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1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT (NO.3) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and
Energy, Senator the Hon Bob Collins)

**PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT
BILL (NO.3) 1994**

GENERAL OUTLINE

1. The purpose of this bill is to repeal the *Livestock Diseases Act 1978*. This action will remove the Commonwealth's responsibility for exotic disease eradication activities in the Australian Capital Territory (ACT) and remove the Commonwealth's liability for payment of compensation to ACT producers whose property is destroyed or damaged as a result of exotic disease or associated eradication activities.
2. In addition, the proposed repeal of this Act will allow the ACT to join in the Commonwealth/States Cost Sharing Agreement for sharing the costs of exotic animal disease eradication campaigns on an equal basis with the States and the Northern Territory.
3. The amendment to the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* (collection of levy Act) is to address the National Registration Authority for Agricultural and Veterinary Chemicals (the NRA) commencing registration activities in 1995 and not 1994 as was originally intended. The amendment will enable the Collection of Levy Act to apply for 1995/96 and thereafter.
4. In addition, experience with the *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994* has identified the requirement for a number of minor amendments which will improve the administrative efficiency of the Collection of Levy Act and hence benefit industry. These amendments include changing the date for payment of the levy from 1 June to 31 July each year. This will remove the necessity for industry to pay both the interim levy and main levy during the 1994/95 financial year. In addition, the NRA will be able to approve levy payments by instalments, thus spreading the cost to industry over a period of time.
5. The proposed amendments to the late penalty payment provisions will allow for those payments to be set by primary legislation, rather than prescribed by regulations.
6. This bill will also amend the *Australian Horticultural Corporation Act 1987* (the Act) to reduce the burden on the chairperson in respect of the Australian Horticultural Corporation's (the Corporation's) reporting requirements and to remove the need for product boards established under the Act to convene an annual general meeting.

7. At present, the Chairperson of the Corporation is required to attend the annual general meeting of each eligible industry body prescribed under the act to give a report on the Corporation's past and future activities. The amendments contained in this bill will enable other members of the Corporation's board of directors to fulfil this statutory duty.
8. The Australian Dried Fruits Board is the only product board established under the Act. At the request of the dried vine fruits industry, this bill abolishes the requirement for the Australian Dried Fruits Board and other product boards that may subsequently be established under the Act to convene an annual general meeting. This provision will be replaced by a requirement for the Chairperson of the product board to report to the annual general meeting of the product board's eligible industry body. In the case of the Australian Dried Fruits Board, the eligible industry body is the Australian Dried Fruits Association. These changes will bring the reporting requirements for product boards broadly in line with the reporting obligations of their parent body, the Australian Horticultural Corporation.
9. This bill makes the repeal of the annual general meeting provisions of the Act effective from 1 July 1994. The retrospective commencement of this amendment to the Act is designed to ensure that there is no obligation on the Australian Dried Fruits Board to hold an annual general meeting after 1 July 1994. The retrospective commencement date has the full support of the Australian Dried Fruits Board, the Australian Dried Fruits Association and the Australian Horticultural Corporation.
10. The amendments to the *Farm Household Support Act 1992*, provide for the payment of Farm Household Support to farmers who have reached the pension age.
11. The amendments to the *Horticultural Research and Development Corporation Act 1987* (the Act) will reduce the burden on the Chairperson in respect of the Horticultural Research and Development Corporation's (the Corporation's) reporting requirements to industry.
12. At present, the Chairperson of the Corporation is required to attend each year the annual conference or a meeting of the executive of each eligible industry body prescribed under the Act, to give a report on the Corporation's activities for the previous year. The amendments contained in this bill will enable other members of the Corporation's board of directors, as well as the Chairperson, to fulfil this statutory duty.

13. The bill also provides for amendments to the *Rural Adjustment Act 1992* which will allow the Rural Adjustment Scheme (RAS) to operate effectively at a regional level.

FINANCIAL IMPACT STATEMENT

14. The amendments will have no significant impact on Government expenditures and will have no staffing implications for the Department of Primary Industries and Energy.

NOTES ON CLAUSES**PART 1 - PRELIMINARY****Clause 1 - Short title**

15. This clause provides for the Bill to be called the Primary Industries and Energy Legislation Amendment Act (No. 3) 1994.

Clause 2 - Commencement

16. This clause provides for the Bill to come into effect on the day it receives Royal Assent unless otherwise provided.
17. The amendments to the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* (the Levy Act) commence either on Royal Assent or immediately after the Levy Act commences, whichever is the later.
18. The amendments to the *Australian Horticultural Corporation Act 1987* in items 15,16 and 18 of the Schedule are taken to have commenced on 1 July 1994.

Clause 3 - Amendments

19. This clause provides that the Acts referred to in the Schedule are amended as set out in the Schedule and the other items listed in the Schedule have effect according to their terms.

Clause 4 - Repeal of the Livestock Diseases Act 1978

20. This clause provides for the repeal of the *Livestock Diseases Act 1978*.

SCHEDULE**PART 1 - AGRICULTURAL AND VETERINARY CHEMICAL PRODUCTS (COLLECTION OF LEVY) ACT 1994****Subsection 3(1) - (definition of "prescribed date for payment")**

21. This subsection is amended so that the prescribed date for payment of the levy is 31 July each year in lieu of 1 June. This provision will benefit the chemical industry in not have to pay the interim levy and the main levy during 1994/95.

Subsection 3(1) - (definition of "registered")

22. This subsection is amended by omitting the definition of "registered" and substituting new definitions of "registered" and "registration laws".
23. The purpose of the amendments is to ensure that the levy can be collected during 1995/96 and thereafter. The omitted definition required the Agricultural and Veterinary Chemicals Code (Agvet Code) to commence during 1994. The delay in commencing the Agvet Code has been necessary to provide extra time for certain States to pass legislation adopting the Agvet Code.

After subsection 3(2)

24. Subsection 2A provides that if a permit is in force in respect of a chemical product under a prescribed law referred to in paragraph (b) of the definition of "registration law", this Act has effect as if the product were registered under that law. In essence, the levy payable is determined taking into account the total amount of a chemical product sold under both a permit and as a registered product under a prescribed law.
25. Subsection 2B provides that where a chemical product was registered under a prescribed law referred to in paragraph (b) of the definition of "registration law", but is not registered under the Agricultural and Veterinary Code, the product is taken not to have been registered under the prescribed law and consequently levy is not payable.

Section 6

26. This amendment provides that the NRA may do any one or more of the actions described in paragraph 6(b).

Paragraph 6(a)

27. Paragraph 6(a) is amended by removing "or" at the end.

Paragraph 6(b)

28. Paragraph 6(b) is omitted and replaced with new paragraphs 6(b) and 6(c).
29. Paragraph 6(b) will enable the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) to publish a notice in the Commonwealth Gazette prescribing a date for payment of the levy which alters the 31 July date. The gazetted date for payment must however be in the same year as if the payment was to be made on 31 July.

30. Paragraph 6(c) will enable the NRA to publish a notice in the Commonwealth Gazette which will allow arrangements to be made for payment of the levy by instalments. Provided the instalments are paid in accordance with the notice, the levy is taken to have been paid by the 31 July or the date prescribed in accordance with paragraph 6(b).

Section 6 - Add at the end

31. This amendment adds subsection (2) which clarifies that a determination or direction made or given under subsection (1) has effect according to its terms.

Subsection 14(1)

32. This subsection is amended by inserting "particular" before "chemical" so as to clarify that a particular chemical product is being referred to in respect of a late penalty payment.

Paragraphs 14 (1)(a) and (b)

33. Paragraphs (a) and (b) are replaced with new late penalty payment provisions.
34. The new provisions set the late penalty payment provisions in primary legislation rather than prescribing by regulations. This amendment is in accordance with the concerns previously expressed by the Senate Standing Committee for the Scrutiny of Bills.

Subsection 20(1)

35. This amendment clarifies that the NRA may give written notice to certain persons for the purpose of determining whether levy is payable under section 8. The determining of the amount of levy payable, as distinct from whether the levy is payable or not, more accurately reflects the purpose of this subsection.

Subsection 20(2)

36. This amendment clarifies that the NRA may give written notice to certain persons for the purpose of determining whether levy is payable under section 9. The determining of the amount of levy payable, as distinct from whether the levy is payable or not, more accurately reflects the purpose of this subsection.

**PART 2 - AUSTRALIAN HORTICULTURAL CORPORATION ACT
1987**

Division 1 - Annual reports of Corporation

Paragraph 31(1)(A)

37. This clause provides for the chairperson or other members of the corporation's board of directors to attend the annual general meeting of eligible industry bodies.

Paragraphs 31(1)(D) and (E)

38. This clause requires the Chairperson or other member of the board (as the case may be) in attendance at the meeting to deliver an address on the Corporation's past and future activities and to be questioned in relation to those activities.

Application

39. This clause specifies the financial year from which the new reporting arrangements for the corporation are to apply.

Division 1 - Product Boards

Subsection 3(1)(definition of "registered levy payer")

40. This clause is a consequential amendment which removes the definition of "registered levy payer" from the Act.

Subsection 31(2)

41. This clause is a consequential amendment which removes the requirement for the Chairperson of the Australian Horticultural Corporation to report to the annual general meeting of product boards established under the Act.

After Subsection 115f

42. This clause provides for the Chairperson of a product board to report to the annual general meeting of the product board's eligible industry body on the product board's past and future activities and to be questioned on these activities.

Sections 115g to 115p (inclusive)

43. This removes the requirement for product boards to convene an annual general meeting.

Application

44. This specifies the financial year from which the new reporting arrangements for the product board are to apply.

PART 3 - FARM HOUSEHOLD SUPPORT ACT 1992**Subsection 3(1) (definition of "pension age")**

45. This omits the definition of "pension age" from the *Farm Household Support Act 1992*, as it is no longer relevant to the interpretation of the Act.

Paragraph 7(a)(ii)

46. This removes the restriction that a person must not have reached the pension age in order to qualify for Farm Household Support. This amendment allows the payment of Farm Household Support to be extended to farmers who have reached the pension age, who were previously unable to access the payment.

Application

47. This provides for the extension of Farm Household Support to farmers who have reached the pension age to apply from the commencement of this Act.

PART 4 - HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION ACT 1987**Paragraph 30(a)**

48. This provides for the Chairperson or other members of the Corporation's board of directors to report to the annual conference or a meeting of the executive of each eligible industry body.

Paragraphs 30(d) and (e)

49. This requires the Chairperson or another member of the board (as the case may be) in attendance at the meeting of an eligible industry body to deliver an address on the Corporation's past and future activities and to be questioned in relation to those activities.

Application

50. This specifies the financial year from which the new reporting arrangements for the corporation are to apply.

PART 5 - RURAL ADJUSTMENT ACT 1992**Subsection 3(1)**

51. This amends paragraph 3(1) to recognise that rural adjustment occurs at both a national and regional level, and that the objectives of the Rural Adjustment Scheme (RAS) can be effectively applied at either of these levels. The incorporation of a regional focus allows the RAS to more effectively address rural adjustment needs.

Paragraph 3(2)(b)

52. The amendment to paragraph 3(2)(b) will differentiate between the types of support to be provided to farmers under the RAS. Direct support to farmers may include a financial grant to the recipient, while indirect support provides for payments to a separate service provider for advice, information and other services, and relates to 3(2)(f) and 3(2)(g).

Paragraph 3(2)(c)

53. This amendment will specify that this paragraph refers to support provided directly to farmers. Under the current Agreement with the States and Territories (the States) such support is provided through the States' usual adjustment authorities.

Paragraph 3(2)(d)

54. This amends paragraph 3(2)(d) to broaden the scope of the adjustment support that may be provided through the RAS. It allows for relevant rural adjustment and/or development purposes other than those referred to in subsections 3(2)(d)(i) and (ii), to be encompassed within the Scheme.

Subsection 3(2)

55. This provides for support under the RAS by way of grants or loans, to persons other than farmers for the purpose of rural adjustment. It also provides for loans to be made to farmers. It is envisaged that this provision will allow support to be extended to persons such as rural facilitators, community groups, and other entities.

Section 4 (definition of "Rural Adjustment Scheme")

56. This omits the current definition of the Rural Adjustment Scheme and replaces it with one which recognises the participation of entities other than States.

Section 4

57. This amendment defines paragraphs (a) and (b) of section 4 as being the 'State' and 'non-State' component of the RAS. This item allows persons or organisations other than States, to participate in schemes of support under the RAS. The definitions allow for the Commonwealth to enter into agreements relating to rural adjustment with States, and with entities other than States. The term 'person' is also defined.

Paragraph 6(3)(d)

58. This relates to members of the Rural Adjustment Scheme Advisory Council (RASAC), and allows for RASAC members to be appointed because of their expertise in regional adjustment and/or regional development.

After paragraph 8(b)

59. This amendment inserts the paragraph 8(b)(ba) which broadens the functions of the RASAC. It provides for RASAC to provide to the Minister a regional perspective on the operations of the RAS.

Paragraph 8(c)

60. This amends paragraph 8(c) which provides for the RASAC to provide advice to the Minister on funding levels under the RAS, concerning the State component of the RAS.

Paragraph 8(d)

61. This amends Paragraph 8(d) relating to the provision of advice by RASAC on the exceptional circumstances provisions of the RAS, specifying that the exceptional circumstances provisions relate to the State component of the RAS.

Part (3) (heading)

62. This omits the Part 3 heading and replaces it. This part deals with the financial agreements relating to rural adjustment. A sub heading 'Division 1' identifies that this division relates to the operation of the non-State component of the RAS.

Before section 21

63. This amendment inserts a new section, with 'Division 1' describing the operation of the non-State component of the RAS, and 'Division 2' relating to the operation of the State component of the RAS. This section provides for the Commonwealth to provide direct support to farmers and indirect support to farmers

(for example through organisations) for purposes relating to rural adjustment.

- Paragraph 20A(1) and (2) provides for written agreements to be entered into with persons other than States, for grants of money or loans relating to rural adjustment. This section provides for the appropriation of money, and sets out the performance requirements under this component of the RAS.
- Paragraph 20B allows delegation of powers under this Division by the Minister to a Senior Executive Service Office of the Department of Primary Industries and Energy.
- Paragraph 20C identifies an amount payable or repayable by a person to the Commonwealth under an agreement, as a debt due to the Commonwealth. This allows debts to the Commonwealth to be legally recognised and pursued appropriately.
- Paragraph 20D provides an express statutory basis for the Commonwealth to enter into an agreement with a State relating to rural adjustment.

Subsection 21(1)

64. This amends paragraph 21(1) so that the terms and conditions applying to payments made by the Commonwealth to a State under an agreement shall also apply to advances.

Subsection 21(2)

65. This amendment allows for the Commonwealth and the State to jointly determine cost sharing under the State component of the RAS, in addition to that described in paragraph 21(2).

Subsections 21(2) and (3)

66. This specifies that the cost sharing arrangements in paragraphs 21(2) and 21(3) refer to the State component of the RAS only.

Subsection 21(3)

67. This refers to the cost sharing arrangement between the Commonwealth and the States under the exceptional circumstances provisions of the RAS. The inclusion of subsection 4 allows for alternative cost sharing arrangements to that described in paragraph 21(3) to be determined jointly by the Commonwealth and the States, as the case requires.

Section 21

68. This amendment inserts the paragraph 21(4), which allows provision for cost sharing arrangements other than that provided for in paragraphs 21(2) and 21(3) under the State component of the RAS to be jointly determined by the Commonwealth and the State.

After section 21

69. This inserts paragraphs 21A and 21B.
- Paragraph 21A provides for the inclusion of performance requirements within an agreement between the Commonwealth and the State, and provides for delegation of powers under this Division by the Minister to a Senior Executive Service Officer of the Department of Primary Industries and Energy.
 - Paragraph 21B refers to repayment of grants etc., and specifies an amount repayable by a State to the Commonwealth under an agreement, as a debt due to the Commonwealth. This allows debts to the Commonwealth to be legally recognised and pursued appropriately.

Section 22

70. This amendment provides for the inalienability of support provided directly to a farmer under the RAS.

After section 22:

71. This amendment inserts a new heading 'Part 5 Regulations' after Section 22. This part provides for the making of regulations by the Governor-General.

Transitional - Commonwealth/State agreements

72. This provides for transitional arrangements regarding Commonwealth/State agreements relating to rural adjustment that were in force prior to the commencement of these amendments. It provides for rights and obligations under agreements currently in place between the Commonwealth and the State to carry forward.





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