



# **Primary Industries Research and Development Act 1989**

**No. 17, 1990 as amended**

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**Includes amendments up to:** Act No. 31, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Primary Industries Research and Development Act 1989* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

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

### **Uncommenced amendments**

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

### **Application, saving and transitional provisions for provisions and amendments**

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

### **Modifications**

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

### **Provisions ceasing to have effect**

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

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# **An Act to provide for the undertaking of research and development relating to primary industries and natural resources, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Primary Industries Research and Development Act 1989*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Section 9, subsections 26(2), 31(2), 36(2) and 39(2), Part 3, section 156 and Schedule 1 commence on 1 July 1990.

### **3 Objects**

The objects of this Act are to:

- (a) make provision for the funding and administration of research and development relating to primary industries with a view to:
  - (i) increasing the economic, environmental and social benefits to members of primary industries and to the community in general by improving the production, processing, storage, transport or marketing of the products of primary industries; and
  - (ii) achieving the sustainable use and sustainable management of natural resources; and
  - (iii) making more effective use of the resources and skills of the community in general and the scientific community in particular; and
  - (iv) supporting the development of scientific and technical capacity; and

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- (v) developing the adoptive capacity of primary producers; and
  - (vi) improving accountability for expenditure on research and development activities in relation to primary industries; and
- (b) make provision for the funding and administration of marketing relating to products of primary industries.

#### 4 Definitions

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

**annual general meeting**, in relation to an R&D Corporation, means an annual general meeting that the Corporation is required to convene under section 58.

**annual operational plan** means an annual operational plan of an R&D Corporation in force under Division 3 of Part 2.

**borrowing** includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of an R&D Corporation.

**Chairperson**, in relation to an R&D Corporation, means the Chairperson of the Corporation.

**Collection Act**, in relation to a levy, means the legislation providing for the collection of the levy.

**Deputy Chairperson**, in relation to an R&D Corporation, means the Deputy Chairperson of the Corporation.

**director** means a director of an R&D Corporation, and includes:

- (a) the Chairperson; and
  - (c) the Executive Director;
- of the Corporation.

**eligible levy payer**, in relation to an R&D Corporation, means a person (within the meaning of section 57) who is included in a list of levy payers prepared by the Corporation under section 57.

**Executive Director**, in relation to an R&D Corporation, means the Executive Director of the Corporation appointed under Division 9 of Part 2.

**Finance Minister** means the Minister who administers the *Financial Management and Accountability Act 1997*.

**funding agreement** means an agreement under subsection 33(4).

**levy** includes:

- (a) an export charge; and
- (b) an excise on the produce of a primary industry; and
- (c) an import charge.

**list of levy payers**, in relation to an R&D Corporation, means a list prepared by the Corporation under section 57 for a particular financial year.

**marketing activities** means the marketing, advertising or promotion of products of primary industries.

**marketing component**, in relation to a levy, means so much of the levy as the regulations declare to be the marketing component of the levy under paragraph 5(3)(aa).

**member**, in relation to a Selection Committee, means a member of the Selection Committee, and includes the Presiding Member of the Selection Committee.

**nominated director** means a director of an R&D Corporation, other than the Chairperson or the Executive Director of the Corporation.

**order** means an order made under section 150.

**prescribed** includes prescribed by an order.

**Presiding Member** means a person appointed under section 122 as the Presiding Member of the Selection Committee for an R&D Corporation.

**primary industry** means any field of endeavour (other than the wool industry) whose objective is:

- (a) the production of agricultural or other primary produce; or

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- (c) the conservation and the sustainable use and management of a natural resource.

**R&D activity**, in relation to a primary industry or class of primary industries, means:

- (a) an R&D project in respect of that industry or class; or
- (b) the development of persons to carry out research and development in respect of that industry or class; or
- (c) the dissemination of information, or the provision of advice or assistance, to persons or organisations engaged in any aspect of:
  - (i) that industry or class; or
  - (ii) the production, processing, storage, transport or marketing of goods that are the produce, or that are derived from the produce, of that industry or class;for the purpose of encouraging those persons or organisations to adopt technical developments designed or adapted to improve that aspect of the industry or class, or that production, processing, storage, transport or marketing; or
- (d) the publication of reports, periodicals, books or papers containing information that is related to research and development in respect of that industry or class; or
- (e) an activity incidental to an activity referred to in paragraph (a), (b), (c) or (d).

**R&D Corporation** means:

- (a) a Research and Development Corporation established under section 8; or
- (b) the Rural Industries Research and Development Corporation established under section 9.

**R&D plan** means an R&D plan of an R&D Corporation in force under Division 3 of Part 2.

**R&D project**, in relation to a primary industry or class of primary industries, means a project for research and development in respect of that industry or class.

**refund**, in relation to a levy, means the amount of refund required to be paid by the Commonwealth in respect of an amount paid to

an R&D Corporation under paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a) in respect of the levy.

**regulations** includes orders.

**representative organisation**, in relation to an R&D Corporation, means an organisation declared under section 7 to be a representative organisation in relation to the Corporation.

**research and development**, in relation to a primary industry or class of primary industries, means systematic experimentation and analysis in any field of science, technology or economics (including the study of the social or environmental consequences of the adoption of new technology) carried out with the object of:

- (a) acquiring knowledge that may be of use in obtaining or furthering an objective of that primary industry or class, including knowledge that may be of use for the purpose of improving any aspect of the production, processing, storage, transport or marketing of goods that are the produce, or that are derived from the produce, of that primary industry or class; or
- (b) applying such knowledge for the purpose of attaining or furthering such an objective.

**research component** means:

- (aa) in relation to the levy imposed by Schedule 25 to the *Primary Industries (Excise) Levies Act 1999*—the whole of the levy; and
- (a) in relation to the levy imposed by the repealed *Wheat Levy Act 1989* during a season (within the meaning of the repealed *Wheat Marketing Act 1989*) that began before 1 July 1999—the proportion of the levy referred to in subsection 5(5); and
- (b) in relation to any other levy—so much of the levy as the regulations declare to be the research component of the levy under paragraph 5(3)(a).

**RIR&D Corporation** means the Rural Industries Research and Development Corporation established under section 9.

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***Selection Committee*** means a Selection Committee for an R&D Corporation established under section 124 or 125.

***separately levied fishery*** has the meaning given by subsection 5A(1).

***State Research Committee*** has the same meaning as in the *Rural Industries Research Act 1985*.

***this Act*** includes the regulations.

- (2) A reference in this Act to expenses incurred by a Selection Committee includes a reference to the remuneration and allowances payable to the Presiding Member and other members of the Selection Committee and persons employed or engaged by the Selection Committee.
- (3) A reference in this Act to the primary industry or class of primary industries to which a levy relates is a reference to the primary industry or class of primary industries that the regulations declare under paragraph 5(3)(b) to be the primary industry or class of primary industries to which the levy relates.

## **5 Levies attached to R&D Corporations**

- (1) For the purposes of this Act, a levy is attached to an R&D Corporation if, and only if, the levy has, or is included in a class of levies that has:
  - (a) been declared by the regulations to be attached to the Corporation; and
  - (b) not ceased, because of section 6, to be attached to the Corporation.
- (2) For the purposes of this Act, a class of levies is attached to an R&D Corporation if, and only if, the class:
  - (a) has been declared by the regulations to be attached to the Corporation; and
  - (b) has not ceased, because of section 6, to be attached to the Corporation.

- (3) If a levy or class of levies is declared by the regulations to be so attached, the regulations must declare:
- (a) the whole or a specified proportion of the levy, or of each levy included in the class, as the case may be, to be the research component of the levy; and
  - (aa) the specified proportion (if any) of the levy, or of each levy included in the class, as the case may be, to be the marketing component of the levy; and
  - (b) a primary industry or class of primary industries to be the primary industry or class of primary industries to which the levy, or each levy included in the class, relates, being a primary industry or class of primary industries in respect of which the Corporation is established.

### 5A Separately levied fisheries

- (1) The regulations may declare that a part of the fishing industry, whether managed in whole or in part by or on behalf of the Commonwealth or a State or Territory, is a *separately levied fishery*.
- (2) The regulations may declare that a levy attached to an R&D Corporation established in respect of the fishing industry is also a levy on a separately levied fishery.

### 6 Redirecting levies

Where:

- (a) at a particular time, a levy or class of levies becomes attached to an R&D Corporation; and
- (b) immediately before that time, the levy or class was attached to another R&D Corporation;

then, for the purposes of this Act, the levy or class:

- (c) is redirected at that time to the first-mentioned R&D Corporation from the other R&D Corporation; and
- (d) ceases at that time to be attached to the other R&D Corporation.

## **7 Representative organisations**

- (1) The Minister may, by notice published in the *Gazette*, declare one or more specified organisations to be representative organisations in relation to an R&D Corporation.
- (2) A declaration may be made in respect of an R&D Corporation at any time after the making of regulations under section 8 establishing the Corporation, even if the regulations concerned are not in force at that time.
- (3) The Minister must, in relation to each R&D Corporation, declare at least one organisation to be a representative organisation.
- (4) A declaration must be published on the Department's website as soon as practicable after it is made.



## **Part 2—Research and Development Corporations**

### **Division 1—Establishment, functions and powers of Research and Development Corporations**

#### **8 Establishment of Research and Development Corporations**

Where the regulations declare the establishment of a Research and Development Corporation in respect of a primary industry or class of primary industries and specify a name for the Corporation:

- (a) a Research and Development Corporation is established in respect of that primary industry or class of primary industries; and
- (b) the Corporation is to be known by the name specified in the regulations.

#### **9 Establishment of the Rural Industries Research and Development Corporation**

- (1) The Rural Industries Research and Development Corporation is established.
- (2) The regulations may specify the primary industries or class of primary industries in respect of which the Rural Industries Research and Development Corporation is established.

#### **10 R&D Corporation is body corporate etc.**

- (1) An R&D Corporation:
  - (a) is a body corporate with perpetual succession; and
  - (b) is to have a common seal; and
  - (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 an R&D Corporation. That Act deals with matters relating to

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Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (2) The common seal of an R&D Corporation is to be kept in such custody as the Corporation directs, and is not to be used except as authorised by the Corporation.
- (3) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the common seal of an R&D Corporation appearing on a document; and
  - (b) presume the imprint was duly affixed.

**11 Functions**

The functions of an R&D Corporation are:

- (a) to investigate and evaluate the requirements for research and development in relation to the primary industry or class of primary industries in respect of which it was established and, on the basis of such investigation and evaluation:
  - (i) to prepare an R&D plan under section 19; and
  - (ii) to review and revise the plan; and
- (b) to prepare an annual operational plan under section 25 for each financial year; and
- (c) to co-ordinate or fund the carrying out of R&D activities that are consistent with the annual operational plan prepared by the Corporation and in force at the time; and
- (d) to:
  - (i) monitor; and
  - (ii) evaluate; and
  - (iii) report to the Parliament, the Minister and its representative organisations on;  
R&D activities that are co-ordinated or funded, wholly or partly, by the Corporation; and
- (da) to:
  - (i) assess; and
  - (ii) report to the Parliament, the Minister and its representative organisations on;

- the impact, on the primary industry or class of primary industries in respect of which the Corporation was established, of R&D activities that are co-ordinated or funded, wholly or partly, by the Corporation; and
- (e) to disseminate and commercialise, and facilitate the dissemination, adoption and commercialisation of, the results of research and development in relation to the primary industry or class of primary industries in respect of which the Corporation was established; and
  - (ea) if a levy attached to the Corporation has a marketing component—to carry out marketing activities for the benefit of the primary industry or class of primary industries in respect of which the Corporation was established; and
  - (f) such other functions as are conferred on the Corporation by this Act or any other Act.

## **12 Powers**

- (1) An R&D 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) enter into agreements under section 13 for the carrying out of R&D or marketing activities by other persons; and
  - (b) enter into agreements under section 14 for the carrying out of R&D or marketing activities by the Corporation and other persons; and
  - (c) make intellectual property and other applications, including joint applications, in relation to the results of research and development; and
  - (d) deal with the results of research and development vested in, or made available to, the Corporation or the Corporation and other persons; and
  - (e) make charges for work done, services rendered, and goods and information supplied, by it; and
  - (f) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust; and

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- (g) acquire, hold and dispose of real and personal property for the purposes of this Act; and
- (h) join in the formation of a company; and
- (j) do anything incidental to any of its powers.

**13 Agreements for carrying out R&D activities and marketing activities by other persons**

- (1) Without limiting the generality of subsection 12(1), an R&D Corporation may enter into an agreement with a person for the carrying out of either or both of the following by the person:
  - (a) R&D activities;
  - (b) if a levy attached to the Corporation has a marketing component—marketing activities.
- (2) Without limiting the matters that may be included in the agreement, the agreement may:
  - (a) provide for 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
  - (b) 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 the money provided under the agreement if any of the money, property or goods referred to in paragraph (a) is or are used for a purpose not specified in the agreement; and
  - (c) make provision with respect to:
    - (i) assigning inventions and interests in inventions; and
    - (ii) applying for patents for inventions; and
    - (iii) commercially exploiting patented inventions; and
    - (iv) granting licences under patented inventions; being inventions made in the course of undertaking R&D activities or doing anything else with that money or with money that includes that money; and
  - (d) 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 the

- money, property or goods referred to in paragraph (a) or patents or interests referred to in paragraph (c); and
- (e) provide for the assignment by the person to the Corporation of any money, property, goods, patents or interests referred to in paragraph (d); and
  - (f) provide for the payment by the person to the Corporation of an amount of money determined by the Corporation in accordance with the agreement in the event of the disposal (otherwise than to the Corporation) of any property, goods, patents or interests referred to in paragraph (d).

#### **14 Agreements for carrying out R&D activities and marketing activities with other persons**

- (1) Without limiting the generality of subsection 12(1), an R&D Corporation may enter into an agreement (including a joint venture agreement or a partnership agreement) with a person for either or both of the following to be carried out by the Corporation and the person:
  - (a) R&D activities;
  - (b) if a levy attached to the Corporation has a marketing component—marketing activities.
- (2) Without limiting the matters that may be included in the agreement, the agreement is to specify:
  - (a) the objectives of the activities; and
  - (b) the expected duration of the activities; and
  - (c) the nature and extent of the contribution to be made by the Corporation towards the activities; and
  - (d) the basis for the distribution of profits and other benefits derived from the activities.

#### **15 Consultations with persons and organisations**

- (1) Without limiting the generality of subsection 12(1), an R&D Corporation may make arrangements for consulting:
  - (a) persons and bodies representative of the primary industry or class of primary industries in respect of which the

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- Corporation was established (including any of the Corporation's representative organisations); and
- (b) Commonwealth, State and Territory authorities concerned with that primary industry or class of primary industries.
- (2) Arrangements made by an R&D Corporation under subsection (1) may provide for:
- (a) the Corporation 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 agreeing to meet expenses (other than travel expenses) reasonably incurred by a representative organisation of the Corporation, or a member of a representative organisation of the Corporation, in connection with consultations with the Corporation.

## **Division 2—Constitution of Research and Development Corporations**

### **16 Constitution**

- (1) An R&D Corporation consists of:
  - (a) a Chairperson; and
  - (c) an Executive Director; and
  - (d) such number of other directors, not fewer than 5 nor more than 7, as the Minister determines, in writing, to be appropriate for that Corporation.
- (2) The performance of the functions and the exercise of the powers of an R&D Corporation are not affected merely because of vacancies in the Corporation's directorship.

### **17 Appointment of directors**

- (1) The directors of an R&D Corporation (other than the Executive Director) are to be appointed by the Minister.
- (3) The nominated directors of an R&D Corporation are to be appointed from persons:
  - (a) nominated by a Selection Committee under Part 4; or
  - (b) included on a list, given to the Minister under paragraph 132(2)(b), of persons a Selection Committee considers suitable for nomination.
- (5) The appointment of a person as a director of an R&D Corporation is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

### **18 Members of executive of representative organisation not eligible for appointment etc.**

- (1) A person who is a member of the executive of a representative organisation of an R&D Corporation must not be appointed as a director of the Corporation.

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- (2) A director of an R&D Corporation who becomes a member of the executive of a representative organisation of the Corporation ceases to hold office as a director of the Corporation.



## **Division 3—R&D plans and annual operational plans**

### **19 R&D plans**

- (1) An R&D Corporation must prepare, in written form, an R&D plan for each successive period referred to in subsections (3) and (4).
- (2) An R&D Corporation's R&D plan is to include:
  - (a) a statement of the Corporation's objectives and priorities for the period to which the plan is expressed to relate; and
  - (b) an outline of the strategies that the Corporation intends to adopt in order to achieve those objectives.
- (3) The first R&D plan is to be expressed to relate to:
  - (a) if the R&D Corporation is established in the first 9 months of a financial year—that financial year and the 4 subsequent financial years; or
  - (b) if the R&D Corporation is established in the last 3 months of a financial year—the next financial year and the 4 subsequent financial years.
- (4) Each subsequent R&D plan is to be expressed to relate to the period of 5 years commencing at the end of the period to which the immediately preceding R&D plan relates.

### **20 Approval of R&D plans**

- (1) An R&D plan is to be submitted to the Minister for approval no later than 2 months, or such shorter period as the Minister, in special circumstances, allows, before the intended day of commencement of the period to which the plan relates.
- (2) Where the Minister is of the opinion that an R&D Corporation's R&D plan, submitted under subsection (1) or (3) for his or her approval, should be revised in some respect, the Minister may give to the Corporation a written notice:
  - (a) requesting the Corporation to make such a revision; and
  - (b) setting out the reasons for the request.

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- (3) Where an R&D Corporation receives such a request, it must:
  - (a) consider the request and the statement of reasons; and
  - (b) make such revision of the R&D plan it considers appropriate; and
  - (c) submit the plan, as so revised, to the Minister for approval.
- (4) Where a copy of an R&D plan is submitted to the Minister for approval under subsection (1) or (3), a copy of the plan is at the same time also to be provided to the Presidents (or the holders of the equivalent office) within each of the representative organisations of the Corporation.
- (5) Where the Minister approves an R&D plan, the Corporation is, no later than one month after the day on which it is approved by the Minister, to notify each of its representative organisations of the Minister's approval.
- (6) An R&D plan does not come into operation until:
  - (a) the day on which it is approved by the Minister; or
  - (b) the day of commencement of the period to which it relates;whichever is the later.

**21 Variation of R&D plans**

- (1) An R&D Corporation must:
  - (a) as soon as practicable after 30 June next following the day on which its R&D plan comes into operation; and
  - (b) as soon as practicable after each subsequent 30 June occurring before the day of expiration of the plan;review the plan and consider whether a variation of it is necessary.
- (2) An R&D Corporation may, at any other time, review its R&D plan (whether or not the plan has come into operation) and consider whether a variation of it is necessary.
- (3) Where the Minister gives to an R&D Corporation a notice requesting that the Corporation vary its R&D plan and setting out the reasons for making the request, it must consider, having regard to the reasons, whether the requested variation of the plan is appropriate.

- (4) Where an R&D Corporation considers that:
  - (a) a variation of its R&D plan is necessary; or
  - (b) a variation of its R&D plan, requested by the Minister, is appropriate;it may vary the plan with the Minister's approval.
- (5) When requesting the Minister's approval for a variation of the plan, the Corporation must, unless the variation was requested by the Minister, provide the Minister with:
  - (a) a statement of its reasons for making the request; and
  - (b) such other information as the Minister requests.
- (6) The Minister may, after considering the request (together with the material (if any) provided under subsection (5)):
  - (a) approve the requested variation; or
  - (b) reject the requested variation.
- (7) Where the Minister approves a requested variation, the Corporation is, no later than one month after the day on which it is approved by the Minister, to provide a copy of the varied plan as approved by the Minister to the Presidents (or the holders of the equivalent office) within each of the representative organisations of the Corporation.
- (8) If the Minister rejects the requested variation he or she must give the Corporation his or her written reasons for doing so.

## **22 Approval for varied R&D plans to run for 4 years from next 1 July**

- (1) Where an R&D Corporation requests the Minister's approval for a variation of its R&D plan, and that plan is in force, the Corporation may also request the Minister's approval for the plan as varied to be in force until the end of 4 years beginning on the next 1 July after the day on which the variation 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.

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- (3) Where:
- (a) a request is made under subsection (1); and
  - (b) the Minister approves a variation of the plan under subsection 21(6); 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 varied to be in force until the end of 4 years beginning on the next 1 July after the day on which the variation takes effect.

**23 When variations of R&D plans take effect**

- (1) Where the Minister approves a variation of an R&D plan, the variation takes effect on:
- (a) if the Minister also gives his or her approval under section 22 for the plan as varied to be in force as mentioned in that section—the day specified by the Minister in giving the approval under that section, or, where no such day is specified, the next 1 July after the day of approval of the variation; or
  - (b) in any other case—the day of approval of the variation.
- (2) If the operation of an R&D plan (being a plan that has come into force) takes effect on the day of the Minister's approval of the variation, the plan as varied continues in force, on and after that day, as if the Minister had originally approved the plan as varied.

**24 Consultation**

Before preparing or varying an R&D plan, or making a request under subsection 22(1), an R&D Corporation must consult, and have regard to the views expressed by:

- (aa) the Minister; and
- (a) each of its representative organisations; and
- (b) such other persons or organisations as it considers appropriate.

## **25 Annual operational plans**

- (1) An R&D Corporation must, for each financial year during which an R&D plan is in force, prepare, in written form, an annual operational plan that is expressed to relate to that financial year.
- (2) The annual operational plan is to:
  - (a) specify the broad groupings of R&D and marketing activities that the R&D 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 R&D plan in force during that financial year; and
    - (ii) in particular, pursue the strategies outlined in the R&D plan and help to achieve the objectives described in the R&D 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 R&D activities the Corporation proposes to fund during the financial year; and
    - (ii) the total of the amounts likely to be spent by the Corporation under section 33, other than paragraph 33(1)(a), during the financial year; and
    - (iii) the total of the amounts referred to in subparagraphs (i) and (ii); and
    - (iv) the total of the amounts that are likely to be paid to the Corporation during the financial year (other than the amounts paid under section 30, 30A or 30B).
- (3) A reference in this section to R&D or marketing activities that an R&D Corporation proposes to fund includes a reference to R&D or marketing activities that the Corporation is prepared, subject to its examination of specific proposals, to fund.

## **26 Commencement of annual operational plan etc.**

- (1) An annual operational plan for an R&D Corporation comes into operation on the first day of the period to which the plan relates.

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- (2) Before the plan comes into operation, the Corporation must provide a copy of the plan to:
- (a) the Minister; and
  - (b) each of the representative organisations of the Corporation.

**27 Compliance with R&D plans and annual operational plans**

To the extent that it is practicable to do so, an R&D Corporation must ensure that, at any time:

- (a) the performance of its functions; and
- (b) the exercise of its powers;

are consistent with, and designed to give effect to, any R&D plan, and any annual operational plan, prepared by it and in force at the time.

## **Division 4—Accountability**

### **28 Annual report**

- (1) The directors must include in each report on an R&D Corporation prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*:
- (a) particulars of:
    - (i) the R&D activities that it co-ordinated or funded, wholly or partly, during the period; and
    - (ia) if a levy attached to the Corporation had a marketing component during the period—the marketing activities that it coordinated or funded, wholly or partly, during the period; and
    - (ii) the amount that it spent during the period in relation to each of those activities; and
    - (iib) the impact of those activities on the primary industry or class of primary industries in respect of which the Corporation was established; and
    - (iii) revisions of its R&D plan approved by the Minister during the period; and
    - (iv) the entering into of agreements under sections 13 and 14 during the period and its activities during the period in relation to agreements entered into under that section during or prior to the period; and
    - (v) its activities during the period in relation to applying for patents for inventions, commercially exploiting patented inventions and granting licences under patented inventions; and
    - (vi) the activities of any companies in which the Corporation has an interest; and
    - (vii) any activities relating to the formation of a company; and
    - (viii) significant acquisitions and dispositions of real property by it during the period; and
  - (b) an assessment of the extent to which its operations during the period have:

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- (i) achieved its objectives as stated in its R&D plan; and
- (ii) implemented the annual operational plan 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 of this Act as set out in section 3; and
- (d) in respect of the grain industry or such other primary industry or class of primary industries as is prescribed in the regulations, particulars of sources and expenditure of funds, including:
  - (i) commodity, cross commodity and regional classifications; and
  - (ii) funds derived from transfer of assets, debts, liabilities and obligations under section 144.

**29 Accountability to representative organisations**

The Chairperson of an R&D Corporation (other than an R&D Corporation to which Division 7 applies) must, as soon as practicable after the Corporation's annual report has been submitted to the Minister, provide copies of the report to each of the Corporation's representative organisations, and make arrangements with each of those organisations to attend the organisation's annual conference, or a meeting of the organisation's executive, for the purpose of enabling:

- (a) the annual report to be considered; and
- (b) the Chairperson to deliver an address in relation to:
  - (i) the Corporation's activities in the period to which the report relates; and
  - (ii) the Corporation's intended activities in the financial year following the end of the period; and
  - (iii) in respect of the grain industry and such other primary industry or class of primary industries as is prescribed in the regulations, particulars of sources and expenditure of funds, including:
    - (A) commodity, cross commodity and regional classifications; and



- (B) funds derived from transfer of assets, debts, liabilities and obligations under section 144; and
  - (C) funds derived from the transfer, under section 151 of this Act, of levies attached to Research Funds under the *Rural Industries Research Act 1985*; and
- (c) the Chairperson to be questioned in relation to those activities.

## Division 5—Finance

### 30 Payments to R&D Corporation—general

(1A) In this section, a reference to an amount spent or required to be spent by an R&D Corporation under section 33 does not include a reference to an amount spent or required to be spent in relation to marketing activities.

- (1) There are to be paid to an R&D Corporation (other than an R&D Corporation to which no levy is attached) amounts equal to:
- (a) where a levy is attached to the Corporation—the amounts from time to time received by the Commonwealth, under the Collection Act for each levy attached to the Corporation, as:
    - (i) the research component of that levy; and
    - (ii) amounts (if any) paid, on behalf of a person liable to pay that levy, by another person, in respect of the research component of that levy; and
    - (iii) amounts of penalty for non-payment of that levy, to the extent that the penalty is attributable to the non-payment of the research component of that levy; and
    - (iv) the marketing component of that levy; and
  - (b) subject to subsection (2) and sections 31 and 32, amounts equal to one-half of the amounts required to be spent by the Corporation under section 33 (other than paragraph 33 (1)(d)).

Note: See also subsection 7(3) of the *Plant Health Australia (Plant Industries) Funding Act 2002*, which provides that this Act applies to certain amounts of levy or charge (and related late payment penalty) to which that Act applies.

- (2) No amounts are payable under paragraph (1)(b) to an R&D Corporation established in respect of the coal industry.
- (3) Amounts payable under subsection (1), or under section 37 or 38, are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

- (4) There are to be paid to an R&D Corporation to which no levy is attached the amounts from time to time appropriated for the purpose by the Parliament.
- (5) This section does not apply in relation to an R&D Corporation established in respect of the fishing industry.

**30A Fishing industry payments other than separately levied fishery payments**

- (1A) In this section:
  - (a) a reference to a levy does not include a reference to a levy on a separately levied fishery; and
  - (b) a reference to an amount spent or required to be spent by an R&D Corporation under section 33 does not include a reference to an amount spent or required to be spent in relation to:
    - (i) a separately levied fishery; or
    - (ii) marketing activities; and
  - (c) a reference to the fishing industry does not include a reference to a separately levied fishery; and
  - (d) a reference to an amount spent or required to be spent by an R&D Corporation under section 33 does not include a reference to an amount spent or required to be spent in relation to marketing activities.

*Levy payments*

- (1) There are to be paid to an R&D Corporation established in respect of the fishing industry amounts equal to:
  - (a) where a levy is attached to the Corporation—the amounts from time to time received by the Commonwealth, under the Collection Act, as:
    - (i) the research component of that levy; and
    - (ii) amounts (if any) paid, on behalf of a person liable to pay that levy, by another person, in respect of the research component of that levy; and

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- (iii) amounts of penalty for non-payment of that levy, to the extent that the penalty is attributable to the non-payment of the research component of that levy; and
  - (iv) the marketing component of that levy; and
- (b) amounts worked out under subsection (2).

*Matching payments*

- (2) The amounts to be paid to the Corporation under paragraph(1)(b), during a particular financial year, are as follows:
- (a) an amount equal to 0.5% of interim total GVP for that year or, if the amount spent or required to be spent by the Corporation under section 33 (other than paragraph 33(1)(d)) for that financial year is less than 0.5% of that interim total GVP, an amount equal to that lesser amount;
  - (b) where the amount so spent or required to be spent by the Corporation for that financial year is more than 0.5% of interim total GVP for that year:
    - (i) if that amount is not less than 1% of that interim total GVP—an amount equal to 0.25% of interim Commonwealth GVP for that year; or
    - (ii) if that amount is more than 0.5%, but less than 1%, of that interim total GVP—half of the amount equal to the percentage of interim Commonwealth GVP for that year by which the amount so spent or required to be spent was more than 0.5% of that interim total GVP;reduced, unless the regulations provide otherwise, by the amount (if any) by which the amount worked out under subparagraph (i) or (ii) (as the case may be) exceeds the total of the amounts paid to the Corporation during the year under subparagraphs (1)(a)(i) and (ii) (less the sum of any refunds in relation to levies attached to the Corporation);
  - (c) where the amount so spent or required to be spent by the Corporation for that financial year is more than 0.5% of interim total GVP for that year and a State or Territory has made a payment to the Corporation or to the Commonwealth in respect of research and development in respect of the fishing industry:

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- (i) if the amount so required to be spent by the Corporation is not less than 1% of that interim total GVP—an amount equal to 0.25% of that interim State or Territory GVP for that year; or
  - (ii) if that amount is more than 0.5%, but less than 1%, of that interim total GVP—half of the amount equal to the percentage of that interim State or Territory GVP for that year by which the amount so spent or required to be spent was more than 0.5% of that interim total GVP; reduced by the amount (if any) by which the amount worked out under subparagraph (i) or (ii) (as the case may be) exceeds the amount of the payment made by the State or Territory to the Corporation or to the Commonwealth in respect of research and development in respect of the fishing industry;
  - (d) other amounts of matching payments specified in the regulations, so along as the total of the amounts paid to the Corporation under paragraph (1)(b) in the financial year do not exceed 0.75% of interim total GVP for that year.
- (2B) If:
- (a) an amount is paid to the Corporation under paragraph (1)(b) in a financial year; and
  - (b) the amount was calculated, in whole or in part, under subsection (2) on the basis of:
    - (i) interim Commonwealth GVP for the financial year; or
    - (ii) interim State or Territory GVP for the financial year for a State or Territory; or
    - (iii) interim total GVP for the financial year; and
  - (c) before the end of 31 October next following the financial year, the Minister determines an amount that is:
    - (i) if subparagraph (b)(i) applies—the final Commonwealth GVP for the financial year; or
    - (ii) if subparagraph (b)(ii) applies—the final State or Territory GVP for the financial year for that State or Territory; or
    - (iii) if subparagraph (b)(iii) applies—the final total GVP for the financial year; and

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(d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (1)(b) in the financial year exceeds the amount that would have been paid to the Corporation under that paragraph in the financial year if:

- (i) each reference in subsection (2) to interim Commonwealth GVP were a reference to the amount of final Commonwealth GVP so determined; and
- (ii) each reference in subsection (2) to interim State or Territory GVP were a reference to the amount of final State or Territory GVP so determined; and
- (iii) each reference in subsection (2) to interim total GVP were a reference to the amount of final total GVP so determined;

the Corporation must pay to the Commonwealth an amount equal to the excess.

(2C) If:

- (a) an amount is paid to the Corporation under paragraph (1)(b) in a financial year; and
- (b) the amount was calculated, in whole or in part, under subsection (2) on the basis of:
  - (i) interim Commonwealth GVP for the financial year; or
  - (ii) interim State or Territory GVP for the financial year for a State or Territory; or
  - (iii) interim total GVP for the financial year; and
- (c) before the end of 31 October next following the financial year, the Minister determines an amount that is:
  - (i) if subparagraph (b)(i) applies—the final Commonwealth GVP for the financial year; or
  - (ii) if subparagraph (b)(ii) applies—the final State or Territory GVP for the financial year for that State or Territory; or
  - (iii) if subparagraph (b)(iii) applies—the final total GVP for the financial year; and
- (d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (1)(b) in the financial year falls short of the

amount that would have been paid to the Corporation under that paragraph in the financial year if:

- (i) each reference in subsection (2) to interim Commonwealth GVP were a reference to the amount of final Commonwealth GVP so determined; and
- (ii) each reference in subsection (2) to interim State or Territory GVP were a reference to the amount of final State or Territory GVP so determined; and
- (iii) each reference in subsection (2) to interim total GVP were a reference to the amount of final total GVP so determined;

the Commonwealth must pay to the Corporation an amount equal to the shortfall.

(2D) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) an amount that is final Commonwealth GVP for the financial year; and
- (b) the Minister has determined under subsection (4) the amount that is final Commonwealth GVP for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of final Commonwealth GVP for the financial year is equal to the amount of the final Commonwealth GVP determined under subsection (4) for the previous financial year.

(2E) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount that is final State or Territory GVP for the financial year for a State or a Territory; and
- (b) the Minister has determined under subsection (4) the amount that is final State or Territory GVP for the previous financial year for the State or Territory;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of final State or Territory GVP for the financial year for

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the State or Territory is equal to the amount of the final State or Territory GVP determined under subsection (4) for the previous financial year for the State or Territory.

(2F) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount that is final total GVP for the financial year; and
- (b) the Minister has determined under subsection (4) the amount that is final total GVP for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount that is final total GVP for the financial year is equal to the amount of the final total GVP determined under subsection (4) for the previous financial year.

(2G) The Minister may, on behalf of the Commonwealth, set off an amount payable by an R&D Corporation under this section against an amount that is payable to the Corporation under subsection (1) or (2C).

(2H) A determination made under this section is not a legislative instrument.

(3) Amounts payable under subsection (1) or (2C) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(4) In this section:

***final Commonwealth GVP***, in relation to a financial year, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of that part of the fishing industry that is managed by or on behalf of the Commonwealth.

***final State or Territory GVP***, in relation to a financial year and in relation to a State or Territory, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of that part of



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the fishing industry that is managed by or on behalf of the State or Territory.

***final total GVP***, in relation to a financial year, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of all parts of the fishing industry, whether managed by or on behalf of the Commonwealth, a State or a Territory.

***interim Commonwealth GVP***, in relation to a financial year, means the final Commonwealth GVP for the previous financial year.

***interim State or Territory GVP***, in relation to a financial year and in relation to a State or Territory, means the final State or Territory GVP for the previous financial year for the State or Territory.

***interim total GVP***, in relation to a financial year, means the final total GVP for the previous financial year.

- (5) The regulations may provide for the manner in which the Minister is to determine the amount of the Commonwealth GVP, a State or Territory GVP or a total GVP for a financial year.

### **30B Separately levied fishery payments**

- (1) In this section, a reference to an amount spent or required to be spent by an R&D Corporation under section 33 does not include a reference to an amount spent or required to be spent in relation to marketing activities.

#### *Levy payments*

- (2) There are to be paid to an R&D Corporation established in respect of the fishing industry amounts equal to:
- (a) if a levy on a separately levied fishery is attached to the Corporation—the amounts from time to time received by the Commonwealth, under the Collection Act, as:
    - (i) the research component of that levy; and

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- (ii) amounts (if any) paid, on behalf of a person liable to pay that levy, by another person, in respect of the research component of that levy; and
  - (iii) amounts of penalty for non-payment of that levy, to the extent that the penalty is attributable to the non-payment of the research component of that levy; and
  - (iv) the marketing component of that levy; and
- (b) amounts worked out under subsection (3) in respect of the separately levied fishery.

*Matching payments*

- (3) The amounts to be paid to an R&D Corporation under paragraph (2)(b) in respect of the separately levied fishery, during a particular financial year, are as follows:
- (a) an amount equal to 0.5% of interim GVP for the fishery for that year or, if the amount spent or required to be spent by the Corporation under section 33 in relation to the separately levied fishery (other than paragraph 33(1)(d)) for that financial year is less than 0.5% of that interim GVP, an amount equal to that lesser amount;
  - (b) where the amount so spent or required to be spent by the Corporation in relation to the fishery for that financial year is more than 0.5% of interim GVP for that year:
    - (i) if that amount is not less than 1% of that interim GVP—  
an amount equal to 0.25% of that interim GVP; or
    - (ii) if that amount is more than 0.5%, but less than 1%, of that interim GVP—half of the amount equal to the percentage of that interim GVP by which the amount spent or required to be spent was more than 0.5% of that interim GVP;
- reduced, unless the regulations provide otherwise, by the amount (if any) by which the amount worked out under subparagraph (i) or (ii) (as the case may be) exceeds the total of the amounts paid to the Corporation during the year under subparagraphs (2)(a)(i) and (ii) (less the sum of any refunds paid in relation to levies covered by those subparagraphs); and

(c) other amounts of matching payments specified in the regulations, so along as the total of the amounts paid to the Corporation under paragraph (2)(b) in the financial year do not exceed 0.75% of interim GVP for that year.

(4) If:

- (a) an amount is paid to the Corporation under paragraph (2)(b) in a financial year; and
- (b) the amount was calculated, in whole or in part, under subsection (3) on the basis of interim GVP for the financial year; and
- (c) before the end of 31 October next following the financial year, the Minister determines an amount that is the final GVP for the fishery for the financial year; and
- (d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (2)(b) in the financial year exceeds the amount that would have been paid to the Corporation under that paragraph in the financial year if each reference in subsection (3) to interim GVP were a reference to the amount of final GVP so determined;

the Corporation must pay to the Commonwealth an amount equal to the excess.

(5) If:

- (a) an amount is paid to the Corporation under paragraph (2)(b) in a financial year; and
- (b) the amount was calculated, in whole or in part, under subsection (3) on the basis of interim GVP for the financial year; and
- (c) before the end of 31 October next following the financial year, the Minister determines an amount that is the final GVP for the fishery for the financial year; and
- (d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (2)(b) in the financial year falls short of the amount that would have been paid to the Corporation under that paragraph in the financial year if each reference in

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subsection (3) to interim GVP were a reference to the amount of final GVP so determined;

the Commonwealth must pay to the Corporation an amount equal to the shortfall.

(6) If:

(a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (10) an amount that is final GVP for the fishery for the financial year; and

(b) the Minister has determined under subsection (10) the amount that is final GVP for the fishery for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (10) that the amount of final GVP for the fishery for the financial year is equal to the amount of the final GVP for the fishery determined under subsection (10) for the previous financial year.

(7) The Minister may, on behalf of the Commonwealth, set off an amount payable by an R&D Corporation under this section against an amount that is payable to the Corporation under subsection (2) or (5).

(8) A determination made under this section is not a legislative instrument.

(9) Amounts payable under subsection (2) or (5) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(10) In this section:

**final GVP**, for a separately levied fishery for a financial year, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of that fishery.

**interim GVP**, for a separately levied fishery for a financial year, means the final GVP for the fishery for the previous financial year.

- (11) The regulations may provide for the manner in which the Minister is to determine the amount of the final GVP for a separately levied fishery for a financial year.

### **31 Government matching payments not to exceed levy and certain other payments**

- (1) If:
- (a) a levy is attached to an R&D Corporation; and
  - (b) the Corporation is not a Corporation declared by the regulations to be an R&D Corporation to which this section does not apply;
- the sum of the amounts paid to the Corporation under paragraph 30(1)(b) is not to exceed the sum of:
- (c) the amounts paid to the Corporation under subparagraphs 30(1)(a)(i) and (ii) (less the sum of any refunds in relation to research components of levies attached to the Corporation); and
  - (d) amounts in relation to which subsection (2) applies; and
  - (e) other amounts of matching payments specified in the regulations.
- (2) Where an R&D Corporation is established in respect of the dairy industry, and that Corporation accepts an amount paid to it by way of gift or grant from a co-operative company (as defined by sections 117 and 118 of the *Income Tax Assessment Act 1936*) in the dairy industry, for the purposes of research and development, the Corporation may, subject to the regulations, determine that this subsection applies in relation to the amount.
- (3) This section does not apply in relation to the RIR&D Corporation.

### **32 Retention limit for Commonwealth's matching payments**

- (1) For the purposes of this section, ***gross value of production***, in relation to a levy for a financial year, means the gross value of production, for that financial year, of the goods that are the produce of the primary industry, or class of primary industries, to which the levy relates.

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(1A) If:

- (a) a levy is attached an R&D Corporation; and
- (b) before the end of 31 October next following a financial year, the Minister determines the amount of the gross value of production in relation to the levy for the financial year; and
- (c) as at the end of 31 October next following the financial year, the sum of the amounts that were paid to the Corporation during the financial year under paragraph 30(1)(b) exceeds 0.5% of the amount of the gross value of production in relation to the levy for the financial year as determined by the Minister;

the Corporation must pay to the Commonwealth an amount equal to the excess.

(1B) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (1A) the amount of the gross value of production in relation to a levy for the financial year; and
- (b) the Minister has determined under subsection (1A) the amount of the gross value of production in relation to the levy for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (1A) that the amount of the gross value of production in relation to the levy for the financial year is equal to the amount of the gross value of production in relation to the levy determined under subsection (1A) for the previous financial year.

(1C) The Minister may, on behalf of the Commonwealth, set off an amount payable by the R&D Corporation under subsection (1A) against an amount that is payable to the Corporation under paragraph 30(1)(b).

(1D) A determination made under subsection (1A) is not a legislative instrument.

(2) The regulations may provide for the manner in which the Minister is to determine the amount of the gross value of production of goods for a financial year.

### **33 Expenditure of money of R&D Corporations**

- (1) An R&D Corporation's money may be spent only:
  - (a) for the purpose of funding R&D activities included in the broad groupings of R&D activities specified in an annual operational plan prepared by the Corporation and in force when payments are made; and
  - (b) in payment or discharge of the expenses and liabilities incurred by the Corporation in the performance of its functions or the exercise of its powers; and
  - (c) in payment of remuneration and allowances payable:
    - (i) under sections 68 and 81 to the Corporation's directors; or
    - (ii) under section 89 to members of committees established by the Corporation under that section; and
  - (ca) in payment to the Commonwealth of amounts payable under subsection 30A(2B), 30B(4) or 32(1A); and
  - (d) in payment to the Commonwealth of amounts payable under section 34; and
  - (da) in payment to the Commonwealth of amounts payable under subsection 18(3) of the *Primary Industries Levies and Charges Collection Act 1991*; and
  - (e) in payment of amounts in respect of expenses (including the payment of remuneration and allowances) incurred by a Selection Committee in performing its function, and exercising its powers, in relation to the selection of directors for appointment to the Corporation; and
  - (f) in making any other payments that the Corporation is authorised or required to make under this Act.
- (2) An R&D 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, in relation to the selection of directors for appointment to the Corporation.

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*Spending must be in accordance with funding agreement*

- (3) After 30 June 2015, an R&D Corporation must not spend money that has been paid to the R&D Corporation by the Commonwealth unless the R&D Corporation does so in accordance with a written funding agreement.
- (4) The Minister may enter into a funding agreement with an R&D Corporation. The agreement must specify the terms and conditions on which money paid to the R&D Corporation by the Commonwealth will be spent.
- (5) A funding agreement must be published on the website of the R&D Corporation concerned as soon as practicable after it is made or varied.

**33A R&D money must not be spent on marketing**

Of money received by an R&D Corporation under sections 30 to 30B, only money received under the following provisions may be spent in relation to marketing activities:

- (a) subparagraph 30(1)(a)(iv);
- (b) subparagraph 30A(1)(a)(iv);
- (c) subparagraph 30B(2)(a)(iv).

**33B State and Territory fisheries R&D money**

- (1) This section applies if:
  - (a) a State or Territory makes a payment to an R&D Corporation in respect of research and development in respect of the fishing industry; or
  - (b) the Commonwealth makes a payment to an R&D Corporation of money paid by a State or Territory to the Commonwealth in respect of research and development in respect of the fishing industry.
- (2) The R&D Corporation must, within 5 years of receiving the payment, spend an equal amount on R&D activities of relevance to the State or Territory.



### **33C Separately levied fisheries money**

Money received by an R&D Corporation under section 30B in respect of a separately levied fishery may be spent for purposes related to the separately levied fishery only.

### **34 Commonwealth to be paid levy expenses from R&D Corporations**

Where a levy is attached to an R&D Corporation, the Corporation must pay to the Commonwealth amounts equal to the expenses incurred by the Commonwealth in relation to:

- (a) the collection or recovery of amounts of the kind referred to in paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a) that are receivable by the Commonwealth under the Collection Act for that levy; and
- (b) the administration of paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a) in respect of that levy.

### **35 Commonwealth to be reimbursed for refunds of levy**

Where a levy is attached to an R&D Corporation, the Corporation must pay to the Commonwealth amounts equal to the amounts of any refunds paid by the Commonwealth in respect of amounts of levy of the kind referred to in paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a).

### **36 Transfers of money where levies redirected**

(1) Where:

- (a) a levy becomes attached to an R&D Corporation; and
- (b) immediately before becoming so attached, the levy was attached to another R&D Corporation (in this subsection called the *other Corporation*);

the other Corporation must pay to the first-mentioned Corporation an amount equal to so much of the other Corporation's money as is attributable to money paid to the other Corporation:

- (c) as a result of the levy being attached to the other Corporation; or

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- (d) as a result of the other Corporation being established in respect of the primary industry or class of primary industries to which the levy relates.
- (3) Where 2 R&D Corporations are unable to agree on:
- (a) whether one of them is required to pay money to the other under this section; or
  - (b) the amount of money that one of them is required to pay to the other under this section;
- the amount (if any) that is required to be paid is an amount determined by the Minister.

**37 Payment of amounts of levy where levies redirected**

Where:

- (a) a levy becomes attached to an R&D Corporation; and
- (b) immediately before becoming so attached, the levy was attached to another R&D Corporation (in this section called the *other Corporation*); and
- (c) while the levy was attached to the other Corporation, the Commonwealth was obliged to pay money to the other Corporation under paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a); and
- (d) the Commonwealth had not so paid the money before the levy became attached to the first-mentioned Corporation;

then:

- (e) the Commonwealth must pay the money to the first mentioned Corporation; and
- (f) notwithstanding paragraph 30(1)(a), 30A(1)(a) or 30B(2)(a) as the case may be, the Commonwealth ceases, from the time the levy becomes so attached, to be obliged to pay the money to the other Corporation.

**38 Payment of matching contributions where levies redirected**

Where:

- (a) a levy becomes attached to an R&D Corporation; and

- (b) immediately before becoming so attached, the levy was attached to another R&D Corporation (in this section called the *other Corporation*); and
  - (c) while the levy was attached to the other Corporation, the other Corporation spent money under section 33 in connection with:
    - (i) research and development relating to the primary industry or class of primary industries to which the levy relates; or
    - (ii) administering the funding of such research and development; and
  - (d) as a result of the expenditure, the Commonwealth was obliged to pay money to the other Corporation under paragraph 30(1)(b), 30A(1)(b) or 30B(2)(b); and
  - (e) the Commonwealth had not so paid the money before the levy became attached to the first-mentioned Corporation;
- then:
- (f) the Commonwealth must pay the money to the first-mentioned Corporation; and
  - (g) notwithstanding paragraph 30(1)(b), 30A(1)(b) or 30B(2)(b), as the case may be, the Commonwealth ceases, from the time the levy becomes so attached, to be obliged to pay the money to the other Corporation.

### **39 Treatment of amounts received, after levies redirected, as a result of earlier expenditure**

- (1) Where:
  - (a) a levy becomes attached to an R&D Corporation; and
  - (b) immediately before becoming so attached, the levy was attached to another R&D Corporation (in this subsection called the *other Corporation*); and
  - (c) after the levy becomes so attached, the other Corporation receives an amount:
    - (i) from the sale of property paid for; or
    - (ii) from the sale of property produced, or from dealing with patents in respect of inventions made, in the course of carrying out an R&D activity; or

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(iii) in respect of work paid for;  
by the spending of money under section 33 in connection  
with research and development relating to the primary  
industry or class of primary industries to which the levy  
relates;

the other Corporation must pay the amount to the first-mentioned  
Corporation.

- (3) Where 2 R&D Corporations are unable to agree on:
- (a) whether one of them is required to pay money to the other  
under this section; or
  - (b) the amount of money that one of them is required to pay to  
the other under this section;
- the amount (if any) that is required to be paid is an amount  
determined by the Minister.

#### **40 Separate accounting records**

- (1) The regulations may:
- (a) require an R&D Corporation to keep separate accounting  
records in relation to the funding of specified classes of  
activities; and
  - (b) specify the amounts to be credited and debited in the  
accounting records and the manner in which the amounts are  
to be calculated.
- (2) Where the regulations require an R&D Corporation to keep  
separate accounting records in relation to the funding of classes of  
activities, the regulations may make provision in relation to the  
expenditure of money to which the accounting records relate.

#### **41 Borrowing from Commonwealth**

The Finance Minister may, on behalf of the Commonwealth, out of  
money appropriated by the Parliament for the purpose, lend money  
to an R&D Corporation on such terms and conditions as the  
Finance Minister determines in writing.

#### **42 Borrowing from persons other than the Commonwealth**

- (1) An R&D Corporation may, with the written approval of the Finance Minister, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.
- (2) Money may be borrowed wholly or partly in foreign currency.

#### **43 Guarantee of borrowing**

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by an R&D Corporation of obligations incurred by it under section 42.
- (2) If the Finance Minister determines in writing that obligations incurred by the Corporation under that section are guaranteed by the Commonwealth, the obligations are so guaranteed by force of this subsection.
- (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 class of transactions.
- (4) A contract 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 courts of a foreign country;
  - (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

#### **44 Borrowing not otherwise permitted**

An R&D Corporation must not borrow money except under this Division.

#### **45 R&D Corporations may give security**

An R&D Corporation may give security over the whole or part of its assets for:

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- (a) the performance by the Corporation of any obligation incurred under section 41 or 42; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid by the Commonwealth under a guarantee under section 43.

**46 Liability to taxation**

- (1) An R&D Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.
- (2) Subject to subsections (3) and (4), an R&D 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 an R&D Corporation in respect of transactions entered into by, and instruments and documents executed by or on behalf of, the Corporation.

**46A Delegation by Finance Minister**

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 42 or 43 to an official (within the meaning of the *Financial Management and Accountability Act 1997*).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

## **Division 6—Meetings of Research and Development Corporations**

### **47 Times and places of meetings**

- (1) An R&D Corporation must hold such meetings as is necessary for the efficient performance of its functions.
- (2) Subject to subsections (3) and (4), meetings are to be held at such times and places as the Corporation from time to time determines.
- (3) The Chairperson may call a meeting at any time.
- (4) The Chairperson must call a meeting if requested to do so in writing by a majority of the directors.

### **48 Presiding at meetings**

- (1) The Chairperson is to preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present at a meeting and the Deputy Chairperson is present, the Deputy Chairperson is to preside.
- (3) If the Chairperson and Deputy Chairperson are not present at a meeting, the directors present are to appoint one of their number to preside.

### **49 Quorum**

A majority of the directors constitutes a quorum.

### **50 Voting at meetings**

- (1) A question is to be decided by a majority of the votes of the directors present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

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**51 Conduct of meetings**

- (1) An R&D Corporation may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.
- (2) Without limiting subsection (1), an R&D Corporation may permit a director to participate in a meeting by telephone or any other means of communication.
- (3) A director who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

**52 Resolutions without meetings**

Where an R&D 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 directors indicate agreement with the resolution in accordance with the 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 section 49.

**53 Minutes**

An R&D Corporation must keep minutes of its meetings.

**55 Persons may be invited to attend meetings**

An R&D Corporation may invite a person to attend a meeting for the purpose of advising or informing it on any matter.



## **Division 7—Annual general meetings**

### **56 Application of Division**

This Division applies to an R&D Corporation if:

- (a) a levy is attached to the Corporation; and
- (b) the regulations declare that this Division applies to the Corporation.

### **57 List of levy payers**

- (1) An R&D Corporation must, in respect of each financial year, prepare a list of persons whom the Corporation knows became, during the immediately preceding financial year or the 3 months after the end of the immediately preceding financial year, liable to pay a levy that is attached to the Corporation.
- (2) The Corporation must complete its preparation of the list for the financial year:
  - (a) no sooner than the day on or before which applications from persons seeking to be entered on the list must be received by the Corporation, in accordance with the notice published under subsection 59(1), for the Corporation's annual general meeting in that financial year; and
  - (b) no later than 30 days after that day.
- (3) The Corporation must not include in the list for the financial year persons whose applications to be entered on the list are received by the Corporation after the day referred to in paragraph (2)(a).
- (4) The Corporation must not use such a list otherwise than for the purposes of this Division.
- (5) In this section:

**person** includes a partnership and the trustee or trustees, from time to time, of a trust estate.

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**58 R&D Corporation to convene annual general meetings**

- (1) Where an R&D Corporation is required by the representative organisation to hold an annual general meeting, the Corporation must cause the meeting to be held in each financial year at a time and place determined by the Corporation.
- (2) The Corporation must ensure that a period of not more than 15 months elapses between each annual general meeting.

**59 Notice of the convening of an annual general meeting**

- (1) An R&D Corporation must, not later than 70 days before the day on which an annual general meeting is to be held in a financial year, cause a notice to be published in the *Gazette*, and in a newspaper that circulates throughout Australia, specifying:
  - (a) the day, time and place of the meeting; and
  - (b) the day (not being earlier than 14 days after the notice is published) before which applications from persons seeking to be entered on the list of levy payers for the financial year must be received by the Corporation.
- (2) In addition to publishing a notice under subsection (1), the Corporation:
  - (a) must give copies of the notice to each of its representative organisations; and
  - (b) may cause particulars of the annual general meeting to be made public in such a way as the Corporation determines at any time before the day referred to in paragraph (1)(b).

**60 Purpose of annual general meeting**

- (1) The purpose of an R&D Corporation's annual general meeting is to provide an opportunity for eligible levy payers:
  - (a) to consider the most recent annual report of the Corporation; and
  - (b) to receive an address by the Chairperson of the Corporation concerning:
    - (i) the Corporation's performance in the financial year to which the annual report relates; and

- (ii) the outlook for the primary industry or class of primary industries in respect of which the Corporation was established and the Corporation's intended activities in the following financial year; and
- (c) to question the directors about any aspect of the Corporation's activities during the financial year to which the annual report relates and any aspect of the Corporation's intended activities; and
- (d) to debate, and vote upon:
  - (i) any motion relating to a matter within the Corporation's responsibilities other than a matter relating to the making of regulations prescribing an amount of levy in respect of a levy attached to the Corporation or declaring the research component, or marketing component, of such a levy; or
  - (ii) any motion moved on behalf of the Corporation to endorse a recommendation that the Corporation proposes to make to the Minister in relation to the making of such regulations; or
  - (iii) any motion of no confidence in the Chairperson or in the Corporation.

## **61 Regulations may provide for certain matters**

The regulations may make provision with respect to one or more of the following:

- (a) notifying an R&D Corporation of the terms of any motion proposed to be moved by an eligible levy payer of the Corporation at an annual general meeting;
- (b) notifying the Corporation's eligible levy payers of:
  - (i) the day, time and place of an annual general meeting of the Corporation; and
  - (ii) the terms of motions proposed to be moved in the meeting; and
  - (iii) other matters relevant to the conducting of the meeting;
- (c) the appointment of persons to act as proxies of eligible levy payers of the Corporation in an annual general meeting and the participation of such proxies in the meeting;

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- (d) the method or methods by which a motion or class of motions is to be taken to have been passed at an annual general meeting of the Corporation;
- (e) if the Corporation is a corporation to which a levy is attached—the method of determining the number of votes that an eligible levy payer of the Corporation who is entitled to vote at an annual general meeting may cast when voting at such a meeting, being a method that has regard to the research component, or marketing component, of any levy (being a levy that is attached to the Corporation) for which the eligible levy payer became liable during, or within 3 months after the end of, the financial year immediately preceding the meeting;
- (f) the adoption of a procedure relating to voting at annual general meetings that will ensure that amounts of levy for which an eligible levy payer became liable remains confidential.

**62 Conduct of annual general meetings**

- (1) An annual general meeting of an R&D Corporation may be attended by:
  - (a) the directors of the Corporation; and
  - (b) the eligible levy payers of the Corporation who are included in the list of levy payers for the financial year in which the meeting is held; and
  - (c) the members of the executive of each of the Corporation's representative organisations; and
  - (d) persons invited by the Corporation to attend the meeting; and
  - (e) such employees and consultants of the Corporation as the Chairperson determines, having regard to the business of the meeting.
- (2) The Chairperson must preside at an annual general meeting at which he or she is present.
- (3) An eligible levy payer of the Corporation is entitled to vote upon any matter to be determined at an annual general meeting if the

eligible levy payer is included in the Corporation's list of levy payers for the financial year in which the meeting is held.

- (4) The Corporation must keep a record of the proceedings of an annual general meeting.

### **63 Motions of no confidence**

- (1) Where a motion of no confidence in an R&D Corporation or in the Chairperson is moved at an annual general meeting:
- (a) the person presiding at the meeting must cease to preside until the motion has been voted on; and
  - (b) an employee of the Corporation selected by the Chairperson is to preside.
- (2) Where a motion of no confidence in the Corporation is passed at the meeting:
- (a) the office of each of the directors (other than the Executive Director) is to be taken to be vacant for the purposes of Part 4 immediately after the meeting; and
  - (b) the Minister must:
    - (i) within one month after the meeting, by notice published in the *Gazette*, terminate the appointment of each of the directors (other than the Executive Director) with effect from a day specified in the notice; and
    - (ii) under section 17, appoint a different Chairperson; and
    - (iii) under section 17, appoint persons, in accordance with Part 4, in the place of the nominated directors whose appointments have been so terminated.
- (3) The fact that a person's appointment as a director has been terminated under subparagraph (2)(b)(i) does not prevent the person being re-appointed under subparagraph (2)(b)(iii).
- (4) Where a motion of no confidence in the Chairperson is passed at the meeting, the Minister must:
- (a) terminate the Chairperson's appointment as soon as possible after the meeting; and
  - (b) within 2 months after the meeting, appoint another person as the Chairperson.

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**64 Notification of motions passed**

- (1) An R&D Corporation must, within one month after the holding of an annual general meeting, provide to each of its representative organisations a copy of the text of all motions passed at the meeting.

## **Division 8—Provisions relating to directors other than Executive Directors**

### **65 Definition**

In this Division:

*director* means a director of an R&D Corporation other than the Executive Director.

### **66 Term of office**

- (1) A director:
  - (a) is to be appointed with effect from the day specified in the instrument of appointment; and
  - (b) holds office, subject to this Act, 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.
- (2) If a 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 director's place until the end of the term.

### **67 Directors hold office on part-time basis**

Directors hold office on a part-time basis.

### **68 Remuneration and allowances of directors**

- (1) A director 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 director is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**69 Terms and conditions of appointment not provided for by Act**

A 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.

**70 Outside employment**

A director must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the director's duties.

**71 Leave of absence**

- (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as the Minister considers appropriate.
- (2) The Chairperson may grant leave of absence to a nominated director on such terms and conditions as the Chairperson considers appropriate.

**72 Resignation**

- (1) A director may resign by written notice signed and delivered to the Minister.
- (2) The resignation takes effect (unless the director's appointment is sooner terminated):
  - (a) if a date of effect is stated in the notice of resignation—at the end of that day; or
  - (b) in any other case—on the day on which the notice is given.

**73 Termination of appointment**

- (1) The Minister may terminate the appointment of the Chairperson or a nominated director:
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the Chairperson or nominated director:
    - (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 Chairperson or nominated director, without reasonable excuse, contravenes section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.
- (2) The Minister may terminate the appointment of the Chairperson if the Chairperson is absent, except with the leave of the Minister, from 3 consecutive meetings.
- (3) The Minister may terminate the appointment of a nominated director of an R&D Corporation if the nominated director is absent, except with the leave of the Chairperson, from 3 consecutive meetings.

#### **74 Deputy Chairperson**

- (1) The Minister must appoint a nominated director as the Deputy Chairperson.
- (2) The Minister must, before making the appointment, consult with the Chairperson.
- (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 director 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) The Deputy Chairperson is to act as the Chairperson:
  - (a) during any vacancy in the office of the Chairperson; or
  - (b) during any period when the Chairperson is unable, for any reason, to perform the duties of the office.

**Part 2** Research and Development Corporations

**Division 8** Provisions relating to directors other than Executive Directors

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Note: For rules that apply to persons acting as the Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

- (7) The Deputy Chairperson has, when acting as Chairperson, all the powers, duties, rights and entitlements of the Chairperson.

## **Division 9—Executive Director**

### **75 Executive Director**

Each R&D Corporation is to have an Executive Director.

### **76 Duties**

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

### **77 Appointment**

- (1) The Executive Director is to be appointed by the Corporation.
- (2) The Chairperson or a nominated director must not be appointed as the Executive Director.
- (3) A person who is a member of the executive of a representative organisation of the Corporation must not be appointed as the Executive Director.
- (4) If the Executive Director becomes a member of the executive of a representative organisation of the Corporation, he or she ceases to hold office as the Executive Director.
- (6) The appointment of a person as Executive Director is not invalid because of a defect or irregularity in connection with the person's appointment.

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**78 Term of appointment etc.**

- (1) The Executive Director:
- (a) is to be appointed with effect from the day specified in the instrument of appointment; and
  - (b) holds office during the Corporation's pleasure.

**79 Executive Director holds office on full-time or part-time basis**

The Executive Director holds office on a full-time basis or on a part-time basis, as specified in the instrument of appointment.

**80 Executive Director not to engage in other paid employment**

The Executive Director must not:

- (a) if the Executive Director holds office on a full-time basis—engage in paid employment outside the duties of the office without the Corporation's approval; or
- (b) if the Executive Director holds office on a part-time basis—engage in paid employment that, in the Corporation's opinion, conflicts or may conflict with the proper performance of the Executive Director's duties.

**81 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.

**82 Leave of absence**

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

**83 Resignation**

- (1) The Executive Director may resign by written notice signed and delivered to the Chairperson.

- (2) The resignation takes effect (unless the Executive Director's appointment is sooner terminated):
  - (a) if a date of effect is stated in the notice of resignation—at the end of that day; or
  - (b) in any other case—on the day on which the notice is given.

### **85 Acting Executive Director**

- (1) The Corporation may appoint a person (other than a director) to act as Executive Director:
  - (a) during a vacancy in the office of Executive Director; 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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The appointment of a person under subsection (1) ceases to have effect if the person resigns the appointment by writing delivered to the Chairperson.

### **86 Exclusion of Executive Director etc. from certain deliberations**

- (1) The Executive Director of an R&D Corporation must not be present during any deliberation of, 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
  - (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; or
  - (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 of an R&D Corporation must not be present during any deliberation of, or take

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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; or
- (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; or
- (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 10—Employees and consultants**

### **87 Employees**

- (1) An R&D 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 are to be determined by the Corporation.
- (3) A person must not be employed by the Corporation on terms and conditions as to remuneration that:
  - (a) in the case of a person employed on a full-time basis—are more favourable than the terms and conditions as to remuneration on which the Executive Director has been appointed; or
  - (b) in the case of a person employed on a part-time basis—are more favourable, when considered on a pro rata basis, than the terms and conditions as to remuneration on which the Executive Director has been appointed.

### **88 Consultants**

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

## Division 11—Miscellaneous

### 89 Committees

- (1) An R&D Corporation may establish committees to assist it in the performance of its functions and the exercise of its powers.
- (2) The Corporation may fix the number of members of a committee required to constitute a quorum at a meeting of the committee.
- (3) Section 54 applies in relation to a member of a committee established by the Corporation as if:
  - (a) a reference to a director of the Corporation were a reference to a member of the committee (whether or not the member of the committee is also a director); and
  - (b) a reference to the Corporation were a reference to the committee.
- (4) A member of a committee established by the Corporation who is not a director 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.
- (5) Such a member is to be paid such allowances as are prescribed.
- (6) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 90 Delegation by R&D Corporation

- (1) An R&D Corporation may, by writing under its common seal, delegate all or any of its powers under this Act (except its powers under section 81) to:
  - (a) a committee of the Corporation; or
  - (b) a director of the Corporation; or
  - (c) an employee of the Corporation.
- (2) In the exercise of a power delegated by the Corporation, the delegate is subject to the directions of the Corporation.



**91 Delegation by Executive Director**

- (1) The Executive Director of an R&D Corporation may, by writing, delegate to an employee of the Corporation all or any of his or her powers under this Act.
- (2) In the exercise of a power delegated by the Executive Director, the delegate is subject to the directions of the Executive Director.

## **Part 4—Selection Committees**

### **Division 1—Establishment etc. of Selection Committees**

#### **122 Presiding Members of Selection Committees**

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

#### **123 Minister may request the establishment of a Selection Committee**

- (1) The Minister must, for the purposes of:
  - (a) appointing the nominated directors of an R&D Corporation; or
  - (b) filling a vacancy caused by the resignation of, or the termination of the appointment of, any such director;give a written notice to the Presiding Member of the Selection Committee for that R&D Corporation:
  - (c) if there is no Selection Committee for the R&D Corporation—requesting the Presiding Member to establish the Selection Committee; and
  - (d) specifying the period within which the Selection Committee must nominate persons, or a person, for appointment.
- (3) If the Minister believes on reasonable grounds that a vacancy of a kind referred to in subsection (1) is about to arise, the Minister may give a notice under subsection (1) before the vacancy arises.

#### **124 Establishment of Selection Committees—R&D Corporations**

- (1) If:
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- (a) the Presiding Member of the Selection Committee for an R&D Corporation (other than an R&D Corporation to which section 125 applies) receives a request under subsection 123(1); and
  - (b) there is no Selection Committee for the Corporation; the Presiding Member must establish the Selection Committee for the purpose of nominating persons for appointment to the Corporation.
- (2) The Selection Committee so established consists of the following members:
  - (a) the Presiding Member;
  - (b) up to 4 other members appointed by the Minister on the nomination of the Presiding Member.
- (2A) For the purposes of nominating the other members, the Presiding Member must:
  - (a) consult with each of the Corporation's representative organisations; and
  - (b) have regard to the desirability of reflecting diversity, including a diversity of expertise, experience and gender, among the nominees.
- (3) Subject to subsections (4) and (5), the Minister must appoint the persons nominated by the Presiding Member.
- (4) Where the Minister is not satisfied that a person nominated for appointment should be appointed, the Minister may reject the nomination and request another nomination.
- (5) Where the Minister is satisfied that nominations for membership of a Selection Committee, as provided for under paragraph (2)(b) or subsection (4), will not be made within a reasonable time, the Minister may appoint persons to be members of the Selection Committee as if they had been so nominated.
- (6) The performance of the function, and the exercise of the powers, of a Selection Committee for an R&D Corporation are not affected merely because of vacancies in the Selection Committee's membership.

**125 Establishment of Selection Committees—predominantly Commonwealth funded R&D Corporations**

- (1) This section applies to an R&D Corporation if the regulations declare the Corporation to be a predominantly Commonwealth funded R&D Corporation.
- (2) If a request is made under subsection 123(1) to the Presiding Member of the Selection Committee for the R&D Corporation:
  - (a) if there is no Selection Committee for the R&D Corporation—the Presiding Member must establish the Selection Committee for the purpose of nominating persons for appointment to the Corporation; and
  - (b) the Minister may appoint up to 4 persons as members of that Committee for the purposes of this paragraph; and
  - (c) the Minister must inform the Presiding Member of any such appointment.
- (3) If the Minister has not appointed 4 persons under paragraph (2)(b), the Minister may request the Presiding Member to nominate to the Minister persons for appointment to the Selection Committee.
- (4) The Selection Committee so established consists of the following members:
  - (a) the Presiding Member;
  - (b) up to 4 other members, being:
    - (i) the members (if any) appointed by the Minister under paragraph (2)(b); and
    - (ii) such other members appointed by the Minister on the nomination of the Presiding Member.
- (4A) For the purposes of nominating persons for appointment to the Selection Committee, the Presiding Member must:
  - (a) consult with each of the Corporation’s representative organisations; and
  - (b) have regard to the desirability of reflecting diversity, including a diversity of expertise, experience and gender, among the nominees.

- (5) Subject to subsections (6) and (7), the Minister must appoint the persons nominated by the Presiding Member.
- (6) Where the Minister is not satisfied that a person nominated for appointment should be appointed, the Minister may reject the nomination and request another nomination.
- (7) Where the Minister is satisfied that nominations for membership of a Selection Committee, as provided for under subparagraph (4)(b)(ii) or subsection (6), will not be made within a reasonable time, the Minister may appoint persons to be members of the Selection Committee as if they had been so nominated.
- (8) The performance of the function, and the exercise of the powers, of a Selection Committee for an R&D Corporation to which this section applies are not affected merely because of vacancies in the Selection Committee's membership.

### **127 Function of Selection Committees**

The function of a Selection Committee for an R&D Corporation is to nominate, at the request of the Minister, persons to the Minister for appointment as nominated directors of the R&D Corporation.

### **128 Powers of Selection Committees**

A Selection Committee has power to do all things that are necessary or convenient to be done in connection with the performance of its function.

### **129 Presiding Member to abolish Selection Committee**

The Presiding Member of a Selection Committee must abolish the Selection Committee at the later of the following times:

- (a) when the term of office of the Presiding Member in which the Selection Committee was established ends (disregarding any term for which the Presiding member is reappointed);
- (b) if, when that term ends, the Selection Committee is part way through a selection process, when that selection process is complete.

## Division 2—The selection process

### 130 Nominations to be made by Selection Committees

- (1) A Selection Committee for an R&D Corporation must, within the period specified by the Minister in a request under section 123, give to the Minister a written notice nominating the person or persons it considers suitable for appointment to the R&D Corporation, having regard to the desirability of reflecting diversity, including a diversity of expertise, experience and gender, among the nominees.
- (2) For the purpose of enabling it to make a nomination, the Selection Committee:
  - (a) must invite nomination of persons for appointment by advertisements placed in a newspaper that circulates throughout Australia; and
  - (b) must invite nomination of persons for appointment from the representative organisation or representative organisations of the R&D Corporation; and
  - (c) may invite nomination of persons for appointment in any other way it considers appropriate; and
  - (d) must make a list of persons the Selection Committee considers suitable for nomination and the details of their expertise and experience.
- (3) A notice under subsection (1) is to include a statement:
  - (a) containing, in respect of each nominee:
    - (i) details of the nominee's qualifications and experience; and
    - (ii) any other information, relating to the nominee, that the Selection Committee considers will assist the Minister in deciding whether or not to appoint the nominee; and
  - (b) specifying how, in the Selection Committee's opinion, the nomination or nominations will best ensure that the directors of the R&D Corporation concerned collectively possess:
    - (i) an appropriate balance of expertise in accordance with subsection 131(2); and

- (ii) experience in board affairs; and
- (iii) appropriate diversity.

### **131 Selecting persons for nomination**

- (1) A Selection Committee must not nominate a person for appointment to an R&D Corporation unless the person appears to the Selection Committee to be suitably qualified for appointment because of expertise in one or more of the following fields:
  - (a) commodity production;
  - (b) commodity processing;
  - (c) commodity marketing;
  - (d) conservation of natural resources;
  - (e) management of natural resources;
  - (f) science;
  - (g) technology and technology transfer;
  - (h) environmental and ecological matters;
  - (i) economics;
  - (j) administration of research and development;
  - (k) finance;
  - (l) business management;
  - (m) communication;
  - (n) public administration.
- (1A) Before making a nomination for appointment to an R&D Corporation, the Selection Committee must consult the Chairperson (if any) of the Corporation, on the appropriate balance of expertise and experience of directors of the Corporation that, in the Chairperson's opinion, would best ensure the effective performance of the Corporation's functions.
- (2) In making a nomination, the Selection Committee must choose from the available candidates the person who will best ensure that the directors of the R&D Corporation concerned collectively possess:
  - (a) an appropriate balance of expertise in as many as possible of the fields referred to in subsection (1), having regard to the particular primary industry or class of primary industries in

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- respect of which the R&D Corporation or R&D Council is established; and
- (b) experience in board affairs.
- (3) A person may be nominated by a Selection Committee even if, on one or more previous occasions:
- (a) a proposal for a nomination for the person's appointment to an R&D Corporation has been rejected at a meeting of a Selection Committee; or
- (b) the Minister has rejected such a nomination.
- (4) The Selection Committee must not invite nominations under paragraphs 130(2)(a) to (c) in relation to the appointment if:
- (a) the Selection Committee is satisfied that a person listed within the previous 12 months under paragraph 130(2)(d) is suitable for nomination by the Selection Committee; and
- (b) the person has not been included on a list of persons given to the Minister under paragraph 132(2)(b) in relation to the appointment.

**132 Selection Committee to make only one nomination**

- (1) Subject to section 134, the Selection Committee is to nominate only one person in respect of each appointment to be made by the Minister.
- (2) The Selection Committee must also provide the Minister with:
- (a) details of the expertise and experience of the nominees; and
- (b) a list of any other persons the Selection Committee considers suitable for nomination and the details of their expertise and experience.

**133 Minister may request further information**

Where the Minister considers the statement provided by a Selection Committee in a notice under subsection 130(3) to be inadequate, the Minister may give to the Presiding Member of the Selection Committee a written notice requesting the Selection Committee to provide the Minister with further specified information within the period specified in the notice.



**134 Minister may reject nomination**

- (1) Where the Minister is not satisfied that a nominee or any other person listed by a Selection Committee is suitable for appointment to an R&D Corporation, the Minister may give to the Presiding Member of the Selection Committee a written notice requesting another nomination within a specified period.
- (2) For the purposes of this Part (other than sections 124 and 125):
  - (a) such a notice is to be taken to be a notice under section 123;  
and
  - (b) the period specified in the notice is to be taken to be the period specified in a notice under section 123.

## Division 3—Preliminary selection arrangements

### 135 Selection arrangements for proposed R&D Corporations

- (1) Where:
  - (a) regulations declaring the establishment of an R&D Corporation (in this section called the *proposed Corporation*) under section 8 have been made but are not yet in force; and
  - (b) the Minister has declared under section 7 one or more specified organisations to be representative organisations in relation to the proposed Corporation;then:
  - (c) the Minister may appoint a person under section 122 to be the Presiding Member of the Selection Committee for the proposed Corporation; and
  - (d) the Minister may appoint persons to be directors of the proposed Corporation, but such appointments are only to take effect when the regulations declaring the establishment of the proposed Corporation come into force; and
  - (e) this Part applies in relation to appointments of nominated directors of the proposed Corporation as if the proposed Corporation were an R&D Corporation.
- (2) The Commonwealth 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, in relation to the selection of directors for appointment to the proposed Corporation before the regulations declaring the establishment of the proposed Corporation as an R&D Corporation come into force.
- (3) When the regulations come into force:
  - (a) the R&D Corporation thus established is liable to reimburse the Commonwealth for any amounts the Commonwealth has paid as a result of a liability arising under subsection (2); and
  - (b) any liability arising under subsection (2) in respect of which the Commonwealth has yet to make payments is to be taken to be transferred to the R&D Corporation and to be a liability

incurred by the Corporation in the performance of its functions.

## **Division 4—Other provisions relating to Selection Committees**

### **138 Applied provisions and disclosure of interest provisions**

- (1) Divisions 6 and 8 of Part 2 (other than subsection 48(2) and sections 53, 65, 66 and 74) apply in relation to a Selection Committee, the Presiding Member of the Selection Committee and the members of the Selection Committee as if:
  - (a) references in those Divisions to an R&D Corporation were references to the Selection Committee; and
  - (b) references in those Divisions to the Chairperson of an R&D Corporation were references to the Presiding Member; and
  - (c) references in those Divisions to a director of an R&D Corporation were references to a member of the Selection Committee; and
  - (d) the reference in subsection 47(1) to the functions of an R&D Corporation were a reference to the function of the Selection Committee; and
  - (e) the reference in subsection 48(3) to the Deputy Chairperson of an R&D Corporation were omitted; and
  - (f) the references in section 73 to a nominated director of an R&D Corporation were references to a member of the Selection Committee; and
  - (g) the reference in paragraph 73(1)(c) of this Act to section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997* were a reference to subsections (2), (3), (4) and (5) of this section.
- (2) If:
  - (a) a member of the Selection Committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Committee; and
  - (b) the interest could conflict with the proper performance of the member's duties in relation to the matter;

the member must disclose the nature of the interest at a meeting of the Committee as soon as practicable after the member knows the relevant facts.

- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Committee determines otherwise, the member must not:
  - (a) be present during any deliberation of the Committee in relation to the matter; or
  - (b) take part in any decision of the Committee in relation to the matter.
- (5) A member who has a direct or indirect pecuniary interest in a matter to which a disclosure relates must not:
  - (a) be present during any deliberation of the Committee for the purpose of making a determination under subsection (4); or
  - (b) take part in the Committee's making of the determination.

### **139 Employees**

- (1) The Presiding Member of a Selection Committee may, on behalf of the Selection Committee, employ persons to perform administrative and clerical services in connection with the performance of its function and the exercise of its powers.
- (2) The Presiding Member of a Selection Committee for an R&D Corporation must not employ a person who is an employee of the R&D Corporation.
- (4) The terms and conditions of employment are to be determined by the Selection Committee.

### **140 Consultants**

- (1) The Presiding Member of a Selection Committee may, on behalf of the Selection Committee, engage persons having suitable qualifications and experience as consultants to the Selection Committee to assist it in identifying a suitable person or persons for nomination.

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- (2) The terms and conditions of engagement are to be determined by the Selection Committee.

**141 Annual reports of Selection Committees**

- (1) The Presiding Member of the Selection Committee for an R&D Corporation must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of the operations, during the immediately preceding financial year, of the Selection Committee (if any) established by the Presiding Member or another person who was the Presiding Member of the Selection Committee for the R&D Corporation.
- (1AA) Without limiting subsection (1), a report for a financial year must include an assessment of the processes undertaken by the Selection Committee (if any) for the R&D Corporation to identify the widest possible field of available candidates for nomination for appointment to the Corporation.
- (1A) A report for a financial year may, subject to agreement between the Presiding Member and the Chairperson of the R&D Corporation concerned, be included, as a discrete part, in the Corporation's annual report for that financial year.
- (2) If subsection (1A) 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 has received the report.
- (3) Where the first appointment of a Presiding Member of a Selection Committee for an R&D Corporation does not commence on 1 July, subsection (1) has effect in relation to the period commencing on the day the appointment commences and ending on the next 30 June as if:
- (a) where 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.
- (4) In this section:

***R&D Corporation*** includes a proposed Corporation within the meaning of section 135.

## **Part 5—Miscellaneous**

### **142 Co-ordination meetings**

- (1) The Minister must, at least once in each financial year:
  - (a) cause a co-ordination meeting to be held at the time and place determined by the Minister; and
  - (b) nominate the Chairperson of an R&D Corporation to preside at the meeting.
- (2) Co-ordination meetings are held for the purposes of considering, and, as far as practicable, co-ordinating, R&D activities pursued, or proposed to be pursued, by the R&D Corporations.
- (3) Each co-ordination meeting is to be attended by the Chairperson of each R&D Corporation.
- (4) If a Chairperson of an R&D Corporation is unable to attend, a person who is nominated by that Corporation is to attend instead.
- (7) Where the Chairperson nominated by the Minister to preside at a co-ordination meeting is unable to attend that meeting, the persons attending the meeting are to elect one of their number to preside.
- (8) The person presiding at a co-ordination meeting may give directions regarding the procedure to be followed at or in connection with the meeting.
- (9) At a co-ordination meeting:
  - (a) all questions are to be decided by a majority of votes of the persons present and voting; and
  - (b) the person presiding has a deliberative vote and, if necessary, also has a casting vote.

### **143 Minister may give directions**

- (1) The Minister may give to an R&D Corporation written directions as to the performance of its functions and the exercise of its powers.



- (2) Subject to subsection (3), particulars of any directions given in a financial year must be included in the annual report of the R&D Corporation concerned in that year.
- (3) Subsection (2) does not apply if:
  - (a) the Minister, on the recommendation of the R&D Corporation concerned, determines, in writing, that compliance with the subsection would, or would be likely to, prejudice commercial activities carried on by or on behalf of the Corporation; or
  - (b) the Minister determines, in writing, that compliance with the subsection would be contrary to the public interest.

### **143A Delegations**

The Minister may, in writing, delegate all or any of his or her powers and functions under this Act (other than section 143) to:

- (a) the Secretary; or
- (b) an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position, in the Department.

### **144 Transfer of assets etc. on the establishment of an R&D Corporation**

- (1) Where an R&D Corporation is established, the Minister may cause to be transferred to the Corporation any assets held by the Commonwealth that the Minister considers appropriate to be transferred to the Corporation for the performance of its functions and the exercise of its powers.
- (3) Where an asset held by the Commonwealth is transferred to an R&D Corporation under this section, the Corporation becomes liable to pay and discharge all debts, liabilities and obligations of the Commonwealth (if any) that existed in respect of the asset immediately before the transfer.

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**145 Transfer of assets etc. on cessation of an R&D Corporation**

- (1) Where an R&D Corporation ceases to exist as a result of the repeal of regulations made under section 8 declaring the establishment of the Corporation, all the assets held by the Corporation immediately before the cessation are, on the cessation, to be taken to have been transferred to the Commonwealth.
- (2) Before disposing of any of the assets so transferred, the Commonwealth must have regard to the views of each of the representative organisations concerning the disposal.
- (4) Where an asset held by an R&D Corporation is transferred to the Commonwealth under this section, the Commonwealth becomes liable to pay and discharge all debts, liabilities and obligations of the Corporation (if any) that existed in respect of the asset immediately before the transfer.

**146 Alteration of agreements and instruments on establishment of an R&D Corporation**

Where an R&D Corporation is established, the Minister may, by writing signed by him or her, declare that specified agreements or specified instruments:

- (a) to which the Commonwealth or the Commonwealth Government is a party; and
  - (b) that, immediately before the establishment of the Corporation, related to research and development in connection with the primary industry or class of primary industries in respect of which the Corporation is established;
- have effect, after the establishment of the Corporation, as if:
- (c) the Corporation were substituted for the Commonwealth or the Commonwealth Government, as the case may be, as a party to the agreements or instruments; and
  - (d) any reference in the agreements or instruments to the Commonwealth were (except in relation to matters that occurred before the establishment of the Corporation) a reference to the Corporation;

and, where the Minister makes such a declaration, the agreements or instruments have effect accordingly.

**147 Alteration of agreements and instruments on cessation of an R&D Corporation**

Where an R&D Corporation ceases to exist as a result of the repeal of regulations made under section 8 declaring the establishment of the Corporation, all the agreements and instruments to which the Corporation was a party immediately before the cessation have effect, after the cessation, as if:

- (a) the Commonwealth were substituted for the Corporation as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to the Corporation were (except in relation to matters that occurred before the cessation) a reference to the Commonwealth.

**148 Renaming of R&D Corporations**

The regulations may change the name of an R&D Corporation, and, when such regulations come into operation, subsection 25B(1) of the *Acts Interpretation Act 1901* applies as if the regulations were an Act.

**149 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, 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.
- (2) Before making a regulation for the purposes of section 8 establishing an R&D Corporation in respect of a primary industry or class of primary industries, the Governor-General is to take into consideration any relevant recommendation made to the Minister by any of the organisations that, in the Minister's opinion, represent that primary industry or class of primary industries.
- (3) Before making a regulation for the purposes of section 56 declaring that Division 7 of Part 2 applies to an R&D Corporation, the Governor-General is to take into consideration any relevant

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recommendation made to the Minister by any of the Corporation's representative organisations.

**150 Orders**

- (1) 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 must not be made prescribing any penalty.
- (3) An order is a legislative instrument.

**Endnote 1—About the endnotes**

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

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

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

**Abbreviation key—Endnote 2**

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

**Legislation history and amendment history—Endnotes 3 and 4**

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

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

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

**Uncommenced amendments—Endnote 5**

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

## Endnotes

Endnote 1—About the endnotes

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### **Modifications—Endnote 6**

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

### **Misdescribed amendments—Endnote 7**

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

### **Miscellaneous—Endnote 8**

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

**Endnote 2—Abbreviation key**

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

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Primary Industries and Energy Research and Development Act 1989	17, 1990	17 Jan 1990	ss. 9, 26(2), 31(2), 36(2), 39(2), 92–121, 156 and Schedule 1: 1 July 1990 Remainder: Royal Assent	
Primary Industries and Energy Legislation Amendment Act 1990	134, 1990	28 Dec 1990	Part 7 (ss. 34–37): 1 Oct 1990 Remainder: Royal Assent	s. 36(2)
Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991	26, 1991	1 Mar 1991	1 July 1991 ( <i>see</i> s. 2)	s. 5
Primary Industries and Energy Legislation Amendment Act 1991	31, 1991	20 Mar 1991	20 Mar 1991	—
Primary Industries and Energy Research and Development Amendment Act 1991	109, 1991	27 June 1991	1 July 1991	—
Primary Industries Legislation Amendment Act (No. 2) 1991	125, 1991	27 Aug 1991	Part 5 (ss. 10–12): Royal Assent ( <i>a</i> )	—
Fisheries Legislation (Consequential Provisions) Act 1991	163, 1991	10 Nov 1991	ss. 3–22: 3 Feb 1992 ( <i>see</i> <i>Gazette</i> 1992, No. GN1) Remainder: Royal Assent	—
<b>as amended by</b>				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 3 (item 25): 10 Nov 1991 ( <i>b</i> )	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Primary Industries and Energy Legislation Amendment Act (No.2) 1992	59, 1992	22 June 1992	22 June 1992	—
Wool Legislation (Repeals and Consequential Provisions) Act 1993	65, 1993	12 Nov 1993	1 Dec 1993 ( <i>see</i> s. 2 and <i>Gazette</i> 1993, No. GN46)	ss. 31–42
Primary Industries and Energy Legislation Amendment Act 1993	94, 1993	16 Dec 1993	Parts 11 and 12 (ss. 47–65): 1 Jan 1994 s. 69(1)(b): 1 July 1989 Remainder: Royal Assent	—
Primary Industries and Energy Legislation Amendment Act (No. 2) 1994	129, 1994	21 Oct 1994	s. 3: Royal Assent ( <i>c</i> )	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (item 88): ( <i>d</i> )	—
Primary Industries and Energy Legislation Amendment Act (No. 1) 1997	22, 1997	7 Apr 1997	Schedule 5 (item 4): 17 Jan 1990 ( <i>e</i> )	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 1088–1096): 1 Jan 1998 ( <i>f</i> )	—
Wheat Marketing Amendment Act 1997	194, 1997	8 Dec 1997	Schedule 1 (Part 1 [items 1–3]): Royal Assent ( <i>g</i> ) Schedule 1 (Part 3 [items 138, 139]): 1 July 1999 ( <i>g</i> )	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
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 3 (items 1–7): 1 July 1999 ( <i>h</i> ) Schedule 3 (item 8): 1 Jan 2000	Sch. 3 (items 7, 8)
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 10 (items 110–113): 13 Mar 2000 ( <i>see Gazette</i> 2000, No. S114) ( <i>i</i> )	—
Primary Industries and Energy Research and Development Amendment Act 2001	62, 2001	28 June 2001	1 July 2001	Sch. 1 (items 3, 6)
Plant Health Australia (Plant Industries) Funding Act 2002	80, 2002	8 Oct 2002	ss. 1 and 2: Royal Assent Remainder: 1 Jan 2003	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	Schedule 2 (items 151–156, 174): Royal Assent	Sch. 2 (item 174)
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Schedule 5 (items 132–136) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11)
Primary Industries and Energy Research and Development Amendment Act 2007	71, 2007	28 May 2007	28 May 2007	Sch. 1 (items 33, 35)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007	123, 2007	28 June 2007	Schedule 1: 29 June 2007 Schedule 2: 3 Sept 2007 (see F2007L02639) Remainder: Royal Assent	—
Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008	66, 2008	30 June 2008	Schedule 2 (items 12–14): 1 July 2008 (see s. 2(1))	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 912, 913) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Schedule 1 (items 90–119): 29 June 2012	Sch. 1 (items 114–119)
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2013	17, 2013	27 Mar 2013	Schedule 6 (item 57): 28 Mar 2013	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 3 (items 132, 343) and Schedule 4 (items 25–27): Royal Assent	Sch. 3 (item 343)
Rural Research and Development Legislation Amendment Act 2013	146, 2013	13 Dec 2013	Sch 1 (items 5–80), Sch 2 (items 12–14), Sch 3, 4, 6, Sch 7 (item 3), Sch 8 (items 1–21), Sch 9 (items 2–10) and Sch 10: Royal Assent Sch 5 (items 8–11): (j)	Sch 6 (item 26)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 6 (items 17, 18, 23): 24 June 2014	Sch 6 (item 23)

## Endnotes

### Endnote 3—Legislation history

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- (a) The *Primary Industries Research and Development Act 1989* was amended by Part 5 (sections 10–12) only of the *Primary Industries Legislation Amendment Act (No. 2) 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Fisheries Legislation (Consequential Provisions) Act 1991* was amended by Schedule 3 (item 25) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (c) The *Primary Industries Research and Development Act 1989* was amended by section 3 only of the *Primary Industries and Energy Legislation Amendment Act (No 2) 1994*, 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 *Primary Industries Research and Development Act 1989* was amended by Schedule 2 (item 88) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (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 88 is taken to have commenced immediately after the commencement of section 20 of the *Fisheries Legislation (Consequential Provisions) Act 1991*. Section 20 commenced on 3 February 1992 (see *Gazette* 1992, No. GN1).
- (e) The *Primary Industries Research and Development Act 1989* was amended by Schedule 5 (item 4) only of the *Primary Industries and Energy Legislation Amendment Act (No. 1) 1997*, subsection 2(4) of which provides as follows:
- (4) Item 4 of Schedule 5 is taken to have commenced on the day on which the *Primary Industries and Energy Research and Development Act 1989* received the Royal Assent.
- The *Primary Industries Research and Development Act 1989* received the Royal Assent on 17 January 1990.
- (f) The *Primary Industries Research and Development Act 1989* was amended by Schedule 2 (items 1088–1096) only 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*.
- (g) The *Primary Industries Research and Development Act 1989* was amended by Schedule 1 (Part 1 [items 1–3] and Part 3 [items 138, 139]) only of the *Wheat Marketing Amendment Act 1997* subsections 2(1) and (5) of which provide as follows:
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## Endnote 3—Legislation history

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (5) Part 3 of Schedule 1 commences on 1 July 1999.
- (h) The *Primary Industries Research and Development Act 1989* was amended by Schedule 3 (items 1–6) only of the *Primary Industries Levies and Charges (Consequential Amendments) Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the commencement of section 1 of the *Primary Industries (Excise) Levies Act 1999*.
- (2) The following provisions commence on 1 January 2000:
- (c) Part 3 of Schedule 3;
- (i) The *Primary Industries Research and Development Act 1989* was amended by Schedule 10 (items 110–113) 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.
- (j) Subsection 2(1) (items 3 and 4) of the *Rural Research and Development Legislation Amendment Act 2013* 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.

<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>
3. Schedule 5, items 1 to 7	The day this Act receives the Royal Assent.	13 December 2013
4. Schedule 5, items 8 to 11	Immediately after the commencement of the provision(s) covered by table item 3.	13 December 2013

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Title .....	am No 146, 2013
<b>Part 1</b>	
s 1 .....	am No 146, 2013
s. 3 .....	am. No. 94, 1993
	rs No 146, 2013
s. 4 .....	am. No. 134, 1990; Nos. 109 and 163, 1991; No. 59, 1992; Nos. 65 and 94, 1993; No. 194, 1997; No. 32, 1999; No. 8, 2005; No. 101, 2006; No. 71, 2007; No. 66, 2008; No 146, 2013
hdg to s 5 .....	am No 146, 2013
s. 5 .....	am. No. 134, 1990; No. 194, 1997; No. 32, 1999; No. 66, 2008; No 146, 2013
s 5A.....	ad No 146, 2013
s 6 .....	am No 146, 2013
s 7 .....	am No 146, 2013
<b>Part 2</b>	
<b>Division 1</b>	
Note to s. 10(1) .....	ad. No. 152, 1997
s. 11 .....	am. No. 71, 2007; No 146, 2013
s. 12 .....	am. No. 152, 1997; No 146, 2013
hdg to s 13.....	rs No 146, 2013
s 13 .....	am No 146, 2013
hdg to s 14.....	rs No 146, 2013
s 14 .....	am No 146, 2013
<b>Division 2</b>	
s 16 .....	am. No. 109, 1991; No. 65, 1993; No. 71, 2007
s 17 .....	am No 109, 1991; No 65, 1993; No 71, 2007; No 146, 2013
<b>Division 3</b>	
s. 20 .....	am. No. 31, 1991
s. 24 .....	am. No. 71, 2007
s. 25 .....	am. No. 163, 1991 (as am. by No. 43, 1996); No. 94, 1993; No. 32, 1999; No. 123, 2007; No 146, 2013

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 26 .....	am. No. 31, 1991 rs No 146, 2013
<b>Division 4</b>	
s. 28 .....	am. No. 94, 1993; No. 152, 1997; No. 71, 2007; No 146, 2013
s. 29 .....	am. No. 31, 1991
<b>Division 5</b>	
s. 30 .....	am. Nos. 109 and 163, 1991; No. 65, 1993; No 146, 2013
Note to s. 30(1) .....	ad. No. 80, 2002
hdg to s 30A.....	rs No 146, 2013
s. 30A.....	ad. No. 163, 1991 am. No. 129, 1994; No. 102, 1998; No. 82, 2012; No 146, 2013
s. 30B.....	ad. No. 109, 1991 am. No. 125, 1991 rep. No. 65, 1993 ad No 146, 2013 am No 146, 2013
s. 31 .....	am. No. 134, 1990; No. 94, 1993; No. 32, 1999; No. 62, 2001; No 146, 2013
Heading to s. 32 .....	rs. No. 82, 2012
s. 32 .....	am. No. 94, 1993; No. 62, 2001; No. 101, 2006; No. 82, 2012
s. 33 .....	am. No. 94, 1993; No. 123, 2007; No. 82, 2012; No 146, 2013
s. 33A.....	ad. No. 94, 1993 am. No. 32, 1999 rep. No. 123, 2007 ad No 146, 2013
s 33B.....	ad No 146, 2013
s 33C.....	ad No 146, 2013
s. 34 .....	am. No. 163, 1991; No 146, 2013
s 35 .....	am No 146, 2013
s 36 .....	am No 146, 2013
s. 37 .....	am. No. 163, 1991; No 146, 2013
s. 38 .....	am. No. 163, 1991; No. 43, 1996; No 146, 2013
s 39 .....	am No 146, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 40 .....	am No 146, 2013
ss. 41–43 .....	am. No. 8, 2005 <sup>1</sup>
s. 46A.....	ad. No. 8, 2005
<b>Division 6</b>	
s. 54 .....	rep. No. 152, 1997
<b>Division 7</b>	
s. 56 .....	rs. No. 109, 1991; No. 65, 1993
s. 57 .....	am. No. 109, 1991; No. 59, 1992; No. 65, 1993
s. 58 .....	am. No. 109, 1991; No. 65, 1993
s. 60 .....	am. No. 109, 1991; No. 65, 1993; No 146, 2013
s. 61 .....	am. No. 59, 1992; No. 65, 1993; No 146, 2013
s. 63 .....	am. No. 71, 2007
s. 64 .....	am. No. 109, 1991; No. 65, 1993
<b>Division 8</b>	
s. 66 .....	am. No. 109, 1991; No. 71, 2007
s. 71 .....	am. No. 71, 2007
s. 73 .....	am. No. 152, 1997; No. 156, 1999
s 74 .....	am No 31, 2014
Note to s 74(6) .....	ad No 31, 2014
<b>Division 9</b>	
Heading to Div. 9 of Part 2 .....	am. No. 109, 1991; No. 65, 1993
s. 75 .....	rs. No. 109, 1991; No. 65, 1993
s. 77 .....	am. No. 71, 2007
s. 81 .....	am. No. 102, 1998
ss. 77, 78 .....	am. No. 109, 1991
s. 84 .....	rep. No. 71, 2007
s. 85 .....	am. No. 102, 1998; No. 46, 2011
Note to s. 85(1) .....	ad. No. 46, 2011
<b>Division 10</b>	
s. 87 .....	am. No. 109, 1991; No. 65, 1993
<b>Division 11</b>	
s. 89A.....	ad. No. 109, 1991



## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 65, 1993
ss. 89B, 89C.....	ad. No. 125, 1991
	rep. No. 65, 1993
s. 90 .....	am. No. 102, 1998
Pt 3.....	rep No 146, 2013
s 92 .....	rep No 146, 2013
s. 93 .....	am. No. 71, 2007
	rep No 146, 2013
s 94 .....	rep No 146, 2013
s 95 .....	rep No 146, 2013
s 96 .....	rep No 146, 2013
s. 97 .....	am. No. 71, 2007
	rep No 146, 2013
s. 98 .....	am. No. 94, 1993; No. 71, 2007
	rep No 146, 2013
s 99 .....	rep No 146, 2013
s. 100 .....	am. No. 152, 1997; No. 156, 1999; No. 71, 2007
	rep No 146, 2013
s. 101 .....	am. No. 31, 1991
	rep No 146, 2013
s 102 .....	rep No 146, 2013
s. 103 .....	am. No. 31, 1991
	rep No 146, 2013
s 104 .....	rep No 146, 2013
s. 105 .....	am. No. 71, 2007
	rep No 146, 2013
s 106 .....	rep No 146, 2013
s 107 .....	rep No 146, 2013
s. 108 .....	am. No. 82, 2012
	rep No 146, 2013
Note to s. 108(1) .....	ad. No. 80, 2002
	rep No 146, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 109 .....	rep No 146, 2013
Heading to s. 110 .....	rs. No. 82, 2012 rep No 146, 2013
s. 110 .....	am. No. 101, 2006; No. 82, 2012 rep No 146, 2013
s 111 .....	rep No 146, 2013
s. 112 .....	am. No. 82, 2012 rep No 146, 2013
s 113 .....	rep No 146, 2013
s 114 .....	rep No 146, 2013
s 115 .....	rep No 146, 2013
s. 116 .....	am. No. 163, 1991 rep No 146, 2013
s 117 .....	rep No 146, 2013
s 118 .....	rep No 146, 2013
s 119 .....	rep No 146, 2013
s 120 .....	rep No 146, 2013
s 121 .....	rep No 146, 2013
<b>Part 4</b>	
<b>Division 1</b>	
s 122 .....	am No 146, 2013
s 123 .....	am No 71, 2007; No 146, 2013
s 124 .....	am No 71, 2007; No 146, 2013
s 125 .....	am No 71, 2007; No 146, 2013
s 126 .....	am No 71, 2007 rep No 146, 2013
s 127 .....	am No 146, 2013
s 129 .....	rs No 146, 2013
<b>Division 2</b>	
s. 130 .....	am. No. 71, 2007; No 146, 2013
s. 131 .....	am. No. 94, 1993; No. 71, 2007; No 17 and 146, 2013
s 132 .....	am No 146, 2013

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 134 .....	am No 146, 2013
<b>Div 3</b>	
s 135 .....	am No 146, 2013
s 136 .....	rep No 146, 2013
s 137 .....	rep No 146, 2013
<b>Division 4</b>	
Heading to s. 138 .....	am. No. 152, 1997
s. 138 .....	am. No. 152, 1997; No. 156, 1999
s 139 .....	am No 146, 2013
s. 141 .....	am. No. 31, 1991; No. 71, 2007; No 146, 2013
<b>Part 5</b>	
s. 142 .....	am. No. 31, 1991; No 146, 2013
s 143 .....	am No 146, 2013
s 143A.....	ad No 146, 2013
hdg to s 144.....	am No 146, 2013
s 144 .....	am No 146, 2013
hdg to s 145.....	am No 146, 2013
s 145 .....	am No 146, 2013
hdg to s 146.....	am No 146, 2013
s 146 .....	am No 146, 2013
hdg to s 147.....	am No 146, 2013
s 147 .....	am No 146, 2013
s. 147A.....	ad. No. 109, 1991 rep. No. 65, 1993
hdg to s 148.....	am No 146, 2013
s 148 .....	am No 146, 2013
s 149 .....	am No 146, 2013
s. 150 .....	am. No. 103, 2013
Pt 6.....	rep No 146, 2013
s 151 .....	rep No 146, 2013
s 152 .....	rep No 146, 2013
s 153 .....	rep No 146, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 154 .....	rep No 146, 2013
s 155 .....	rep No 146, 2013
s. 156 .....	am. No. 103, 2013
	rep No 146, 2013
s. 157 .....	rep. No. 103, 2013
Schedule 1.....	rep. No. 103, 2013
Schedule 2.....	am. No. 22, 1997
	rep. No. 103, 2013

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**