



# **Australian Horticultural Corporation (Honey Export Control) Regulations 1993**

**Statutory Rules 1993 No. 26**

made under the

*Australian Horticultural Corporation Act 1987*

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taking into account amendments up to SR 2002 No. 60

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Attorney-General's Department, Canberra

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## **Part 1**                      **Preliminary**

### **1**            **Name of Regulations** [see Note 1]

These Regulations are the *Australian Horticultural Corporation (Honey Export Control) Regulations 1993*.

### **2**            **Interpretation**

In these Regulations, unless the contrary intention appears:

***approved form*** means a form approved by the Corporation under regulation 16.

***export*** means export from Australia.

***honey*** means honey produced in Australia.

***licence*** means a licence to export honey granted under subregulation 8 (1).

***licensee*** means the holder of a licence.

***prescribed financial arrangement*** means a financial arrangement referred to in column 2 of an item in Schedule 1.

***prescribed offence*** means an offence referred to in column 2 of an item in Schedule 2.

***repealed Act*** means the *Honey Marketing Act 1988*.

***the Act*** means the *Australian Horticultural Corporation Act 1987*.

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**Part 2                      Licensing of honey exports****3                      Control of the export of honey**

A person other than:

- (a) the Corporation; or
- (b) a licensee;

must not export honey.

*Note* See section 118 of the Act for the offence of contravening a prohibition in this regulation.

**4                      Who can apply for a licence?**

- (1) An individual, a partnership or a corporation may apply for a licence.
- (2) The applicant must use the approved form.

**5                      Rules about individuals who apply for licences**

- (1) An individual is eligible for a licence unless he or she is affected by any of the following subregulations.

*Note* Other matters relating to the grant of a licence are set out in subregulation 8 (1).

- (2) An individual who applies for a licence is not eligible for the licence if:
  - (a) he or she held a licence under these Regulations or the repealed Act; and
  - (b) the licence was revoked or cancelled:
    - (i) without the individual's agreement; and
    - (ii) less than 5 years before the day on which the individual applies for the licence.
- (3) An individual who applies for a licence is not eligible for the licence if:

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- (a) he or she was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (b) the partnership's licence was revoked or cancelled:
    - (i) without the partnership's agreement; and
    - (ii) while the individual was a partner; and
    - (iii) less than 5 years before the day on which the individual applies for the licence.
- (4) An individual who applies for a licence is not eligible for the licence if:
- (a) he or she was a director of a corporation or a shareholder who held a controlling interest in a corporation; and
  - (b) the corporation held a licence under these Regulations or the repealed Act; and
  - (c) the corporation's licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) while the individual was a director or a shareholder who held a controlling interest; and
    - (iii) less than 5 years before the day on which the individual applies for the licence.
- (5) An individual who applies for a licence is not eligible for the licence if:
- (a) he or she has entered into a prescribed financial arrangement; and
  - (b) the arrangement has been in force at any time in the period of 5 years before the day on which the individual applies for the licence.
- (6) An individual who applies for a licence is not eligible for the licence if:
- (a) he or she was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (b) the partnership entered into a prescribed financial arrangement while the individual was a partner in it; and
  - (c) the arrangement has been in force at any time in the period of 5 years before the day on which the individual applies for the licence.

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- (7) An individual who applies for a licence is not eligible for the licence if:
- (a) he or she was a director of a corporation or a shareholder who held a controlling interest in a corporation; and
  - (b) the corporation held a licence under these Regulations or the repealed Act; and
  - (c) the corporation entered into a prescribed financial arrangement while he or she was a director or a shareholder who held a controlling interest in it; and
  - (d) the arrangement has been in force at any time in the period of 5 years before the day on which the individual applies for the licence.
- (8) An individual who applies for a licence is not eligible for the licence if he or she was convicted of a prescribed offence within the period of 5 years before the day on which the individual applies for the licence.

**6 Rules about partnerships that apply for licences**

- (1) A partnership is eligible for a licence unless the partnership, or its partners, are affected by any of the following subregulations.

*Note* Other matters relating to the grant of a licence are set out in subregulation 8 (1).

- (2) A partnership that applies for a licence is not eligible for the licence if:
- (a) a partner held a licence under these Regulations or the repealed Act; and
  - (b) the licence was revoked or cancelled:
    - (i) without the partner's agreement; and
    - (ii) less than 5 years before the day on which the partnership applies for the licence.
- (3) A partnership that applies for a licence is not eligible for the licence if:
- (a) a partner was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (b) that partnership's licence was revoked or cancelled:

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- (i) without its agreement; and
  - (ii) while the partner was a partner in it; and
  - (iii) less than 5 years before the day on which the first-mentioned partnership applies for the licence.
- (4) A partnership that applies for a licence is not eligible for the licence if:
  - (a) a partner was a director of a corporation or a shareholder who held a controlling interest in a corporation; and
  - (b) the corporation held a licence under these Regulations or the repealed Act; and
  - (c) the corporation's licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) while the partner was a director or a shareholder who held a controlling interest; and
    - (iii) less than 5 years before the day on which the partnership applies for the licence.
- (5) A partnership that applies for a licence is not eligible for the licence if:
  - (a) a partner has entered into a prescribed financial arrangement; and
  - (b) the arrangement has been in force at any time in the period of 5 years before the day on which the partnership applies for the licence.
- (6) A partnership that applies for a licence is not eligible for the licence if:
  - (a) a partner was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (b) the partnership entered into a prescribed financial arrangement while the partner was a partner in it; and
  - (c) the arrangement has been in force at any time in the period of 5 years before the day on which the first-mentioned partnership applies for the licence.
- (7) A partnership that applies for a licence is not eligible for the licence if:

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- (a) a partner was a director of a corporation or a shareholder who held a controlling interest in a corporation; and
  - (b) the corporation held a licence under these Regulations or the repealed Act; and
  - (c) the corporation entered into a prescribed financial arrangement while he or she was a director or a shareholder who held a controlling interest; and
  - (d) the arrangement has been in force at any time in the period of 5 years before the day on which the partnership applies for the licence.
- (8) A partnership that applies for a licence is not eligible for the licence if a partner was convicted of a prescribed offence within the period of 5 years before the day on which the partnership applies for the licence.

**7 Rules about corporations that apply for licences**

- (1) A corporation is eligible for a licence unless it, or a person connected with it, is affected by any of the following subregulations.

*Note* Other matters relating to the grant of a licence are set out in subregulation 8 (1).

- (2) A corporation that applies for a licence is not eligible for the licence if:
- (a) it held a licence under these Regulations or the repealed Act; and
  - (b) the licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) less than 5 years before the day on which it applies for the licence.
- (3) A corporation that applies for a licence is not eligible for the licence if:
- (a) the corporation was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (b) the partnership's licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) while the corporation was a partner; and

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- (iii) less than 5 years before the day on which the corporation applies for the licence.
- (4) A corporation that applies for a licence is not eligible for the licence if:
  - (a) another corporation holds a controlling interest in the corporation; and
  - (b) the other corporation held a licence under these Regulations or the repealed Act; and
  - (c) the other corporation's licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) less than 5 years before the day on which the first-mentioned corporation applies for the licence.
- (5) A corporation that applies for a licence is not eligible for the licence if:
  - (a) another corporation holds a controlling interest in the corporation; and
  - (b) the other corporation was a partner in a partnership that held a licence under these Regulations or the repealed Act; and
  - (c) the partnership's licence was revoked or cancelled:
    - (i) without its agreement; and
    - (ii) while the other corporation was a partner; and
    - (iii) less than 5 years before the day on which the first-mentioned corporation applies for the licence.
- (6) A corporation that applies for a licence is not eligible for the licence if:
  - (a) it entered into a prescribed financial arrangement; and
  - (b) the arrangement has been in force at any time in the period of 5 years before the day on which the corporation applies for the licence.
- (7) A corporation that applies for a licence is not eligible for the licence if:
  - (a) another corporation holds a controlling interest in the corporation; and

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- (b) the other corporation entered into a prescribed financial arrangement; and
  - (c) the arrangement has been in force at any time in the period of 5 years before the day on which the first-mentioned corporation applies for the licence.
- (8) In subregulations (9) to (15) inclusive, *key person*, in relation to a corporation that applies for a licence, means:
  - (a) a director of the applicant corporation; or
  - (b) a director of a corporation that holds a controlling interest in the applicant corporation; or
  - (c) an individual who is a shareholder who holds a controlling interest in the applicant corporation; or
  - (d) an individual who is a shareholder who holds a controlling interest in a corporation that holds a controlling interest in the applicant corporation.
- (9) A corporation that applies for a licence is not eligible for the licence if:
  - (a) a key person in the corporation held a licence under these Regulations or the repealed Act; and
  - (b) the licence was revoked or cancelled:
    - (i) without the key person's agreement; and
    - (ii) less than 5 years before the day on which the corporation applies for the licence.
- (10) A corporation that applies for a licence is not eligible for the licence if:
  - (a) a key person in the corporation was a partner in a partnership that was the holder of a licence under these Regulations or the repealed Act; and
  - (b) the licence was revoked or cancelled:
    - (i) without the partnership's agreement; and
    - (ii) while the key person was a partner; and
    - (iii) less than 5 years before the day on which the corporation applies for the licence.
- (11) A corporation that applies for a licence is not eligible for the licence if:

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- (a) a key person in the corporation was a director of, or a shareholder who held a controlling interest in, another corporation; and
  - (b) the other corporation was the holder of a licence under these Regulations or the repealed Act; and
  - (c) the licence was revoked or cancelled:
    - (i) without the corporation's agreement; and
    - (ii) while the key person was a director or a shareholder who held a controlling interest; and
    - (iii) less than 5 years before the day on which the first-mentioned corporation applies for the licence.
- (12) A corporation that applies for a licence is not eligible for the licence if:
- (a) a key person in the corporation has entered into a prescribed financial arrangement; and
  - (b) the arrangement has been in force at any time in the period of 5 years before the day on which the corporation applies for the licence.
- (13) A corporation that applies for a licence is not eligible for the licence if:
- (a) a key person in the corporation was a partner in a partnership that was the holder of a licence, under these Regulations or the repealed Act; and
  - (b) the partnership entered into a prescribed financial arrangement while he or she was a partner; and
  - (c) the arrangement has been in force at any time in the period of 5 years before the day on which the partnership applies for the licence.
- (14) A corporation that applies for a licence is not eligible for the licence if:
- (a) a key person in the corporation was a director of, or a shareholder who held a controlling interest in, another corporation; and
  - (b) the other corporation was the holder of a licence under these Regulations or the repealed Act; and

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- (c) the other corporation entered into a prescribed financial arrangement while the key person was a director or a shareholder who held a controlling interest; and
  - (d) the arrangement has been in force at any time in the period of 5 years before the day on which the first-mentioned corporation applies for the licence.
- (15) A corporation that applies for a licence is not eligible for the licence if a key person in the corporation was convicted of a prescribed offence within the period of 5 years before the day on which the corporation applies for the licence.

**8 How does the Corporation grant a licence?**

- (1) The Corporation must grant a licence to an applicant if the applicant:
  - (a) is eligible for the licence under regulation 5, 6 or 7 or subregulation (2); and
  - (b) has a reliable source of honey for export.
- (2) If an applicant is not eligible for the licence under regulation 5, 6 or 7, the Corporation may treat the applicant as eligible for the licence if:
  - (a) the applicant's ineligibility is a result of circumstances beyond the applicant's control; and
  - (b) the applicant took reasonable precautions to prevent the occurrence of the circumstances.
- (3) The Corporation must refuse to grant a licence to an applicant who does not comply with subregulations (1) (a) and (b).
- (4) The Corporation must, if practicable, grant or refuse to grant a licence within 28 days after the day on which the application is made.
- (5) If the Corporation refuses to grant a licence, it must give the applicant a notice that includes:
  - (a) the reasons for its decision; and
  - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for review of the decision; and

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- (c) except where subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies — a statement to the effect that a person whose interests are affected by the decision may request a statement under section 28 of that Act.
- (6) The validity of a refusal to grant a licence is not affected by a failure to comply with subregulation (5).

**9 How long does a licence last?**

- (1) A licence:
  - (a) comes into force on the day on which it is issued; and
  - (b) ceases to be in force:
    - (i) if it is revoked — on the day on which the revocation is effective under subregulation 12 (6); or
    - (ii) in any other case — at the end of the period stated in the licence.
- (2) Before a licence ceases to be in force, a licensee may apply to the Corporation to renew the licence.
- (3) The applicant must use the approved form.
- (4) If the applicant applies for the renewal of the licence:
  - (a) the Corporation must treat the application in the same manner as it must treat an application for a licence under subregulation 4 (1); and
  - (b) regulations 5,6,7 and 8 apply accordingly.

**10 What conditions apply to a licence?**

- (1) The Corporation may grant a licence subject to conditions, of the kind referred to in subsection 117 (4) of the Act, that the Corporation considers appropriate.
- (2) Subject to regulation 11, conditions imposed under subregulation (1) must be endorsed on the licence.
- (3) It is a condition of a licence that:

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- (a) the licensee participates in approved export programs that relate to honey or a place to which the licensee exports honey; and
- (b) the licensee exports honey:
  - (i) during the period of 12 months following the date of issue of the licence; and
  - (ii) during every subsequent period of 12 months; and
- (c) the licensee does not engage in activities which may seriously harm Australia's reputation as a reliable supplier of honey of good quality; and
- (d) the licensee provides returns required under regulation 14; and
- (e) the licensee did not give information that is false or misleading in a material particular in the application for a licence; and
- (f) the licensee does not give information that is false or misleading in a material particular in a return required under regulation 14; and
- (g) the licensee:
  - (i) does not enter into a prescribed financial arrangement while being a licensee; and
  - (ii) is not convicted of a prescribed offence while being a licensee; and
- (h) if the licensee is a partnership — a partner:
  - (i) does not enter into a prescribed financial arrangement while the partnership is a licensee; and
  - (ii) is not convicted of a prescribed offence while a partner; and
- (i) if the licensee is a corporation — a director of the corporation, or a shareholder who holds a controlling interest in, the corporation:
  - (i) does not enter into a prescribed financial arrangement while the corporation is a licensee; and
  - (ii) is not convicted of a prescribed offence while being a director or a shareholder who holds a controlling interest in the corporation; and

**Regulation 10**

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- (j) if the licensee is a partnership — the licensee will inform the Corporation of a change of partners within 28 days of the change; and
- (k) if the licensee is a corporation — the licensee will inform the Corporation, within 28 days, of:
  - (i) a change of the controlling shareholder; or
  - (ii) an arrangement that results in a shareholder holding 20 percent or more of the licensee's share; and
- (l) if:
  - (i) the licensee; or
  - (ii) in the case of a licensee that is a partnership — a partner; or
  - (iii) in the case of a licensee that is a corporation — a director of the corporation or an individual who is a shareholder who holds a controlling interest in the corporation;enters into a prescribed financial arrangement while the licence is in force — the licensee will inform the Corporation within 28 days after the licensee, partner, director or shareholder enters into it; and
- (m) if:
  - (i) the licensee; or
  - (ii) in the case of a licensee that is a partnership — a partner of the partnership; or
  - (iii) in the case of a licensee that is a corporation — a director of the corporation or an individual who is a shareholder who holds a controlling interest in the corporation;is convicted of a prescribed offence — the licensee will inform the Corporation within 28 days after the licensee, partner, director or shareholder is convicted.

(4) Paragraph (3) (b) does not apply if:

- (a) the period between:
  - (i) the date of issue of the licence and the date on which the licence ceases to have effect; or

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- (ii) the end of a period referred to in subparagraph (3) (b) (ii) and the date on which the licence ceases to have effect;  
is less than 12 months; or
- (b) the licensee is unable to export honey because of:
  - (i) an inadequate supply of honey of export quality; or
  - (ii) insufficient transport to allow the licensee to export honey; or
  - (iii) industrial action that has prevented the export of honey by the licensee; or
  - (iv) a substantial reduction in access to, or the closure of, an export market; or
  - (v) any other matter that is beyond the control of the licensee.

**11 How does the Corporation vary a licence?**

- (1) The Corporation may vary a licence by:
  - (a) adding a condition referred to in subregulation 10 (1) to the licence; or
  - (b) varying a condition imposed under subregulation 10 (1); or
  - (c) revoking a condition imposed under subregulation 10 (1).
- (2) If the Corporation varies the licence under paragraph (1) (a) or (b), it must give the licensee a notice that includes:
  - (a) the reasons for the decision; and
  - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for review of the decision; and
  - (c) except where subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies — a statement to the effect that a person whose interests are affected by the decision may request a statement under section 28 of that Act.
- (3) The date of effect of the variation of the licence is the date on which the Corporation notifies the licensee of its decision.

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**Regulation 12**

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- (4) The validity of the variation of the licence is not affected by a failure to comply with subregulation (2).

**12 How does the Corporation revoke a licence?**

- (1) The Corporation must revoke a licence if the licensee asks the Corporation to revoke it.
- (2) The Corporation may revoke a licence if the licensee fails, without reasonable excuse, to comply with a condition of the licence.
- (3) The Corporation is not required to revoke a licence under subregulation (2) if the failure to comply with the condition was:
- (a) of a minor nature; and
  - (b) not intentional on the licensee's part.
- (4) If the Corporation is of the opinion that a licence should be revoked under subregulation (2), the Corporation must:
- (a) notify the licensee of its opinion and the reasons for its opinion; and
  - (b) ask the licensee to show cause, in writing, not more than 21 days after the date on which the notice was given, or a longer period if the Corporation determines, why the licence should not be revoked.
- (5) If the licensee does not show adequate cause, the Corporation must revoke the licence, and the Corporation must give the licensee a notice that includes:
- (a) the reasons for the decision; and
  - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for review of the decision; and
  - (c) except where subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies — a statement to the effect that a person whose interests are affected by the decision may request a statement under section 28 of that Act.

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- (6) The date of effect of the revocation of a licence is the date on which the Corporation notifies the licensee of its decision.
- (7) The validity of the revocation of a licence is not affected by a failure to comply with subregulation (5).

**13 Review of decisions**

An application may be made to the Administrative Appeals Tribunal for the review of a decision:

- (a) not to grant a licence under subregulation 8 (3); or
- (b) not to renew a licence under subregulation 9 (4); or
- (c) to vary a licence under paragraph 11 (1) (a) or(b); or
- (d) to revoke a licence under subregulation 12 (2).

## **Part 3                      Miscellaneous**

### **14                      Returns**

- (1) The Corporation may, by notice, require a person who has been a licensee at any time during the 2 years before the date of a notice to give to the Corporation a return or information that is:
  - (a) referred to in the notice; and
  - (b) required by the Corporation for the purposes of the Act.
- (2) The period within which a person must give a return under subregulation (1):
  - (a) must be referred to in the notice; and
  - (b) must not be less than 28 days after the date of the notice.

### **15                      Giving of notices**

- (1) A notice that is to be given by the Corporation to a licensee may be sent to the licensee at the licensee's address shown on the licence or to another address given by the licensee to the Corporation for that purpose.
- (2) A notice that is to be given by the Corporation to a person who is not a licensee may be sent to the person at the business or residential address last known to the Corporation or to another address nominated by the person.

### **16                      Approvals**

For the purposes of subregulation 4 (2) or 9 (3) the Corporation may approve the form in which an application for a licence or for renewal of a licence must be made.

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## Schedule 1 Prescribed financial arrangements

(regulation 2)

Column 1 Item	Column 2 Financial arrangement
1	A declaration of bankruptcy, made under the laws of the Commonwealth or another country.
2	An assignment of debts for the benefit of creditors, made under the laws of the Commonwealth or of another country, under which unsecured debts are to be repaid at the rate of less than 70 percent of their value.
3	A composition or deed of arrangement, entered into under the laws of the Commonwealth, or of another country, to repay unsecured debts, under which the debts are to be repaid at the rate of less than 70 percent of their value.
4	The winding up of the applicant or the licensee.
5	The appointment of a provisional liquidator to the applicant or the licensee.

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## Schedule 2 Prescribed offences

(regulation 2)

Column 1 Item	Column 2 Offence
1	An offence against the Act.
2	An offence against the law of: <ul style="list-style-type: none"> <li>(a) the Commonwealth; or</li> <li>(b) a State or a Territory; or</li> <li>(c) another country;</li> </ul> in relation to: <ul style="list-style-type: none"> <li>(d) theft; or</li> <li>(e) a matter related to theft; or</li> <li>(f) forgery; or</li> <li>(g) the use of forged instruments;</li> </ul> that is similar to an offence referred to in Division 2 or Division 3A of Part IV of the <i>Crimes Act 1900</i> of the Australian Capital Territory.
3	An offence against a law of: <ul style="list-style-type: none"> <li>(a) the Commonwealth; or</li> <li>(b) a State or a Territory; or</li> <li>(c) another country;</li> </ul> that is similar to an offence referred to in Part VIII of the <i>Crimes Act 1900</i> of the Australian Capital Territory, in relation to: <ul style="list-style-type: none"> <li>(d) aiding and abetting; or</li> <li>(e) being an accessory after the fact of; or</li> <li>(f) attempting to commit; or</li> <li>(g) inciting a person to commit; or</li> <li>(h) conspiracy to commit;</li> </ul> an offence referred to in item 1 or 2.
4	An offence against section 134.1, 134.2, 135.1, 135.2, 144.1, 145.2, 145.3, 145.4 or 145.5 of the <i>Criminal Code</i> .

**Table of Statutory Rules** □

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## **Notes to the *Australian Horticultural Corporation (Honey Export Control) Regulations 1993***

### **Note 1**

The *Australian Horticultural Corporation (Honey Export Control) Regulations 1993* (in force under the *Australian Horticultural Corporation Act 1987*) as shown in this compilation comprise Statutory Rules 1993 No. 26 amended as indicated in the Tables below.

Schedule 2 to the *Australian Horticultural Corporation (Honey Export Control) Regulations 1993* was amended by Schedule 2 (item 42) of the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (Act No. 137, 2000). The amendments are incorporated in this compilation. For application, saving or transitional provisions relating to the amendments see Schedule 2 (items 418 and 419) of that Act.

### **Table of Statutory Rules**

<b>Year and number</b>	<b>Date of notification in Gazette</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1993 No. 26	11 Feb 1993	11 Feb 1993	
2002 No. 60	5 Apr 2002	5 Apr 2002	—

**Table of Amendments**

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**Table of Amendments**

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

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<b>Provision affected</b>	<b>How affected</b>
R. 1 .....	rs. 2002 No. 60
Note to r. 3 .....	rs. 2002 No. 60

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