

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

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

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL 1988

GENERAL OUTLINE

This Bill is an omnibus bill for legislation administered within the Primary Industries and Energy portfolio. Its purpose is to make a number of amendments to existing legislation.

2. The Bill makes the following amendments.

Repeal of Canned Fruits Legislation.

3. The Bill provides for the repeal of the Canned Fruits Marketing Act 1979 and two associated Acts, the Canned Fruits Levy Act 1979 and the Canned Fruits Levy Collection Act 1979.

4. Under the Canned Fruits Marketing Act 1979, the Australian Canned Fruits Corporation is empowered to acquire canned deciduous fruit produced in those States where complementary State legislation exists and to market the acquired product in Australia and overseas. In addition the Corporation operates a pooling scheme whereby returns from gazetted pool markets are equalised and an equalised return is paid to canners.

5. The Government considers that the canned fruits statutory marketing arrangements have served their purpose of bringing about a degree of stability to the industry. However, the industry now needs to adjust further to changing market circumstances, and the repeal of the legislation will allow for necessary structural adjustment and encourage more innovation.

Australian Meat and Live-stock Corporation Act 1977

6. The amendments to this Act will reinforce the situation currently applying so that shipping lines involved in the carriage of meat or livestock on behalf of licenced exporters do not themselves need to hold a meat or livestock export licence. Recent legal advice to the Government has indicated that the matter is not beyond doubt and that clarification is therefore desirable.

Export Control Act 1982

7. The amendments will restrict 'authorized officers' to persons appointed under section 20 of the Act, will put beyond doubt the power of an authorized officer to take photographs or video tape recordings as evidence of a breach of the Act, will permit the regulations to impose penalty for non-payment of fees and will clarify that the orders can impose penalty for the non-payment of fees but cannot impose penalty for offences against the orders.

Fishing Industry Research and Development Act 1987

8. The amendments will place beyond doubt the power of the Fishing Industry Research and Development Council to enter into arrangements with the Department of Primary Industries and Energy for the provision of, and payment for, clerical and administrative services.

Meat Inspection Act 1983

9. The amendments will permit the regulations to impose penalty for non-payment of fees, will put beyond doubt the power of an authorized officer to take photographs or video tape recordings as evidence of a breach of the Act and will clarify that the orders can impose penalty for the non-payment of fees but cannot impose penalty for offences against the orders.

Minerals (Submerged Lands) Act 1981

10. As yet the Commonwealth Act has not been proclaimed pending State and Northern Territory legislation which will, inter alia, authorize the States or Territory Ministers to perform the functions of the Designated Authority responsible for the day-to-day administration of the Commonwealth legislation.

11. The Commonwealth is considering proclaiming only those portions of the Act as will be sufficient for a regime covering exploration.

12. The purpose of the proposed amendment is to remove the requirement that the States and the Northern Territory pass legislation to enable their Ministers to be authorised to perform the functions of the Designated Authority. Instead the States and the Northern Territory will be able to authorise their Ministers by administrative action.

Plant Variety Rights Act 1987

13. Subsections 3(1) and 3(7) will be amended to change "public knowledge" to "common knowledge". The concept of public knowledge requires only one person to know about the new variety whereas common knowledge infers that the variety is known within the trade ie by experts in the field.

14. This change is in line with the intent of the Act and will more closely reflect actual practice. "Common knowledge" is used in Plant Variety Rights legislation overseas and in the International Convention of the Union for the Protection of New Plant Varieties. Australia will now conform with international practice.

15. Section 46 of the Act will be amended to remunerate all part-time members of the Plant Variety Rights Advisory Committee equally. Under the current legislation only two of the six part-time members receive Remuneration Tribunal allowances and remuneration. The others only receive Senior Executive Service travel allowances. This is clearly an anomaly as the members all contribute equally to the working of the Committee and were appointed for their expertise and experience in areas specified by the Act.

Wool Marketing Act 1987

16. The amendments to the Wool Marketing Act 1987 proposed in this Bill involve:

- . empowering the Australian Wool Corporation to prevent wool, which does not meet industry standards or industry terms, or which has not been prepared by a registered woolclasser, from being sold for export by private sale as well as by auction;
- . reinstatement of provisions similar to Subsections 42X(3) and 42Y(2) of the now repealed Wool Industry Act 1972 requiring the Commissioner of Taxation, as soon as possible after the end of a financial year, to furnish to the Australian Wool Corporation certain information required by the Corporation to facilitate the payment of refund of wool tax paid into the Market Support Fund;
- . insertion of a corporate knowledge provision along the lines of section 84 of the Trade Practices Act 1974 to enable corporations to be successfully prosecuted for offences;
- . providing for regulations to be made in relation to inspection of wool test houses;
- . correction of minor drafting errors detected following the enactment of the Wool Marketing Act 1987.

Other Amendments

17. The Bill also contains minor typographical and administrative amendments to the Administrative Decisions (Judicial Review) Act 1977, Dairy Produce Act 1986, Pig Industry Act 1986, and Rural Industries Research Act 1985; and repeals a redundant Act, the Dairy Industry Act 1967.

FINANCIAL IMPACT STATEMENT

18. None of the amendments made by the Bill have any significant financial impact.

NOTES ON INDIVIDUAL CLAUSESPART I PRELIMINARYClause 1 - Short Title

19. Formal

Clause 2 - Commencement

20. Sub-clause 2(1) provides that subject to the succeeding sub-clause, the Bill shall come into operation on receiving Royal Assent.

21. Sub-clause 2(2) provides that Subsection 6(1) and section 7, which relate to repeal of the Canned Fruits Levy Acts, commence on 1 December 1988.

22. Sub-clause 2(3) provides that the remaining provisions of Part III of the Bill, which relate to repeal of canned fruits legislation, and the amendment to the Administrative Decisions (Judicial Review) Act 1977 contained the Schedule to the Bill shall come into operation on 1 January 1989.

PART II AMENDMENTS AND REPEAL OF VARIOUS ACTSClause 3 - Amendment of Acts

23. This clause provides that the Acts specified in the Schedule are amended as set out in the schedule.

Clause 4 - Repeal

24. This clause provides for the repeal of a redundant Act. The Dairying Industry Act 1967 was previously one of a number of Acts which amended the Dairying Industry Act 1962. The Dairying Industry Act 1962 and the other Acts which amended it have already been repealed.

PART III - REPEAL OF CANNED FRUITS LEGISLATIONClause 5: Interpretation

25. Defines the terms "Corporation" and "repealed Marketing Act".

Clause 6: Repeal

26. Specifies the Canned Fruits Acts being repealed

Clause 7: Continued Application of Levy and Levy Collection Acts

27. This clause allows collection of the levies payable in January 1989 on canned fruit produced prior to 30 November 1988 and any outstanding levies (and penalties) to be collected after commencement of the repeal.

Clause 8: Corporation to continue in existence for certain purposes

28. This clause specifies the sections of the repealed marketing Act which are needed to be continued in operation to effect the winding up of the Corporation's activities, following commencement of the repeal on 1 January 1989.

Clause 9: Re-appointment of existing members of Corporation

29. This provides for the members and deputies of the Corporation to remain in office from the commencement of repeal until the Corporation's affairs are wound up.

Clause 10: Corporation to prepare final report

30. These are standard provisions which currently apply to annual reports of other primary industry statutory marketing authorities. These require the Corporation to prepare a report and audited financial statements of its operations for the year ended 31 December 1988, and submit them to the Minister for tabling in Parliament.

Clause 11: Discharge of obligations of Corporation

31. This clause requires the Corporation to discharge its debts, liabilities and obligations.

Clause 12: Corporation to prepare final financial statements

32. This clause specifies the requirements to be followed by the Corporation in preparing the financial statements of its operations for the period commencing 1 January 1989 and ending on its dissolution, which are to be submitted to the Minister for tabling in Parliament.

Clause 13: Disposal of Corporation's assets

33. This clause requires the Corporation to make written recommendations in relation to the disposal of its assets. The Minister may then approve the recommendations and the Corporation dispose of the assets in accordance with them.

Clause 14: Dissolution of Corporation

34. This clause authorises the Minister by notice in the Gazette to declare that the Corporation is to cease to exist, when the Minister is satisfied that the requirements of sections 10 to 13 (inclusive) have been met.

Clause 15: Exemption of certain instruments from taxation

35. This clause provides for certain instruments to be exempt from taxation.

SCHEDULEAMENDMENTS OF ACTSAdministrative Decisions (Judicial Review) Act 1977

36. Proposed amendments to Schedule 2 (paragraph (k)) are:
- (a) consequential upon abolition of the Australian Canned Fruits Corporation as part of the amendments contained in Part III of this Bill; and
 - (b) to correct a typographical error, ie "Livestock" changed to "Live-stock",

these amendments will have effect from 1 January 1989.

Australian Meat and Live-stock Corporation Act 1977

37. Proposed substitute subsections 50B(3) and 50B(6) will put beyond doubt the current arrangement that shipping lines involved in the carriage of meat or livestock on behalf of licenced exporters do not themselves require a meat or livestock export licence.

Dairy Produce Act 1986

38. Proposed amendments to subsections 82(4), (5) and (6) are formal drafting amendments to correct references to the Joint Committee of Public Accounts.

Export Control Act 1982

39. Proposed amendment of definition of "authorized officer" in section 3 limits "authorized officer" to persons appointed under section 20 of the Act.
40. Proposed amendment of section 10 puts beyond doubt the power of an authorized officer to take photographs or video tape recordings as evidence of a breach of the Act.
41. Proposed amendment to section 25 will permit the regulations to impose penalty for non-payment of the fees imposed pursuant to paragraphs 25(2)(a) and 25(2)(d) of the Act and will clarify that the orders can impose penalty for the non-payment of fees but cannot impose penalty for offences against the orders.

Fishing Industry Research and Development Act 1987

42. Proposed amendment to section 7 empowers the Fishing Industry Research and Development Council to enter into arrangements with the Commonwealth for the provision of Secretariat services by the Department.
43. Proposed amendments to section 35 put beyond doubt that payments may be made from the Fishing Industry Research and Development Trust Fund for the agreed cost of Secretariat services provided by the Department.

Meat Inspection Act 1983

44. Proposed amendment of section 20 will permit the regulations to impose penalty for non-payment of the fees imposed by paragraph 20(2)(b) of the Act.

45. Proposed amendment of section 25 puts beyond doubt the power of an authorized officer to take photographs or video tape recordings as evidence of a breach of the Act.

46. Proposed amendment of section 37 will clarify that the orders can impose penalty for the non-payment of fees but cannot impose penalty for offences against the orders.

Minerals (Submerged Lands) Act 1981

47. Proposed amendments to the definitions of "Northern Territory Minister" and "State Minister" in section 3 removes the requirement that a State or Northern Territory Minister be authorised "under the law" of that State or Territory to perform the functions of a Designated Authority for the purposes of the Act. It therefore becomes possible for a State or Territory to authorise a Minister by administrative action.

Pig Industry Act 1986

48. Proposed amendments to subsections 30(8) and 46(5) are formal drafting amendments correcting grammatical errors.

Plant Variety Rights Act 1987

49. Proposed amendments to subsections 3(1) and 3(7) change references to "public knowledge" to "common knowledge". The changes are in line with the intent of the Act and reflect actual practice, both in Australia and internationally.

50. The concept of public knowledge requires only one person to know about a new variety of plant, whereas common knowledge infers that the variety is known within the trade, ie by experts in the field

51. Proposed substitute section 46 will amend the Act to remunerate all part-time members of the Plant Variety Rights Advisory Committee equally. Under current legislation only two of the six part-time members receive Remuneration Tribunal allowances and remuneration. The others only receive Senior Executive Service travel allowances. This is clearly an anomaly as the members all contribute equally to the working of the Committee and were appointed for their expertise and experience in areas specified by the Act.

Rural Industries Research Act 1985

52. Proposed amendment is consequential on the repeal of the Wool Industry Act 1972, which was replaced by the Wool Marketing Act 1987.

Wool Marketing Act 1987

53. The proposed amendment to subsection 3(1) is to delete the definition of "export auction" and insert the broader definition "sale for export", which encompasses sale of wool either at auction or privately as a result of which the wool may be exported. This definition relates to the quality assurance powers of the Corporation under section 74. It will bring those powers into line with paragraph 63(1)(b), which empowers the Corporation to formulate, secure the observance of, and implement standards of preparation of wool for submission for sale at auction or otherwise, and paragraph 63(1)(c), which empowers the Corporation to formulate, and secure the adoption of, terms and conditions governing the acceptance of wool for sale, and the sale of wool, at auction or otherwise.

54. The proposed amendment to the "wool stores strategic plan" in Subsection 3(1) simply relocates that definition in alphabetical order.

55. Proposed amendments to subsections 12(3), 19(2), 49(3) are to correct minor drafting errors.

56. The Bill provides for the insertion of a new subsection 51A which requires the Commissioner for Taxation to provide the Corporation with a copy of the list of persons, registered under the Wool Tax Administration Act 1964 for the purpose of collection and payment of wool tax, and any amendments to that list. Sections 13, 14, 15 and 16 of the Wool Tax Administration Act 1964 respectively refer to wool-brokers, wool-dealers, manufacturers and exporters.

57. The Bill provides for a new subsection 51B requiring the Commissioner of Taxation to provide certain information to the Corporation as soon as practicable after the completion of a financial year to facilitate the eventual payment of refunds to woolgrowers of wool tax paid into the Market Support Fund. The information required relates to the wool on which tax was paid in that financial year and the tax that was paid under section 5 of one of the Wool Tax Acts (Nos 1-5) 1964, which is contained in returns lodged by registered persons with the Commissioner for Taxation under the Wool Tax Administration Act 1964.

58. Proposed amendment to subsection 71(2) corrects a minor drafting error.

59. Proposed amendment of paragraph 74(1)(a) is to empower the Corporation to prohibit the offering of wool which does not meet industry standards or terms, for any sale, either at auction or privately, as a result of which the wool may be exported.

60. Proposed amendment of paragraph 74(1)(c) is to empower the Corporation to order the withdrawal of wool which it considers does not meet industry standards or terms, from any sale, either at auction or privately, as a result of which the wool may be exported.

61. Proposed amendment of paragraph 74(1)(e) is to empower the Corporation to prohibit the offering of wool which has not been classed by a registered woolclasser, for any sale, either at auction or privately, as a result of which the wool may be exported.

62. Proposed amendment of paragraphs 74(2)(a) and 74(2)(d) are to provide for wool which has been withdrawn from sale for export and has subsequently been prepared in accordance with industry standards and terms, to be re-offered for sale for export, either at auction or privately.

63. Subsection 119(4) is superfluous as it repeats a provision of Subsection 119(1) and is therefore proposed to be deleted.

64. The Bill provides for a new section 126A which is a standard corporate knowledge provision along the lines of section 84 of the Trade Practices Act 1974. This will enable corporations to be prosecuted under the Principal Act. The new section is consistent with that contained in the Australian Horticultural Corporation Act 1987.

65. The Bill provides for amendment of paragraph 127(2)(c) by inserting a regulation-making power relating to inspection of wool test houses.

66. The Bill provides for the amendment of paragraph 127(2)(d) by inserting a regulation-making power relating to fees for inspection of wool test houses.

67. The amendments to section 127 are necessary to provide a legislative basis for inspection of wool test houses (wool testing laboratories) for the purposes of registration and ensuring compliance with approved testing procedures. The amendments will bring the provisions for test houses into line with those for wool sampling sites.

68. Proposed amendment to paragraph 137(d) clarifies the reference to "repealed Act" as being to the Wool Industry Act 1972.

