

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY  
THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED.



**PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL**  
**1993**

**OUTLINE**

- 1 This Bill proposes to amend the following Acts:

(Agricultural and Veterinary Chemicals Act 1988  
 (Agricultural and Veterinary Chemicals (Administration) Act (1992  
 (Australian Horticultural Corporation Act 1987  
 (Horticultural Research and Development Corporation Act 1987  
 (Australian Meat and Livestock Industry Selection Committee (Act 1984  
 (Meat Research Corporation Act 1985  
 (Primary Industries and Energy Research and Development Act (1989  
 (Primary Industries Levies and Charges Collection Act 1991  
 (Dairy Produce Act 1986  
 (Fisheries Legislation (Consequential Provisions) Act 1991  
 (Fisheries Management Act 1991  
 (Snowy Mountains Hydro-Electric Power Act 1949  
 (Wheat Marketing Act 1989

**Agricultural and Veterinary Chemicals Act 1988**

**Agricultural and Veterinary Chemicals (Administration) Act 1992**

- 2 The Bill proposes to amend the Agricultural and Veterinary Chemicals Act 1988 to empower the National Registration Authority (the NRA), in certain circumstances, to release a summary of a chemical products evaluation containing confidential commercial information. The summary may be provided on a restricted basis for the purpose of enabling the NRA to determine the clearance of a chemical product. The amendments also impose significant obligations on those persons in receipt of the confidential commercial information to ensure the confidentiality of the information is retained.
- 3 The proposed amendments will enable the NRA to hold public and private hearings for the purpose of obtaining public comment. Before conducting a hearing the NRA must set out the place and time for the hearing in the Gazette and daily newspapers throughout Australia. The proposed amendments will also extend the exemption from suit to the NRA in respect of the granting or refusal of an application for clearance of a chemical product. Directors and staff of the NRA are already exempt.
- 4 The Bill also proposes to amend the Agricultural and Veterinary Chemicals (Administration) Act 1992 to empower the NRA to issue a receipt for money received on behalf of the Commonwealth, thus streamlining the process for issuing receipts; and to enable the NRA to determine progressively conditions of service for staff transferred from the Australian Public Service to the NRA.

**Australian Horticultural Corporation Act 1987**

- 5 The Bill proposes to amend the Australian Horticultural Corporation Act 1987 to remove the 65 year age limit on members of the Corporation, the Managing Director of the Corporation and members of the Corporation Selection Committee.

### **Australian Meat and Live-stock Industry Selection Committee Act 1984**

- 6 The Bill proposes to amend the Australian Meat and Live-stock Industry Selection Committee Act 1984 to ensure that expertise in the fields of conservation and management of natural resources, and environmental and ecological matters is represented on the Meat Research Corporation Board.

### **Horticultural Research and Development Corporation Act 1987**

- 7 The Bill proposes to amend the Horticultural Research and Development Corporation Act 1987 to -
- insert two new objectives relating to furthering the sustainable use and management of natural resources and increasing the economic, environmental and social benefits to members of horticultural industries and to the community in general;
  - make consequential amendments to require the Corporation to include in its annual report, an assessment of the extent to which it has contributed to the achievement of its objectives during the reporting period; and
  - remove the 65 year age limit on members of the Corporation, the Executive Director of the Corporation.

### **Dairy Produce Act 1986**

- 8 The Bill proposes two amendments to the Dairy Produce Act 1986. The first will provide a clear legislative basis for an 'import offset' arrangement operated by the Australian Dairy Corporation when making market support payments. The second amendment will allow the Minister for Primary Industries and Energy to authorise the use of monies from the Dairy industry Fund to underwrite the International Dairy Federation's World Congress, to be held in Australia next year.

### **Fisheries Legislation (Consequential Provisions) Act 1991**

- 9 The Bill proposes to amend the Fisheries Legislation (Consequential Provisions) Act 1991 to extend the period during which Part IVA of the Fisheries Act 1952 continues in force. Part IVA provides the necessary powers for the Commonwealth to enter into arrangements with the States and Northern Territory to vary the jurisdictional arrangements for identified fisheries in accordance with the Offshore Constitutional Settlement. Similar powers exist in the Fisheries Management Act 1991 but these provisions cannot commence operation until amendments have been made to relevant State and Territory legislation to complement that Act.
- 10 This proposed amendment will ensure that the existing jurisdictional arrangements do not lapse on 3 February 1994 and will allow the States and the Northern Territory an additional 12 months to pass complementary legislation. Part IVA of the Fisheries Act 1952 will be repealed when all complementary State and Territory legislation is in place.

### **Fisheries Management Act 1991**

- 11 The Fisheries Management Act 1991, which commenced on 3 February 1992, established a new system of Statutory Fishing Rights and provided for the making of Fishery Management Plans to be the primary instrument for

managing Australia's commercial fisheries. The Act gives AFMA general powers to make Management Plans and create and issue various types of fishing concessions.

- 12 The Bill proposes to amend the Fisheries Management Act 1991 to clarify the matters that may be included in a Plan, and, in particular to enable seasonal and other closures to be authorised under a Management Plan and provide greater flexibility in the type and number of fishing concessions a fisherman may hold.
- 13 The proposed amendments will also enable fishermen to hold a number of Statutory Fishing Rights as a discrete package of Rights which authorises a particular fishing activity, including combinations of quotas to take various species of fish or specified combinations of fishing gear or boat characteristics such as size or engine power.
- 14 The Bill also proposes to amend the *Fisheries Management Act 1991* to make clear that where a provision of the Principal Act could have an application that would exceed the Commonwealth's legislative power, then the provision is only to have an application that is within the Commonwealth's legislative power.
- 15 In some recent cases the High Court has construed legislation to have applications that it has found to be in excess of the Commonwealth's legislative powers. It has then found the provisions incapable of being read down, the result being that the provisions have been held invalid even in relation to classes of cases to which they could have validly applied if they had been limited to those classes. The proposed amendment will enable such legislation to be upheld to the extent of the circumstances to which it could validly apply if it were expressly limited to those circumstances.

#### **Meat Research Corporation Act 1985**

- 16 The Bill proposes to amend the Meat Research Corporation Act 1985 to:
  - ensure that ecologically sustainable development objectives are included in the charter of the Meat Research Corporation;
  - ensure that in its annual operational planning and research and development planning the Corporation takes these objectives into account; and
  - ensure that the Corporation reports on the extent to which it has addressed the furthering of ecologically sustainable development objectives in its annual report.

#### **Primary Industries and Energy Research and Development Act 1989 Primary Industries Levies and Charges Collection Act 1991**

- 17 The Bill proposes to amend the Primary Industries and Energy Research and Development Act 1989 and the Primary Industries Levies and Charges Collection Act 1991 to facilitate the efficient collection and distribution of new export and import charges and levies for the forest and wood products industries. These amendments are consequential to the *Forest Industries Research Import Charge Bill 1993*, the *Forest Industries Research Levy Bill 1993* and the *Forest Industries Research Export Charge Bill 1993*.

### **Snowy Mountains Hydro-electric Power Act 1949**

- 18 The Bill proposes to amend the Snowy Mountains Hydro-electric Power Act 1949 to clarify the ability of the Snowy Mountains Hydro-electric Authority to invest surplus monies in specified ways without needing to seek the permission of the Minister for each transaction.

### **Wheat Marketing Act 1989**

- 19 The Bill proposes to amend the Wheat Marketing Act 1989 to clarify the power of the States to confer functions and powers on the AWB to allow it to conduct intra-state trade in grain and grain products as well as in wheat. The proposed amendments will also improve the operational efficiency of the Australian Wheat Board (AWB) by extending the delegation powers of the Chairperson (if appointed in an executive capacity) or the Managing Director, clarifying the factors to be taken into account in the determination of the total amount payable to a person for pool return wheat, and by extending the AWB's research and associated functions to grains and allowing it to provide commercial services.

### **FINANCIAL IMPACT STATEMENT**

- 20 Funding to implement the amendments to the Agricultural and Veterinary Chemicals Act 1988 and the Agricultural and Veterinary Chemicals (Administration) Act 1992 will be provided from existing NRA funds.
- 21 The amendments to the Primary Industries and Energy Research and Development Act 1989 will allow expenditure from an R&D Corporation established in respect of forest industries to be funded by the Commonwealth up to a maximum of 0.25% of the forest industry's gross value of production (GVP). The levies and export charge are expected to be introduced at a rate which will attract a Commonwealth contribution of 0.05% of GVP. Accordingly, it is estimated that the Commonwealth contribution would be approximately \$90,000 in 1993/94 rising to \$350,000 in 1994/95.
- 22 The remaining amendments proposed in the bill have no financial implications for the Commonwealth.

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

- 23 This clause provides for the Bill to be called the Primary Industries and Energy Legislation Amendment Act 1993.

**Clause 2 - Commencement**

- 24 This clause provides that, except for Parts 11 and 12 and paragraph 68(1)(b), the Act will commence on the day on which it receives the Royal Assent.
- 25 Parts 11 and 12 will commence on 1 January 1994. Paragraph 68(1)(b) is to be taken to have commenced on 1 July 1989, the date on which the Wheat Marketing Act 1989 commenced.

**PART 2 - AMENDMENTS OF THE AGRICULTURAL AND VETERINARY CHEMICALS ACT 1988****Clause 3 - Principal Act**

- 26 This clause provides that the "Principal Act" referred to in this Part is the Agricultural and Veterinary Chemicals Act 1988.

**Clause 4 - Disclosure of confidential commercial information**

- 27 This clause repeals section 20 of the Principal Act and substitutes a new clause 20. The new section 20 will make the following provisions.
- 28 Subsection (1) will provide that the section applies to the Chairperson, members and staff of the former Australian Agricultural and Veterinary Chemicals Council, current and former Directors, Chief Executive Officers and staff of the NRA, consultants to the NRA or members of NRA Committees.
- 29 Subsection (2) will create an offence for the intentional or reckless disclosure, directly or indirectly, of any information about a chemical product or any of its constituents that the person making the disclosure knows to be confidential commercial information which was acquired by the person in the performance of functions or duties or the exercise of powers under the Act. The penalty for the offence is imprisonment for 2 years.
- 30 Subsection (3) will permit the release of confidential commercial information about a chemical product or constituent to a court (including a tribunal) and places certain requirements on the court in respect of its handling of the information.
- 31 Subsection (4) will permit the NRA to authorise a person to release
- a summary of a chemical product assessment containing confidential commercial information where a chemical product contains a new active constituent;
  - particulars of the product where the NRA is reconsidering a product clearance; and
  - information about the toxicology of the product subject to any prescribed conditions.

- 32 Subsection (4) will also permit the release of commercial information about a chemical product or any of its constituents to Commonwealth and State government authorities, overseas authorities with similar functions to the NRA, prescribed international organisations, other prescribed persons or authorities and persons authorised by the person who applied for clearance of the chemical product to obtain the information.
- 33 Subsection (5) will impose an obligation on persons (including persons under their control) who acquire confidential commercial information to handle the information as if they were a member of the NRA.
- 34 Subsection (6) will provide that an authorised person may disclose confidential commercial information about a chemical product, including its constituents, to a range of specified organisations or a person for the purpose of enabling that person or body to provide advice to the NRA.
- 35 Subsection (7) will provide that a person (including persons under their control) who acquires confidential commercial information because of a disclosure under subsection (6) must not intentionally or recklessly disclose that information to another person except for the purpose of providing advice to the NRA in accordance with section 19. The penalty for an offence is imprisonment for 2 years.
- 36 Subsection (8) will provide that if a person has disclosed confidential commercial information to a second person (including persons under their control) the second person must not intentionally or recklessly disclose that information to another person. Disclosure under the proposed subsections (4) and (6) are exempted. The penalty for an offence is imprisonment for 2 years.
- 37 Proposed subsections (9), (10), (11) and (12) provide that the powers to disclose information conferred by subsection (6) are in addition to, and do not prejudice, the powers conferred by proposed subsection (4); that section 20 does not preclude the institution of an action or other civil proceeding against a person in respect of the disclosure of confidential commercial information concerning a chemical product or its constituents; that the operation of the Freedom of Information Act 1982 is not affected by section 20 and defines terms to be used in the section.

#### Clause 5 - Hearings

- 38 Clause 5 inserts a new section 34A in the Principal Act. The new section 34A will make the following provisions.
- 39 Subsections (1) and (2) will enable the NRA to hold hearings for the purpose of its functions or powers provided it publishes in the Gazette and daily newspaper circulated in each State or Territory a notice setting out the place and time for the hearing before holding a hearing.
- 40 Subsections (3) and (4) will provide that the hearing is to be public except where the NRA, having regard to the confidential nature of any submissions or evidence, directs that any part of the hearings be in private. The NRA may determine who may be present at a private hearing. Subsection (7) will create an offence for attendance, without reasonable excuse, of any unauthorised person at a private hearing. The penalty for the offence will be \$2000.
- 41 Subsections (5) and (6) will enable the NRA to give a directions to prohibit or restrict the publication of information given at a public or private hearing and create an offence for contravention, without reasonable excuse, of such a

direction. The penalty for the offence will be \$2000. It is recognised that the provisions, without reasonable excuse, places an onus of proof on the person charged. This is considered appropriate given that the matters to be provide would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.

- 42 Subsection (7) will enable the NRA to give a direction that part of a hearing be in private and creates an offence for contravention, without reasonable excuse, of such a direction. The penalty for the offence will be \$2000. It is recognised that the provision, without reasonable excuse, places an onus of proof on the person charged. This is considered appropriate given that the matters to be proved would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonable by expected to disprove their existence.
- 43 Subsections (8) and (9) will enable the NRA to determine the form in which its receives submissions or evidence and the persons from whom it will receive submissions and directs that NRA hearings are to be conducted with as little formality and technicality as possible. Subsection (9) will also provide that the NRA is not bound by the rules of evidence.

#### Clause 6 - Exemption from suit

- 44 Clause 6 will amend section 45 of the Principal Act to provide that both the NRA and its members and staff are exempt from liability for any loss or injury incurred as a result of the granting or refusal of an application for clearance of a chemical product.

### **PART 3 - AMENDMENTS OF THE AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992**

#### Clause 7 - Principal Act

- 45 This clause provides that the "Principal Act" in this Part is the Agricultural and Veterinary Chemicals (Administration) Act 1992.

#### Clause 8 - NRA may give receipts on behalf of the Commonwealth

- 46 Clause 8 inserts a new clause 59A in the Act which will enable the NRA to issue a receipt where it receives money on behalf of the Commonwealth.

#### Clause 9 - Staff

- 47 This clause will amend section 74 of the Act to enable the NRA to determine conditions of service on a progressive basis for Australian Public Service staff who transfer to the NRA . The section as amended will enable the NRA to make one or more determinations in respect of conditions of service.

### **PART 4 - AMENDMENTS OF THE AUSTRALIAN HORTICULTURAL CORPORATION ACT 1987**

#### Clause 10 - Principal Act

- 48 This clause provides that the "Principal Act" in this Part is the Australian Horticultural Corporation Act 1987.

#### Clauses 11 and 12 - Appointment of members and term of office

- 49 Clause 11 deletes subsection 16 (4) of the Act to remove the 65 year age limit on members of the Corporation. Clause 12 deletes subsection 18 (3) of the Act



to allow the appointment of a person as a member of the Corporation for a term that extends beyond the person turning 65 years of age.

Clauses 13 and 14 - Appointment and term of appointment

- 50 Clause 13 deletes subsection 35 (3) of the Act to remove the 65 year age limit on the Managing Director of the Corporation. Clause 14 deletes subsection 36 (2) of the Act to allow the Managing Director of the Corporation to continue to work in the position after turning 65 years of age.

Clauses 15 and 16 - Appointment of members and term of office of members

- 51 Clauses 15 and 16 delete subsections 87 (5) and 88(3) of the Act to remove the 65 year age limit on members of the Corporation Selection Committee and allow the appointment of a person as a member of the Corporation Selection Committee for a term that extends beyond the person turning 65 years of age.

**PART 5 - AMENDMENT OF THE AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY SELECTION COMMITTEE ACT 1984**

Clause 17- Principal Act

- 52 Clause 17 provides that the "Principal Act" in this Part is the Australian Meat and Live-stock Industry Selection Committee Act 1984.

Clause 18 - Selection of persons for nomination

- 53 This clause amends section 10B of the Act to include expertise in conservation and management of natural resources, and environmental and ecological matters, as requirements for the selection of persons for nomination to positions on the Meat Research Corporation.

**PART 6 - AMENDMENTS OF THE DAIRY PRODUCE ACT 1986**

Clause 19 - Principal Act

- 54 Clause 19 provides that the "Principal Act" in this Part is the Dairy Produce Act 1986.

Clause 20 - Application of Industry Fund

- 55 Clause 20 will insert a new paragraph 88(1)(ba) to enable the Dairy Industry Fund to be used to meet expenses incurred in connection with hosting the 1994 World Dairy Congress and the associated Annual Sessions in Australia and will amend subsection 88(3) to require written approval of the Minister for Primary Industries and Energy for this application of funds.

Clause 21 - Import offset arrangement

- 56 Clause 21 will insert a new section 94A to remove any uncertainty concerning the Australian Dairy Corporation's ability to apply the import offset arrangement for Market Support Payments. The new section 94A will make the following provisions.
- 57 Subsection 94A(1) will define the relevant year as any year commencing on 1 July from 1991 up to and including 1999. Thus the arrangement can be applied to dairy imports for the years for which a determination has been delayed due to

uncertainty. It may be applied from 1991-92 to 30 June 2000, the life of the present Commonwealth arrangements.

- 58 Subsection 94A(2) will provide that recipients of Market Support Payments must declare purchases of imported dairy product. When this is 'like product' to a firm's exports the firm's future entitlement to receive market support payments is reduced by the volume of the imported product. Subsection 94A(3) will enable the Australian Dairy Corporation to determine whether a manufacturer's market support payments should be reduced and, if so, the amount of any reduction.
- 59 Subsections 94A(4) will require the Corporation to notify a manufacturer of the amount of the 'import offset' reduction in market support payments.
- 60 Subsections 5 and 6 will require the Corporation to determine how different dairy products are to be treated and to publish this information. Subsection 5(b) will define related companies for the application of import offset payments.

Clause 22 - Reconsideration and review of the decision

- 61 Clause 22 amends section 118 of the Act to apply existing review provisions, including a right of appeal to the Administrative Appeals Tribunal, to decisions in relation to import offset payments.

**PART 7 - AMENDMENT OF THE FISHERIES LEGISLATION  
(CONSEQUENTIAL PROVISIONS) ACT 1991**

Clause 23 - Principal Act

- 62 Clause 23 provides that the "Principal Act" in this Part is the Fisheries Legislation (Consequential Provisions) Act 1991.

Clause 24 - Saving and transitional - arrangements with States and Territories

- 63 Clause 24 will amend section 7 of the Act to extend the continued operation of Part IVA of the Fisheries Act 1952 for an additional period of 12 months after 3 February 1994.

**PART 8 - AMENDMENTS OF THE FISHERIES MANAGEMENT ACT 1991**

Clause 25 - Principal Act

- 64 Clause 25 provides that the "Principal Act" in this Part is the Fisheries Management Act 1991.

Clause 26 - Act not to apply so as to exceed Commonwealth power

- 65 This clause will insert a new section 9A in the *Fisheries Management Act 1991*.
- 66 Subsection 9A(1) will declare that if a provision of the Act would, apart from the operation of new section 9A, have an invalid application, but also has at least one valid application, then it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- 67 Subsection 9A(2) will provide that the provision is not to have a particular valid application if -
- (a) it is clear that the provision was intended to operate only if the invalid application had been within the Commonwealth's legislative power; or

(b) the valid application would operate in a substantially different respect than it would have operated had the invalid application been valid.

- 68 The proposed new section 9A will operate only where there is no contrary intention in the legislation itself. New subsection 9A(4) provides that the new Section will apply to all provisions of the *Fisheries Management Act*, whether enacted before, at or after the commencement of the new section 9A.
- 69 New subsection 9A(5) defines the terms 'application', 'invalid application' and 'valid application' for the purposes of the subsection.

#### Clause 27 - Plans of management

- 70 Clause 27 amends section 17 of the Act to insert new subsections 17(5A) and 17(5B). Subsection 17(5A) will enable a plan of management for a fishery to empower the Australian Fisheries Management Authority (AFMA), following any consultation required by the plan, to direct the closure of the whole or a part of a fishery, for a period or periods that AFMA specifies in the direction. The new subsection will require AFMA to notify holders of fishing concessions of the requirements of each direction.
- 71 New subsection 17(5B) will prescribe the manner in which a direction issued under subsection 17(5A)(a) may identify the part of the fishery affected by the direction.
- 72 Clause 27 also deletes paragraph 17(6)(a) and inserts new paragraphs 17(6)(a) and (aa) which will give greater flexibility in how fishing capacity may be measured and levels of capacity that may be permitted in a fishery. A management plan may, among other things, specify a method that AFMA will follow to determine fishing capacity in a fishery and the period for which that capacity will apply. This method will not be a formula, but a process that AFMA will follow.
- 73 Clause 27 inserts new subsections 17(6A), (6B) and (6C). New subsection 17(6A) makes it clear that new subsection 17(6)(aa) will permit a determination of fishing capacity to be made in respect of all or part of a fishery, that in effect prohibits fishing in all or part of that fishery for the period of the determination.
- 66A. New paragraph 17(6)(B) provides that each of a determination under paragraph 17(6)(aa) and a direction under paragraph 17(5A)(a) may be disallowed by the Parliament in accordance with the provisions of the Acts Interpretation Act 1901.
- 74 New subsection 17(6C) provides that a plan of management may require a person to hold one or more kinds of fishing concession and may set both maximum and minimum holdings of statutory fishing rights.
- 75 Clause 27 adds a new subsection 17(11) which will enable AFMA to delegate any powers conferred on it under a plan of management in accordance with new paragraphs 17(5A)(a) or (6)(aa) to the Managing Director of AFMA.

#### Clause 28 - Nature of a statutory fishing right

- 76 Clause 28 deletes subsection 21(1) and inserts new subsections 21(1), (1A), (1B) and (1C). New subsection 21(1) will define those rights which, for the purposes of the Act, are to be regarded as a separate statutory fishing right. They include a right to take a particular quantity of fish, a particular proportion of the fishing capacity permitted under a plan of management, to fish in a managed fishery at a particular time, to use a boat in a managed fishery for purposes stated in the plan of management, use particular fishing equipment in a managed fishery and use a particular type of boat in a managed fishery.

- 77 New subsection 21(1A) will provide that a plan of management for a fishery may do number of things, including, provide for a statutory fishing right as described in new subsection 21(1) even where the quantity of fish concerned is nil or negligible or the proportion of fishing capacity to which the fishing right relates would result in a nil or negligible quantity of fish. The plan of management may also provide for a statutory fishing right relating to the use of particular boats or fishing equipment even where it may be impracticable to make or use that kind of boat or fishing equipment.
- 78 New subsection 21(1B) defines a class of statutory fishing rights for the purpose of the use of that term in new subsection (1C). New sub-section 21(1C) provides that where a person holds a number of rights of the same kind, then the right that may be exercised by that person is the sum of the individual rights of that kind. Essentially where a number of individual rights are held, there is no doubt that the holder of the rights can add them together to determine an aggregate access right.

Clause 29 - AFMA to establish system of statutory fishing rights

- 79 Clause 29 omits and substitutes a new paragraph 22(3)(a) of the Act which will require the holder of a statutory fishing right to comply with obligations imposed by the relevant plan of management, and by AFMA under that plan of management, on the holder of such a fishing right.

Clause 30 - Grant of fishing Permits

- 80 Clause 30 omits and substitutes a new paragraph 32(5)(a) which will require the holder of a permit to comply with obligations imposed by the relevant plan of management and by AFMA under that plan of management, on the holder of such a permit.

Clause 31 - Grant of foreign fishing licences

- 81 Clause 31 omits and substitutes a new paragraph 34(4)(a) which will require the holder of a foreign fishing licence authorising commercial fishing to comply with obligations imposed by the relevant plan of management, and by AFMA under that plan of management, on the holder of such a licence.

Clause 32 - Function

- 82 Clause 32 amends section 142 of the Act to add a new subsection 142(2) to exclude from the functions of the Statutory Fishing Rights Allocation Review Panel, the review of the first decisions made about the allocation of statutory fishing rights in each of the Northern Prawn Fishery and Southern Bluefin Tuna Fishery. In this context, the relevant decision will be a decision by AFMA about all persons who will initially be granted statutory fishing rights in each fishery. These decisions will effect a transfer of management arrangements from Plans made under the Fisheries Act 1952 to Plans made under the Fisheries Management Act 1991 with no significant change in the effect of those rights.

Clause 33 - Reconsideration by AFMA and right to review by Administrative Appeals Tribunal

- 83 Clause 33 inserts a new subsection 165(1A) in the Act to exclude from reconsideration by AFMA and from review by the Administrative Appeals Tribunal, the first decision made in the registration of persons as eligible for the grant of statutory fishing rights in each of the Northern Prawn Fishery and Southern Bluefin Tuna Fishery. In this context, the relevant decision will be a decision by AFMA about all persons who will initially be registered as eligible for the grant of statutory fishing rights in each fishery. The decisions will effect a transfer of management arrangements from Plans made under the

Fisheries Act 1952 to Plans under the Fisheries Management Act 1991 with no significant change in the effect of those rights."

## **PART 9 - AMENDMENTS OF THE HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION ACT 1987**

### Clause 34 - Principal Act

- 84 Clause 34 provides that the "Principal Act" in this Part is the Horticultural Research and Development Corporation Act 1987.

### Clause 35 - Objects

- 85 Clause 35 inserts two new objectives in section 5 of the Act to promote increased emphasis on ecologically sustainable development matters within the Corporation. The new objects relate to furthering the sustainable use and management of natural resources and increasing the economic, environmental and social benefits to members of horticultural industries, and to the community in general.

### Clauses 36 and 37 - Appointment of members and term of office

- 86 Clause 36 deletes subsection 15 (4) of the Act to remove the 65 year age limit on members of the Corporation and clause 37 deletes subsection 17(3) to allow appointment of a person as a member of the Corporation for a term that extends beyond the person turning 65 years of age.

### Clause 38 - Annual report

- 87 Clause 38 is consequential to clause 35 and will substitute a new paragraph 29(1)(c) of the Act to require the Corporation to include, in its annual report, an assessment of the extent to which it has contributed to the attainment of the objects of the Act during the period, including the new objects.

### Clauses 39 and 40 - Appointment and term of appointment

- 88 Clause 39 deletes subsection 33 (3) of the Act to remove the 65 year age limit on the Executive Director of the Corporation. Clause 40 deletes subsection 34 (2) of the Act to allow the Executive Director of the Corporation to continue to work in the position after turning 65 years of age.

### Clause 41 - Matching payments by Commonwealth

- 89 The word "particular" is removed from the reference in paragraph 46(5)(b) to "particular horticultural products" to remove uncertainty about whether "particular" means each variety, species, genus or class of horticultural products, and allows regulations to be prepared which take account of the availability of horticultural production and value statistics, and the treatment of other portfolio industries.

**PART 10 - AMENDMENTS OF THE MEAT RESEARCH CORPORATION ACT 1985**

Clause 42 - Principal Act

- 90 Clause 42 provides that the "Principal Act" in this Part is the Meat Research Corporation Act 1985.

Clause 43 - Objects

- 91 Clause 43 amends section 5 of the Principal Act to include the furthering of the sustainable use and sustainable management of natural resources in the objects for which the Meat Research Corporation was established.

Clauses 44 and 45 - Corporation to prepare and review research and development plan; Corporation to prepare annual operational plans

- 92 Clauses 44 and 45 amend sections 30 and 35 of the Principal Act by adding subsection 30(7) and 35(4) which will require the Corporation takes into account the objects of the establishment of the Corporation set out in section 5, including the new objects inserted by clause 43, when preparing reviewing and revising its research and development plan and when preparing its annual operational plans.

Clause 46 - Matters to be included in the annual report

- 93 This clause amends section 50 of the Act to ensure that the Corporation includes an assessment of the extent to which it has addressed the objects of the Corporation in section 5 of the Act during the reporting period.

**PART 11 - AMENDMENTS OF THE PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989**

Clause 47 - Principal Act

- 94 Clause 47 provides that the "Principal Act" in this Part is the Primary Industries and Energy Research and Development Act 1989.

Clauses 48 and 49 - Objects: Definitions

- 95 Clauses 48 and 49 make technical amendments to sections 3 and 4 of the Act to accommodate the imposition of new levies and charges on the forest and wood products industries under the Forest Industries Research Import Charge Act 1993, the Forest Industries Research Levy Act 1993 and the Forest Industries Research Export Charge Act 1993.

Clause 50 - Annual operational plans

- 96 Clause 50 amends section 25 of the Act by adding subsection 25(4) to require the annual operational plan for the Forest and Wood Products Research and Development Corporation to include, in the broad groupings of activities proposed to be funded, research and development activities relevant to imported forest products.

Clause 51 - Annual Report

- 97 This clause amends section 28 of the Act to require an R&D Corporation to include in its annual report research activities related to ecological sustainable development.

Clause 52 - Government matching payments not to exceed levy and certain other payments

- 98 Clause 52 amends section 31 of the Act to reflect the changed funding arrangement for an R&D Corporation established in respect of the forest industries that is, \$1 Commonwealth for every \$2 from industry rather than the \$1 for \$1 currently provided in the Act.

Clause 53 - Commonwealth's matching payments not to exceed certain proportion of production

- 99 Clause 53 amends section 32 of the Act to provide that where an R&D Corporation is established in respect of the forest industries, Commonwealth contributions are not to exceed an amount equal to 0.25 per cent of the gross value of production in respect of the forest industries.

Clause 54 - Expenditure of money of R&D Corporations

- 100 Clause 54 amends section 33 of the Act to provide that where an R&D Corporation is established in respect of the forest industries, the Corporation can pay levy collection costs where levy collection agreements have been entered into with collecting organisations, such as State forest agencies or other organisations.
- 101 In addition, reference to section "35" is to be removed from section 33 of the Act and replaced with a reference to subsection 18(3) of the Primary Industries Levies and Charges Collection Act 1991. This provision relates to the reimbursement of refunds of levy to the Commonwealth from an R&D Corporation.

Clause 55 - Expenditure of money by forest industries R&D Corporation

- 102 Clause 55 inserts a new section 33A which provides that, where revenue (in relation to an R&D Corporation established in respect of forest industries) is derived from charges under the Forest Industries Research Import Charge Act 1993, the funds must be spent on R&D activities relevant to imports of forest products on which a charge is imposed. This subsection also recognises that in determining the proportion of funds to be directed to this area of research, some of the revenue may be spent on administrative and other costs associated with the Corporation. Revenue from import charge which is spent on R&D activities must be in the same proportion as all such expenditure on R&D activities from revenue derived from all levies and charges.

Clause 56 Appointment of members

- 103 Clause 56 omits subsection 98(4) of the Act to remove the 65 year age limit on members of an R&D Council.

Clause 57 - Selecting persons for nomination

- 104 This clause amends section 131 of the Act so that in selecting persons to be nominated for appointment to R&D Corporations and R&D Councils, expertise

in "sociology" is to be included in the fields of expertise in which those persons can be qualified.

## **PART 12 - AMENDMENTS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION ACT 1991**

### Clause 58 - Principal Act

- 105 Clause 58 provides that the "Principal Act" in this Part is the Primary Industries Levies and Charges Collection Act 1991.

### Clause 59 - Interpretation

- 106 This clause provides for the interpretation of "examinable documents" to be expanded to apply to categories of importers and importing agents to reflect that an R&D Corporation established in respect of the forest industries may be funded from charges on imports of forest products.
- 107 The clause also amends the interpretation of "producer" to include the "exporter of logs", the "operator of the mill" and the "importer of forest products" in relation to forest industries research levies and charges. New definitions for "forest industries levy or charge", "importing agent", and "R&D Corporation" are also included.

### Clauses 60 and 61 - Liability of intermediaries:Liabilities of intermediaries - ancillary provisions

- 108 Clause 60 inserts a new subsection 7(3A) which will introduce a new type of intermediary, an "importing agent", from whom charge may be collected on behalf of importers. Minor consequential changes are proposed to subsections (4), (5), and (6) to reflect this.
- 109 Clause 61 amends section 8 to complement the amendments made by clause 59 to allow for the recognition of "importing agents" in collection processes.

### Clauses 62 and 63 - Collection agreements with States and Territories:Collection Agreements with collecting organisations

- 110 Clauses 62 and 63 amend sections 10 and 11 of the Act, respectively, to provide for collection agreements, in relation to an R&D Corporation established in respect of forest industries, to include provisions for the reimbursement of collection expenses to a collecting authority, such as a State Government forest agency.

### Clauses 64 and 65 - Schedules 1 and 2

- 111 These clauses amend Schedules 1 and 2 of the Act to attach the Forest Industries Research Import Charge Act 1993, the Forest Industries Research Levy Act 1993 and the Forest Industries Research Export Charge Act 1993 to the Act.

## **PART 13 - AMENDMENTS OF THE SNOWY MOUNTAINS HYDRO-ELECTRIC POWER ACT 1949**

### Clause 66 - Principal Act

- 112 Clause 66 provides that the "Principal Act" in this Part is the Snowy Mountain hydro-electric Power Act 1949.



Clause 67 - Contracts

- 113 This clause amends section 31 of the Act to allow investment of surplus funds in specified securities without Ministerial approval.

**PART 14 - AMENDMENTS OF THE WHEAT MARKETING ACT 1989**Clause 68 - Principal Act

- 114 Clause 68 provides that the "Principal Act" in this Part is the Wheat Marketing Act 1989.

Clause 69 - Functions of the Board

- 115 This clause amends paragraph 6(1)(f) and subsection 6(4) of the Act to allow the Australian Wheat Board (AWB) to promote, fund or undertake research related to marketing of all grains including wheat, as well as value adding activities and to perform functions conferred on the AWB by States including functions to conduct intra-state trade in any grains as well as wheat. This amendment corrects a deficiency in the Principal Act and is necessary to support the AWB's grain and grain products marketing functions and powers.
- 116 Clause 69 validates the AWB's actions under State laws relating to wheat marketing or value adding activities which purported to give powers and functions wider than wheat marketing or value adding activities prior to the commencement of this amendment.

Clause 70 - Powers of the Board

- 117 This clause amends section 7 of the Act to clarify that AWB has the power to make charges for services provided by it in performance of its functions under paragraph 6(1)(f) of the Act.

Clause 71 - Delegation by Managing Director or Chairperson

- 118 Clause 71 inserts a new section 26A to provide for the Chairperson when appointed in an executive capacity or the Managing Director to delegate any of his or her functions or powers to an employee of the AWB, or to sub delegate any function or power that has been delegated to him or her by the Board under section 12 of the Act.

Clauses 72 and 73 - Total amount payable to a person for pool return wheat: Final payment

- 119 A new section 65A is inserted in the Act by clause 72 to define more precisely the AWB's determination of the total amount payable to a person for pool return wheat. New section 65A sets out matters by which the AWB may make adjustments to pool return payments, such as variety, quality, transport, storage and handling costs and other similar matters, which are unable to be accurately specified in the contract at the time of delivery. Proposed new subsection 65A (3) provides for the AWB to ensure that no unfair advantage or disadvantage results to growers as a result of the AWB's adjustments made to total payments.
- 120 Proposed new subsection 65A (4) provides for the AWB to promulgate guidelines that it will apply when making adjustments to payments.

- 121 Clause 73 consequentially amends section 66 to reflect the changes made by clause 72.

#### **PART 10 - MINOR AMENDMENTS**

##### Clause 74 - Minor amendments

- 122 Clause 74 amends the Acts specified in the Schedule in the manner set out in the Schedule.

##### Schedule - Minor Amendments - Australian Horticultural Corporation Act 1987

- 123 The Schedule deletes "or the first three months of the current financial year" from paragraph 115 (H) (2) (a) of the *Australian Horticultural Corporation Act 1987* to ensure that a single levy or export charge liability incurred in the period 1 July to 30 September does not result in an entitlement to vote at two consecutive annual general meetings. It also amends section 23 of the *Australian Horticultural Corporation Amendment Act 1991* to define "Board" other than by reference to itself.











