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Horticulture Marketing and Research and
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Consequential Provisions) Bill 2000

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 59 2000–01

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

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23 October 2000

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

Date Introduced: 5 October 2000

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Parts 1 and 2 commence on Royal Assent to the *Horticulture Marketing and Research and Development Services Bill 2000* (the principal Bill). The commencement dates for Schedules 1 to 4 vary, and are described in the Main Provisions section.

Purpose

To provide for the transition from the Australian Horticultural Corporation (AHC), the Horticultural Research and Development Corporation (HRDC) and the Australian Dried Fruits Board (ADFB) to a horticultural industry services corporation.

Background

The background to this Bill is explained in the [Bills Digest](#) for the Horticulture Marketing and Research and Development Services Bill 2000. This Bill provides for:

- abolition of the AHC, HRDC and ADFB
- transfer of assets, liabilities and staff from the AHC, HRDC and ADFB to the new industry services body
- continuation of the existing export control system for another two years, and
- repeal of some legislation and consequential amendments to other legislation.

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Main Provisions

Transfer

The Minister must make a written determination that a specified day will be the ‘transfer day’ (**proposed subsection 12(1)**). This date is critical to the operation of the Bill. The transfer day must be within six months of Royal Assent, but must be after the Minister has declared the first body to be the industry services body (ISB) and the first industry export control body (IECB) (**proposed subsection 12(2)**).

Up until the transfer day, the AHC, HRDC and ADFB are to assist in arrangements for their own abolition and for the establishment of the first ISB and IECB. They must also provide funds to the Commonwealth or other entities to pay expenses or liabilities incurred in abolishing them and transferring their functions, assets and liabilities to the ISB and IECB (**proposed section 9**).

Transfer of assets and liabilities

On the transfer day, the assets and liabilities of the AHC, the HRDC and the ADFB vest in the ISB. No conveyance or formal property transfer is required – this occurs by operation of law (**proposed section 16**), and is exempt from stamp duty or other taxation (**proposed section 19**). The transfers may be subject to conditions contained in the deed of agreement (**proposed section 15**). Pending proceedings relating to the assets, liabilities, rights, benefits and obligations of the AHC, HRDC or ADFB are also transferred (**proposed section 18**).

Levies and charges received by the Commonwealth before the transfer day, but not paid out to the AHC, the HRDC or the ADFB, are to be paid to the ISB under **proposed section 22**.

The only asset not transferred to the ISB is the amount of money held on trust for the purposes of the Dried Fruits Trust. **Proposed section 17** provides that the Minister may make a written determination that an amount of money held by the ADFB is to be transferred to the Dried Fruits Trust rather than to the ISB. The Minister for Agriculture, Fisheries and Forestry has stated that ‘\$2m of dried fruits industry reserves ... is to be held in a Dried Fruits Trust for future industry marketing programs.’¹

After the transfer day, references to the AHC, the HRDC or the ADFB in instruments are to be construed as references to the ISB (**proposed section 20**).

Transfer of staff

All the staff of the AHC, HRDC and ADFB are transferred to the ISB on the transfer day (**proposed section 24**). **Proposed subsection 25(2)** states that the employees’ service with the ISB will be considered to be continuous with their current service with the AHC, HRDC or ADFB. Employees will be employed by the ISB on the same terms and

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conditions and with the same accrued entitlements to benefits (**proposed subsections 25(1) and (2)**). However, the terms and conditions may be varied after the transfer day, provided the variations are carried out in accordance with applicable law, awards, agreements and following any procedures specified in the terms of the employee's employment (**proposed section 26**).

No provision is made in the Bill for any staff for the IECB.

Transfer of staff benefits

A range of benefits currently available to employees of the AHC, HRDC and ADFB as Commonwealth employees will continue to be available to employees in limited circumstances, even though the ISB is not the Commonwealth or a Commonwealth authority. This is particularly the case where the entitlement to the benefit accrued before the transfer day. These benefits are:

- workers compensation entitlements under the *Safety, Rehabilitation and Compensation Act 1988* in respect of employees who were injured or suffered property loss before the transfer day (**proposed section 27**)
- deferred benefits under section 78 of the *Defence Force Retirement and Death Benefits Act 1973* where the employee is already entitled to those benefits before the transfer day (**proposed section 31**)
- entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*, for female employees who are already on maternity leave as at the transfer day, or who would have become entitled to maternity leave within 9 months after the transfer day (**proposed sections 32 and 33**).
- long service leave entitlements accrued under the *Long Service Leave (Commonwealth Employees) Act 1976* carry over for employees who are transferred to the ISB at the same rate (**proposed section 40**).

Long service leave

Proposed sections 37 to 41 contain specific transitional provisions for long service leave entitlements. An employee who has accrued at least 10 years of long service carries over all his or her accrued rights under the *Long Service Leave (Commonwealth Employees) Act 1976*. Because long service leave entitlements are preserved, employees are not entitled to receive any payment for ceasing to be employed in the public service (**proposed section 41**).

Employees who have served less than 10 years service and transfer to the ISB carry with them their long service leave credits. After they have served a total of at least 10 years, they may be granted long service leave on full salary (**proposed subsection 37(3)**), or on half salary for a period twice as long (**proposed subsection 37(5)**). If the ISB does not

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grant the employee leave, it must pay the employee an amount in lieu of long service leave (**proposed subsection 38(3)**).

Employees who have served at least one year, and who either retire after the minimum retiring age or are retrenched, may also be granted pro rata long service leave (**proposed subsection 37(4)**). Failing that, they are entitled to pro rata payment in lieu of long service leave (**proposed subsection 38(4)**). Additionally, employees who have served at least one year and retire because of ill health are entitled to pro rata payment in lieu of long service leave (**proposed subsection 38(5)**).

Where an employee who is transferred to the ISB dies after serving at least one year but less than 10 years in total combined service, his or her dependants are entitled to payment at full salary for the period of long service leave accrued (**proposed section 39**).

Workers compensation

Special transitional arrangements also apply to workers compensation payments. For the purposes of workers compensation claims arising before the transfer day, the Commonwealth is taken to have been the employer of AHC, HRDC and ADFB employees (**proposed paragraph 28(b)**). Hence, the Commonwealth will be liable to pay the premium to Comcare in respect of those employees. The ISB is not liable for premiums under the Commonwealth scheme. The ISB will be entitled to a refund of the premium paid by the AHC, HRDC and ADFB for the part of the financial year after the transfer date, although use of the refund may be made subject to certain conditions (**proposed section 30**). However, the ISB is not wholly exempt from the operation of the Commonwealth workers compensation scheme. It will have to cooperate with the Commonwealth in assisting it to fulfil its obligations in relation to rehabilitation and providing suitable employment for employees injured prior to the transfer date (**proposed section 29**).

Benefits no longer available

Some benefits currently available to AHC, HRDC and ADFB employees will cease to be available when they are transferred to the ISB. The ISB is not an 'approved authority' for the purposes of Commonwealth public sector superannuation legislation,² so private superannuation arrangements will apply to employees from the transfer day (**proposed sections 34, 35 and 36**).

Additionally, staff will cease to have mobility rights within the public service and cease to be employees of the APS from the transfer day (**proposed section 43**).

Annual reports

The AHC, HRDC and ADFB must each produce a final annual report covering their operations and financial status up to the transfer day. They will continue to exist after the transfer day for the sole purpose of producing the annual report (**proposed sections 49, 50**).

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and 51). However, as all their staff will be transferred to the ISB from the transfer day, it appears that only the Board members will be available to write the report.

Export control scheme

Part V of the *Australian Horticultural Corporation Act 1987* and the regulations, orders and instruments made under it, which deal with the system of export controls, continue in force for a period of two years beginning on the transfer day (**proposed section 45 and proposed subsection 47(2)**). The IECB will take over all the functions, powers and duties of the AHC and Product Boards, with the important exception that the IECB will not have the power to prohibit the export of any product, or to revoke or vary a prohibition order (**proposed section 46**). Only the Secretary of Agriculture, Fisheries and Forestry Australia will have the power to alter prohibitions, as described below.

Part V and the instruments made under it cease to have effect progressively in relation to particular horticultural products. If the Secretary makes an order under the principal Bill specifying that a horticultural product, export of which is currently prohibited, is now a regulated horticultural product in respect of a particular regulated horticultural market, Part V ceases to have effect in relation to that product (**proposed subsection 47(1)**). At the end of the two year transitional period, the entire export control system under Part V will cease to have effect. Export control will then be dealt with entirely under the new procedure established in the principal Bill.

Miscellaneous

The Secretary has power to delegate his or her powers to public servants within the Department who have appropriate skills or experience (**proposed section 52**).

Proposed section 53 provides that the acquisition of property from a person under the Bill must be on just terms, in accordance with paragraph 51(xxxi) of the Constitution. The Federal Court is appointed to arbitrate on the question of what amounts of compensation would constitute 'just terms', if the Commonwealth and the person whose property is acquired are unable to agree.

The Governor-General has power to make regulations relating to any matters contained in the Bill (**proposed section 54**).

Repeals

The *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987* are repealed with effect from the transfer day (**proposed Schedule 1 and proposed section 2**). This repeals the AHC, HRDC and

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ADFB themselves, except insofar as their existence continues to be necessary to prepare their final annual reports.

Consequential amendments

A number of consequential amendments are made to other Acts, with effect from the transfer day, by **proposed Schedule 2**. These have the following purposes:

- to remove references to the AHC or HRDC, and substitute references to the ISB³
- to remove references to Product Boards⁴
- to remove references to the *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987* from legislation which only applies to the Commonwealth and Commonwealth authorities,⁵ and
- to substitute references to the principal Bill for existing references to the *Australian Horticultural Corporation Act 1987* and the *Horticultural Research and Development Corporation Act 1987*.⁶

Proposed Schedule 3 will make further consequential amendments if the Administrative Appeals Tribunal is repealed and replaced with the Administrative Review Tribunal, as is proposed in the Administrative Review Tribunal Bill 2000. **Proposed Schedule 3** commences on the later of Royal Assent to the principal Bill and the date on which Parts 4 to 10 of the *Administrative Review Tribunal Act* commence.

Proposed Schedule 4 will amend the principal Bill to provide that the immunity from liability or suit does not affect the operation of the *Privacy Act 1988*. This amendment will commence on the later of Royal Assent to the principal Bill and the date on which Schedule 1 of the *Privacy Amendment (Private Sector) Act 2000* commences.

Endnotes

- 1 The Hon Warren Truss, Minister for Agriculture, Fisheries and Forestry, Second reading speech on the Horticulture Marketing and Research and Development Services Bill 2000, House of Representatives, *Hansard*, p. 18691, 5 October 2000.
- 2 The *Superannuation Act 1922*, the *Superannuation Act 1976*, the *Superannuation Act 1990*, and the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.
- 3 In the *Primary Industries (Customs) Charges Act 1999* (items 4, 5, 6, 7, 10, 11, 13, 14, 15); and the *Primary Industries (Excise) Levies Act 1999* (items 17, 18, 19, 20, 23, 24, 26, 27, 28).

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- 4 Items 8, 9, 12, 21, 22, 25.
- 5 *Safety, Rehabilitation and Compensation Act 1988* (items 30 and 31); *Freedom of Information Act 1982* (items 1 and 2). It is worth noting that records of the AHC and HRDC in respect of their commercial activities were already exempt from freedom of information requirements.
- 6 Items 3, 16, 29.

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