

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 18 September 1987

(Minister for Primary Industries and Energy)

A BILL

FOR

**An Act relating to the collection of the levy imposed by the
*Horticultural Levy Act 1987***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

5 **1.** This Act may be cited as the *Horticultural Levy Collection Act 1987*.

Commencement

2. This Act shall come into operation on the commencement of the *Horticultural Levy Act 1987*.

Object

10 **3.** The object of this Act is to make provision for the efficient and effective collection of the levy imposed by the *Horticultural Levy Act 1987*.

Interpretation

4. In this Act, unless the contrary intention appears:

“authorised person” means a person who is, by virtue of an appointment under section 18, an authorised person for the purposes of the provision in which the expression appears; 5

“cut flowers and foliage” includes processed cut flowers and foliage;

“examinable documents” means any books or documents relating to:

(a) the producing of leviable horticultural products, whether by:

(i) growing or harvesting; or

(ii) processing the products or other products; or 10

(b) the handling, storing, transporting, processing or marketing of leviable horticultural products;

including, without limiting the generality of the foregoing, books or documents relating to financial dealings between any of the following persons: 15

(c) producers of leviable horticultural products;

(d) selling agents;

(e) first purchasers;

(f) persons who handle, store, transport, process or market leviable horticultural products; 20

“first purchaser” means a person who, in the course of carrying on a business, purchases leviable horticultural products from the producers of the products (otherwise than through selling agents);

“fruits” includes processed fruits;

“horticultural products” means: 25

(a) fruits;

(b) vegetables;

(c) nuts;

(d) nursery products;

(e) cut flowers and foliage; and 30

(f) products in a class of products prescribed for the purposes of this paragraph;

“leviable horticultural products” means horticultural products in a class of horticultural products prescribed for the purposes of this definition;

“magistrate” includes a justice of the peace; 35

“nursery products” includes trees, shrubs, plants, seeds, bulbs, corms, tubers, propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts, or cut flowers or foliage;

“nuts” includes processed nuts; 40

“order” means an order made under the regulations;

“prescribed” includes prescribed by an order;

5 “process”, in relation to a product, means the performance of any operation in relation to the product, and includes the chilling, freezing, drying, bottling, packing, canning or preserving of the product, but does not include the performance of an operation included in a class of operations prescribed for the purposes of this definition, either generally or in relation to the product or a class of products in which the product is included;

“producer” means:

- 10 (a) in the case of a product in a class of products prescribed for the purposes of this paragraph—the person who owned the product immediately after harvesting;
- (b) in the case of a product in a class of products prescribed for the purposes of this paragraph—the person who produced the product by processing the product or another product;
- 15 (c) in the case of a product in a class of products prescribed for the purposes of this paragraph—the person (being a person involved in the growing, harvesting or processing of the product, a product from which the product was produced or a product produced from the product) who, under the regulations, is to be taken to be the producer of the product; and
- 20 (d) in any other case—the grower of the product;

“product” includes a thing occurring naturally;

“regulations” includes orders;

25 “Secretary” means the Secretary to the Department;

“selling agent” means a person who, in the course of carrying on a business, sells leviable horticultural products on behalf of the producers of the products;

“this Act” includes the regulations;

30 “vegetables” includes:

- (a) mushrooms and other edible fungi; and
- (b) processed vegetables (including mushrooms and other edible fungi).

Act binds Crown

35 **5. (1)** This Act binds the Crown in right of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of a State, the Northern Territory or Norfolk Island liable to be prosecuted for an offence.

When levy due for payment

40 **6.** Amounts of levy are due for payment as required by the regulations.

Liability of selling agents and first purchasers

7. (1) For better securing the payment of levy, a selling agent who sells leviable horticultural products on behalf of the producer, and a first purchaser who purchases leviable horticultural products from the producer (otherwise than through a selling agent), is liable to pay to the Commonwealth, on behalf of the producer, an amount equal to the sum of: 5

- (a) the amount of any levy due for payment on the products that remains unpaid by the producer; and
- (b) any amount payable by the producer under subsection 8 (1) in relation to that levy. 10

(2) Notwithstanding any law of a State or Territory or any agreement (whether entered into before or after the commencement of this Act) to the contrary, the selling agent or first purchaser may, for the purpose of ensuring that the selling agent or first purchaser is provided with the funds necessary for the due payment by the selling agent or first purchaser, on behalf of the producer, of levy on the products, deduct from any money received by the selling agent on behalf of the producer, or payable by the first purchaser to the producer, in relation to the products an amount equal to, or that may reasonably be expected to be equal to, the unpaid levy on the products. 15 20

(3) Where the selling agent or first purchaser deducts an amount under subsection (2), the producer is, on the levy becoming due for payment, discharged from liability to pay the levy to the extent of the amount deducted, but the liability of the selling agent or first purchaser under subsection (1) is not affected. 25

(4) Where an amount is received by the Commonwealth from the selling agent or first purchaser under subsection (1):

- (a) the producer is, to the extent of that amount, discharged from so much of his or her liability to the Commonwealth in relation to the products as has not previously been discharged under subsection (3); and 30
- (b) the selling agent or first purchaser may recover from the producer, by set-off or otherwise, an amount equal to the amount by which the first-mentioned amount exceeds the amount (if any) deducted by the selling agent or first purchaser under subsection (2). 35

(5) The regulations may provide that this section does not apply in relation to specified selling agents or first purchasers or specified classes of selling agents or first purchasers.

Penalty for non-payment

8. (1) If any levy in relation to leviable horticultural products remains unpaid after the time when it became due for payment, there is payable by the producer to the Commonwealth, by way of penalty, an amount calculated at the rate of 20% per annum on the amount unpaid, computed from that time. 40

(2) Where:

(a) a selling agent or first purchaser deducts an amount under subsection 7 (2) in relation to the unpaid levy on any leviable horticultural products; and

5 (b) the selling agent or first purchaser does not pay the amount deducted to the Commonwealth at or before the time when the levy became due for payment;

10 there is payable by the selling agent or first purchaser to the Commonwealth, by way of penalty, an amount calculated at the rate of 20% per annum on the unpaid amount deducted, computed from that time.

Remission of amounts

9. (1) Subject to subsection (2), the Minister or an authorised person may remit the whole or a part of an amount payable under section 8.

15 (2) An amount remitted by an authorised person under subsection (1) may not exceed \$500.

Recovery of levy and other amounts

10. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- 20 (a) amounts of levy that are due for payment;
(b) amounts payable under subsection 7 (1);
(c) amounts payable under section 8.

Refund of levy

25 11. (1) Subject to subsections (2) and (3), where any amount referred to in section 10 has been overpaid, the amount overpaid shall be refunded by the Commonwealth.

(2) Where:

- 30 (a) an amount would, but for this subsection, be refundable by the Commonwealth under subsection (1); and
(b) an amount equal to that amount has been paid to the Australian Horticultural Corporation under subsection 48 (1) of the *Australian Horticultural Corporation Act 1987*;

the amount of the refund shall be paid by that Corporation.

(3) Where:

- 35 (a) an amount would, but for this subsection, be refundable by the Commonwealth under subsection (1); and
(b) an amount equal to that amount has been paid to the Horticultural Research and Development Corporation under subsection 46 (1) of the *Horticultural Research and Development Corporation Act 1987*;

the amount of the refund shall be paid by that Corporation.

Powers of authorised person in relation to premises

12. (1) An authorised person may, with the consent of the occupier of the premises or in accordance with a warrant issued under section 13, enter premises for the purpose of exercising the powers of an authorised person under subsection (2). 5

(2) Where an authorised person enters any premises under subsection (1), the authorised person may:

- (a) search for, examine and take stock of any leviable horticultural products and any goods produced from leviable horticultural products; and 10
- (b) search for, inspect, take extracts from and make copies of any examinable documents.

Warrant to enter premises

13. (1) If a magistrate, on application by an authorised person, is satisfied, by information on oath or affirmation: 15

- (a) that there is reasonable ground for believing:
 - (i) that leviable horticultural products:
 - (A) are produced on particular premises, whether by growing or harvesting, or by processing the products or other products; or 20
 - (B) are handled, stored or processed on particular premises;
 - (ii) that goods produced from leviable horticultural products are stored on particular premises; or
 - (iii) that there are examinable documents on particular premises; and 25
- (b) that the issue of the warrant is reasonably required for the purposes of this Act;

the magistrate may issue a warrant.

- (2) The warrant authorises the authorised person to enter the premises:
 - (a) with such assistance, and by such force, as is necessary and reasonable; and 30
 - (b) during such hours as the warrant specifies or, if the warrant so specifies, at any time.

(3) The warrant shall specify the period during which it remains in effect. 35

Identity cards

14. (1) The Secretary may cause an identity card to be issued to an authorised person.

- (2) An identity card shall:
 - (a) contain a photograph of the authorised person to whom it is issued; and 40
 - (b) be in a form approved, in writing, by the Secretary.

5 (3) Where an authorised person proposes to enter premises otherwise than in accordance with a warrant issued under section 13, the authorised person shall produce his or her identity card to the occupier of the premises for the occupier's inspection and, if the authorised person fails to do so, the authorised person is not entitled to enter the premises under subsection 12 (1).

10 (4) Where a person to whom an identity card has been issued ceases to be an authorised person, the person shall forthwith return the identity card to a person occupying such office in the Department as is designated, in writing, by the Secretary.

Penalty: \$100.

Power to require returns etc.

15 15. An authorised person may, by notice in writing given to a person, require the person to submit to the authorised person, within such reasonable time as is specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

Offences in relation to returns etc.

20 16. (1) A person shall not, without reasonable excuse, refuse or fail to submit a return or information that the person is required by or under this Act to submit.

25 (2) A person is not excused from submitting a return or information on the ground that the return or information might tend to incriminate the person, but any return or information submitted, and any information or thing (including any document) obtained as a direct or indirect consequence of the submitting of the return or information, is not admissible in evidence against the person in:

- 30 (a) criminal proceedings other than proceedings for an offence against subsection (1) or (3); or
- (b) proceedings for recovery of an amount payable by way of penalty under section 8.

(3) A person shall not knowingly present a document, make a statement or submit a return or information, that is false or misleading in a material particular, to a person performing duties under this Act.

35 Penalty:

- (a) if the person is a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) if the person is a body corporate—\$5,000.

Conduct of directors, servants and agents

40 17. (1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by: 5

(a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent; 10

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary to establish, for the purposes of this Act, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show: 15

(a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the servant or agent had the state of mind. 20

(4) Any conduct engaged in on behalf of a person other than a body corporate by:

(a) a servant or agent of the person within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent; 25

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person. 30

(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and 35

(b) the person's reasons for the intention, opinion, belief or purpose.

Appointment of authorised persons

18. The Secretary may, in writing, appoint a person to be an authorised person, or persons in a class of persons to be authorised persons, for the purposes of a specified provision of this Act. 40

Review of decisions

19. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision to refuse to remit under subsection 9 (1) the whole or part of an amount.

5 (2) Where the Minister or an authorised person makes a decision under subsection 9 (1) and gives to the person whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on
10 behalf of any person whose interests are affected by the decision, for a review of the decision.

(3) A failure to comply with the requirements of subsection (2) in relation to a decision does not affect the validity of the decision.

Delegation by Secretary

15 20. (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to the person occupying an office in the Department all or any of his or her powers under this Act, other than this power of delegation.

20 (2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Secretary.

(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Secretary.

(4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Secretary.

25 **Regulations**

21. (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
- 30 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular:

- (c) providing for the manner of payment of levy and other amounts payable to the Commonwealth under this Act;
- 35 (d) requiring producers of leviable horticultural products, first purchasers, selling agents, and such other persons as are prescribed for the purposes of this paragraph, to make and keep accounts, accounting records and other records in relation to leviable horticultural products;
- 40 (e) requiring producers of leviable horticultural products, first purchasers, selling agents, and such other persons as are prescribed for the purposes of this paragraph, to provide returns or information for the purposes of this Act; and

- (f) prescribing penalties not exceeding, in the case of a natural person, a fine of \$500 and, in the case of a body corporate, a fine of \$2,500 for offences against the regulations.

(2) Without limiting the manner in which classes of leviable horticultural products may be described in the regulations, the regulations may describe such classes by reference to: 5

- (a) the use for which the products are sold by the producer;
 (b) the use to which the products are put by the producer; or
 (c) the state, form or condition of the products, whether by reference to a process or otherwise. 10

Orders

22. (1) Subject to subsection (2), 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. 15

(2) An order shall not be made prescribing any penalty.

(3) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders as if references to regulations were references to orders and references to an Act were references to regulations.

(4) An order shall not be taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule. 20

(5) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (4), the reference in the first-mentioned subsection to the Minister specified in that subsection shall be read as a reference to a Minister administering this Act. 25

(6) An order shall be deemed to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*. 30

