

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT BILL 1990

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 1990

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.

Exotic Animal Disease Control Act 1989

3. The amended Schedule to this Act will enable regulations to be put in place to collect levies from the pig and laying chicken industries for payment into the Exotic Animal Disease Preparedness Trust Account.

4. Regulations already apply (from 1 April 1990) for the dairy, livestock, meat chicken and wool industries to contribute to the Trust Account.

Export Control Act 1982

5. The amendments to this Act reflect the operational changes in procedures for export documentation as a result of the introduction of the export documentation (EXDOC) system.

6. The amendments to this Act will:

- (a) reflect the operational changes as a result of the implementation of the system;
- (b) ensure that the powers afforded by existing provisions in the Act and subordinate legislation are preserved with the introduction of the system;
- (c) enable requisite consequential amendments to the Prescribed Goods (General) Orders and other subordinate legislation to be made;
 - the amendments to the Act and to the Prescribed Goods (General Orders) will in turn facilitate the further legislative changes which will be necessary with the extension of the system to the export of other commodities; and
- (d) allow for flexibility and expansion of the system and enable certification directly to other countries.

Horticultural Research and Development Corporation Act 1987

7. The amendments to this Act provide for revised arrangements for the constitution of independent Selection Committees to nominate persons to the Minister for appointment to the Horticultural Research and Development Corporation. Under current arrangements the Corporation's Selection Committee comprises four members of the Research Councils Selection Committee under the Rural Industries Research Act 1985 and three other members nominated by eligible industry bodies. Under the new arrangements Selection Committees will comprise a Presiding Member appointed by the Minister and from four to six persons nominated by eligible industry bodies. Selection committees will be established when a selection task arises and disbanded when the selection process has been completed.

Murray-Darling Basin Act 1983

8. This Act gives effect to the River Murray Waters Agreement 1982 among the Governments of the Commonwealth, New South Wales, Victoria and South Australia. This part of the Bill incorporates an Amending Agreement 1990 into the Act, which will allow out-of-session decisions to be made by the Murray-Darling Basin Ministerial Council.

9. The Council, consisting of up to three Ministers from each Contracting Government representing agriculture, water resources and the environment, is charged with the direction and co-ordination of the Murray-Darling Basin Initiative to combat land and water degradation and develop sustainable resource use in the Basin.

10. The existing Agreement only allows Ministers to make decisions at formal Council meetings. For the efficient discharge of its charter and to improve flexibility and responsiveness, Council has agreed that a means of making decisions out-of-session is required. This part of the Bill is directed at this need.

11. To provide for out-of-session decision making, it is necessary to amend the current River Murray Waters Agreement by way of an amending agreement and parallel legislation in State and Commonwealth Parliaments.

12. The necessary amending agreement has been signed by Heads of all four participating governments and arrangements have been made to incorporate it in the Bills to be submitted to the respective Parliaments in the current Parliamentary Sessions.

Plant Variety Rights Act 1987

13. The amendments to this Act will clarify several issues which have emerged in the initial stages of implementation of this legislation and will meet obligations required under the Convention of the International Union for the Protection of New Varieties of Plants (UPOV).

Primary Industries and Energy Research and Development Act 1989

14. The amendments to this Act correct an inconsistency concerning the attachment of the wheat industry fund levy to the Grains Research and Development Corporation and provide the necessary power for the research component going to the Corporation to be adequately specified.

Snowy Mountains Hydro-electric Power Act 1949

15. The changes to this Act clarify the intention of allowing the Snowy Mountains Hydro-electric Authority to invest surplus monies in specified ways without needing to seek the permission of the Minister for Resources for each transaction.

Wheat Industry Fund Levy Collection Act 1989

16. The amendments to this Act provides that where wheat is processed by or for a grower, the levy only becomes payable once such wheat is delivered or used for a commercial purpose.

Wheat Marketing Act 1989

17. The amendments to this Act are concerned mainly with enabling the management of the Wheat Industry Fund by the Australian Wheat Board shall be by means of an Annual Business Plan approved by the Grains Council of Australia.

FINANCIAL IMPACT STATEMENT

18. The amendments will not affect Government expenditure and will have no staffing implications for the Department of Primary Industries and Energy.

NOTES ON INDIVIDUAL CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

19. Formal.

Clause 2 - Commencement

20. This clause provides that the provisions of the Bill will come into operation on the day on which it receives the Royal Assent, with the exception of Part 7 which is to be taken to commence on 1 October 1990.

PART 2 - AMENDMENT OF THE EXOTIC ANIMAL DISEASE CONTROL ACT 1989

Clause 3 - Principal Act

21. This clause provides that the Principal Act is the Exotic Animal Disease Control Act 1989.

Clause 4 - Substitution of the Schedule

22. This clause repeals the Schedule to the Principal Act and substitutes the Schedule as set out in Schedule 1 to this Act.

PART 3 - AMENDMENTS OF THE EXPORT CONTROL ACT 1982

Clause 5 - Principal Act

23. This clause provides that the Principal Act is the Export Control Act 1982.

Clauses 6 - False trade descriptions

24. This clause provides that section 15(2)(c) of the Act is amended by inserting "or stated in" after "applied to" to cover false trade descriptions in any document transmitted electronically.

Clause 7 - Certificates with respect to goods

25. This clause provides that section 23 is repealed and substituted with a provision to enable Certificates with respect to goods to be transmitted electronically and to meet country requirements.

Clause 8 - Electronic transmission of information and documents

26. This clause provides that section 24A is inserted to allow for the electronic transmission of information and documents. It enables the prescribing of "specifications" in the Regulations relating to the manner and form of transmission.

Evidence of transmission of information or document

27. Section 24E is inserted to overcome evidentiary issues associated with the electronic transmission of information or documentation and the proof of such evidence in proceedings in a court for offences against the Act.

PART 4 - AMENDMENTS OF THE HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION ACT 1987

Clause 9 - Principal Act

28. This clause provides that the Principal Act is the Horticultural Research and Development Corporation Act 1987.

Clause 10 - Interpretation

29. This clause amends the definition of "member" to reflect the changed title of "Presiding Member" in place of "Chairperson of the Selection Committee".

30. The omission of the definition of "Research Councils Selection Committee" is consequential to the repeal of section 65 of the Principal Act under which four members of the Research Councils Selection Committee were also members of the Corporation's Selection Committee.

Clause 11 - Presiding Member/Minister may request the establishment of a Selection Committee

31. This clause provides that section 57 is repealed to allow the establishment and abolition of Selection Committees as required and new sections 57 and 57A are inserted.

32. The new section 57 provides for the part-time appointment of a Presiding Member of Selection Committees for a term of not more than three years as specified in the instrument of appointment.

33. The new section 57A provides that for the purposes of appointing and filling vacancies or expected vacancies for nominated members, the Minister must write to the Presiding Member to request that a Selection Committee be established. The Minister must also specify the period in which the Committee is to undertake its task.

Clause 12 - Abolition

34. This clause provides that a new section 59A is inserted to provide that where a Selection Committee has completed its task and that where there are no outstanding matters to be dealt with, the Presiding Member must abolish the Selection Committee.

Clause 13 - Nominations

35. This clause provides that section 61 of the Principal Act is amended to specify that in assisting it to make a nomination, a Selection Committee must, except in special circumstances, invite nomination of persons for appointment by placing advertisements in at least one daily newspaper which circulates throughout Australia and by inviting eligible industry bodies to suggest candidates.

36. Paragraph 61(2)(b) is amended to add a requirement for the Selection Committee to provide an opinion on how the nomination(s) will best ensure that the members of the Corporation will collectively possess an appropriate balance of expertise.

Clause 14 - Selection of persons by Selection Committee

37. This clause provides that section 62 of the Principal Act is amended to include technology, technology transfer, conservation and management of natural resources and environmental and ecological matters as additional fields in which Corporation members should collectively possess a balance of expertise. These additional fields of expertise reflect the increasing importance given to sustainable development principles and transfer of research knowledge to industry.

Clause 15 - Minister may request further information

38. This clause provides that section 63 of the Principal Act is amended consequential to the changed Selection Committee arrangements.

Clause 16 - Minister may reject nomination

39. This clause provides that section 64 of the Principal Act is amended to provide for a request by the Minister for a further nomination to have the same meaning as an original request under section 57A.

Clause 17 - Establishment of Selection Committee

40. This clause provides that section 67 of the Principal Act is amended to provide that, after receiving a request to establish a Selection Committee, the Presiding Member is required to write to each eligible industry body of the Corporation seeking nomination of persons to the Minister for appointment to the Selection Committee.

41. The Selection Committee will comprise the Presiding Member and 4, 5, or 6 other members, appointed by the Minister on the nomination of all the eligible industry bodies acting together. Provision exists for the Minister to appoint persons without nomination where the Minister is satisfied that industries will be unable to nominate persons within a reasonable time.

42. This clause also repeals the provision to disallow persons who have attained 65 years of age from participating on selection committees. The 65 years of age restriction is inconsistent with the policy of appointing the best available person, particularly given the shorter period of appointment under the new arrangements.

43. Actions carried out in good faith by a Selection Committee are not negated by vacancies in the Committee's membership.

Clause 18 - Termination of appointment

44. This clause provides that section 74 of the Principal Act is repealed and a new section 74 is inserted providing powers for the Minister to terminate the appointment of the Presiding Member and other members but reflecting the changed composition of the committee.

45. The provision for the Minister to terminate the appointment of a member on request of the industry body which had nominated that member has been removed. This provision is no longer required due to the abolition of a Selection Committee after each selection task.

Clause 19 - Employees

46. This clause provides that section 77 of the Principal Act is amended to provide for the Presiding Member to employ persons for the provision of administrative and clerical services to the Selection Committee without the requirement for Ministerial approval for such employment.

Clause 20 - Consultants

47. This clause provides that section 78 of the Principal Act is amended to provide for the Presiding Member to engage consultants on the Selection Committee's behalf.

Clause 21 - Annual Reports

48. This clause provides that section 79 of the Principal Act, which empowered the Selection Committee to delegate its power to employ persons or to engage consultants to a member of the Selection Committee or an employee of the Department, is repealed. Amendments to sections 77 and 78 (above) provide for the Presiding Member to employ persons and engage consultants on behalf of the Selection Committee.

49. A new section 79 is inserted which provides for the Presiding Member of Selection Committees to prepare and give to the Minister a report of Committee activities for the preceding year. The Minister is required to table the report in Parliament within fifteen sitting days of receiving it. The Presiding Member may arrange for the report to be included in the Annual Report of the Horticultural Research and Development Corporation.

PART 5 - AMENDMENT OF THE MURRAY-DARLING BASIN ACT 1983Clause 22 - Principal Act

50. This clause provides that the Principal Act is the Murray-Darling Basin Act 1983.

Clause 23 - Approval of Amending Agreement

51. This clause approves an Amending Agreement allowing out-of-session decisions by the Murray-Darling Basin Ministerial Council entered into by the governments of the Commonwealth and the States of New South Wales, Victoria and South Australia on 4 October 1990.

Clause 24 - Interpretation

52. This clause refers to a new definition of "Agreement" as including an additional Schedule to the Principal Act.

Clause 25 - Schedule 3

53. This clause incorporates the Amending Agreement into the Principal Act by way of that additional Schedule.

PART 6 - AMENDMENTS OF THE PLANT VARIETY RIGHTS ACT 1987Clause 26 - Principal Act

54. This clause provides that the Principal Act is the Plant Variety Rights Act 1987.

Clause 27 - Interpretation

55. This clause provides that subsection 3(3) of the Act deems that a person who has originated a new plant variety by selective breeding is the originator of that variety. It is generally accepted that selection of a variety from a population is a method of selective breeding.

Clause 28 - Plant variety rights not to be granted in relation to certain varieties

56. This clause provides that section 13 of the Act requires that genera and species must be prescribed before they are eligible for Plant Variety Right (PVR).

Clauses 29 and 30 - Priority of certain breeders/Lodging of applications

57. These clauses provide that Article 12 of the Union for the Protection of New Varieties of Plants (UPOV) Convention requires members to give twelve month's priority to an application from a breeder who has lodged a similar application in another UPOV country.

58. This is being implemented administratively in Australia but needs to be included in the legislation to ensure validity.

Clause 31 - Provisional Protection

59. This clause provides that when an application is accepted, provisional protection is granted to ensure that another person cannot obtain and use the variety during the examination period.

60. This amendment deletes subsection 22(2)(b), allowing the applicant to retain provisional protection if the variety is sold commercially during the examination period. In the interim a regulation under subsection 22(1)(b)(iii) prescribing "market evaluation" has been made.

61. To avoid losing protection applicants must delay the release, denying growers, exporters and consumers access to varieties which may be of considerable economic significance. The rationale for denying provisional protection if the variety is sold commercially was to stop a person marketing a variety under the guise of PVR when the application could still be rejected.

62. This is not a strong argument as the applicant cannot take action for any infringement during the provisional protection period until PVR has been granted. If the application is rejected, no action can be taken. Also, if the variety has been sold and rights are refused, the applicant cannot reapply for PVR by virtue of section 14.

Clause 32 - Characteristics of plant varieties originated outside Australia

63. Many UPOV member countries have bilateral agreements which remove the need for repeating PVR trials in each country. The PVR Office is negotiating several such agreements to assist Australian breeders to obtain PVR overseas.

64. Section 23 of the Act could preclude the acceptance in Australia of overseas trial data and special provision needs to be made for cases where bilateral agreements are in place.

Clause 33 - Offences

65. This clause provides that section 52(1)(b) wrongly refers to section 21 when section 22 is clearly intended by the meaning and wording of that section.

PART 7 - AMENDMENTS OF THE PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989

Clause 34 - Principal Act

66. This clause provides that the Principal Act is the Primary Industries and Energy Research and Development Act 1989.

Clause 35 - Definitions

67. This clause provides that a revised definition of "research component" to include determination of the research component of levy imposed under the Wheat Industry Fund Levy Act 1989.

Clause 36 - Levies attached to R&D corporations or R&D funds

68. A revised definition of "research component" to include determination of the research component of levy imposed under the Wheat Industry Fund Levy Act 1989. Sub-clause 36(2) provides that regulations made prior to these amendments remain in force.

Clause 37 - Government matching payments not to exceed levy and certain other payments

69. This clause clarifies that only the research component of the levy is relevant for establishing Commonwealth Government matching payments.

PART 8 - AMENDMENT OF THE SNOWY MOUNTAINS HYDRO-ELECTRIC POWER ACT 1949

Clause 38 - Principal Act

70. This clause provides that the Principal Act is the Snowy Mountains Hydro-electric Power Act 1949.

Clause 39 - Contracts

71. This clause provides that section 31 be amended to allow investment of surplus funds in specified securities without Ministerial approval.

PART 9 - AMENDMENT OF THE WHEAT INDUSTRY FUND LEVY COLLECTION ACT 1989

Clause 40 - Principal Act

72. This clause provides that the Principal Act is the Wheat Industry Fund Levy Collection Act 1989.

Clause 41 - Payment of levy

73. This clause provides that the levy becomes due for payment either on delivery by the grower to another person or, where wheat is processed by or for the grower, once the processed wheat is used by the grower for a commercial purpose. The clause further provides a timeframe for payment of levy due.

PART 10 - AMENDMENTS OF THE WHEAT MARKETING ACT 1989

Clause 42 - Principal Act

74. This clause provides that the Principal Act is the Wheat Marketing Act 1989.

Clause 43 - Management of the Fund

75. This clause establishes that, subject to the operation of any relevant Regulations, the management of the Wheat Industry Fund is to be in accordance with a Business Plan approved by the Grains Council of Australia. Subclause 43(2) provides that the existing Business Plan approved under current Regulations is subject to these provisions of the Bill.

Clause 44 - Interpretation

76. This clause provides that the definition of "research fund" is no longer relevant following the termination of the Wheat Research Trust Fund.

Clause 45 - Determination of apportionment of wheat industry fund levy

77. This clause provides that this amendment is consequential on the termination of the Wheat Research Trust Fund and provides that the Grains Council of Australia shall determine the research component of the Wheat Industry Fund Levy.

Clause 46 - Repeal

78. This clause provides that this amendment is consequential on the termination of the Wheat Research Trust Fund.

Clause 47 - Regulations

79. This clause relates to regulations concerning the operation of the Wheat Industry Fund and associated Business Plan and provides detail of matters in relation to the Fund and the Business Plan which may be provided for by regulation. It also provides for the Grains Council, after consultation with the Australian Wheat Board, to provide a report to the Minister on appropriate regulations regarding the Fund and the Business Plan. Sub-clause 47(2) provides that regulations made prior to these amendments remain in force as if made under this Bill.

PART 11 - MINOR AMENDMENTS OF ACTS

Clause 48 - Amendments of Acts

80. This clause provides that the Acts specified in Schedule 2 are amended as set out in the schedule.

Horticultural Research and Development Corporation Act 1987 - Further amendments

81. The Schedule includes the following changes to the Principal Act.

82. Paragraph 47(1)(a) and subsection 47(2) of the Principal Act are amended to clarify the Corporation's responsibility to pay expenses and discharge liabilities incurred by a Selection Committee in connection with the performance of its functions and the exercise of its powers.

83. References to "the Selection Committee" throughout the Bill are replaced with "a Selection Committee" in recognition that the new arrangements provide for a series of Selection Committees to be formed to fill specific vacancies instead of having a standing Selection Committee.

84. Recognition that "Chairperson of the Selection Committee" is replaced by a "Presiding Member" who has wider responsibilities.

85. Paragraph 76(5)(a) of the Principal Act is amended to alter the quorum required for a meeting of a Selection Committee recognising the changed composition and flexible size of a Selection Committee under new subsection 67(1A).

86. Sections 60, 65, 66 and 68 of the Principal Act which provided for the composition of the Selection Committee, for the Minister to request nominations from a selection Committee, and for the term of office of the selection Committee are repealed. Arrangements to replace these sections are incorporated in new section 57, 57A, 59A and 67 of this Bill.

87. Subsection 70(1) is amended to provide for alternative remuneration for members of a Selection Committee to be determined by the Minister if no provisions have been determined by the Remuneration Tribunal.

