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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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

No. , 2000

(Agriculture, Fisheries and Forestry)

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

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1 **A Bill for an Act to deal with matters consequential**
2 **on the enactment of the *Horticulture Marketing and***
3 ***Research and Development Services Act 2000*, and**
4 **for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

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

Section 2

2 Commencement

(1) Subject to this section, this Act commences at the same time as Part 2 of the *Horticulture Marketing and Research and Development Services Act 2000*.

(2) Schedules 1 (repeals) and 2 (consequential amendments) commence on the transfer day, immediately after the transfer of assets, liabilities and staff under Part 2.

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

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

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

(b) the time immediately after the *Horticulture Marketing and Research and Development Services Act 2000* receives the Royal Assent.

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

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

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

(b) the time immediately after the *Horticulture Marketing and Research and Development Services Act 2000* receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act:

This Act deals with the transition from the Australian Horticultural Corporation, Horticultural Research and Development Corporation and the Australian Dried Fruits Board to new bodies. The new

Section 4

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bodies are those declared under the *Horticulture Marketing and Research and Development Services Act 2000*.

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

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

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

The *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987* are repealed once the assets, liabilities and staff of the bodies established by those Acts have been transferred to the new industry services body (see Schedule 1 to this Act).

19 **4 Definitions**

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

ADF Trust Amount has the meaning given by section 17.

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

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

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

Section 4

1 **award** has the same meaning as in the *Workplace Relations Act*
2 *1996*.

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

5 (a) the period that is, immediately before the transfer day, the
6 employee's period of service for the purposes of the Long
7 Service Leave Act; and

8 (b) the period, during which the employee continues to be an
9 employee of the industry services body.

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

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

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

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

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

24 **law** means:

25 (a) a law of the Commonwealth or of a State or Territory; or

26 (b) regulations or any other instrument (other than an award,
27 determination or industrial agreement) made under such a
28 law.

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

Section 4

- 1 **Long Service Leave Act** means the *Long Service Leave*
2 (*Commonwealth Employees*) *Act 1976*, as in force immediately
3 before the transfer day.
- 4 **Maternity Leave Act** means the *Maternity Leave (Commonwealth*
5 *Employees) Act 1973*, as in force immediately before the transfer
6 day.
- 7 **post-commencement long service leave rights**, in relation to an
8 employee, means any long service leave rights the employee
9 acquires on or after the transfer day under an award, determination,
10 industrial agreement or law (other than this Act).
- 11 **previous employer**, in relation to a transferred employee, means
12 the statutory authority that employed the employee immediately
13 before the transfer day.
- 14 **SRC Act** means the *Safety, Rehabilitation and Compensation Act*
15 *1988*, as in force immediately before the transfer day.
- 16 **statutory authority** means:
17 (a) the Australian Horticultural Corporation; or
18 (b) the Horticultural Research and Development Corporation; or
19 (c) the Australian Dried Fruits Board.
- 20 **transfer day** means the day specified by the Minister as the transfer
21 day in a determination under section 12.
- 22 **transferred employee** means a person whose employment is
23 transferred under section 24.
- 24 **transitional period** means the period of 24 months beginning on
25 the transfer day.
- 26 (2) Expressions used in this Act that are defined in the *Horticulture*
27 *Marketing and Research and Development Services Act 2000* have
28 the same meanings as they have in that Act.
- 29 (3) Expressions used in Subdivision F of Division 4 of Part 2 that are
30 defined in the Long Service Leave Act have the same meanings as
31 they have in that Act.

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Part 1 Preliminary

Section 5

1 **5 Crown to be bound**

2 This Act binds the Crown in each of its capacities.

3 **6 Extra-territorial operation**

4 This Act applies both within and outside Australia.

5 **7 Schedule(s)**

6 Subject to section 2, each Act that is specified in a Schedule to this
7 Act is amended or repealed as set out in the applicable items in the
8 Schedule concerned, and any other item in a Schedule to this Act
9 has effect according to its terms.

1

Part 2—Transitional provisions

2

Division 1—Statutory authorities' role in transition

3

8 Simplified outline

4

The following is a simplified outline of this Division:

5

This Division sets out the role of the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and the Australian Dried Fruits Board in the transition to the new industry bodies.

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9 Functions of statutory authorities

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(1) It is a function of each statutory authority to plan, facilitate and participate in:

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(a) its abolition under this Act; and

(b) the establishment of the first industry services body and the first industry export control body under the *Horticulture Marketing and Research and Development Services Act 2000*; and

(c) the implementation of this Act.

(2) Each statutory authority also has the function of providing funds to another person or body (including the Commonwealth) to meet, or reimburse the person or body for, expenses or liabilities it incurs in participating in processes of the kind mentioned in subsection (1).

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(3) A statutory authority must comply with any written directions from the Minister about the performance of its functions under subsection (1) or (2).

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Part 2 Transitional provisions

Division 1 Statutory authorities' role in transition

Section 10

1 **10 Repeal of Division**

2 This Division is repealed at the time the *Australian Horticultural*
3 *Corporation Act 1987* and the *Horticultural Research and*
4 *Development Corporation Act 1987* are repealed.

1

2

Division 2—Transfer day

3

11 Simplified outline

4

The following is a simplified outline of this Division:

5

This Division provides for the Minister to determine the transfer day.

6

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12 Minister must determine transfer day

8

(1) The Minister must determine, in writing, that a specified day is the *transfer day* for the purposes of this Act.

9

10

(2) The day:

11

(a) must not be a day before both of the following declarations have taken effect under section 9 of the *Horticulture Marketing and Research and Development Services Act 2000*:

12

13

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15

(i) the first declaration of the industry services body;

16

(ii) the first declaration of the industry export control body;

17

and

18

(b) must be a day within the period of 6 months after the commencement of this section.

19

20

(3) The determination has effect accordingly.

21

(4) A copy of the determination is to be published in the *Gazette* within 14 days after the determination is made.

22

23

(5) The determination can be varied or revoked by the Minister in the same manner in which it was made, but it cannot be varied or revoked on or after the day specified in the determination as the transfer day.

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

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Part 2 Transitional provisions

Division 2 Transfer day

Section 13

1 **13 Time of transfers**

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

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2

Division 3—Transfer of assets and liabilities etc.

3

14 Simplified outline

4

The following is a simplified outline of this Division:

5

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

6

7

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

8

9

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

10

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

11

12

15 Transfers subject to conditions

13

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

14

15

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

17

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16 Transfer of assets and liabilities

21

(1) This section applies to:

22

(a) the assets of a statutory authority (other than the ADF Trust Amount); and

23

24

(b) the liabilities of a statutory authority (other than a liability referred to in section 28).

25

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

27

(3) On the transfer day:

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Part 2 Transitional provisions

Division 3 Transfer of assets and liabilities etc.

Section 17

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

9 Note: See also sections 18 and 21.

10 **17 ADF Trust Amount**

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

28 **18 Transfer of pending proceedings**

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

Section 19

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

10 **19 Exemption from taxation**

- 11 Stamp duty or other tax is not payable under a law of a State or
12 Territory in respect of:
13 (a) a transfer of an asset or liability of a statutory authority under
14 this Act; or
15 (b) anything done (including a transaction entered into or an
16 instrument or document made, executed, lodged or given)
17 because of, or for a purpose connected with or arising out of,
18 such a transfer.

19 **20 References in certain instruments**

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

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Part 2 Transitional provisions

Division 3 Transfer of assets and liabilities etc.

Section 21

21 Certificates in relation to assets

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

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

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary, having regard to the effect of this Division.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.

22 Saving: levies and charges

- (1) Amounts equal to the following are to be paid to the industry services body:
- (a) amounts of levy or charge that are received by the Commonwealth, but not paid out of the Consolidated Revenue Fund under the *Australian Horticultural Corporation Act 1987* or the *Horticultural Research and Development Corporation Act 1987*, before the transfer day;
 - (b) amounts that are payable to the Horticultural Research and Development Corporation under section 46 of the *Horticultural Research and Development Corporation Act 1987*, but not paid out of the Consolidated Revenue Fund under that Act, before the transfer day;
 - (c) amounts that:

Section 22

- 1 (i) are payable to the Australian Horticultural Corporation
2 or the Australian Dried Fruits Board by virtue of
3 section 47 or 115Q of the *Australian Horticultural*
4 *Corporation Act 1987*, or to the Horticultural Research
5 and Development Corporation by virtue of section 45 of
6 the *Horticultural Research and Development*
7 *Corporation Act 1987*; and
8 (ii) are not covered by paragraph (a); and
9 (iii) are not paid out of the Consolidated Revenue Fund
10 under that Act before the transfer day.
- 11 (2) Amounts payable under this section are to be paid out of the
12 Consolidated Revenue Fund, which is appropriated accordingly.
- 13 (3) In this section:
- 14 **charge** means:
- 15 (a) charge imposed by subclause 2(1) of Schedule 10 to the
16 *Primary Industries (Customs) Charges Act 1999* at a rate set
17 under subclause 3(3), 3(4) or 3(5) of that Schedule; and
18 (b) amounts a person is liable to pay under subsection 7(3) of the
19 *Primary Industries Levies and Charges Collection Act 1991*;
20 and
21 (c) amounts payable by way of penalty under section 15 of the
22 *Primary Industries Levies and Charges Collection Act 1991*
23 in relation to charge referred to in paragraph (a) and amounts
24 referred to in paragraph (b).
- 25 **levy** means:
- 26 (a) levy imposed under subclause 2(1) of Schedule 15 to the
27 *Primary Industries (Excise) Levies Act 1999* at a rate set
28 under subclause 4(1), 4(2) or 4(3) of that Schedule; and
29 (b) amounts a person is liable to pay under subsection 7(2) of the
30 *Primary Industries Levies and Charges Collection Act 1991*;
31 and
32 (c) amounts payable by way of penalty under section 15 of the
33 *Primary Industries Levies and Charges Collection Act 1991*
34 in relation to levy referred to in paragraph (a) and amounts
35 referred to in paragraph (b).
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Part 2 Transitional provisions

Division 4 Transfer of staff

1 **Section 23**

2 **Division 4—Transfer of staff**

3 **Subdivision A—Preliminary**

4 **23 Simplified outline**

5 The following is a simplified outline of this Division:

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

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

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

15 **24 Transfer of staff**

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

20 **25 Terms and conditions of transferred employees**

21 (1) A transferred employee is taken:

- 22 (a) to have been engaged by the industry services body on the
23 same terms and conditions as those that applied to the person,
24 immediately before the transfer day, as an employee of the
25 previous employer; and
26 (b) to have accrued an entitlement to benefits, in connection with
27 that engagement by the industry services body, that is
28 equivalent to the entitlement that the person had accrued, as

Section 26

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

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

4 (2) The service of a transferred employee as an employee of the
5 industry services body is taken, for all purposes, to have been
6 continuous with the service of the employee, immediately before
7 the transfer day, as an employee of the previous employer.

8 (3) A transferred employee is not entitled to receive any payment or
9 other benefit merely because he or she stopped being an employee
10 of the previous employer as a result of this Division.

11 (4) This section:

12 (a) has effect subject to this Division; and

13 (b) is not to be taken to be a law of the Commonwealth for the
14 purposes of paragraph 170XA(2)(b) of the *Workplace*
15 *Relations Act 1996*.

16 **26 Variation of terms and conditions of employment**

17 (1) This Division does not prevent the terms and conditions of a
18 transferred employee's employment after the transfer day from
19 being varied:

20 (a) in accordance with those terms and conditions; or

21 (b) by or under a law, award, determination or agreement.

22 (2) In this section:

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

24 (a) omitting any of those terms and conditions; or

25 (b) adding to those terms and conditions; or

26 (c) substituting new terms or conditions for any of those terms
27 and conditions.

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Part 2 Transitional provisions

Division 4 Transfer of staff

Section 27

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

3 **27 Continued application of SRC Act**

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

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

10 **28 Commonwealth liability to meet certain SRC Act liabilities**

11 On and after the transfer day, the Commonwealth:

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

18 **29 SRC Act: rehabilitation provisions**

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

Section 30

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

6 **30 Premiums under the SRC Act**

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

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Part 2 Transitional provisions

Division 4 Transfer of staff

Section 31

- 1 (6) A copy of each direction must be published in the *Gazette* within
2 14 days after the direction is given.
- 3 (7) The direction is not invalid merely because it has not been
4 published as required under subsection (6).
- 5 (8) In this section:
- 6 *refund amount* means the amount equal to the difference between
7 the amount of confirmed estimate of premium for a statutory
8 authority for the relevant financial year and the amount of that
9 confirmed estimate as reduced because of a determination under
10 subsection (1).
- 11 *relevant financial year* means the financial year in which the
12 transfer day occurs.
- 13 (9) Expressions used in this section have the same meanings as they
14 have in the SRC Act.

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

31 Saving: deferred benefits under the DFRDB Act

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

1 **Subdivision D—Maternity leave provisions**

2 **32 Maternity leave starting before transfer day**

3 (1) This section applies in relation to a person if:

4 (a) immediately before the transfer day, the person was a female
5 employee of a statutory authority who was on leave granted
6 under the Maternity Leave Act; and

7 (b) the person becomes an employee of the industry services
8 body on the transfer day; and

9 (c) the person would have been entitled to have remained on that
10 leave on and after the transfer day if the person had
11 continued to be an employee of the statutory authority.

12 (2) On and after the transfer day, the Maternity Leave Act continues to
13 apply to the person in relation to the confinement in respect of
14 which the leave was granted as if the industry services body were a
15 prescribed authority for the purposes of that Act.

16 **33 Maternity leave starting after transfer day**

17 (1) This section applies in relation to a person if:

18 (a) immediately before the transfer day, the person was a female
19 employee of a statutory authority; and

20 (b) the person becomes an employee of the industry services
21 body on the transfer day; and

22 (c) within 9 months after the transfer day, the person would have
23 been entitled to start leave granted under the Maternity Leave
24 Act if the person had continued to be an employee of the
25 statutory authority.

26 (2) On and after the transfer day, the Maternity Leave Act continues to
27 apply to the person in relation to the confinement in respect of
28 which she would have been entitled to leave as if the industry
29 services body were a prescribed authority for the purposes of that
30 Act.

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Part 2 Transitional provisions

Division 4 Transfer of staff

Section 34

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

2 **34 Application of the *Superannuation Act 1922***

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

5 **35 Application of other Superannuation Acts**

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

9 **36 Application of the *Superannuation Benefits (Supervisory***
10 ***Mechanisms) Act 1990***

11 (1) The Minister must not declare the industry services body to be a
12 relevant body for the purposes of the *Superannuation Benefits*
13 *(Supervisory Mechanisms) Act 1990*.

14 (2) In this section:

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

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

18 **37 Long service leave for employees with less than 10 years service**

19 (1) This section applies in relation to a person:

20 (a) who became a transferred employee of the industry services
21 body on the transfer day; and

22 (b) whose period of service for the purposes of the Long Service
23 Leave Act immediately before the transfer day was less than
24 10 years.

25 (2) This section does not apply in relation to an employee who dies.

26 (3) If the employee continues to be employed by the industry services
27 body until his or her combined service period is at least 10 years,

Section 38

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

4 (4) If:

5 (a) the employee stops being an employee of the industry
6 services body on or after reaching the minimum retiring age,
7 or because of retrenchment; and

8 (b) the employee's combined service period at the time when he
9 or she stops being an employee of the industry services body
10 is at least one year;

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

14 (5) If a period of long service leave may be granted to an employee
15 under subsection (3) or (4), the industry services body may, if the
16 employee asks in writing, grant the employee long service leave on
17 half salary for a period not longer than twice the first-mentioned
18 period.

19 (6) Long service leave granted in the circumstances set out in
20 subsection (4) must be taken so as to end immediately before the
21 employee stops being an employee.

22 (7) For the purposes of this section, the rate of salary to be used in
23 working out the full salary of an employee is the rate that would
24 apply to the employee under section 20 of the Long Service Leave
25 Act if:

26 (a) that section applied to the employee; and

27 (b) for the expression "section 16 or 17" in that section there
28 were substituted the expression "section 37 of the
29 *Horticulture Marketing and Research and Development*
30 *Services (Repeals and Consequential Provisions) Act 2000*".

31 **38 Payments in lieu of long service leave for employees with less**
32 **than 10 years service**

33 (1) This section applies to a person:

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Part 2 Transitional provisions

Division 4 Transfer of staff

Section 38

- 1 (a) who became a transferred employee on the transfer day; and
2 (b) whose period of service for the purposes of the Long Service
3 Leave Act immediately before the transfer day was less than
4 10 years.
- 5 (2) This section does not apply in relation to an employee who dies.
- 6 (3) If the employee stops being an employee of the industry services
7 body on or after the day on which his or her combined service
8 period reaches 10 years, the industry services body must pay him
9 or her an amount equal to full salary in respect of his or her long
10 service leave credit under subsection 40(2).
- 11 (4) If:
- 12 (a) the employee stops being an employee of the industry
13 services body, on or after reaching the minimum retiring age,
14 or because of retrenchment; and
15 (b) at that time the employee's combined service period is at
16 least one year;
17 the industry services body must pay him or her an amount equal to
18 full salary in respect of his or her long service leave credit under
19 subsection 40(2).
- 20 (5) If:
- 21 (a) the employee stops being an employee of the industry
22 services body; and
23 (b) the industry services body is satisfied that the employee left
24 the industry services body's employment because of
25 ill-health that justified his or her so leaving; and
26 (c) when the employee left, his or her combined service period
27 was at least one year;
28 the industry services body must pay him or her an amount equal to
29 full salary in respect of his or her long service leave credit under
30 subsection 40(2).
- 31 (6) For the purposes of this section, the rate of salary to be used in
32 working out the full salary of an employee is the rate that would
33 apply to the employee under section 21 of the Long Service Leave
34 Act if:
-

Section 39

- 1 (a) that section applied to the employee; and
2 (b) for the expression “sections 16 and 17” in that section there
3 were substituted the expression “section 38 of the
4 *Horticulture Marketing and Research and Development*
5 *Services (Repeals and Consequential Provisions) Act 2000*”.

6 **39 Payments on the death of an employee**

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

Division 4 Transfer of staff

Section 40

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

5 **40 Employee’s long service leave credit for the purposes of** 6 **sections 37 and 38**

7 (1) For the purposes of section 37, an employee’s long service leave
8 credit is equal to the long service leave credit that the employee
9 would have under the Long Service Leave Act for the period:

10 (a) beginning when the employee began his or her period of
11 service; and

12 (b) ending on the transfer day;
13 if the employee had been retrenched on that day.

14 (2) For the purposes of section 38, an employee’s long service leave
15 credit is the employee’s long service leave credit worked out under
16 subsection (1) of this section reduced by any long service leave
17 credit used under section 37.

18 **41 Employees with at least 10 years service**

19 (1) This section applies to an employee of a statutory authority whose
20 period of service under the Long Service Leave Act was at least 10
21 years immediately before the transfer day.

22 (2) Even though the employee ceases to be employed in Government
23 Service for the purposes of the Long Service Leave Act, the
24 employee’s accrued rights under that Act continue if the employee
25 becomes an employee of the industry services body on the transfer
26 day. However, the employee is not entitled to receive any payment
27 because he or she ceases to be in Government Service.

28 (3) The Long Service Leave Act has effect on and after the transfer
29 day in relation to the employee’s rights under that Act that accrued
30 before the transfer day, as if the industry services body were an
31 approving authority for the purposes of that Act.

1 **42 Division not to affect post-commencement long service leave**
2 **rights**

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

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

7 **Subdivision G—Staff with mobility rights**

8 **43 Cessation of mobility rights**

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

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

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Part 2 Transitional provisions

Division 5 Transitional period for export controls

Section 44

Division 5—Transitional period for export controls

44 Simplified outline

The following is a simplified outline of this Division:

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

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

45 Continuation of export controls despite repeal of AHC Act

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

46 References to AHC and Product Board

- (1) During the transitional period, references to powers, duties or functions of the Corporation or of a Board in Part V of the Act or
-

Section 47

1 in an instrument in force under Part V are taken to be references to
2 powers, duties or functions of the industry export control body.

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

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

11 Note: The power to prohibit the export of a horticultural product to a
12 specified place is given to the Corporation by regulation 5 of the
13 Australian Horticultural Corporation (Export Control) Regulations
14 1990.

15 **47 Phasing out of export controls under Part V of AHC Act**

- 16 (1) If:
17 (a) the export of a horticultural product to a place is prohibited
18 under the Australian Horticultural Corporation (Export
19 Control) Regulations 1990 or the Australian Horticultural
20 Corporation (Dried Fruits Export Control) Regulations 1991;
21 and
22 (b) during the transitional period, the product and the place are
23 the subject of an order (the *new order*) under section 19 of
24 the *Horticulture Marketing and Research and Development*
25 *Services Act 2000*;
26 Part V (and any instrument made under, or for the purposes of,
27 Part V) ceases, at the time of the new order, to have effect in
28 relation to the export of that product to that place.
- 29 (2) If, at the end of the transitional period, Part V of the Act still has
30 effect in relation to any horticultural product, it (and any
31 instrument made under, or for the purposes of, Part V) ceases to
32 have effect immediately after the end of the transitional period.

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Part 2 Transitional provisions

Division 6 Final annual reports

Section 48

Division 6—Final annual reports

48 Simplified outline

The following is a simplified outline of this Division:

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

49 Final annual report: Australian Horticultural Corporation

(1) In spite of the repeal of the *Australian Horticultural Corporation Act 1987*:

(a) the Australian Horticultural Corporation continues in existence for the purpose of giving the Minister the report required under section 9 of the *Commonwealth Authorities and Companies Act 1997* in relation to the period starting on the last 1 July before the transfer day and ending on the transfer day; and

(b) for that purpose, the membership of the Corporation immediately before the transfer day is taken to be the same on and after the transfer day.

(2) For the purposes of the application of section 9 of the *Commonwealth Authorities and Companies Act 1997* to the report referred to in subsection (1):

(a) the period starting on the last 1 July before the transfer day and ending on the transfer day is taken to be a financial year; and

(b) the *Australian Horticultural Corporation Act 1987* continues to have effect as if it had not been repealed.

50 Final annual report: Australian Dried Fruits Board

(1) In spite of the repeal of the *Australian Horticultural Corporation Act 1987*:

Section 51

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

23 **51 Final annual report: Horticultural Research and Development**
24 **Corporation**

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

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Part 2 Transitional provisions

Division 6 Final annual reports

Section 51

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

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Division 7—Miscellaneous

3

52 Delegation of Secretary's powers

4

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

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

9

53 Compensation for acquisition of property

10

(1) If:

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(a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

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(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

15

16

the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.

17

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(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

19

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(3) In this section:

24

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

25

26

54 Regulations

27

(1) The Governor-General may make regulations prescribing matters:

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(a) required or permitted by this Act to be prescribed; or

29

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Part 2 Transitional provisions

Division 7 Miscellaneous

Section 54

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

1 **Schedule 1—Repeal of Acts**
2

3 **1 Repeal of Acts**

4 The Acts specified in this Schedule are repealed.

5 *Australian Horticultural Corporation Act 1987*

6 *Horticultural Research and Development Corporation Act*
7 *1987*

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Schedule 2—Consequential amendments

Freedom of Information Act 1982

1 Part III of Schedule 2 (item referring to *Australian Horticultural Corporation Act 1987*)

Repeal the item.

2 Part III of Schedule 2 (item referring to *Horticultural Research and Development Corporation Act 1987*)

Repeal the item.

Natural Heritage Trust of Australia Act 1997

3 Section 54 (definition of *horticulture*)

Omit “horticultural products (within the meaning of the *Australian Horticultural Corporation Act 1987*)”, substitute “a horticultural product (within the meaning of the *Horticulture Marketing and Research and Development Services Act 2000*)”.

Primary Industries (Customs) Charges Act 1999

4 Clause 1 of Schedule 9 (definition of *Corporation*)

Repeal the definition.

5 Clause 1 of Schedule 9

Insert:

industry services body means the industry services body declared under section 9 of the *Horticulture Marketing and Research and Development Services Act 2000*.

6 Subclause 5(2) of Schedule 9

Omit “Corporation”, substitute “industry services body”.

7 Clause 1 of Schedule 10

Insert:

1 *industry services body* means the industry services body declared
2 under section 9 of the *Horticulture Marketing and Research and*
3 *Development Services Act 2000*.

4 **8 Subclause 3(4) of Schedule 10**

5 Repeal the subclause.

6 Note 1: The heading to subclause 3(3) of Schedule 10 is replaced by the heading “*Marketing*
7 *component*”.

8 Note 2: The heading to subclause 3(5) of Schedule 10 is replaced by the heading “*Research and*
9 *development component*”.

10 **9 Subclause 3(7) of Schedule 10**

11 Omit “(4),”.

12 **10 Subclause 5(2) of Schedule 10**

13 Omit “Australian Horticultural Corporation or the Horticultural
14 Research and Development Corporation”, substitute “industry services
15 body”.

16 **11 Subclause 5(3) of Schedule 10**

17 Omit “Australian Horticultural Corporation”, substitute “industry
18 services body”.

19 **12 Subclause 5(4) of Schedule 10**

20 Repeal the subclause.

21 **13 Subclause 5(5) of Schedule 10**

22 Omit “Horticultural Research and Development Corporation”,
23 substitute “industry services body”.

24 **14 Subclause 5(6) of Schedule 10**

25 Omit “Australian Horticultural Corporation”, substitute “industry
26 services body”.

27 **15 Subclause 5(7) of Schedule 10**

28 Omit “Horticultural Research and Development Corporation”,
29 substitute “industry services body”.

1 **16 Clause 1 of Schedule 14 (definition of *horticultural***
2 ***product*)**

3 Omit “*Australian Horticultural Corporation Act 1987*”, substitute
4 “*Horticulture Marketing and Research and Development Services Act*
5 *2000*”.

6 ***Primary Industries (Excise) Levies Act 1999***

7 **17 Clause 1 of Schedule 14 (definition of *Corporation*)**

8 Repeal the definition.

9 **18 Clause 1 of Schedule 14**

10 Insert:

11 *industry services body* means the industry services body declared
12 under section 9 of the *Horticulture Marketing and Research and*
13 *Development Services Act 2000*.

14 **19 Subclause 6(3) of Schedule 14**

15 Omit “*Corporation*”, substitute “*industry services body*”.

16 **20 Clause 1 of Schedule 15**

17 Insert:

18 *industry services body* means the industry services body declared
19 under section 9 of the *Horticulture Marketing and Research and*
20 *Development Services Act 2000*.

21 **21 Subclause 4(2) of Schedule 15**

22 Repeal the subclause.

23 Note 1: The heading to subclause 4(1) of Schedule 15 is replaced by the heading “*Marketing*
24 *component*”.

25 Note 2: The heading to subclause 4(3) of Schedule 15 is replaced by the heading “*Research and*
26 *development component*”.

27 **22 Subclause 4(5) of Schedule 15**

28 Omit “(2)”.

29 **23 Subclause 6(3) of Schedule 15**

1 Omit “Australian Horticultural Corporation or the Horticultural
2 Research and Development Corporation”, substitute “industry services
3 body”.

4 **24 Subclause 6(4) of Schedule 15**

5 Omit “Australian Horticultural Corporation”, substitute “industry
6 services body”.

7 **25 Subclause 6(5) of Schedule 15**

8 Repeal the subclause.

9 **26 Subclause 6(6) of Schedule 15**

10 Omit “Horticultural Research and Development Corporation”,
11 substitute “industry services body”.

12 **27 Subclause 6(7) of Schedule 15**

13 Omit “Australian Horticultural Corporation”, substitute “industry
14 services body”.

15 **28 Subclause 6(8) of Schedule 15**

16 Omit “Horticultural Research and Development Corporation”,
17 substitute “industry services body”.

18 **29 Clause 1 of Schedule 27 (definition of *horticultural*
19 *products*)**

20 Omit “*Australian Horticultural Corporation Act 1987*”, substitute
21 “*Horticulture Marketing and Research and Development Services Act*
22 *2000*”.

23 ***Safety, Rehabilitation and Compensation Act 1988***

24 **30 Subsection 128A(4) (paragraph (h) of the definition of
25 *prescribed Commonwealth authority*)**

26 Repeal the paragraph.

27 **31 Subsection 128A(4) (paragraph (za) of the definition of
28 *prescribed Commonwealth authority*)**

29 Repeal the paragraph.

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Schedule 3—References to Administrative Appeals Tribunal

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Horticulture Marketing and Research and Development Services Act 2000

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8

1 Subsection 22(2) (note)

Omit “Appeals”, substitute “Review”.

9

2 Subsection 35(5)

10

Repeal the subsection.

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Schedule 4—Operation of the Privacy Act

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Horticulture Marketing and Research and Development Services Act 2000

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1 At the end of section 25

Add:

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

