holds office or may be granted leave;
- (c) the termination of the appointment of the Executive Director; or
- (d) the giving or refusing of approval for the Executive Director to engage in paid employment outside the duties of the office.

(2)

A person appointed to act as Executive Director shall not be present during any deliberation of the Corporation or a committee of the Corporation, or take part in any decision of the Corporation or a committee of the Corporation, with respect to:

- (a) the appointment of a person as Executive Director or

- to act as Executive Director;
- (b) the determination or application of any terms and conditions on which the Executive Director, or a person appointed to act as Executive Director, holds office or may be granted leave;
 - (c) the termination of the appointment of the person or the Executive Director; or
 - (d) the giving or refusing of approval for the Executive Director, or a person acting as Executive Director, to engage in paid employment outside the duties of the office.

Division 6; Employees and consultants

- SECT 43 Employees

- (1) The Corporation may engage such employees as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) The terms and conditions of employment shall be determined by the Corporation.

- SECT 44 Consultants

- (1) The Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation.
- (2) The terms and conditions of engagement shall be determined by the Corporation.

Division 7; Finance

- SECT 44A

Corporation's component of levy

For the purposes of this Act, the Corporation's component of levy is an amount of levy covered by subclause 4(3) of Schedule 15 to the Primary Industries (Excise) Levies Act 1999.

- SECT 44B

Corporation's component of charge

For the purposes of this Act, the Corporation's component of charge is an amount of charge covered by subclause 3(5) of Schedule 10 to the Primary Industries (Customs) Charges Act 1999.

- SECT 45

Payment of amounts of levy and charge to Corporation

(1)

There shall be paid to the Corporation amounts equal to:

(aaa)

amounts received by the Commonwealth as the Corporation's component of levy; and

(a)

amounts of levy received by the Commonwealth by virtue of section 9 of the old Levy Act; and

(aa)

amounts received by the Commonwealth by way of penalty under section 15 of the Levies and Charges Collection Act in relation to amounts of levy referred to in paragraph (aaa) or (a); and

(b)

amounts received by the Commonwealth by way of penalty under section 8 of the old Levy Collection Act in relation to amounts of levy referred to in paragraph (a).

(2)

There shall be paid to the Corporation amounts equal to:

(aaa)

amounts received by the Commonwealth as the Corporation's component of charge; and

- (a) amounts of charge received by the Commonwealth by virtue of section 9 of the old Export Charge Act; and
- (aa) amounts received by the Commonwealth by way of penalty under section 15 of the Levies and Charges Collection Act in relation to amounts of charge referred to in paragraph (aaa) or(a); and
- (b) amounts received by the Commonwealth by way of penalty under section 8 of the old Export Charge Collection Act in relation to amounts of charge referred to in paragraph (a).

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

- (3A) The reference in paragraph (1)(aaa) to amounts received by the Commonwealth as the Corporation's component of levy includes a reference to:

- (a) amounts received by the Commonwealth under subsection 7(1) or (2) of the Levies and Charges Collection Act in relation to such a component of levy; and
- (b) amounts received by the Commonwealth by virtue of an agreement entered into under section 10 or 11 of that Act in relation to such a component of levy.

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

- (a) amounts received by the Commonwealth under paragraph 7(1)(a) of the old Levy Collection Act, or by virtue of an agreement entered into under section 7B of that Act, in relation to such levy; and
- (aa) amounts of levy received by the Commonwealth under subsection 7(1) or (2) of the Levies and Charges Collection Act, or by virtue of an agreement entered into under section 10 or 11 of that Act, in relation to such levy; and
- (b)

amounts received by the Commonwealth under subsection 7A(1) of the old Levy Collection Act on account of such levy; and

(4A)

The reference in paragraph (2)(aaa) to amounts received by the Commonwealth as the Corporation's component of charge includes a reference to:

(a)

amounts received by the Commonwealth under paragraph 7(3)(a) of the Levies and Charges Collection Act in relation to such a component of charge; and

(b)

amounts received by the Commonwealth by virtue of an agreement entered into under section 10 or 11 of that Act in relation to such a component of charge.

(5)

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

(a)

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

(aa)

amounts of charge received by the Commonwealth under paragraph 7(3)(a) of the Levies and Charges Collection Act, or by virtue of an agreement entered into under section 10 or 11 of that Act, in relation to such charge; and

(b)

amounts received by the Commonwealth under subsection 7A(1) of the old Export Charge Collection Act on account of such charge; and

(ba)

amounts received by the Commonwealth under subsection 9(1) of that Act, or by virtue of an agreement entered into under section 10 or 11 of that Act, in respect of penalty payable under that Act.

(5A)

The reference in paragraph (1)(aa) to amounts received by the Commonwealth by way of penalty under section 15 of the Levies and Charges Collection Act includes a reference to:

(a)

amounts received by the Commonwealth under paragraph 7(1)(e) of that Act; and

- (b) amounts received by the Commonwealth under subsection 9(1) of that Act, or by virtue of an agreement entered into under section 10 or 11 of that Act, in respect of penalty payable under that Act.

- (6) The reference in paragraph (1)(b) to amounts received by the Commonwealth by way of penalty under section 8 of the old Levy Collection Act includes a reference to:

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

- (6A) The reference in paragraph (2)(aa) to amounts received by the Commonwealth by way of penalty under section 15 of the Levies and Charges Collection Act includes a reference to:

- (a) amounts received by the Commonwealth under paragraph 7(3)(b) of that Act; and
- (b) amounts received by the Commonwealth under subsection 9(1) of that Act, or by virtue of an agreement entered into under section 10 or 11 of that Act, in respect of penalty payable under that Act.

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

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

- SECT 45A

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

(1)

The Corporation may enter into an agreement, in writing, with any person who is responsible under:

- (a) section 7 or 7A of the old Levy Collection Act; or
- (b) section 7 or 7A of the old Export Charge Collection Act; or
- (c) section 7 or 9 of the Levies and Charges Collection Act;

for the collection of amounts for payment to the Commonwealth, providing for payment by the Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

(2)

The Corporation may enter into an agreement in writing, with any person who has agreed, under:

- (a) subsection 7B(1) of the old Levy Collection Act; or
- (b) subsection 7B(1) of the old Export Charge Collection Act; or
- (c) subsection 10(1) or 11(1) of the Levies and Charges Collection Act;

to collect amounts on behalf of the Commonwealth, providing for payment by the Corporation to that person in respect of the collection of so much of the amounts collected as are paid to the Corporation.

(3)

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

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

- SECT 46

Matching payments by Commonwealth

- (1) Subject to subsections (3) and (5), there shall be paid to the Corporation an amount equal to one-half of each amount (other than an amount payable under paragraph 47(1)(aa)) required to be expended by the Corporation.
- (2) Amounts payable under subsection (1) shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (3) The sum of the amounts paid to the Corporation under subsection (1) shall not exceed the sum of:
 - (a) the amounts paid to the Corporation under paragraphs 45(1)(aaa) and
 - (a) and (2)(aaa) and (a); and
 - (b) amounts in relation to which subsection (4) applies;

less the sum of the amounts paid by the Corporation under subsection 11(3) of the old Levy Collection Act and subsection 11(3) of the old Export Charge Collection Act.

- (4) Where the Corporation accepts an amount paid to it by way of gift, grant, bequest or devise or on trust, the Corporation may, subject to the regulations, determine that this subsection applies in relation to the amount.
- (5) The sum of:
 - (a) the amounts paid to the Corporation under subsection (1) in a financial year (in paragraph (c) called the current financial year); and
 - (b) the amounts paid to the Corporation under that subsection in earlier financial years;

in relation to amounts required to be expended by the Corporation in relation to horticultural products shall not exceed the sum of:

- (c) 0.5% of the amount determined by the Minister, in writing and in accordance with a method specified in the regulations, to be the gross value of production

- of those products in the current financial year; and
 - (d) 0.5% of the amounts determined by the Minister, in writing and in accordance with such a method, to be the gross value of production of those products in those earlier financial years.
- (6) If this Part does not commence at the beginning of a financial year, a reference in subsection (5) to a financial year does not include a reference to the financial year that commenced on the 1 July immediately preceding the commencement of this Part.

- SECT 47
Expenditure of money of Corporation

- (1) The money of the Corporation may be expended only:
- (a) in payment or discharge of the expenses and liabilities incurred by or on behalf of the Corporation or a Selection Committee;
 - (aa) in payment to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth in relation to:
 - (i) the collection or recovery of amounts referred to in paragraph 45(1)(aaa), (a), (aa) or (b) or (2)(aaa), (a), (aa) or (b); or
 - (ii) the administration of section 45;
 - (b) in payment of remuneration and allowances payable under this Act; and
 - (c) in making any other payments that the Corporation is authorised or required to make by or under this Act or another Act.
- (2)

The Corporation is liable to pay the expenses, and discharge the liabilities, incurred by a Selection Committee in connection with the performance of its function, and the exercise of its powers, under this Act.

- (3) This section does not prevent investment of surplus money of the Corporation under section 18 of the Commonwealth Authorities and Companies Act 1997.

- SECT 48

Separate accounts [see Note 2]

- (1) The regulations may require the Corporation to keep separate accounts in relation to specified classes of horticultural products, and may specify the amounts to be credited and debited to such an account and the manner in which such amounts are to be calculated.
- (2) Where the regulations require the Corporation to keep a separate account in relation to a class of horticultural products, the regulations may make provision in relation to the expenditure of money standing to the credit of the account, including the application of money standing to the credit of the account if, and when, the account ceases to exist.

- SECT 49

Borrowing and raising of money

- (1) The Corporation may, with the written approval of the Minister:
 - (a) borrow money; or
 - (b) raise money otherwise than by borrowing;

on terms and conditions that are specified in, or consistent with, the approval.

- (2) Without limiting the generality of subsection (1), the Corporation may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.
- (3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1) may be made, in whole or in part, in a currency other than Australian currency.
- (4)

An approval may be given under subsection (1) in relation to a particular transaction or a class of transactions.

(5) The Corporation may not borrow, or raise money otherwise than by borrowing, except in accordance with this section.

(6) For the purposes of this section:

(a) the issue by the Corporation of an instrument acknowledging a debt in consideration of:

(i) the payment or deposit of money; or

(ii) the provision of credit;

otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Corporation, shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

(b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

- SECT 50

Guarantee of borrowings and raisings of money

(1) The Treasurer may, on behalf of the Commonwealth, enter into a contract:

(a) guaranteeing the repayment by the Corporation of money borrowed under paragraph 49(1)(a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed; or

(b) guaranteeing the payment by the Corporation of such amounts (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 49(1)(b) as are specified in the contract.

(2)

The Treasurer may, in writing, determine:

(a)

that the repayment by the Corporation of money borrowed under paragraph 49(1)(a), and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed, are guaranteed by the Commonwealth; or

(b)

that the payment by the Corporation of such money (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 49(1)(b) as is specified in the determination is guaranteed by the Commonwealth;

and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by force of this subsection, guaranteed by the Commonwealth.

(3)

A contract may be entered into under subsection (1), and a determination may be made under subsection (2), in relation to a particular transaction or a class of transactions.

(4)

A contract entered into under subsection (1) may include either or both of the following provisions:

(a)

a provision agreeing that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia;

(b)

a provision waiving the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

- SECT 51

Corporation may give security

The Corporation may give security over the whole or any part of its land or other assets for:

(a)

the repayment by the Corporation of money borrowed by it under paragraph 49(1)(a) and the payment by it of interest (including any interest on that interest) on

money so borrowed;

- (b) the payment by the Corporation of amounts (which may be interest) that it is liable to pay with respect to money raised by it under paragraph 49(1)(b); or
- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into under subsection 50(1) or as a result of a determination made under subsection 50(2).

- SECT 53

Liability to taxation

- (1) The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.
- (2) Subject to subsections (3) and (4), the Corporation is not subject to taxation under a law of a State or Territory.
- (3) The regulations may provide that subsection (2) does not apply in relation to:
 - (a) a specified law of a State or Territory; or
 - (b) laws in a specified class of laws of a State or Territory.
- (4) Stamp duty under the law of a State or a Territory is payable by the Corporation in respect of transactions entered into by, and instruments and documents executed by or on behalf of, the Corporation.

Division 8; Miscellaneous

- SECT 54

Committees

- (1) The Corporation may establish committees to assist it in the performance of its functions and the exercise of its powers.
- (2) A committee may be constituted wholly by members of the Corporation or partly by members of the Corporation and partly

- by other persons.
- (3) The Corporation may fix the number of members of a committee required to constitute a quorum at a meeting of the committee.
 - (4) Section 19 applies in relation to a member of a committee who is not a member of the Corporation as if the member were a member of the Corporation.
 - (5) Sections 27F to 27L of the Commonwealth Authorities and Companies Act 1997 apply to a member of a committee as if the committee were a Commonwealth authority and the member were a director of the authority.

- SECT 55
Delegation by Corporation

- (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate all or any of its powers under this Act (other than its powers under section 36 or 37 this power of delegation) to:
 - (a) a committee of the Corporation;
 - (b) a member of the Corporation; or
 - (c) an employee of the Corporation.
- (2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Corporation.
- (3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Corporation.
- (4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Corporation.

- SECT 56
Delegation by Executive Director

- (1) The Executive Director may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to an employee of the Corporation all or any of his or her

powers under this Act, other than this power of delegation.

- (2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Executive Director.
- (3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Executive Director.
- (4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Executive Director.

Part III; Selection Committees

Division 1; Presiding Member and Selection Committees

- SECT 57
Presiding Member

- (1) The Minister must appoint a person as the Presiding Member of Selection Committees for the Corporation.
- (2) The Presiding Member is to be appointed on a part-time basis.
- (3) The Presiding Member holds office for the period, not longer than 3 years, specified in the instrument of appointment, but is eligible for re-appointment.

- SECT 57A
Minister may request the establishment of a Selection Committee

- (1) For the purpose of:
 - (a) appointing the nominated members of the Corporation;
or
 - (b) filling a vacancy caused by the resignation, or the termination of the appointment, of such a member;

the Minister must give written notice to the Presiding Member:

- (c) asking the Presiding Member to establish a Selection Committee; and
 - (d) specifying the period within which the Selection Committee must nominate a person or persons (as the case requires) for appointment.
- (2)

If the Minister believes on reasonable grounds that a vacancy of the kind mentioned in paragraph (1)(b) is about to occur, the Minister may give a notice before the vacancy occurs.

- SECT 58

Function

The function of a Selection Committee is to nominate, at the request of the Minister, persons to the Minister for appointment as nominated members of the Corporation.

- SECT 59

Powers

A Selection Committee has power to do, on behalf of the Commonwealth, all things necessary or convenient to be done for, or in connection with, the performance of its function.

- SECT 59A

Abolition

(1)

Where:

- (a) the Minister has appointed to the Corporation a person nominated by a Selection Committee; and
- (b) the Selection Committee has not made any other nomination that has yet to be accepted or rejected by the Minister; and
- (c) there are no outstanding matters in a request by the Minister under section 57A or 64 that are yet to be dealt with by the Selection Committee;

the Presiding Member must abolish the Selection Committee.

Division 2;Nominations for membership of Corporation

- SECT 61
Nominations

- (1) Where the Minister makes a request under section 57A, the Selection Committee established in accordance with the request must, within the period specified in the request, nominate in writing to the Minister a person or persons, as the case requires.
- (1A) For the purpose of enabling it to make a nomination, the Selection Committee:
- (a) must invite nomination of persons for appointment by advertising in a newspaper that circulates throughout Australia; and
 - (b) must invite nomination of persons for appointment from the eligible industry bodies; and
 - (c) may invite nomination of persons for appointment in any other way it considers appropriate.
- (1B) The Selection Committee need not comply with paragraph (1A)(a) if:
- (a) it is less than 12 months since the last appointment of a nominated member of the Corporation; and
 - (b) the member's nomination was made following an advertisement under that paragraph; and
 - (c) the Selection Committee considers that compliance with the paragraph is unlikely to result in a significantly improved field of candidates for nomination to the Minister.
- (2) The nomination shall be accompanied by a statement setting out:
- (a) details of the person's qualifications and experience; and
 - (b) such other information relating to the person as the

Selection Committee considers will assist the Minister in considering whether or not to appoint the person;

and specifying how, in the Selection Committee's opinion, the nomination or nominations will best ensure that the members of the Corporation collectively possess an appropriate balance of expertise in accordance with section 62.

- (3) Subject to section 64, a Selection Committee shall nominate only one person for each appointment.
- (4) A Selection Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person for another appointment or a Selection Committee has previously decided not to nominate the person.

- SECT 62
Selection of persons by Selection Committee

- (1) A Selection Committee shall not nominate a person unless the person appears to the Selection Committee to be suitably qualified for appointment by virtue of expertise in one or more of the following fields:
 - (a) the growing or harvesting of horticultural products;
 - (b) the handling, storing, transporting, processing or marketing of horticultural products;
 - (c) horticultural research and development or other research and development;
 - (d) the administration or management of:
 - (i) horticultural research and development; or
 - (ii) other research and development;
 - (e) science and technology;
 - (ea) technology transfer;
 - (eb) conservation and management of natural resources;
 - (ec)

- environmental and ecological matters;
 - (f) business management;
 - (g) finance;
 - (h) economics;
 - (j) marketing.
- (2) A Selection Committee shall not nominate a person if:
- (a) the person is a member of the Selection Committee; or
 - (b) the person was a member of the Selection Committee during the year immediately preceding the making of the nomination.
- (3) In selecting a person for nomination, a Selection Committee shall choose from the available candidates the person who will best ensure that the members of the Corporation collectively possess an appropriate balance of expertise.

- SECT 63

Minister may request further information

Where the Minister considers the information contained in the statement accompanying a nomination by a Selection Committee to be inadequate, the Minister may, by notice in writing given to the Presiding Member, request the Selection Committee, within the period specified in the notice, to provide the Minister with further specified information in relation to the person.

- SECT 64

Minister may reject nomination

- (1) Where the Minister is not satisfied that a person nominated by a Selection Committee should be appointed as a member of the Corporation, the Minister may, by notice in writing given to the Presiding Member, reject the nomination and request the nomination, within a specified period, of another person.
- (2) For the purposes of this Part, other than section 67:
- (a)

a notice under subsection (1) is taken to be a notice under section 57A; and

- (b) the period specified in a notice under subsection (1) is taken to be a period specified in a notice under section 57A.

Division 3; Establishment and meetings of Selection Committees

- SECT 67

Establishment of Selection Committees

(1)

Where the Presiding Member receives a request under section 57A, the Presiding Member must establish a Selection Committee to nominate a person or persons for appointment to the Corporation.

(1A)

The Selection Committee so established comprises the following members:

(a)

the Presiding Member;

(b)

4, 5 or 6 nominated members appointed by the Minister.

(1B)

For the purpose of establishing a Selection Committee, the Presiding Member must, as soon as practicable after receiving a request under section 57A, by written notice to each eligible industry body, ask the body to nominate to the Minister persons for appointment to the Selection Committee.

(1C)

Where there are, in a particular case, 2 or more eligible industry bodies, the Presiding Member's notice must ask each of those bodies to act jointly with all of the other bodies in making the nomination.

(2)

Subject to this section, the Minister must appoint the persons nominated by the eligible industry body or bodies.

(3)

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

(3A)

Where the Minister is satisfied that nominations for membership of a Selection Committee will not be made as provided under this section within a reasonable time, the Minister may appoint

persons to be members of the Selection Committee as if they had been so nominated.

- (4) The Minister shall not appoint a member of the Corporation as a nominated member of a Selection Committee.
- (6) The appointment of a person as a nominated member of a Selection Committee is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.
- (7) The performance of the function, and the exercise of the powers, of a Selection Committee are not affected merely because of a vacancy in its membership.

- SECT 69

Members to hold office on part time basis

The members of a Selection Committee hold office on a part time basis.

- SECT 70

Remuneration and allowances

- (1) A member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, is to be paid such remuneration as is prescribed.
- (2) A member of a Selection Committee shall be paid such allowances as are prescribed.
- (3) Where:
 - (a) a person who is a member of a Selection Committee is also a member of, or a candidate for election to, the Parliament of a State; and
 - (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person shall not be paid remuneration or allowances under this Act, but shall be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

- (4)

Where a person who is a member of a Selection Committee:

- (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person;
- (b) is in the service or employment of a State, or an authority of a State, on a full time basis; or
- (c) holds or performs the duties of an office or position established by or under a law of a State on a full time basis;

it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

- (5) An amount payable under subsection (4) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.
- (6) Subject to subsection (7), this section has effect subject to the Remuneration Tribunals Act 1973.
- (7) Subsection 7(9) of the Remuneration Tribunal Act 1973 does not apply in relation to a member of a Selection Committee.

- SECT 71
Leave of absence

- (1) The Minister may grant leave of absence to the Presiding Member on such terms and conditions as the Minister considers appropriate.
- (2) The Presiding Member may grant leave of absence to another member of a Selection Committee on such terms and conditions as the Presiding Member considers appropriate.

- SECT 72
Resignation of nominated members

A nominated member of a Selection Committee may resign by writing signed and delivered to the Minister.

- SECT 73

Disclosure of interests

(1)

Where:

(a)

a member of a Selection Committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Selection Committee; and

(b)

the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Selection Committee.

(2)

A disclosure under subsection (1) shall be recorded in the minutes of the Selection Committee.

- SECT 74

Termination of appointment

(1)

The Minister may terminate the appointment of the Presiding Member or a nominated member of a Selection Committee:

(a)

for misbehaviour or physical or mental incapacity; or

(b)

if the Presiding Member or nominated member:

(i)

becomes bankrupt; or

(ii)

applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii)

compounds with his or her creditors; or

(iv)

makes an assignment of his or her remuneration for the benefit of such creditors; or

(c)

if the Presiding Member or nominated member, without

reasonable excuse, contravenes section 73.

- (2) The Minister may terminate the appointment of the Presiding Member if the Presiding Member is absent, except with the Minister's leave, from 3 consecutive meetings of a Selection Committee.
- (3) The Minister may terminate the appointment of a nominated member of a Selection Committee if the member is absent, except with the Presiding Member's leave, from 3 consecutive meetings of the Selection Committee.

- SECT 75

Terms and conditions of appointment not provided for by Act

A member of a Selection Committee holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

- SECT 76

Meetings

- (1) Subject to subsection (2), meetings of a Selection Committee shall be held at such times and places as the Selection Committee from time to time determines.
- (2) The Presiding Member may at any time convene a meeting of a Selection Committee.
- (3) The Presiding Member must preside at all meetings of a Selection Committee at which he or she is present.
- (4) If the Presiding Member is not present at a meeting of a Selection Committee, the members present shall appoint one of their number to preside at the meeting.
- (5) At a meeting of a Selection Committee:
 - (a) a majority of the members constitutes a quorum;
 - (b) a question shall be decided by a majority of the votes of the members present and voting; and
 - (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

- (6) A Selection Committee shall keep minutes of its proceedings.
- (7) A Selection Committee may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Division 4; Employees and consultants

- SECT 77 Employees

- (1) The Presiding Member may, on behalf of a Selection Committee, employ persons to perform administrative and clerical services in connection with the performance of the Selection Committee's function and the exercise of its powers.
- (3) The terms and conditions of employment of persons employed under subsection (1) shall be determined by the Selection Committee.

- SECT 78 Consultants

- (1) The Presiding Member may, on behalf of a Selection Committee, engage persons having suitable qualifications and experience as consultants to the Selection Committee to assist it in performing its function.
- (2) The terms and conditions of engagement shall be determined by the Selection Committee.

Division 5; Miscellaneous

- SECT 79 Annual reports

- (1) The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other Presiding Member.
- (2) Where the first appointment of a Presiding Member does not

begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:

- (a) if the period is less than 3 months; the period were included in the next financial year; or
 - (b) in any other case; the period were a financial year.
- (3) A report for a financial year may, subject to agreement between the Presiding Member and the Chairperson of the Corporation, be included, as a discrete part, in the annual report of the Corporation for that financial year.
- (4) If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Part IV; Miscellaneous

- SECT 80 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

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

- SECT 81 Orders

- (1) Subject to subsection (2), the regulations may make provision for or in relation to empowering the Minister to make orders, not inconsistent with this Act, with respect to any matter for or in relation to which provision may be made by the regulations.
- (2) An order shall not be made prescribing any penalty.

- (3) Sections 48, 48A, 48B, 49, 49A and 50 of the Acts Interpretation Act 1901 apply in relation to orders as if references to regulations were references to orders and references to an Act were references to regulations.
- (4) An order shall not be taken to be a statutory rule within the meaning of the Statutory Rules Publication Act 1903, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule.
- (5) For the purposes of the application of subsection 5(3B) of the Statutory Rules Publication Act 1903 in accordance with subsection (4), the reference in the first-mentioned subsection to the Minister specified in that subsection shall be read as a reference to a Minister administering this Act.
- (6) An order shall be deemed to be an enactment for the purposes of the Administrative Appeals Tribunal Act 1975.

Notes to the Horticultural Research and Development Corporation Act 1987

Note 1

The Horticultural Research and Development Corporation Act 1987 as shown in this compilation comprises Act No. 166, 1987 amended as indicated in the Tables below.

Table of Acts

Act

Number
and year

Date
of Assent

Date of commencement

Application, saving or transitional provisions

Horticultural Research and Development Corporation Act 1987

166, 1987

26 Dec 1987

Part II (ss. 4-56): 1 Aug 1988 (see Gazette 1988, No. S216)
Remainder: Royal Assent

Primary Industries (Recovery of Levy Collection Expenses) Act 1988

51, 1988

15 June 1988

S. 3: (a)

;

Statutory Instruments (Tabling and Disallowance) Legislation
Amendment Act 1988

99, 1988

2 Dec 1988

2 Dec 1988

;

Horticultural Legislation Amendment Act 1989

46, 1989

8 June 1989

Ss. 31, 33 and 34: Royal Assent (b)
S. 32: 1 Oct 1989 (see Gazette 1989, No. S313) (b)

;

Primary Industries and Energy Legislation Amendment Act 1990

134, 1990

28 Dec 1990

Part 7 (ss. 34-37): 1 Oct 1990
Remainder: Royal Assent

;

Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991

26, 1991

1 Mar 1991

1 July 1991 (see s. 2)

Ss. 5 and 9

Primary Industries Legislation Amendment Act 1991

39, 1991

27 Mar 1991

Ss. 3(1) and 4: 1 July 1991
Remainder: Royal Assent

;

Primary Industries and Energy Legislation Amendment Act 1993

94, 1993

16 Dec 1993

Part 11 (ss. 47-57) and Part 12 (ss. 58-65): 1 Jan 1994
S. 69(1)(b): 1 July 1989
Remainder: Royal Assent

;

Primary Industries and Energy Legislation Amendment Act (No. 1) 1995

36, 1995

12 Apr 1995

Schedule (items 24-26): Royal Assent (c)

Sch. (item 26)

Statute Law Revision Act 1996

43, 1996

25 Oct 1996

Schedule 2 (item 65): (d)
Schedule 4 (items 91, 92): Royal Assent (d)

;

Audit (Transitional and Miscellaneous) Amendment Act 1997

152, 1997

24 Oct 1997

Schedule 2 (items 851-860): 1 Jan 1998 (see Gazette 1997,
No. GN49) (e)

;

Primary Industries and Energy Legislation Amendment Act (No. 1) 1998

102, 1998

30 July 1998

30 July 1998

;

Primary Industries Levies and Charges (Consequential Amendments) Act
1999

32, 1999

14 May 1999

Schedule 6: 1 July 1999 (f)

;

Corporate Law Economic Reform Program Act 1999

156, 1999

24 Nov 1999

Schedule 10 (items 90-92): 13 Mar 2000 (see Gazette 2000, No. S114) (g)

;

(a) The Horticultural Research and Development Corporation Act 1987 was amended by section 3 only of the Primary Industries (Recovery of Levy Collection Expenses) Act 1988, subsections 2(1) and (4) of which provide as follows:

(1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

(4) The amendments of the Horticultural Research and Development Corporation Act 1987 made by this Act commence immediately after section 47 of that Act commences.

Section 47 commenced on 1 August 1988 (see Gazette 1988, No. S216).

(b) The Horticultural Research and Development Corporation Act 1987 was amended by sections 31-34 only of the Horticultural Legislation Amendment Act 1989, subsections 2(1) and (4) of which provide as follows:

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

(4) Subject to subsection (5), the remaining provisions of this Act also commence on a day or days to be fixed by Proclamation.

(c) The Horticultural Research and Development Corporation Act 1987 was amended by the Schedule (items 24-26) only of the Primary Industries and Energy Legislation Amendment Act (No. 1) 1995, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(d) The Horticultural Research and Development Corporation Act 1987 was amended by Schedule 2 (item 65) and Schedule 4 (items 91, 92) only of the Statute Law Revision Act 1996, subsections 2(1) and (2) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.

Item 65 is taken to have commenced immediately after the commencement of section 11 of the Primary Industries and Energy Legislation Amendment Act 1990.

Section 11 commenced on 28 December 1990.

(e) The Horticultural Research and Development Corporation Act 1987 was amended by Schedule 2 (items 851-860) of the Audit (Transitional and Miscellaneous) Amendment Act 1997, subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the Financial Management and Accountability Act 1997.

(f) The Horticultural Research and Development Corporation Act 1987 was amended by Schedule 6 only of the Primary Industries Levies and Charges (Consequential Amendments) Act 1999, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the commencement of section 1 of the Primary Industries (Excise) Levies Act 1999.

(g) The Horticultural Research and Development Corporation Act 1987 was amended by Schedule 10 (items 90-92) only of the Corporate Law Economic Reform Program Act 1999, subsection 2(2)(c) of which provides as follows:

(2) The following provisions commence on a day or days to be fixed by Proclamation:

(c) the items in Schedules 10, 11 and 12.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected

How affected

am. No. 46, 1989; No. 134, 1990; No. 26, 1991; No. 32, 1999

S. 5

am. No. 94, 1993

S. 6

am. No. 39, 1991

S. 7

am. No. 39, 1991; No. 152, 1997

Note to s. 11(1)

ad. No. 152, 1997

S. 15

am. No. 94, 1993

S. 17

am. No. 94, 1993

S. 19

am. No. 39, 1991; No. 43, 1996

S. 22

rep. No. 152, 1997

S. 23

am. No. 152, 1997; No. 156, 1999

S. 25

am. No. 39, 1991

S. 25A

ad. No. 39, 1991

S. 26

am. No. 39, 1991

S. 26A

ad. No. 39, 1991

Ss. 27, 28

am. No. 39, 1991

S. 29

am. No. 39, 1991; No. 94, 1993; No. 152, 1997

S. 30

am. No. 36, 1995

Ss. 33, 34

am. No. 94, 1993

S. 36

rs. No. 39, 1991

am. No. 102, 1998

S. 37

am. No. 102, 1998

S. 40

am. No. 102, 1998

S. 42

rep. No. 39, 1991

Ss. 44A, 44B

ad. No. 32, 1999

S. 45

am. No. 46, 1989; No. 26, 1991; No. 32, 1999

S. 45A

ad. No. 46, 1989

am. No. 26, 1991; No. 32, 1999

S. 46

am. No. 51, 1988; No. 94, 1993; No. 32, 1999

S. 47

am. No. 51, 1988; No. 134, 1990; No. 152, 1997; No. 32, 1999

S. 52

rep. No. 152, 1997

S. 54

am. No. 152, 1997; No. 156, 1999

S. 55

am. No. 102, 1998

Heading to Part III

rs. No. 134, 1990

Heading to Div. 1 of Part III

rs. No. 134, 1990

S. 57

rs. No. 134, 1990

am. No. 43, 1996

S. 57A

ad. No. 134, 1990

Ss. 58, 59

am. No. 134, 1990

S. 59A

ad. No. 134, 1990

S. 60

rep. No. 134, 1990

Ss. 61-64

am. No. 134, 1990

Heading to Div. 3 of Part III

rs. No. 134, 1990

Ss. 65, 66

rep. No. 134, 1990

S. 67

am. No. 134, 1990

S. 68

rep. No. 134, 1990

S. 69

am. No. 134, 1990

S. 70

am. No. 134, 1990; No. 43, 1996

Ss. 71-73

am. No. 134, 1990

S. 74

rs. No. 134, 1990

Ss. 75-78

am. No. 134, 1990

S. 79

rs. No. 134, 1990

S. 81

am. No. 99, 1988

Note 2

Section 48(1)(aa)(i);Section 3 of the Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991 provides as follows:

-
SECT Subparagraph 48(1)(aa)(i):

- (a) Insert ", (aa)" after "paragraph 45(1)(a)".
- (b) Insert ", (aa)" after "or (2)(a)".

The proposed amendment was misdescribed and is not incorporated in this compilation.