



# **Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000**

**No. 163, 2000 as amended**

**Compilation start date:** 29 June 2013

**Includes amendments up to:** Act No. 103, 2013

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## About this compilation

### The compiled Act

This is a compilation of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* as amended and in force on 29 June 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 5 August 2013.

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

### Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

### Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

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

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**An Act to deal with matters consequential on the enactment of the *Horticulture Marketing and Research and Development Services Act 2000*, and for related purposes**

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*.

**2 Commencement**

- (1) Subject to this section, this Act commences at the same time as Part 2 of the *Horticulture Marketing and Research and Development Services Act 2000*.
- (2) Schedules 1 (repeals) and 2 (consequential amendments) commence on the transfer day, immediately after the transfer of assets, liabilities and staff under Part 2.

Note: See sections 12 and 13 for the transfer day, and the time at which the transfer occurs.

- (3) Schedule 3 (references to Administrative Appeals Tribunal) commences at the later of:
  - (a) the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence; and
  - (b) the time immediately after the *Horticulture Marketing and Research and Development Services Act 2000* receives the Royal Assent.

Note: The short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

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- (4) Schedule 4 (operation of the Privacy Act) commences at the later of:
- (a) the time when Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000* commences; and
  - (b) the time immediately after the *Horticulture Marketing and Research and Development Services Act 2000* receives the Royal Assent.

### 3 Simplified outline

The following is a simplified outline of this Act:

This Act deals with the transition from the Australian Horticultural Corporation, Horticultural Research and Development Corporation and the Australian Dried Fruits Board to new bodies. The new bodies are those declared under the *Horticulture Marketing and Research and Development Services Act 2000*.

The Minister must determine a ***transfer day*** (see section 12).

On the transfer day assets, liabilities and staff of the Corporations and the Board are transferred to the new industry services body (see Divisions 2, 3 and 4 of Part 2).

The system of export controls in place under the *Australian Horticultural Corporation Act 1987* is kept in place for a maximum period of 2 years after the transfer day. Export controls on particular products can be phased out during the 2 year period, as controls on those products are brought in under the *Horticulture Marketing and Research and Development Services Act 2000* (see Division 5 of Part 2 of this Act).

The *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987* are repealed once the assets, liabilities and staff of the bodies established by those Acts have been transferred to the new industry services body.



## 4 Definitions

- (1) In this Act, unless the contrary intention appears:

***ADF Trust Amount*** has the meaning given by section 17.

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

***assets*** means any legal or equitable estate or interest of the authority in real or personal property (whether actual, contingent or prospective) and includes all rights, powers, privileges and immunities (whether actual, contingent or prospective).

***assets official*** means a person or authority who, under a law, has responsibility for keeping a register in relation to assets of the kind concerned.

***combined service period***, in relation to an employee, means the total of:

- (a) the period that is, immediately before the transfer day, the employee's period of service for the purposes of the Long Service Leave Act; and
- (b) the period, during which the employee continues to be an employee of the industry services body.

***DFRDB Act*** means the *Defence Force Retirement and Death Benefits Act 1973*.

***Dried Fruits Trust*** has the meaning given by section 17.

***employee***, in relation to a statutory authority, means a person who was, immediately before the transfer day, an officer or an employee of the authority, and includes the Chief Executive Officer, Managing Director or General Manager of the authority.

***industry export control body*** means the body for the time being declared to be the industry export control body under the *Horticulture Marketing and Research and Development Services Act 2000*.

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**industry services body** means the body for the time being declared to be the industry services body under the *Horticulture Marketing and Research and Development Services Act 2000*.

**law** means:

- (a) a law of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

**liabilities** means all liabilities, duties and obligations, whether actual, contingent or prospective.

**Long Service Leave Act** means the *Long Service Leave (Commonwealth Employees) Act 1976*, as in force immediately before the transfer day.

**Maternity Leave Act** means the *Maternity Leave (Commonwealth Employees) Act 1973*, as in force immediately before the transfer day.

**post-commencement long service leave rights**, in relation to an employee, means any long service leave rights the employee acquires on or after the transfer day under an award, determination, industrial agreement or law (other than this Act).

**previous employer**, in relation to a transferred employee, means the statutory authority that employed the employee immediately before the transfer day.

**SRC Act** means the *Safety, Rehabilitation and Compensation Act 1988*, as in force immediately before the transfer day.

**statutory authority** means:

- (a) the Australian Horticultural Corporation; or
- (b) the Horticultural Research and Development Corporation; or
- (c) the Australian Dried Fruits Board.

**transfer day** means the day specified by the Minister as the transfer day in a determination under section 12.

***transferred employee*** means a person whose employment is transferred under section 24.

***transitional period*** means the period of 24 months beginning on the transfer day.

- (2) Expressions used in this Act that are defined in the *Horticulture Marketing and Research and Development Services Act 2000* have the same meanings as they have in that Act.
- (3) Expressions used in Subdivision F of Division 4 of Part 2 that are defined in the Long Service Leave Act have the same meanings as they have in that Act.

## **5 Crown to be bound**

This Act binds the Crown in each of its capacities.

## **6 Extra-territorial operation**

This Act applies both within and outside Australia.

## Part 2—Transitional provisions

### Division 2—Transfer day

#### 11 Simplified outline

The following is a simplified outline of this Division:

This Division provides for the Minister to determine the transfer day.
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#### 12 Minister must determine transfer day

- (1) The Minister must determine, in writing, that a specified day is the *transfer day* for the purposes of this Act.
- (2) The day:
  - (a) must not be a day before both of the following declarations have taken effect under section 9 of the *Horticulture Marketing and Research and Development Services Act 2000*:
    - (i) the first declaration of the industry services body;
    - (ii) the first declaration of the industry export control body;and
  - (b) must be a day within the period of 6 months after the commencement of this section.
- (3) The determination has effect accordingly.
- (4) A copy of the determination is to be published in the *Gazette* within 14 days after the determination is made.
- (5) The determination can be varied or revoked by the Minister in the same manner in which it was made, but it cannot be varied or revoked on or after the day specified in the determination as the transfer day.

- (6) The determination is not invalid merely because it has not been published as required under subsection (4).

### **13 Time of transfers**

Any transfer occurring under this Part is taken to occur immediately after the end of the day before the transfer day.

## Division 3—Transfer of assets and liabilities etc.

### 14 Simplified outline

The following is a simplified outline of this Division:

On the transfer day, the assets and liabilities of the 3 statutory authorities vest in the new industry services body.

Special provision is made for the transfer of certain money of the Australian Dried Fruits Board (see section 17).

Transfers are not subject to taxation (see section 19).

Other transitional matters (such as the transfer of records, outstanding money and legal proceedings) are also dealt with.

### 15 Transfers subject to conditions

The deed of agreement may contain conditions relating to an asset or liability, or a class of assets or liabilities, transferred to the industry services body under this Act.

Note: The *Horticulture Marketing and Research and Development Services Act 2000* and the deed of agreement provide for the consequences of a breach of the deed by the industry services body (see sections 10, 16 and 27 of that Act, and the provisions of the deed).

### 16 Transfer of assets and liabilities

- (1) This section applies to:
- (a) the assets of a statutory authority (other than the ADF Trust Amount); and
  - (b) the liabilities of a statutory authority (other than a liability referred to in section 28).

Note: The transfer of the ADF Trust Amount is dealt with in section 17.

- (3) On the transfer day:

- (a) the assets and liabilities cease to be assets and liabilities of the authority and become assets and liabilities of the industry services body without any conveyance, transfer or assignment; and
- (b) the industry services body becomes the statutory authority's successor in law in relation to the assets and liabilities immediately after they become assets and liabilities of the industry services body.

Note: See also sections 18 and 21.

### **17 ADF Trust Amount**

- (1) The Minister may determine, in writing, that:
  - (a) a particular amount of money of the Australian Dried Fruits Board is the *ADF Trust Amount* for the purposes of this section; and
  - (b) a particular trust is the *Dried Fruits Trust* for the purposes of this section.
- (2) If the Minister has made a determination under subsection (1) before the transfer day, the ADF Trust Amount vests in the trustees on the transfer day and is held on trust by the trustees for the purposes of the Dried Fruits Trust.
- (3) If the ADF Trust Amount is transferred under subsection (2), it vests in the trustees without any conveyance, transfer or assignment.
- (4) A copy of the determination is to be published in the *Gazette* within 14 days after the determination is made.
- (5) The determination is not invalid merely because it has not been published as required under subsection (4).

### **18 Transfer of pending proceedings**

- (1) This section applies if, as a result of a transfer under this Act, a person (the *successor*) becomes the successor in law of another person (the *original person*) at a particular time in relation to a particular asset, liability, right, benefit or obligation.

**Part 2** Transitional provisions

**Division 3** Transfer of assets and liabilities etc.

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- (2) If any proceedings to which the original person was a party:
- (a) were pending in any court or tribunal immediately before that time; and
  - (b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;
- the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

**19 Exemption from taxation**

Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

- (a) a transfer of an asset or liability of a statutory authority under this Act; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, such a transfer.

**19A Operation of GST Law**

- (1) For the purposes of the GST Law, a transfer to a person or body under section 16 or 17 of this Act is taken to be consideration provided by the Commonwealth to that person or body for:
- (a) in the case of a transfer under section 16—entering into obligations under the deed of agreement by the industry services body; and
  - (b) in the case of a transfer under section 17—entering into obligations under the deed of trust establishing the Dried Fruits Trust by the trustees of that Trust.
- (2) Expressions used in this section have the same meanings as they have in the *A New Tax System (Goods and Services Tax) Act 1999*.



## **20 References in certain instruments**

- (1) An instrument to which subsection (2) applies continues to have effect on and after the transfer day as if a reference in the instrument to the statutory authority were a reference to the industry services body.
- (2) This subsection applies to an instrument if it is:
  - (a) in operation immediately before the transfer day; and
  - (b) is an instrument:
    - (i) to which a statutory authority is a party; or
    - (ii) which was given to, or in favour of, a statutory authority; or
    - (iii) in which a reference is made to a statutory authority; or
    - (iv) under which any right or liability accrues or may accrue to a statutory authority.

## **21 Certificates in relation to assets**

- (1) This section applies if:
  - (a) an asset (other than money) becomes an asset of the industry services body under this Division; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Secretary; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become an asset of the body under this Division.

Note: For the meaning of *assets official*, see section 4.

- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary, having regard to the effect of this Division.

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- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.

## **Division 4—Transfer of staff**

### **Subdivision A—Preliminary**

#### **23 Simplified outline**

The following is a simplified outline of this Division:

On the transfer day, the staff of the 3 statutory authorities are transferred to the new industry services body on the same terms and conditions, and with the same accrued entitlements, that they had before the transfer (see section 25).

The terms and conditions on which the staff are transferred can be varied after the transfer (see section 26).

Other provisions deal with the application of certain Commonwealth Acts (such as superannuation Acts and the Maternity Leave Act).

#### **24 Transfer of staff**

On the transfer day, each employee of a statutory authority ceases to be employed by the statutory authority and is taken to have been engaged as an employee of the industry services body immediately after that cessation.

#### **25 Terms and conditions of transferred employees**

- (1) A transferred employee is taken:
  - (a) to have been engaged by the industry services body on the same terms and conditions as those that applied to the person, immediately before the transfer day, as an employee of the previous employer; and
  - (b) to have accrued an entitlement to benefits, in connection with that engagement by the industry services body, that is equivalent to the entitlement that the person had accrued, as

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an employee of the previous employer, immediately before the employee's transfer time.

Note: For *previous employer*, see section 4.

- (2) The service of a transferred employee as an employee of the industry services body is taken, for all purposes, to have been continuous with the service of the employee, immediately before the transfer day, as an employee of the previous employer.
- (3) A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the previous employer as a result of this Division.
- (4) This section:
  - (a) has effect subject to this Division; and
  - (b) is not to be taken to be a law of the Commonwealth for the purposes of paragraph 170XA(2)(b) of the *Workplace Relations Act 1996*, as in force immediately before the reform commencement within the meaning given by that Act.

## 26 Variation of terms and conditions of employment

- (1) This Division does not prevent the terms and conditions of a transferred employee's employment after the transfer day from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, award, determination or agreement.
- (2) In this section:

*vary*, in relation to terms and conditions, includes:

  - (a) omitting any of those terms and conditions; or
  - (b) adding to those terms and conditions; or
  - (c) substituting new terms or conditions for any of those terms and conditions.

## **Subdivision B—Application of the Safety, Rehabilitation and Compensation Act**

### **27 Continued application of SRC Act**

The SRC Act continues to apply on and after the transfer day in relation to:

- (a) injuries suffered before that time by an employee of a statutory authority; and
- (b) loss of, or damage to, property incurred before that time by an employee of a statutory authority.

### **28 Commonwealth liability to meet certain SRC Act liabilities**

On and after the transfer day, the Commonwealth:

- (a) is liable to pay the liabilities of the statutory authorities under section 128A of the SRC Act; and
- (b) subject to section 29, is taken to have been the employer of the employees of the statutory authorities before the transfer day for the purposes of the application of the SRC Act in relation to those liabilities.

### **29 SRC Act: rehabilitation provisions**

- (1) If a transferred employee had, before the transfer day, suffered an injury resulting in an incapacity for work or an impairment, the employee's employer must, after that time, provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the SRC Act in relation to the transferred employee.
- (2) On and after the transfer day, the industry services body is, for the purposes of section 40 of the SRC Act, taken to be the relevant employer of each transferred employee employed by the industry services body.

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- (3) On and after the transfer day, the industry services body is, for the purposes of applying section 71 of the SRC Act in relation to each transferred employee, taken to be a Commonwealth authority.
- (4) Expressions used in this section have the same meanings as they have in the SRC Act.

**30 Premiums under the SRC Act**

- (1) The Safety, Rehabilitation and Compensation Commission must, as soon as practicable after the transfer day, determine the amount (if any) by which the confirmed estimate of premium for each statutory authority for the relevant financial year should be reduced.
- (2) If:
  - (a) an amount equal to the confirmed estimate of premium for a statutory authority for the relevant financial year has been paid to the Commonwealth under section 96G of the SRC Act; and
  - (b) the amount of the confirmed estimate of premium is reduced as a result of a determination under subsection (1);the Secretary may, in writing, direct that an amount equal to the refund amount, or amounts that together add up to the refund amount, be paid to the industry services body in accordance with the direction.
- (3) A direction by the Secretary may be given subject to such conditions (if any) about the use or expenditure of the amount or amounts to which it relates as are set out in the direction.
- (4) If the Secretary gives a direction, the amount or amounts to which it relates are payable out of the Consolidated Revenue Fund, which is appropriated accordingly, to the industry services body.
- (5) The payment of an amount under subsection (4) must be made in accordance with the direction, and is subject to the conditions (if any) set out in the direction.

- (6) A copy of each direction must be published in the *Gazette* within 14 days after the direction is given.
- (7) The direction is not invalid merely because it has not been published as required under subsection (6).
- (8) In this section:

*refund amount* means the amount equal to the difference between the amount of confirmed estimate of premium for a statutory authority for the relevant financial year and the amount of that confirmed estimate as reduced because of a determination under subsection (1).

*relevant financial year* means the financial year in which the transfer day occurs.

- (9) Expressions used in this section have the same meanings as they have in the SRC Act.

### **Subdivision C—Deferred Defence Force Retirement and Death Benefits Act benefits**

#### **31 Saving: deferred benefits under the DFRDB Act**

- (1) This section applies to a transferred employee of the industry services body if, immediately before the transfer day, the employee was a person to whom deferred benefits were applicable under section 78 of the DFRDB Act.
- (2) For the purposes of Division 3 of Part IX of the DFRDB Act, the employee is taken to continue in public employment on and after the transfer day while the employee continues to be employed by the industry services body.
- (3) This section is subject to Division 3 of Part IX of the DFRDB Act.

### **Subdivision D—Maternity leave provisions**

#### **32 Maternity leave starting before transfer day**

- (1) This section applies in relation to a person if:
  - (a) immediately before the transfer day, the person was a female employee of a statutory authority who was on leave granted under the Maternity Leave Act; and
  - (b) the person becomes an employee of the industry services body on the transfer day; and
  - (c) the person would have been entitled to have remained on that leave on and after the transfer day if the person had continued to be an employee of the statutory authority.
- (2) On and after the transfer day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which the leave was granted as if the industry services body were a prescribed authority for the purposes of that Act.

#### **33 Maternity leave starting after transfer day**

- (1) This section applies in relation to a person if:
  - (a) immediately before the transfer day, the person was a female employee of a statutory authority; and
  - (b) the person becomes an employee of the industry services body on the transfer day; and
  - (c) within 9 months after the transfer day, the person would have been entitled to start leave granted under the Maternity Leave Act if the person had continued to be an employee of the statutory authority.
- (2) On and after the transfer day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which she would have been entitled to leave as if the industry services body were a prescribed authority for the purposes of that Act.



## **Subdivision E—Provisions relating to superannuation**

### **34 Application of the *Superannuation Act 1922***

Section 145 of the *Superannuation Act 1922* does not apply in relation to the industry services body.

### **35 Application of other Superannuation Acts**

The industry services body is not an approved authority for the purposes of the *Superannuation Act 1976* or the *Superannuation Act 1990*.

### **36 Application of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990***

- (1) The Minister must not declare the industry services body to be a relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.
- (2) In this section:

*Minister* has the same meaning as in the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

## **Subdivision F—Provisions relating to long service leave**

### **37 Long service leave for employees with less than 10 years service**

- (1) This section applies in relation to a person:
  - (a) who became a transferred employee of the industry services body on the transfer day; and
  - (b) whose period of service for the purposes of the Long Service Leave Act immediately before the transfer day was less than 10 years.
- (2) This section does not apply in relation to an employee who dies.
- (3) If the employee continues to be employed by the industry services body until his or her combined service period is at least 10 years,

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the industry services body may grant the employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 40(1).

- (4) If:
- (a) the employee stops being an employee of the industry services body on or after reaching the minimum retiring age, or because of retrenchment; and
  - (b) the employee's combined service period at the time when he or she stops being an employee of the industry services body is at least one year;

the industry services body may grant the employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 40(1).

- (5) If a period of long service leave may be granted to an employee under subsection (3) or (4), the industry services body may, if the employee asks in writing, grant the employee long service leave on half salary for a period not longer than twice the first-mentioned period.
- (6) Long service leave granted in the circumstances set out in subsection (4) must be taken so as to end immediately before the employee stops being an employee.
- (7) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 20 of the Long Service Leave Act if:
- (a) that section applied to the employee; and
  - (b) for the expression "section 16 or 17" in that section there were substituted the expression "section 37 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*".

**38 Payments in lieu of long service leave for employees with less than 10 years service**

- (1) This section applies to a person:
- (a) who became a transferred employee on the transfer day; and

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- (b) whose period of service for the purposes of the Long Service Leave Act immediately before the transfer day was less than 10 years.
- (2) This section does not apply in relation to an employee who dies.
- (3) If the employee stops being an employee of the industry services body on or after the day on which his or her combined service period reaches 10 years, the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 40(2).
- (4) If:
  - (a) the employee stops being an employee of the industry services body, on or after reaching the minimum retiring age, or because of retrenchment; and
  - (b) at that time the employee's combined service period is at least one year;the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 40(2).
- (5) If:
  - (a) the employee stops being an employee of the industry services body; and
  - (b) the industry services body is satisfied that the employee left the industry services body's employment because of ill-health that justified his or her so leaving; and
  - (c) when the employee left, his or her combined service period was at least one year;the industry services body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 40(2).
- (6) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 21 of the Long Service Leave Act if:
  - (a) that section applied to the employee; and

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- (b) for the expression “sections 16 and 17” in that section there were substituted the expression “section 38 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*”.

**39 Payments on the death of an employee**

- (1) This section applies to a person who was an employee of a statutory authority immediately before the transfer day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.
- (2) If the person dies on or after the transfer day and immediately before his or her death:
- (a) the person was an employee of the industry services body; and
  - (b) the person’s combined service period was at least one year; and
  - (c) the person had one or more dependants;
- the industry services body must make a payment to the dependant or dependants.
- (3) The total amount of the payment or payments is the amount that would have been payable to the person under section 38 if, on the day of his or her death, the person had instead stopped being an employee of the industry services body on or after reaching the minimum retiring age.
- (4) If subsection (2) applies, section 23 of the Long Service Leave Act has effect as if:
- (a) that section applied to an employee of the industry services body; and
  - (b) a reference in that section to the approving authority were a reference to the industry services body; and
  - (c) for the expression “this Act” in that section there were substituted the expression “section 39 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*”; and

- (d) for the expression “subsection 16(7) or 17(5)” there were substituted the expression “section 39 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*”.

#### **40 Employee’s long service leave credit for the purposes of sections 37 and 38**

- (1) For the purposes of section 37, an employee’s long service leave credit is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:
- (a) beginning when the employee began his or her period of service; and
  - (b) ending on the transfer day;
- if the employee had been retrenched on that day.
- (2) For the purposes of section 38, an employee’s long service leave credit is the employee’s long service leave credit worked out under subsection (1) of this section reduced by any long service leave credit used under section 37.

#### **41 Employees with at least 10 years service**

- (1) This section applies to an employee of a statutory authority whose period of service under the Long Service Leave Act was at least 10 years immediately before the transfer day.
- (2) Even though the employee ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee’s accrued rights under that Act continue if the employee becomes an employee of the industry services body on the transfer day. However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.
- (3) The Long Service Leave Act has effect on and after the transfer day in relation to the employee’s rights under that Act that accrued before the transfer day, as if the industry services body were an approving authority for the purposes of that Act.

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**42 Division not to affect post-commencement long service leave rights**

This Division does not affect an employee's post-commencement long service leave rights.

Note: For the meaning of *post-commencement long service leave rights*, see section 4.

**Subdivision G—Staff with mobility rights**

**43 Cessation of mobility rights**

If a transferred employee had rights under section 6 or 7 of the *Public Employment (Consequential and Transitional) Amendment Act 1999* immediately before the transfer day, the employee ceases to have those rights, and ceases to be an APS employee, on the transfer day.

Note: For the meaning of *APS employee*, see section 4.

## **Division 5—Transitional period for export controls**

### **44 Simplified outline**

The following is a simplified outline of this Division:

The system of export controls in place under the *Australian Horticultural Corporation Act 1987* is continued after the transfer day for a transitional period (a maximum of 2 years).

During the transitional period most of the export control powers that the Australian Horticultural Corporation had can be exercised by the new industry export control body.

### **45 Continuation of export controls despite repeal of AHC Act**

- (1) In spite of the repeal of the *Australian Horticultural Corporation Act 1987* (the *Act*):
  - (a) Part V of the Act continues in force after the repeal; and
  - (b) regulations, orders and other instruments made under the Act for the purposes of Part V that were in force immediately before the repeal continue in force.
- (2) Any other provision of the Act that is necessary for the effective operation of Part V of the Act (as continued in force under subsection (1)) also continues in force in spite of the repeal but applies only to the extent that it relates to the operation of Part V.
- (3) Without limiting subsection (2), sections 121 and 122 of the Act continue in force to the extent that regulations and orders relating to the operation of Part V (including regulations, or orders, amending or repealing earlier regulations or orders) may be made under them.
- (4) Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against Part V of the Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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**Division 5** Transitional period for export controls

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- (5) The offences in subsections 118(1) and (2) of the Act are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) For the purposes of subsection 118(2) of the Act, the defendant bears an evidential burden in relation to the matter of whether the defendant has a reasonable excuse.

Note: For evidential burdens, see subsection 13.3(3) of the *Criminal Code*.

**46 References to AHC and Product Board**

- (1) During the transitional period, references to powers, duties or functions of the Corporation or of a Board in Part V of the Act or in an instrument in force under Part V are taken to be references to powers, duties or functions of the industry export control body.

Note: For *transitional period* and *industry export control body*, see section 4.

- (2) However, in spite of subsection (1), the industry export control body does not, during the transitional period, have the power:
- (a) to prohibit the export of a product to a specified place unless the export of the product to that place was prohibited immediately before the transfer day; or
  - (b) to revoke or vary a prohibition of export to a specified place.

Note: The power to prohibit the export of a horticultural product to a specified place is given to the Corporation by regulation 5 of the Australian Horticultural Corporation (Export Control) Regulations 1990.

**47 Phasing out of export controls under Part V of AHC Act**

- (1) If:
- (a) the export of a horticultural product to a place is prohibited under the Australian Horticultural Corporation (Export Control) Regulations 1990 or the Australian Horticultural Corporation (Dried Fruits Export Control) Regulations 1991; and
  - (b) during the transitional period, the product and the place are the subject of an order (the *new order*) under section 19 of



*the Horticulture Marketing and Research and Development Services Act 2000;*

Part V (and any instrument made under, or for the purposes of, Part V) ceases, at the time of the new order, to have effect in relation to the export of that product to that place.

- (2) If, at the end of the transitional period, Part V of the Act still has effect in relation to any horticultural product, it (and any instrument made under, or for the purposes of, Part V) ceases to have effect immediately after the end of the transitional period.

## Division 6—Final annual reports

### 48 Simplified outline

The following is a simplified outline of this Division:

Each of the 3 statutory authorities must produce a final annual report covering the authority's operations and financial status up to the transfer day.

### 49 Final annual report: Australian Horticultural Corporation

- (1) In spite of the repeal of the *Australian Horticultural Corporation Act 1987*:
  - (a) the Australian Horticultural Corporation continues in existence for the purpose of giving the Minister the report required under section 9 of the *Commonwealth Authorities and Companies Act 1997* in relation to the period starting on the last 1 July before the transfer day and ending on the transfer day; and
  - (b) for that purpose, the membership of the Corporation immediately before the transfer day is taken to be the same on and after the transfer day.
- (2) For the purposes of the application of section 9 of the *Commonwealth Authorities and Companies Act 1997* to the report referred to in subsection (1):
  - (a) the period starting on the last 1 July before the transfer day and ending on the transfer day is taken to be a financial year; and
  - (b) the *Australian Horticultural Corporation Act 1987* continues to have effect as if it had not been repealed.

### 50 Final annual report: Australian Dried Fruits Board

- (1) In spite of the repeal of the *Australian Horticultural Corporation Act 1987*:
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- (a) the Australian Dried Fruits Board continues in existence for the purpose of giving the Minister the report required under section 9 of the *Commonwealth Authorities and Companies Act 1997* in relation to the period starting on the last 1 July before the transfer day and ending on the transfer day; and
  - (b) for that purpose, the membership of the Board immediately before the transfer day is taken to be the same on and after the transfer day.
- (2) For the purposes of the application of section 9 of the *Commonwealth Authorities and Companies Act 1997* to the report referred to in subsection (1):
- (a) the period starting on the last 1 July before the transfer day and ending on the transfer day is taken to be a financial year; and
  - (b) the *Australian Horticultural Corporation Act 1987* continues to have effect as if it had not been repealed; and
  - (c) the reference in paragraph 101A(b) of that Act to 31 August after the end of the financial year is taken to be a reference to the day occurring 8 weeks after the transfer day; and
  - (d) the reference in subsection 30A(1) of that Act to 15 October after the end of each financial year is taken to be a reference to the day occurring 14 weeks after the transfer day.

**51 Final annual report: Horticultural Research and Development Corporation**

- (1) In spite of the repeal of the *Horticultural Research and Development Corporation Act 1987*:
- (a) the Horticultural Research and Development Corporation continues in existence for the purpose of giving the Minister the report required under section 9 of the *Commonwealth Authorities and Companies Act 1997* in relation to the period starting on the last 1 July before the transfer day and ending on the transfer day; and
  - (b) for that purpose, the membership of the Corporation immediately before the transfer day is taken to be the same on and after the transfer day.

**Part 2** Transitional provisions

**Division 6** Final annual reports

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- (2) For the purposes of the application of section 9 of the *Commonwealth Authorities and Companies Act 1997* to the report referred to in subsection (1):
- (a) the period starting on the last 1 July before the transfer day and ending on the transfer day is taken to be a financial year; and
  - (b) the *Australian Horticultural Research and Development Corporation Act 1987* continues to have effect as if it had not been repealed.

## **Division 7—Miscellaneous**

### **52 Delegation of Secretary's powers**

The Secretary may delegate all or any of the Secretary's powers under this Act, the regulations or orders to an APS employee in the Department who has appropriate skills or experience. The delegation must be in writing.

Note: For the meaning of *APS employee*, see section 4.

### **53 Compensation for acquisition of property**

- (1) If:
  - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;  
the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

*acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

### **54 Regulations**

- (1) The Governor-General may make regulations prescribing 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.

**Part 2** Transitional provisions

**Division 7** Miscellaneous

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- (2) In particular, regulations may be made dealing with other transitional matters arising out of the repeal of the *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987* and the enactment of this Act and the *Horticulture Marketing and Research and Development Services Act 2000*.

## Endnote 1—Legislation history

## Endnotes

## Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000	163, 2000	21 Dec 2000	Schedules 1 and 2: 1 Feb 2001 ( <i>see Gazette</i> 2001, No. GN6) Schedule 3: (a) ( <i>see s. 2(3)</i> ) Schedule 4: 21 Dec 2001 ( <i>see s. 2(4)</i> ) Remainder: 21 Dec 2000 ( <i>see s. 2(1)</i> )	
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	16 Oct 2001	s. 4
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Schedule 4 (item 4): (b)	—
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 1 (item 17): 17 Nov 2009	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 4 (items 11–13): Royal Assent	—

*Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* 33

## Endnotes

### Endnote 1—Legislation history

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<b>Number and year</b>	<b>FRLI registration date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
2006 No. 50	17 Mar 2006 ( <i>see</i> F2006L00820)	Schedule 26: 27 Mar 2006 ( <i>see</i> r. 2(b))	—

- (a) The Administrative Review Tribunal Bill has not been enacted. Therefore these amendments do not commence.
- (b) Subsection 2(1) (item 10) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 4	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

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## Endnote 2—Amendment history

**Endnote 2—Amendment history**

This endnote sets out the amendment history of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*.

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ad = added or inserted   am = amended   rep = repealed   rs = repealed and substituted  
exp = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 3.....	am No 103, 2013
s 4.....	am No 54, 2009
s 7.....	rep No 103, 2013
<b>Part 2</b>	
<b>Division 1</b>	
Division 1 .....	rep 1 Feb 2001 (s 10)
s 8.....	rep 1 Feb 2001 (s 10)
s 9.....	rep 1 Feb 2001 (s 10)
s 10.....	rep 1 Feb 2001 (s 10)
<b>Division 3</b>	
s 22.....	rep No 111, 2009
<b>Division 4</b>	
<b>Subdivision A</b>	
s 25.....	am SLI No 50, 2006
<b>Division 5</b>	
s 45.....	am No 115, 2001
Schedule 1.....	rep No 103, 2013
Schedule 2.....	rep No 103, 2013
Schedule 3.....	rep No 103, 2013
Schedule 4.....	rep No 103, 2013

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## Endnotes

Endnote 3—Uncommenced amendments [none]

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### **Endnote 3—Uncommenced amendments [none]**

There are no uncommenced amendments.

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Endnote 4—Misdescribed amendments [none]

**Endnote 4—Misdescribed amendments [none]**

There are no misdescribed amendments.