

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HORTICULTURAL LEGISLATION AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Primary Industries and Energy  
the Hon. John Kerin, MP)



## HORTICULTURAL LEGISLATION AMENDMENT BILL 1989

## OUTLINE

The purpose of this Bill is to provide additional arrangements under which horticultural industries are able to participate in the Australian Horticultural Corporation (AHC) and the Horticultural Research and Development Corporation (HRDC) through product levies and export charges. The Bill amends the Australian Horticultural Corporation Act 1987, the Horticultural Export Charge Collection Act 1987, the Horticultural Levy Collection Act 1987 and the Horticultural Research and Development Corporation Act 1987.

2. Firstly, the Bill provides for industries wanting to participate in the Corporations but whose proposed levy and export charge collection arrangements cannot be implemented under present legislation.

3. Under the current legislation, in order for better securing the payment of levies and charges, amounts are paid to the Commonwealth on behalf of the producer or owner of prescribed horticultural products by the first purchaser, selling agent or exporting agent. Such an arrangement would not be cost effective in those industries where there are many purchasers or agents of a horticultural product.

4. For these industries the Bill will provide for amounts on account of levy and charge to become payable at the point of purchase of prescribed goods or services (inputs) used in the production of prescribed horticultural products. Exemptions and refunds will be available for purchasers of these goods and services under certain circumstances.

5. The nursery industry has confirmed it wishes to participate in the AHC and the HRDC while the blueberry industry wishes to participate in the AHC only. Both industries intend to utilise the above collection mechanism.

6. Secondly, the Bill provides for the Commonwealth to be able to enter into collection agreements with a State or Territory. Under the agreement, a State or Territory or an authority of the State or Territory will collect horticultural levies and charges on the Commonwealth's behalf and then pay collected amounts to the Commonwealth. This will significantly reduce the costs of collecting levies and charges.

7. Thirdly, the Corporations will be empowered to enter into agreements with levy and charge collectors on the payment of costs borne by those persons in respect of the collection process.

#### FINANCIAL IMPACT STATEMENT

8. It is expected that the approximate amount raised by a nursery industry levy and charge will be initially \$750,000. Of this amount half will be directed to the HRDC and will be matched by the Commonwealth dollar for dollar up to a limit of 0.5% of the average annual gross value of production of the industry.

9. Amounts raised by the blueberry industry are expected to be approximately \$150,000. As this industry wishes to participate in the AHC only this levy will have no financial impact on the Commonwealth, as the Corporation is to be fully funded by levies, charges and fees for service

- given the Government's commitment of \$5.85 million in the first 5 years of the Corporation's operations.

10. The extent of the Commonwealth contribution to research will continue to depend on the number of industries which agree to participate in the HRDC and the rates at which they are prepared to fund Corporation research activities

- given the Government's commitment of \$1.25 million in the Corporation's first 5 years of operations.

## NOTES ON INDIVIDUAL CLAUSES

### PART I - PRELIMINARY

#### Clause 1 - Short Title

11. Provides for the Act to be cited as the Horticultural Legislation Amendment Act 1989.

#### Clause 2 - Commencement

12. Sections 1 to 3, 5 to 8, 19, 20, 31, 33, 34 and provisions of sections 11 and 23 will come into effect on the day the Bill receives Royal Assent. The remaining provisions come into effect by Proclamation.

### PART 2 - AMENDMENTS OF THE AUSTRALIAN HORTICULTURAL CORPORATION ACT 1987

#### Clause 3 - Principal Act

13. Formal.

#### Clause 4 - Interpretation

14. The definitions of "State" and "Parliament" are amended to included reference to the Australian Capital Territory.

#### Clause 5 - Payments of amounts of levy and charge to Corporation

15. Section 47 of the Principal Act provides that amounts equal to amounts of levy, charge and penalty received by the Commonwealth are payable to the Corporation. This clause amends section 47 by widening the reference to levy, charge and penalty to include amounts received under the new collection arrangements provided for by this Bill.

#### Clause 6 - Insertion of new section

Corporation may enter into agreements with certain other persons collecting levy, charge or penalty.

16. A new section 47A is inserted, providing for the Corporation to enter into an agreement with persons responsible for industry levy and charge collections for the payment of their services. The amounts raised by the levies and charges are used to fund Corporation activities for the benefit of those industries. The use of the provision to pay particular persons for collection services can be expected to follow consultation with the relevant industry and in circumstances when it is seen as necessary to facilitate collection arrangements for that industry.

PART 3 - AMENDMENTS OF THE HORTICULTURAL EXPORT CHARGE  
COLLECTION ACT 1987

Clause 7 - Principal Act

17. Formal.

Clause 8 - Interpretation

18. New definitions are inserted and some present definitions are amended.

Clause 9 - Act binds Crown

19. Section 5 of the Principal Act is amended by including reference to the Australian Capital Territory.

Clause 10 - Liability of exporting agents

20. Section 7 of the Principal Act is amended to provide that, for better securing the payment of charge, an exporting agent may pay to State collecting authorities amounts equal to amounts of charge due rather than to the Commonwealth. This provision will only apply where an agreement has been entered into between the Commonwealth and State or Territory under a new section 7B of the Principal Act (clause 11 of the Bill).

Clause 11 - Insertion of new sections

**Liability of sellers of prescribed goods or services.**

21. A new section 7A is inserted to provide for better securing the payment of charge of particular chargeable horticultural products. It provides for a person who purchases prescribed goods or services (inputs) which are used in the production of chargeable horticultural products, to pay to the seller an amount on account of the charge that would be payable if the products, produced with the aid of those goods or services, were exported. That is, the amounts on account of charge may be payable before the chargeable products are actually produced. Any penalty payable by the purchaser shall also be paid to the seller. Amounts received by the seller of the goods or services shall in turn be payable to the Commonwealth.

22. It will be possible for a purchaser of the goods or services to seek an exemption from making a payment of an amount on account of charge if it is their intention that:

- (a) the goods or services will not be used in producing chargeable horticultural products; or
- (b) chargeable horticultural products produced with the aid of the goods or services will not be exported.

## Collection Agreements.

23. A new section 7B empowers the Commonwealth to enter into agreements with States and Territories to collect moneys payable under this Act on behalf of the Commonwealth. The collecting authority named in the agreement may be either the State or Territory or an authority (such as a marketing board) of a State or Territory. An agreement may cover collections of amounts directly from an owner of chargeable horticultural products or amounts payable by the exporting agent of such products on behalf of the owner. At present, under the Principal Act such amounts payable by exporting agents must be remitted directly to the Commonwealth. However, for some industries, the cost of collecting charges will be significantly reduced if these amounts are paid via State authorities which are already responsible for the collection of State charges and fees.

### Clause 12 - Penalty for non-payment

24. This clause amends section 8 of the Principal Act and relates to non-payment of amounts on account of charge under the proposed section 7A (described in paragraphs 19 and 20 of this Memorandum). It prescribes penalty if the purchaser of goods or services does not pay amounts payable to the seller of the goods or services by a prescribed period or if the seller does not pay amounts received to the Commonwealth by a prescribed period.

### Clause 13 - Recovery of charge and other amounts

25. Amends section 10 of the Principal Act and provides that amounts payable under subsection 7A(1) are recoverable as debts due to the Commonwealth.

### Clause 14 - Refund of charge

26. Amends section 11 of the Principal Act by providing that refunds of amounts paid under subsection 7A(1) may be made if it can be demonstrated that the goods or services purchased were in the event not used in the production of chargeable horticultural products. Refunds will also be payable if chargeable horticultural products are produced but not exported. This provision covers situations, for example, where goods are purchased but are stolen or destroyed before they can be used in the production of chargeable horticultural products.

### Clause 15 - Powers of authorised person in relation to premises

27. Amends section 12 of the Principal Act and provides that the purpose for which entry to premises may be obtained is to ascertain whether a person has contravened or is contravening a provision of this Act or is committing an offence against this Act.

### Clause 16 - Seizure

28. A new section 12A is inserted and provides for seizure of evidence of the commission of an offence against this Act.

#### Clause 17 - Warrant to enter premises

29. Amends section 13 of the Principal Act and describes the circumstances and the period for which a warrant may be issued. A magistrate should be satisfied that it was reasonably necessary to issue the warrant and that it is for the purposes described in clause 15.

#### Clause 18 - Review of decisions

30. Section 19 of the Principal Act is amended by providing that application can be made to the Administrative Appeals Tribunal for review of a decision to refuse refunds sought under subsection 11(1A) of amounts paid to the Commonwealth on account of charge.

### PART 4 - AMENDMENTS OF THE HORTICULTURAL LEVY COLLECTION ACT 1987

#### Clause 19 - Principal Act

31. Formal.

#### Clause 20 - Interpretation

32. New definitions are inserted and some present definitions are amended.

#### Clause 21 - Act binds Crown

33. Section 5 of the Principal Act is amended by including reference to the Australian Capital Territory.

#### Clause 22 - Liability of selling agents and first purchasers

34. Section 7 of the Principal Act is amended to provide that, for better securing the payment of levy, a selling agent or first purchaser of prescribed horticultural products may pay to State collecting authorities amounts equal to amounts of levy due rather than to the Commonwealth. This provision will only apply where an agreement has been entered into between the Commonwealth and State or Territory under a new section 7B of the Principal Act (clause 23 of the Bill).

#### Clause 23 - Insertion of new sections

##### **Liability of sellers of prescribed goods or services.**

35. A new section 7A is inserted to provide for better securing the payment of levy on particular leviable horticultural products. It provides for a person who purchases prescribed goods or services which are used in the production of leviable horticultural products, to pay to the seller an amount on account of the levy that would be payable if the products were sold or used in the production of other goods. This means the amounts on account of levy



will generally be payable before the leviable products are produced. Any penalty payable by the purchaser shall also be paid to the seller. Amounts received by the seller of the goods or services shall in turn be payable to the Commonwealth.

36. It will be possible for a purchaser of the goods or services to seek an exemption from making a payment on account of the levy if it is their intention that:

- (a) the goods or services will not be used in producing leviable horticultural products; or
- (b) leviable horticultural products produced with the aid of the goods or services will not be sold or used in the production of other goods.

37. A new section 7B empowers the Commonwealth to enter into agreements with States and Territories to collect moneys payable under this Act on behalf of the Commonwealth. The collecting authority named in the agreement may be either the State or Territory or an authority (such as a marketing board) of a State or Territory. An agreement may cover collections of amounts directly from a producer of leviable horticultural products or amounts payable by the selling agent or first purchaser of such products on behalf of the producer. At present, under the Principal Act such amounts payable by selling agents and first purchasers must be remitted directly to the Commonwealth. However, for some industries, the cost of collecting levies will be significantly reduced if these amounts are paid via State authorities which are already responsible for the collection of State charges and fees.

#### Clause 24 - Penalty for non-payment

38. This clause amends section 8 of the Principal Act and relates to non-payment of amounts on account of levy under the proposed section 7A (described in paragraphs 32 and 33 of Memorandum). It prescribes penalty if the purchaser of goods or services does not pay amounts to the seller of the goods or services by a prescribed period or if the seller does not pay amounts received to the Commonwealth by a prescribed period.

#### Clause 25 - Recovery of levy and other amounts

39. Amends section 10 of the Principal Act and provides that amounts payable under subsection 7A(1) are recoverable as debts due to the Commonwealth.

Clause 26 - Refund of levy

40. Amends section 11 of the Principal Act by providing that refunds of amounts paid under subsection 7A(1) may be made if it can be demonstrated that the goods or services purchased were in the event not used in the production of leviable horticultural products. Refunds will also be payable if leviable horticultural products are produced but not sold or used in the production of other goods. This provision covers situations, for example, where goods are purchased but are stolen or destroyed before they can be used in the production of leviable horticultural products.

Clause 27 - Powers of authorised person in relation to premises

41. Amends section 12 of the Principal Act and provides that the purpose for which entry to premises may be obtained is to ascertain whether a person has contravened or is contravening a provision of this Act or is committing an offence against the Act.

Clause 28 - Seizure

42. A new section 12A is inserted and provides for seizure of evidence of the commission of an offence against this Act.

Clause 29 - Warrant to enter premises

43. Amends section 13 of the Principal Act and describes the circumstances and the period for which a warrant may be issued. A magistrate should be satisfied that it was reasonably necessary to issue the warrant and that it is for the purposes described in clause 27.

Clause 30 - Review of Decisions

44. Section 19 of the Principal Act is amended by providing that application can be made to the Administrative Appeals Tribunal for review of a decision to refuse refunds sought under subsection 11(1A) of amounts paid to the Commonwealth on account of levy.

PART 5 - AMENDMENTS OF THE HORTICULTURAL RESEARCH  
AND DEVELOPMENT CORPORATION ACT 1987

Clause 31 - Principal Act

45. Formal.

Clause 32 - Interpretation

46. The definitions of "State" and "Parliament" are amended to include reference to the Australian Capital Territory.

Clause 33 - Payment of amounts of levy and charge to Corporation

47. Section 45 of the Principal Act provides that amounts equal to amounts of levy, charge and penalty received by the Commonwealth are payable to the Corporation. This clause amends section 45 by widening the reference to levy, charge and penalty to include amounts received under the new collection arrangements provided for by this Bill.

Clause 34 - Insertion of new section

Corporation may enter into agreements with certain other persons collecting levy, charge or penalty.

48. A new section 45A is inserted, providing for the Corporation to enter into an agreement with persons responsible for industry levy and charge collections for the payment of their services. The amounts raised by the levies and charges are used to fund Corporation activities for the benefit of those industries. The use of the provision to pay particular persons for collection services can be expected to follow consultation with the relevant industry and in circumstances when it is seen as necessary to facilitate collection arrangements for that industry.









