

# Agricultural Industry Services Act 1998 No 45

[1998-45]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Agricultural Industry Services Amendment \(Interstate Arrangements\) Act 2002 No 81](#), Sch 1 [6] (not commenced — to commence on 1.7.2004 unless commenced sooner by proclamation)
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)

### Authorisation

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# Agricultural Industry Services Act 1998 No 45



New South Wales

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# Agricultural Industry Services Act 1998 No 45



New South Wales

An Act with respect to the constitution and functions of agricultural industry services committees; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Agricultural Industry Services Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**agricultural industry service** means any service that comprises the provision, funding or facilitation of:

- (a) the conduct of research into, the development of techniques for or the provision of information or advice on:
  - (i) the growing, raising, producing, packaging, processing or marketing of primary products, or
  - (ii) the prevention, eradication or control of diseases or pest infestations that affect primary products, or
- (b) the establishment or management of schemes for:
  - (i) the maintenance of quality control in the growing, raising, producing, packaging, processing or marketing of primary products, or
  - (ii) the prevention, eradication or control of diseases or pest infestations that affect primary products, or
  - (iii) the compensation of primary producers for losses incurred by them as a result of the damage or destruction of primary products, or

- (iv) the protection or management of the natural environment by primary producers,  
or
- (v) the purchase by, or the supply to, primary producers of goods and services for use  
in connection with their activities as primary producers, or
- (c) such other activities as are declared by the regulations to be agricultural industry  
services for the purposes of this Act.

**annual report** means a report prepared by the Director-General on the Director-General's work and activities under this Act, as referred to in section 47.

**area of operations** means:

- (a) in relation to a proposed committee, the area described in the application for the  
establishment of the committee referred to in section 4 (2) (a), and
- (b) in relation to an established committee, the committee's area of operations, as set  
out in the committee's foundation regulation.

**committee** means an agricultural industry services committee constituted by this Act.

**commodity**, in relation to a committee, means a primary product (or a variety, grade or class of primary product) that is specified by the committee's foundation regulation to be a commodity for that committee.

**Competition Principles Agreement** means the agreement of that name between the Commonwealth, the States and the Territories that was entered into, for and on behalf of New South Wales, on 11 April 1995.

**constituent** of a committee means a person whose name is included in the committee's register of constituents.

**Department** means the Department of Agriculture.

**Departmental inspector** means a person appointed by the Director-General to exercise the functions of a Departmental inspector under this Act.

**Director-General** means the Director-General of the Department.

**exercise** a function includes perform a duty.

**foundation regulation**, in relation to a committee, means a regulation made for the purposes of section 4 or 5, being the regulation by which the committee is established.

**function** includes a power, authority or duty.

**grower** means a person:

- (a) who grows, raises or produces a primary product on his, her or its own behalf, or
- (b) on whose behalf a primary product is grown, raised or produced, or
- (c) who is a party to a share-farming or partnership agreement under which a primary product is grown, raised or produced.

**local land board**, in relation to land, means the local land board constituted under the [Crown Lands Act 1989](#) for the land district in which the land is situated.

**occasional report**, in relation to a committee, means a report prepared by the Director-General in relation to the committee's work and activities, as referred to in section 16 (1) (e).

**packer** means a person:

- (a) who packages primary products on his, her or its own behalf, or
- (b) on whose behalf primary products are packaged.

**primary producer** means a grower, packer, processor or trader.

**primary product** means any produce of agriculture, horticulture, viticulture, grazing, pig-keeping, poultry farming or bee-keeping, or of any similar activity prescribed by the regulations, and includes anything prepared directly from any such produce.

**processor** means a person:

- (a) who processes primary products on his, her or its own behalf, or
- (b) on whose behalf primary products are processed,

but does not include a person who manufactures products of which one or more primary products are merely ingredients.

**register of constituents** means a register referred to in section 8.

**trader** means a person:

- (a) who sells primary products on his, her or its own behalf, or
- (b) on whose behalf primary products are sold,

but does not include a person who sells primary products by retail only.

### 3A Notes

Notes included in this Act do not form part of this Act.



## **Part 2 Agricultural industry services committees**

### **Division 1 Procedure for establishing committees**

#### **4 Establishment of new agricultural industry services committees**

- (1) A regulation may establish an agricultural industry services committee to perform specified agricultural industry services for a specified class of primary producers and for a specified class of primary products grown, raised, produced, packed, processed or marketed within a specified area.
- (2) A regulation referred to in subsection (1) may not be made unless:
  - (a) an application for the establishment of the committee is made to the Minister by persons whose activities as primary producers are located within the committee's proposed area of operations, and
  - (b) more than half of the votes cast in a poll in which more than half of the committee's proposed constituents cast votes are in favour of the establishment of the committee, and
  - (c) the making of the regulation has the concurrence of the Premier.
- (3) A poll referred to in subsection (2) (b) is to be taken only if the Minister so directs.
- (4) Such a direction may not be given unless:
  - (a) the Minister is satisfied that the establishment of the committee would be to the benefit of the committee's proposed constituents, and
  - (b) the Minister has had regard to the *Competition Principles Agreement*, and
  - (c) the Premier has concurred in the giving of the direction.
- (5) The question on which the poll is taken must deal with each of the matters that are required by section 6 to be dealt with in a foundation regulation, and may also include a proposed rate for the purposes of section 23.

#### **5 Continuation of existing agricultural industry services committees, marketing boards and marketing committees**

- (1) A regulation may establish an agricultural industry services committee:
  - (a) to continue an existing agricultural industry services committee whose foundation regulation is due for repeal by section 10 of the *Subordinate Legislation Act 1989*, or
  - (b) to continue, as an agricultural industry services committee, some other body in the nature of an agricultural industry services committee, being a body

constituted or established by or under some other Act administered by the Minister.

- (2) In any regulation referred to in subsection (1), the agricultural industry services, primary producers, primary products and area of operations for the new agricultural industry services committee are to be the same as those for the existing agricultural industry services committee or other body.
- (3) A regulation referred to in subsection (1) may not be made unless the making of the regulation has the concurrence of the Premier.

## **6 Content of foundation regulation**

- (1) A committee's foundation regulation must specify the following:
  - (a) the class of primary producers for which the committee is constituted,
  - (b) the area of operations for which the committee is constituted,
  - (c) the commodities for which the committee is constituted,
  - (d) the agricultural industry services for which the committee is constituted.
- (2) A committee's foundation regulation must also make provision for the following matters:
  - (a) the corporate name of the committee,
  - (b) the number of members that are to constitute the committee, indicating:
    - (i) how many are to be elected members, and
    - (ii) how many (if any) are to be appointed members,
  - (c) if the committee's area of operations is to be divided into electoral districts, the boundaries of those districts,
  - (d) if there are to be appointed members:
    - (i) the persons or bodies by whom the appointed members are to be appointed, and
    - (ii) the procedures for appointment of those members,
  - (e) in the case of a regulation referred to in section 4 (1), the terms (not exceeding 4 years for any member) for which the first members of the committee are to hold office,
  - (f) in the case of a regulation referred to in section 5 (1), such provisions of a savings or transitional nature as are necessary or convenient to be made as a

consequence of the reconstitution of the committee under this Act,

- (g) the voting entitlements of the committee's constituents, both for polls and (if appropriate) for elections,
  - (h) the quorum for a committee meeting and for a meeting of the committee's constituents,
  - (i) the committee's financial year.
- (3) More than half of the members of the committee are to be members elected or appointed from among the committee's constituents.
- (4) A constituent's voting entitlement for elections need not be the same as the constituent's voting entitlement for polls.

**Note—**

The *Subordinate Legislation Act 1989*, including, in particular, item 3 of Schedule 2 to that Act, makes provision for the preparation of a regulatory impact statement for a committee's foundation regulation.

## **Division 2 Constitution and functions of committees**

### **7 Constitution of committees**

- (1) On the day on which a committee's foundation regulation takes effect, the committee established by the regulation is constituted by this Act as a corporation under the corporate name given to it by the regulation.
- (2) In the case of a foundation regulation that establishes a committee (the **new committee**) to continue an existing committee as referred to in section 5 (1) (a) or to continue, as a committee, some other body as referred to in section 5 (1) (b) (the **existing body**):
- (a) the new committee is taken to be the same legal entity as, and a continuation of, the existing body, and
  - (b) each member of the existing body continues to hold office as a member of the new committee until the expiry of the term for which he or she was elected or appointed, and
  - (c) any rate, fee or charge that was payable to the existing body under the Act by or under which it was constituted or established is taken to be a rate, fee or charge payable to the new committee under this Act.
- (3) Schedule 1 has effect with respect to the membership and procedure of a committee.
- (4) A committee is not, and does not represent, the Crown.

## **8 Register of constituents**

- (1) A committee must compile and maintain a register of its constituents and their voting entitlements, both for polls and elections.
- (2) A person's name is to be included in a committee's register of constituents if and only if the person belongs to the class of primary producers for which the committee is constituted, as set out in the committee's foundation regulation.
- (3) A committee that decides to include a person's name in the register, or to exclude a person's name from the register, must cause notice of its decision to be served on the person.
- (4) A committee must keep its register of constituents available for public inspection at its offices, free of charge, during its ordinary business hours.

## **9 Functions of committee**

- (1) A committee's principal function is to perform the agricultural industry services specified in its foundation regulation.
- (2) A committee has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) In the exercise of its functions, a committee is subject to such lawful instructions from its constituents as are supported by more than half of the votes cast in a poll in which more than half of the committee's constituents cast votes.
- (4) A poll referred to in subsection (3) is to be taken only if the Minister so directs in accordance with section 17 (4).
- (5) For the purpose of exercising its functions, a committee may enter into, and perform its obligations under, an arrangement with any other body with respect to the orderly provision of agricultural industry services to primary producers within the combined areas of operations of both bodies.
- (6) Without limiting subsection (5), the bodies with which a committee may enter into such an arrangement include the Government of, or a public authority of, the Commonwealth or this or any other State or Territory.

## **10 Staff of committee**

- (1) A committee may employ such staff as it considers necessary for the exercise of its functions.
- (2) A committee may also engage contractors to assist it in the exercise of its functions.

### **11 Delegation of functions**

A committee may delegate to any person any of its functions, other than this power of delegation.

### **12 Seal of committee**

- (1) A committee is to have an official seal.
- (2) The seal is to be kept by the chairperson of the committee and may be applied to a document only:
  - (a) in the presence of the chairperson or a member of staff of the committee authorised in that behalf by the chairperson, and
  - (b) with an attestation, signed by the chairperson or member of staff, as to its application to the document.

### **13 Personal liability**

An act or omission by a committee, by a member of a committee, by a member of staff of a committee or by any person acting under the direction of a committee does not subject the member or person so acting personally to any action, liability, claim or demand so long as the act or omission was done or omitted in good faith in the purported administration or execution of this or any other Act or law.

## **Division 3 Accountability**

### **14 Meetings of committee's constituents**

- (1) A committee must convene a general meeting of its constituents at least once every 12 months.
- (2) In addition to the general meetings, a committee must convene a special meeting of its constituents whenever applications (whether individual or collective) for convening such a meeting are made by as many of its constituents as would constitute a quorum at such a meeting.
- (3) A meeting of a committee's constituents may consider any matter in relation to the committee's functions.
- (4) Schedule 2 has effect with respect to the procedures for meetings of a committee's constituents.

### **15 Strategic plans and reports**

- (1) As soon as practicable after a committee is first established, it must prepare a plan of its proposed work and activities for its first 5 years (its first **5-year plan**).

- (2) Each year, the committee is to review its current 5-year plan and, in the light of the review, prepare a new 5-year plan.
- (3) Each 5-year plan:
  - (a) must deal with the period of 5 years from the date on which it is prepared, and
  - (b) may include indicators against which the performance of the committee may be measured.
- (4) Within 6 months after a committee is first established under this Act:
  - (a) it must cause copies of its first 5-year plan to be sent to each of its constituents, and
  - (b) it must convene a special meeting of its constituents to consider the plan.
- (5) As soon as practicable after a committee prepares its annual report under the *Annual Reports (Statutory Bodies) Act 1984*, it must cause:
  - (a) copies of the report, and
  - (b) copies of its current 5-year plan,to be sent to each of its constituents.

## 16 Role of Director-General

- (1) The Director-General is entitled, in respect of each committee established under this Act:
  - (a) to receive copies of all matter sent by the committee to its members and constituents, and
  - (b) to attend all meetings of the committee and all meetings of the committee's constituents, and
  - (c) to be given such information as the Director-General requests from the committee in connection with its work and activities, and
  - (d) to monitor the work and activities of the committee, and
  - (e) to prepare reports from time to time, for submission to the Minister, on the work and activities of the committee (referred to as **occasional reports**).
- (2) The Director-General must ensure that copies of:
  - (a) any occasional report with respect to a particular committee, and
  - (b) such part of any annual report as relates to a particular committee,

are given to the committee.

- (3) The Director-General's power to make an occasional report in relation to a particular committee's work and activities is independent of the Director-General's duty to prepare an annual report in relation to the Director-General's work and activities under this Act.
- (4) The Director-General may delegate to any person the Director-General's functions under this Act, other than this power of delegation.

## **17 Initiation of polls by constituents**

- (1) A committee's constituents may request the Minister to direct that a poll be taken on any one or more of the following questions:
  - (a) the question of whether an instruction should be given to the committee in relation to the committee's exercise of its functions,
  - (b) the question of whether the committee's foundation regulation should be amended so as to vary provisions of the kind referred to in section 6 (1),
  - (c) the question of whether the committee's affairs should be wound up.
- (2) Such a request is to be made:
  - (a) by means of a resolution carried at a meeting of the committee's constituents, or
  - (b) by means of applications (whether individual or collective) from the committee's constituents,where the number of constituents voting in support of the resolution or the number of applicants, as the case requires, is at least as great as the number of constituents required for a quorum at a meeting of the committee's constituents.
- (3) Within 14 days after such a request is made by a committee's constituents, the committee must cause notice of the request to be given to the Minister.
- (4) A poll referred to in subsection (1) is to be taken only if the Minister so directs.
- (5) Such a direction may not be given:
  - (a) with respect to a question referred to in subsection (1) (a), unless the Minister has had regard to the *Competition Principles Agreement*, and
  - (b) with respect to a question referred to in subsection (1) (b), unless:
    - (i) the Minister has had regard to the *Competition Principles Agreement*, and
    - (ii) the Premier has concurred in the giving of the direction.

## **Division 4 Winding up of committee's affairs**

### **18 Initiation of proposal to wind up committee's affairs**

(1) The winding up of a committee's affairs may be proposed:

- (a) by the Minister, on his or her own motion, or
- (b) by the committee's constituents, by means of a request of the kind referred to in section 17 (1) (c), or
- (c) by the committee, by notice in writing to the Minister.

(2) If the Minister:

- (a) proposes the winding up of a committee's affairs, as referred to in subsection (1) (a), or
- (b) receives notice that the winding up of the committee's affairs is supported by more than half of the votes cast in a poll referred to in section 17 (4) in which more than half of the committee's constituents cast votes,

the Minister may, by notice published in the Gazette, declare that the committee's affairs are to be wound up.

### **19 Action on committee's proposal to wind up committee's affairs**

(1) On receiving a notice of a proposal under section 18 (1) (c), the Minister must cause notice of the proposal to be published in a newspaper circulating (at intervals of not more than one month) within the committee's area of operations.

(2) The notice:

- (a) must indicate that representations may be made to the Minister by the committee's constituents as to whether or not the committee's affairs should be wound up, and
- (b) must specify a date by which any such representations should be made if they are to be considered by the Minister.

(3) If the Minister is satisfied, after considering any representations made with respect to the proposal to which the notice relates:

- (a) that there is among the committee's constituents both significant support for, and significant opposition to, the proposal, the Minister may, by order published in the Gazette, direct that a poll be taken on the question of whether the committee's affairs should be wound up, or
- (b) that there is among the committee's constituents significant support for, but no



significant opposition to, the proposal, the Minister may, by notice published in the Gazette, declare that the committee is to be wound up, or

- (c) that there is among the committee's constituents no significant support for the proposal, the Minister may decide that no further action is to be taken.
- (4) If the Minister receives notice that the winding up of the committee's affairs is supported by more than half of the votes cast in a poll referred to in subsection (3) (a) in which more than half of the committee's constituents cast votes, the Minister may, by notice published in the Gazette, declare that the committee is to be wound up.

## **20 Circumstances in which committee's affairs to be wound up**

- (1) A committee's affairs are to be wound up:
- (a) if the committee is the subject of a declaration referred to in section 18 (2) or 19 (3) (b) or (4), or
  - (b) if its foundation regulation is disallowed by either House of Parliament under section 41 of the *Interpretation Act 1987*, or
  - (c) if its foundation regulation is repealed by section 10 of the *Subordinate Legislation Act 1989*.
- (2) Subject to section 21, the disallowance or repeal of a committee's foundation regulation does not affect the existence or capacity of a committee.

## **21 Conduct of winding up**

- (1) The winding up of a committee's affairs is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Division 4 of Part 5.5 (Voluntary winding up) and Part 5.6 (Winding up generally) of the *Corporations Act 2001* of the Commonwealth (the **Commonwealth Act**), subject to the following modifications to the provisions of Parts 5.5 and 5.6:
- (a) the functions of winding up a committee's affairs may be exercised by a liquidator appointed by the Minister under subsection (2),
  - (b) a reference in Division 4 of Part 5.5 of the Commonwealth Act to a company is to be read as a reference to a committee,
  - (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

### **Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the

Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The Minister may appoint a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) to be a liquidator in relation to the winding up of a committee's affairs for the purposes of subsection (1).
- (2A) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
  - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2B) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2A) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.
- (3) A liquidator appointed by the Minister is entitled to such remuneration as the Minister may, with the concurrence of the Treasurer, determine, and any such remuneration may be paid out of the assets of the committee as part of the costs of liquidation.
- (4) Any assets of a committee that remain after it has been wound up are to be dealt with as the Governor, on the recommendation of the Minister, may direct.
- (5) In making a recommendation referred to in subsection (4):
  - (a) the Minister must first consider whether it would be fair and practicable for those assets, or any part of them, to be returned to persons who are, or who have recently been, constituents of the committee and, if so, must recommend accordingly, and
  - (b) in relation to any assets remaining after the provisions of paragraph (a) have been

complied with, the Minister must then consider whether there is any other organisation (including a body or organisation that represents the interests of primary producers in a participating jurisdiction under Part 3A) having the same general objects as those of the committee and, if so, must recommend that those remaining assets be transferred to that organisation or, if there is more than one such organisation, to each of those organisations in such proportions as the Minister considers appropriate, and

(c) in relation to any assets remaining after the provisions of paragraphs (a) and (b) have been complied with, the Minister must then consider how best those remaining assets can be dealt with in the public interest and must recommend accordingly.

(6) In considering the matters referred to in subsection (5) (a), (b) and (c), the Minister must consult with the members of the committee.

(7) A member of a committee that is being wound up continues to hold office until the winding up has been completed, and his or her term of office is taken to be extended to the extent necessary for that purpose.

(8) On being satisfied that a committee's affairs have been fully wound up, the Minister may, by notice published in the Gazette, declare that the committee is dissolved.

(9) The publication of the notice operates to dissolve the committee.

## **Division 5 Amendment and repeal of foundation regulations**

### **22 Amendment and repeal of foundation regulations**

(1) Despite section 43 of the *Interpretation Act 1987*, a regulation under this Act:

(a) may not amend a committee's foundation regulation with respect to the matters referred to in section 6 (1) unless the amendment is supported by more than half of the votes cast in a poll referred to in section 17 (4) in which more than half of the committee's constituents cast votes, and

(b) may not repeal a committee's foundation regulation unless the committee has been dissolved.

(2) In the case of a regulation to amend a committee's foundation regulation so as to add to:

(a) the class of primary producers for which the committee is constituted, or

(b) the area of operations for which the committee is constituted, or

(c) the commodities for which the committee is constituted,

the reference in subsection (1) (a) to the committee's constituents is taken to be a reference to all of the persons who would be the committee's constituents if the committee's foundation regulation were amended in accordance with the amending regulation.

## **Part 3 Finance**

### **Division 1 Rates**

#### **23 Resolution to levy rates**

- (1) A committee may from time to time resolve to levy rates on its constituents for agricultural industry services performed by the committee.
- (2) Such a resolution may not be made otherwise than in accordance with:
  - (a) a resolution carried at a meeting of the committee's constituents within the previous 12 months, or
  - (b) a proposal supported by more than half of the votes cast in a poll referred to in section 4 (5) in which more than half of the committee's proposed constituents cast votes.

#### **24 Levying of rates**

- (1) A committee levies a rate on a constituent by causing notice of the rate to be served on the constituent.
- (2) The notice must indicate:
  - (a) the amount of the rate, and
  - (b) the date on which that amount falls due or (if the rate is payable by instalments) the several dates on which those instalments fall due.
- (3) The rate falls due in accordance with the terms of the notice, except that no part of it falls due before the expiry of 14 days after the notice is served.
- (4) A rate levied by the committee on a constituent is not a charge on land.
- (5) A person does not cease to be liable for a rate that a committee levies on the person while the person is a constituent of the committee merely because the person subsequently ceases to be a constituent of the committee.

#### **25 Interest on unpaid rates**

- (1) A committee may charge interest on any rates levied by it that are due but unpaid.
- (2) The maximum rate at which interest may be charged under this section is the rate

chargeable under section 95 of the *Supreme Court Act 1970* in relation to unpaid judgment debts.

## **Division 2 Fees and charges for goods and services**

### **26 Fees and charges for goods and services**

- (1) A committee may impose such fees and charges as it may determine for any goods or services it provides to a person at the person's request.
- (2) Division 1 does not apply to or in respect of a fee or charge imposed under this section.

## **Division 3 Funds**

### **27 Establishment of funds**

A committee must establish:

- (a) a general fund, and
- (b) a special fund for each agricultural industry service that it is authorised by its foundation regulation to perform.

### **28 Payments into funds**

- (1) There is payable into a committee's general fund:
  - (a) all rates, fees, charges and other money received by the committee that are not required to be paid into a special fund, and
  - (b) all interest received in respect of the investment of money belonging to the fund, and
  - (c) all money directed to be paid into the fund by or under this or any other Act or law.
- (2) There is payable into a committee's special fund:
  - (a) all rates, fees, charges and other money received by the committee in connection with that fund, and
  - (b) all interest received in respect of the investment of money belonging to the fund, and
  - (c) all money directed to be paid into the fund by or under this or any other Act or law.
- (3) All money payable into a general or special fund is to be paid into an account kept with a bank, building society or credit union carrying on business in New South Wales

or, in the case of a committee that has entered into an arrangement referred to in section 9 (5), an account kept in accordance with that arrangement.

## **29 Payments from funds**

There is payable from a committee's fund:

- (a) all money paid on account of the committee or otherwise required to meet the committee's expenditure in connection with that fund, and
- (b) such part of the remuneration (including allowances) of the members and staff of the committee as are referable to that fund, and
- (c) all money directed to be paid from that fund by or under this or any other Act or law.

## **30 Internal loans between funds**

- (1) Money held by a committee in any of its funds (being money that is not yet required for the purposes of the fund in which it is held) may be lent (by way of internal loan) to any other of the committee's funds if, and only if, the Minister so approves.
- (2) In granting such an approval, the Minister must impose conditions as to the time within which the loan must be repaid and as to any additional amount, in the nature of interest, that must be paid in connection with the loan.
- (3) The terms of the loan must comply with the requirements imposed by the conditions of the approval.

## **31 Investment**

A committee may invest money in its funds:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the committee to invest money, in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister with the concurrence of the Treasurer.

## **Division 4 Miscellaneous**

### **32 Financial year**

- (1) The financial year of a committee is the financial year prescribed by the committee's foundation regulation.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

## Part 3A Extra-territorial application of Act

### Division 1 Interpretation

#### 32A Definitions

In this Part:

**agricultural industry services legislation** means the agricultural industry services legislation of New South Wales or the corresponding agricultural industry services legislation of Victoria or another State or Territory.

**agricultural industry services legislation of New South Wales** means this Act and the regulations, orders and other instruments made under this Act.

**associated laws**, in relation to the agricultural industry services legislation of New South Wales or of a participating jurisdiction, means the provisions of any laws of New South Wales or that jurisdiction concerning a matter arising under that legislation relating to the following:

- (a) the jurisdiction of courts and tribunals under that legislation,
- (b) the procedure before courts and tribunals exercising jurisdiction under that legislation (including with respect to evidence, appeals and review),
- (c) the judicial review of administrative decisions under that legislation,
- (d) the jurisdiction of the Ombudsman with respect to the conduct of public officials under that legislation,
- (e) the access to information held by public officials under that legislation and the correction or amendment of that information,
- (f) the protection of the privacy of personal information held by bodies established under that legislation,
- (g) the disclosure of improper conduct by public officials under that legislation and bodies established under that legislation, the investigation of the matters disclosed and the protection of persons who make those disclosures or who may suffer reprisals in relation to those disclosures,
- (h) the provision of financial statements and annual reports by bodies established under that legislation,
- (i) the conduct of financial and performance audits of bodies established under that legislation,
- (j) the interpretation of that legislation.

**corresponding agricultural industry services legislation** means the provisions of an Act or an instrument under an Act of a participating jurisdiction in respect of which a declaration under section 32B (b) is in force.

**grown or produced**, in relation to a commodity, includes raised, packed, processed or marketed.

**law** includes unwritten law.

**participating jurisdiction** means:

- (a) Victoria, or
- (b) another State or a Territory in respect of which a declaration under section 32B (a) is in force.

**recognised foundation instrument** means an instrument made under an Act of a participating jurisdiction in respect of which a declaration under section 32D is in force.

## **Division 2 Regulations enabling extra-territorial effect**

### **32B Declaration of participating jurisdictions and corresponding legislation**

The regulations may:

- (a) declare another State or a Territory to be a participating jurisdiction for the purposes of this Act, and
- (b) declare an Act or an instrument under an Act of a participating jurisdiction relating to agricultural industry services to be corresponding agricultural industry services legislation for the purposes of this Act.

### **32C NSW foundation regulation with operation outside New South Wales**

- (1) A foundation regulation under this Act may provide for the application of this Act and the foundation regulation:
  - (a) in the area of operations in New South Wales that is specified in the foundation regulation, and
  - (b) in an area of operations in a participating jurisdiction that is specified in the foundation regulation, and
  - (c) to and in relation to the relevant commodity specified in the foundation regulation that is grown or produced in New South Wales and in a participating jurisdiction that is specified in the foundation regulation, and
  - (d) to and in relation to the primary producers of the relevant commodity in New South Wales and in a participating jurisdiction that is specified in the foundation



regulation.

- (2) The provisions of this Act and the regulations made under this Act with respect to the holding of polls and elections apply to the making of a foundation regulation referred to in subsection (1) with the following modifications:
  - (a) a reference to an area includes a reference to an area in the participating jurisdiction, and
  - (b) the modifications set out in this section and section 32J.
- (3) The Minister must not direct that a poll of primary producers be held for the making of a foundation regulation referred to in subsection (1) unless the Minister responsible for administering the corresponding agricultural industry services legislation in the participating jurisdiction has agreed to the poll being held.
- (4) A foundation regulation referred to in subsection (1) may be made if the majority of votes cast in the poll of primary producers in the area of operations in New South Wales (in which more than half of the primary producers in New South Wales who are entitled to vote in the poll have cast a vote) are in favour of the making of the proposed foundation regulation.
- (5) A foundation regulation referred to in subsection (1) does not have effect unless the foundation regulation is declared to be a recognised instrument for the purposes of the participating jurisdiction in which the regulation is to have effect.
- (6) A foundation regulation referred to in subsection (1) takes effect from the date a declaration under subsection (5) is made or from such later date as is specified in the regulation.
- (7) Division 3 applies to and in relation to a foundation regulation referred to in subsection (1) from the date the regulation takes effect.

**32D Declaration of recognised foundation instruments to allow interstate legislation to have effect in New South Wales**

- (1) The regulations may declare an instrument made under an Act of a participating jurisdiction corresponding to this Act to be a recognised foundation instrument for the purposes of this Act.
- (2) The Minister is not to recommend the making of a regulation under subsection (1) unless the Minister is satisfied that, at a poll conducted of the primary producers in New South Wales of the commodity that is proposed to be regulated under the recognised foundation instrument:
  - (a) more than half of the primary producers entitled to vote in the poll have cast a vote, and

- (b) the majority of the votes cast are in favour of the establishment of the committee concerned.
- (3) A regulation under subsection (1) may declare that a recognised foundation instrument applies:
  - (a) in the area in New South Wales that is specified in the regulation, and
  - (b) to and in relation to the commodity specified in the regulation in New South Wales, and
  - (c) to and in relation to the primary producers of the relevant commodity in New South Wales.
- (4) Division 4 applies to and in relation to a regulation under subsection (1) from the date the regulation takes effect.

### **Division 3 Area transferred to control of New South Wales with respect to specified commodity**

#### **32E Application of New South Wales agricultural industry services legislation and associated laws in area outside New South Wales**

This Division has effect for the purposes of the application of the agricultural industry services legislation of New South Wales:

- (a) in the area of the participating jurisdiction described in a foundation regulation referred to in section 32C (1), and
- (b) in relation to the commodity described in that regulation that is grown or produced in that area,

as if that area were within the territorial limits of New South Wales.

#### **32F Conferral of functions etc and jurisdiction on New South Wales**

- (1) All persons who have functions conferred or imposed on them for the purposes of or in connection with the agricultural industry services legislation of New South Wales (or the associated laws of New South Wales) have and may exercise those functions for the purposes of or in connection with that legislation or those laws, as applying:
  - (a) in the area of the participating jurisdiction specified in a foundation regulation referred to in section 32C (1), and
  - (b) in relation to the commodity described in that regulation that is grown or produced in that area.
- (2) The several courts and tribunals of New South Wales are invested with jurisdiction in all matters arising under the agricultural industry services legislation of New South

Wales (or the associated laws of New South Wales), as applying:

- (a) in the area of the participating jurisdiction described in a foundation regulation referred to in section 32C (1), and
  - (b) in relation to the commodity described in the regulation that is grown or produced in that area.
- (3) Charges that are required to be paid under the agricultural industry services legislation of New South Wales in relation to the commodity described in a foundation regulation referred to in section 32C (1) that is grown or produced in the area of the participating jurisdiction described in the regulation are to be treated as debts due and payable in accordance with the laws of New South Wales.

## **Division 4 Area transferred to the control of a participating jurisdiction with respect to specified commodity**

### **32G Application of participating jurisdiction's agricultural industry services legislation and associated laws in New South Wales**

- (1) The agricultural industry services legislation of a participating jurisdiction relating to the commodity described in a regulation under section 32D (1) and the associated laws of that jurisdiction, apply:
  - (a) in the area of New South Wales described in that regulation, and
  - (b) in relation to the commodity described in that regulation that is grown or produced in that area,as if that area were within the territorial limits of the participating jurisdiction.
- (2) The agricultural industry services legislation of New South Wales relating to the commodity described in a regulation under section 32D (1) and the associated laws of New South Wales do not apply:
  - (a) in the area of New South Wales described in that regulation, and
  - (b) in relation to the commodity described in that regulation that is grown or produced in that area of New South Wales.

### **32H Conferral of functions and jurisdiction on participating jurisdiction**

- (1) All persons who have functions conferred or imposed on them for the purposes of or in connection with the agricultural industry services legislation of the participating jurisdiction (or the associated laws of the participating jurisdiction) have and may exercise those functions for the purposes of or in connection with that legislation or those laws, as applying in and in relation to the area of New South Wales by virtue of this Division.

- (2) The several courts and tribunals of the participating jurisdiction are invested with jurisdiction in all matters arising under the agricultural industry services legislation of the participating jurisdiction (or the associated laws of the participating jurisdiction), as applying in and in relation to the area of New South Wales by virtue of this Division.
- (3) Charges and other amounts that are required to be paid under the agricultural industry services legislation of the participating jurisdiction in relation to the commodity described in a regulation under section 32D (1) that is grown or produced in the area of New South Wales described in the regulation are to be treated as debts due and payable in accordance with the laws of the participating jurisdiction.

**32I Provisions of agricultural industry services legislation of the participating jurisdiction with specific application not to apply**

- (1) Nothing in this Division renders a provision of the agricultural industry services legislation of the participating jurisdiction applicable in a particular place:
  - (a) in so far as the provision is incapable of applying in or in relation to that place, or
  - (b) if that legislation expressly provides that the provision does not extend to or apply in or in relation to that place, or
  - (c) if that legislation expressly provides that the provision applies only in a specified locality that does not include that place.
- (2) A provision of the agricultural industry services legislation of the participating jurisdiction is not to be taken to be a provision to which subsection (1) applies merely because it is limited in its application to acts, matters or things within a particular part (however described) of the area described in the regulation under section 32D in the participating jurisdiction.

**Division 5 Polls relating to extra-territorial committees**

**32J Special provisions for polls relating to extra-territorial committees**

- (1) The Minister may authorise the Electoral Commissioner or a person appointed by the Electoral Commissioner to conduct a poll of primary producers:
  - (a) in the area of a participating jurisdiction specified in a draft foundation regulation referred to in section 32C, and
  - (b) referred to in section 32C (1) (d) in the area of operations in New South Wales.
- (2) In the case of a poll under section 4 (2) (b) on the question of whether a committee should be established by a foundation regulation referred to in section 32C, if the corresponding agricultural industry services legislation relating to:
  - (a) the method of enrolment of persons eligible to vote, or

- (b) the preparation of a final roll for the poll, or
- (c) whether voting in relation to the poll is compulsory, or
- (d) the method of determining the outcome of the poll in the participating jurisdiction, is inconsistent with agricultural industry services legislation of New South Wales, the corresponding agricultural industry services legislation applies to that matter in the conduct of the poll in the production area in the participating jurisdiction (except to the extent that the Minister administering that corresponding legislation otherwise determines by notice in writing to the person conducting the poll).

## **Part 4 Enforcement**

### **33 Departmental inspector may require persons to give certain information**

- (1) A Departmental inspector, by written notice served on any person, may require the person to furnish the inspector with such information as is reasonably necessary to enable the inspector to ascertain:
  - (a) whether the person is a primary producer for whom a committee is or is to be established, and
  - (b) if so, the extent of that person's activities as a primary producer.
- (2) A person on whom such a notice is served must not, without reasonable excuse, fail to provide the Departmental inspector with the information sought by the notice.

Maximum penalty: 10 penalty units.

### **34 Powers of entry**

A Departmental inspector may enter any land within the area of operations of a committee or proposed committee for the purpose of ascertaining:

- (a) whether any person is carrying out on that land any activity that indicates that the person is a primary producer for whom a committee is or is to be established, and
- (b) if so, the extent of that person's activities as a primary producer.

### **35 Notice of entry**

- (1) Before a Departmental inspector exercises a power of entry under this Part, the inspector must give the owner or occupier of the land written notice of the inspector's intention to enter the land.
- (2) The notice must specify the day on which the inspector intends to enter the land and must be given before that day.
- (3) This section does not require notice to be given if entry to the land is made with the

consent of the owner or occupier of the land.

### **36 Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any land under a power conferred by this Part, but only if authorised by the Director-General in accordance with this section.
- (2) The authority:
  - (a) must be in writing, and
  - (b) must be given in respect of the particular entry concerned, and
  - (c) must specify the circumstances that must exist before force may be used.
- (3) A Departmental inspector who uses force for the purpose of gaining entry to land must promptly advise the Director-General of that fact.

### **37 Care to be taken**

- (1) In the exercise of a power under this Part, a Departmental inspector must do as little damage as possible.
- (2) Entry onto fenced land is to be made through an existing opening in the fence or, if entry through an existing opening is not practicable, through a new opening.
- (3) Any new opening is to be properly closed when the need for entry ceases.

### **38 Compensation**

- (1) The Director-General must pay compensation to the owner of any land in respect of which a power is exercised under this Part for any loss or damage arising from the exercise of the power.
- (2) However, the Director-General is not liable to pay compensation to the extent to which the loss or damage arises from anything done for the purposes of an inspection that reveals that there has been a contravention of this Act by the owner or occupier of the land.
- (3) A committee is taken to have indemnified the Director-General for any compensation payable by the Director-General under this section as a result of action taken by the Director-General at the request of the committee.

### **39 Certificates of authority**

- (1) A power of entry under this Part may not be exercised by a Departmental inspector unless the inspector:
  - (a) is in possession of a certificate of authority issued by the Director-General, and

(b) produces the certificate when asked to do so by the owner or occupier of the land.

(2) The certificate of authority:

(a) must state that it is issued under this Act, and

(b) must give the name of the Departmental inspector to whom it is issued, and

(c) must describe the nature of the powers conferred and the source of those powers, and

(d) must state the date (if any) on which it expires, and

(e) must describe the kind of land to which the power extends, and

(f) must bear the signature of the Director-General.

#### **40 Entry to residential premises**

A power of entry conferred by this Part is not exercisable in relation to such part of a building as is used for residential purposes except:

(a) with the consent of the occupier of that part of the building, or

(b) under the authority conferred by a search warrant.

#### **41 Search warrants**

(1) A Departmental inspector may apply to an authorised justice for a search warrant if of the opinion that it is necessary for a Departmental inspector to enter and inspect any land (including any building used for residential purposes) for the purposes of this Act.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a Departmental inspector named in the warrant to enter and inspect land for the purposes of this Act.

(3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant under this section in the same way as it applies to a search warrant under that Act.

(4) In this section, **authorised justice** has the same meaning as it has in the [Search Warrants Act 1985](#).

### **Part 5 Miscellaneous**

#### **42 Appeals**

(1) A person who is aggrieved by a decision of a committee:

(a) as to the inclusion of the person's name in, or the exclusion of the person's name

from, the committee's register of constituents, or

(b) as to the amount of a rate levied on the person,

may appeal to the local land board against the committee's decision.

(2) Such an appeal may not be made more than 28 days after the date on which notice of the committee's decision is served on the appellant, except by leave of the local land board.

(3) The local land board's decision on the appeal is binding on the committee.

#### **42A Territorial application of this Act**

(1) This Act applies both within and outside New South Wales.

(2) This Act applies outside New South Wales to the full extent of the extra-territorial legislative power of the Parliament.

#### **43 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **44 Recovery of unpaid money**

Any money due to a committee may be recovered by it as a debt.

#### **45 Service of documents on persons**

(1) A document that is required to be served on a person (other than a corporation) may be served on the person:

(a) by delivering it to the person, or

(b) by posting it to, or by leaving it with some other person who is apparently 16 years old or more and who apparently resides at, the person's residential address, or

(c) by posting it to, or by leaving it with some other person who is apparently 16 years old or more and who apparently is employed at, the person's business address.

(2) A document that is required to be served on a corporation may be served on the corporation by posting it to, or by leaving it with a person who is apparently 16 years old or more and who apparently is employed at, the registered office of the corporation.

(3) Nothing in this section limits any other law relating to the manner in which documents may be served on a person.



#### **46 Service of documents on committees**

- (1) A document may be served on a committee by leaving it at, or by sending it by post to:
  - (a) the office of the committee, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any other Act or law, or of any rules of court, that authorise a document to be served on a committee in any other manner.

#### **47 Annual reports by Director-General**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director-General must prepare and forward to the Minister a report of the Director-General's work and activities under this Act.
- (2) The Minister must cause each such report to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report under this section need not be separately prepared but may form part of the report prepared for the Department under the [Annual Reports \(Departments\) Act 1985](#).

#### **48 Disclosure and misuse of information**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed by or under some other Act, or
  - (e) with other lawful excuse.

Maximum penalty: 50 penalty units.

- (2) A person must not use, either directly or indirectly, information acquired by the person in the administration or execution of this Act, being information that is not generally known but if generally known might reasonably be expected to materially affect the market value or price of any primary product, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner, a relative of the person or any other associate of the person.

Maximum penalty: 50 penalty units.

#### **49 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.

#### **50 Directors and managers liable for offences committed by corporations**

- (1) If a corporation contravenes a provision of this Act or the regulations, each person who:
  - (a) is a director of the corporation, or
  - (b) is concerned in the management of the corporation,is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention.
- (2) A person may, under this section, be proceeded against and convicted for a contravention of that provision whether or not the corporation has been proceeded against or convicted for a contravention of that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **51 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:
  - (a) the conduct of polls and elections for the purposes of this Act,
  - (b) the manner and form in which applications are to be made under section 4 for the establishment of a committee,
  - (c) the form and content of the register of proposed constituents to be prepared under section 4 for a poll for the establishment of a committee,
  - (d) the form and content of a committee's register of constituents,
  - (e) the manner and form in which applications are to be made under section 14 for a special meeting of a committee's constituents.
- (2) A regulation may create offences with a maximum penalty not exceeding 20 penalty units (in the case of a corporation) and 10 penalty units (in any other case).

#### **52 (Repealed)**

## **52A Savings, transitional and other provisions**

Schedule 4 has effect.

## **53 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Membership and procedure of an agricultural industry services committee**

(Section 7)

### **Part 1 Constitution**

#### **1 Terms of office of members**

- (1) Subject to this Schedule, a member holds office for 3 years from the date of his or her election or appointment, but is eligible (if otherwise qualified) for re-election or re-appointment.
- (2) In relation only to the first members elected or appointed to a particular committee, subclause (1) is subject to the committee's foundation regulation.

#### **2 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **3 Deputies**

- (1) A member may, from time to time, appoint a person to be the member's deputy, and may revoke any such appointment.
- (2) A member by whom such an appointment is made must cause notice of the appointment, and the name of the deputy appointed, to be given to the chairperson of the committee.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.

- (4) While acting in the place of a member, a deputy member:
- (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the deputy member.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### **4 Vacancy in office of member**

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-elected or re-appointed, or
- (c) resigns the office by instrument in writing addressed to the committee, or
- (d) is absent from 4 consecutive meetings of the committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the committee or unless the member is excused by the committee for having been absent from those meetings, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

#### **5 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act and the regulations, to be elected or appointed to fill the vacancy.

#### **6 Chairperson and deputy chairperson**

- (1) A committee must appoint its own chairperson and deputy chairperson.
- (2) In the absence of the chairperson, the deputy chairperson may, if available, act in the place of the chairperson.
- (3) While acting in the place of the chairperson, the deputy chairperson has all the functions of the chairperson and is taken to be the chairperson.

- (4) The chairperson or deputy chairperson vacates office as chairperson or deputy chairperson if the person ceases to be a member.

## **7 Disclosure of pecuniary interests**

- (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

- (2) A disclosure by a member at a meeting of the committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the committee otherwise determines:
- (a) be present during any deliberation of the committee with respect to the matter, or
  - (b) take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the committee for the purpose of making the determination, or

(b) take part in the making by the committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the committee.

## **8 Effect of certain Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 2 Procedure**

### **9 Quorum**

The quorum for a meeting of a committee is as prescribed by the committee's foundation regulation.

### **10 Presiding member**

(1) The person to preside at a meeting of a committee is to be:

(a) the chairperson, or

(b) in the absence of the chairperson, the deputy chairperson, or

(c) in the absence of both the chairperson and the deputy chairperson, a member appointed by the members present at the meeting.

(2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **11 Voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is a decision of the committee.

### **12 Transaction of business outside meetings or by telephone**

(1) A committee may, if it thinks fit, transact any of its business by the circulation of

papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the committee.

- (2) The committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson and each member have the same voting rights as they have at an ordinary meeting of the committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **13 Minutes**

A committee is to cause full and accurate minutes to be kept of the proceedings of its meetings.

### **14 First meeting**

The Minister may convene the first meeting of a committee at such time and place, and in such manner, as the Minister thinks fit.

## **Schedule 2 Procedure for meetings of a committee's constituents**

(Section 14)

### **1 Procedure at meetings**

- (1) The procedure for convening meetings of a committee's constituents and for the conduct of those meetings is, subject to this Act and the regulations, to be as determined by the committee.
- (2) The question of whether an instruction should be given to the committee in relation to the exercise of its functions may not form part of the business of a meeting unless notice of the motion to raise the question has been given to the chairperson of the committee at least 14 days before the date of the meeting.

## **2 Quorum for meetings**

The quorum for a meeting of a committee's constituents is as prescribed by the committee's foundation regulation.

## **3 Presiding member at meetings**

- (1) The person to preside at a meeting of a committee's constituents is to be:
  - (a) the chairperson, or
  - (b) in the absence of the chairperson, the deputy chairperson, or
  - (c) in the absence of both the chairperson and the deputy chairperson, a member appointed by the constituents present at the meeting.
- (2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **4 Attendance and voting at meetings**

- (1) Any owner or occupier of land within a committee's area of operations may attend a meeting of the committee's constituents, but only the committee's constituents are entitled to vote at the meeting.
- (2) Each of the committee's constituents has a single vote only.
- (3) Proxy voting is allowed, subject to the regulations.

## **5 Minutes of meetings**

A committee is to cause full and accurate minutes to be kept of the proceedings of meetings of the committee's constituents.

## **Schedule 3 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 52A)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Horticultural Legislation Amendment Act 2000*, but only to the extent that it repeals the *Horticultural Stock and Nurseries Act 1969*

*Agricultural Industry Services Amendment (Interstate Arrangements) Act 2002*



*Wine Grapes Marketing Board (Reconstitution) Act 2003*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on repeal of Horticultural Stock and Nurseries Act 1969**

### **Division 1 Interpretation**

#### **2 Definitions**

In this Part:

**amending Act** means the *Horticultural Legislation Amendment Act 2000*.

**cultivate** horticultural stock means to grow, raise or produce the stock otherwise than by propagation.

**establishment period** means the period of 6 months commencing on the day on which the repealed Act is repealed.

**horticultural stock** means any tree, vine, plant, shrub or other vegetation.

**horticultural stock industry** means an industry concerned with:

- (a) the propagation of horticultural stock for the purpose of sale, or
- (b) the cultivation of such stock for the purpose of sale.

**propagate** horticultural stock means to generate or multiply by sexual or asexual means.

**repealed Act** means the *Horticultural Stock and Nurseries Act 1969* as in force immediately before its repeal by the amending Act.

**sale**, in relation to horticultural stock, includes:

- (a) barter or exchange, or

- (b) agreeing to sell or offering or exposing for sale, or
  - (c) having in possession for sale, or
  - (d) sending, forwarding or delivering for or on sale,
- or causing, suffering or attempting any of those acts or things.

## **Division 2 Establishment of horticultural industry service committees**

### **3 Establishment of agricultural industry services committee for horticultural stock industry**

- (1) Section 4 (2) (b) of this Act does not apply to the establishment of an agricultural industry services committee under this Act in relation to a horticultural stock industry.
- (2) Any information concerning a person who was registered as a nurseryman or reseller under the repealed Act immediately before the commencement of the establishment period may be used by the Minister or any such committee for the purposes of this Act to ascertain the constituent members (or proposed constituent members) of the committee.
- (3) Subclauses (1) and (2) cease to have effect on the expiry of the establishment period. However, nothing in this subclause affects the validity of any agricultural industry services committee established under this Act during that period in relation to a horticultural stock industry.

### **4 Levying of rates by agricultural industry services committee**

- (1) Despite section 23 (2) of this Act, an agricultural industry services committee established under this Act during the establishment period in relation to a horticultural stock industry cannot resolve to levy a rate on its constituents (whether during or after that period) unless the resolution is made in accordance with section 23 (2) (b) of this Act.
- (2) Subclause (1) ceases to apply to an agricultural industry services committee immediately after the first time that the committee has successfully made a resolution to levy its constituents in accordance with section 23 (2) (b) of this Act.

## **Division 3 General provisions**

### **5 Funds in Horticultural Stock and Nurseries Account**

- (1) The Minister may direct that any available funds in the Horticultural Stock and Nurseries Account be applied to pay any persons, associations or institutions determined by the Minister to be used by them in any manner that, in the opinion of the Minister, will assist in any of the following:

- (a) the establishment of an agricultural industry services committee under this Act in relation to a horticultural stock industry,
- (b) the development or protection of a horticultural stock industry.

(2) For the purposes of this clause:

- (a) the Horticultural Stock and Nurseries Account is to continue to be kept after the repeal of the repealed Act until the Account is closed in accordance with subclause (3), and
- (b) any fees recovered after the repeal of the repealed Act that were payable under the repealed Act immediately before that repeal that would have been payable to the credit of the Horticultural Stock and Nurseries Account had the repealed Act not been repealed are to continue to be paid to the credit of that Account, and
- (c) any penalties recovered after the repeal of the repealed Act in respect of offences committed against that Act before its repeal that would have been payable to the credit of the Horticultural Stock and Nurseries Account had the repealed Act not been repealed are to continue to be paid to the credit of that Account.

(3) The Treasurer may, on the recommendation of the Minister:

- (a) close the Horticultural Stock and Nurseries Account, and
- (b) transfer any funds standing to the credit of the Account on the date of closure to any persons, associations or institutions recommended by the Minister.

(4) In this clause:

**available funds**, in relation to the Horticultural Stock and Nurseries Account, means:

- (a) any funds standing to the credit of the Account immediately before the repeal of section 20 of the repealed Act, and
- (b) any funds subsequently paid to the credit of the Account in accordance with subclause (2).

**Horticultural Stock and Nurseries Account** means the Horticultural Stock and Nurseries Account kept under section 20 of the repealed Act immediately before the repeal of that Act.

## **6 Continuing operation of Part 5 (Inspections and records) of repealed Act**

- (1) Sections 16–18 of the repealed Act, as in force immediately before their repeal, continue to apply to any contravention of a provision of the repealed Act (or the regulations made under that Act) that occurred or is alleged to have occurred before the repeal of that provision.

- (2) If section 19 of the repealed Act, as in force immediately before its repeal, applied to a person in respect of a record kept, or required to be kept, under that section:
  - (a) the section continues to apply to that person and record as if section 19 (and any regulation prescribing matters for the purposes of that section) had not been repealed, and
  - (b) the reference in that section to an inspector has the same meaning as it had immediately before that repeal.

#### **7 Offences committed before repeal of repealed Act**

- (1) Proceedings for offences under the repealed Act (or the regulations made under that Act) committed, or alleged to have been committed, before the repeal of that Act are to be prosecuted and determined as if the repealed Act had not been repealed.
- (2) Accordingly, the law (including any relevant provision of the repealed Act) that would have been applicable to the proceedings had the repealed Act not been repealed continues to apply to the proceedings as if the repealed Act had not been repealed.
- (3) Section 13 of the repealed Act, as in force immediately before its repeal, continues to apply to horticultural stock propagated or offered for sale in contravention of a notification under section 12 of the repealed Act before that repeal.
- (4) This clause does not affect the operation of section 30 of the *Interpretation Act 1987*.

#### **8 Fees payable under repealed Act**

- (1) Any fee payable under the repealed Act that was unpaid immediately before the repeal of that Act is taken to be payable under this Act.
- (2) Any such fee is taken to be a debt due to the Crown and is recoverable by the Director-General in a court of competent jurisdiction.
- (3) The repeal of Part 2 (Registration) of the repealed Act does not:
  - (a) entitle a person to a refund of the prescribed fee paid before that repeal for an application for the registration, or the renewal of the registration, as a nurseryman or reseller for any part of the year in respect of which the fee was paid that elapses after the repeal of that Part, or
  - (b) affect the liability of any person who was liable to pay (but had not paid) such a fee for the whole of the year to which the liability related even if part of that year elapses after the repeal of that Part.
- (4) The repeal of Part 3A (Certification schemes) of the repealed Act does not entitle a person to a refund of the prescribed fee paid before that repeal for an application to participate in an approved certification scheme or for labels for stock grown in

accordance with an approved certification scheme.

#### **9 No compensation payable consequent on repeal of repealed Act**

No compensation is payable to any person for any damage or other loss suffered by that person by reason of the repeal of the repealed Act by the amending Act.

### **Part 4 Provisions consequent on enactment of [Wine Grapes Marketing Board \(Reconstitution\) Act 2003](#)**

#### **14 [Agricultural Industry Services \(Wine Grapes Marketing Board\) Regulation 2003](#)**

- (1) The [Agricultural Industry Services \(Wine Grapes Marketing Board\) Regulation 2003](#) set out in Schedule 1 to the [Wine Grapes Marketing Board \(Reconstitution\) Act 2003](#) (**the new Regulation**) may be amended and repealed as if it had been made under this Act, and does not cease to have effect when that Act expires.
- (2) Sections 4 and 5 do not apply to the new Regulation.
- (3) Section 7 applies to the new Regulation as if it had been made under section 5.
- (4) For the purposes of section 7 (2) (b), the term for which each member of the existing body referred to in that paragraph is taken to have been elected or appointed is taken to expire on 2 February 2007.
- (5) Part 2 of the [Subordinate Legislation Act 1989](#) does not apply to the new Regulation.
- (6) For the purposes of section 10 of the [Subordinate Legislation Act 1989](#), the new Regulation is taken to have been published on 1 January 2004.
- (7) Sections 39, 40 and 41 of the [Interpretation Act 1987](#) do not apply to the new Regulation.