

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN MEAT AND LIVE-STOCK CORPORATION AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Primary Industry,
the Hon. John Kerin, MP)

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for

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OUTLINE

This bill is one of a package of Bills (including the Australian Meat and Live-stock Industry Policy Council Bill 1984, the Australian Meat and Live-stock Industry Selection Committee Bill 1984, the Live-stock Slaughter Levy Amendment Bill 1984 and the Live-stock Export Charge Amendment Bill 1984) which will establish a new administrative structure for the meat and live-stock industry.

The Australian Meat and Live-stock Coporation Amendment Bill 1984 is designed to modify the structure of the Corporation and to better delineate its functions and powers so as to allow it a greater degree of commercial flexibility, especially in the area of its trading and borrowing powers.

The Bill proposes to change the structure of the membership of the Corporation so that its membership is no longer representative of particular industry sectors but is composed of persons with specified qualifications and experience relevant to its functions.

The Bill confines the functions of the Corporation to essentially activities associated with commerce, viz: identifying and developing market opportunities, and the regulation of, and involvement in, export trading.

The Bill gives the Corporation increased commercial powers by:

- removal of the provision restricting the Corporation to trading in meat and livestock that it owns;
- clarifying the Corporation's power to operate a scheme for allocating export quotas to individual exporters in the circumstances where the Australian Government agrees, or is expected to agree, with the Government of another country to restrict exports of meat;
- including power for the Corporation to engage in sole trading (or to restrict the number of licencees permitted to export) to a particular market where, in the opinion of the Corporation, such action would be beneficial in developing the market. The exercise of this power is to be taken into account in the development of the corporate plan by the AMLC which is to be approved by the Minister;
- providing for the making of regulations that would enable the Corporation to charge fees for the licensing of exporters and in connection with the performance of services by authorised officers;

- a provision to broaden the borrowing powers of the Corporation to enable it to raise moneys by the issue of securities, all borrowings by the Corporation whether by the issue of securities or other forms of borrowing, to be subject to the approval of the Minister for Primary Industry.

In addition to existing accountability measures the Bill also seeks to greatly improve the accountability of the Corporation to industry which funds its operations through a requirement that it hold an annual general meeting. Through this requirement

- the industry will be able to consider and question the Corporation or any aspect of its Annual Report or general activities
- the Corporation will put as a motion to the AGM any planned variation to levies or charges and the meeting will have the opportunity to endorse or decline any proposed increases in such levies or charges
- industry will have the power to cause the removal of the Corporation's chairman or members.

Accountability will also be improved with the requirement for the Corporation to prepare a 5 year Corporate Plan which will set out the objectives, key programs and priorities of the Corporation to provide the framework for the administration of its functions and powers for the 5 year period. Complementary to the 5 year plan is the requirement for an Annual Operational Plan to set out the Corporation's objectives and programs for the relevant 12 month period ahead.

NOTES ON CLAUSES

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. Clauses 1 and 2 of the Bill will come into effect on the day the Bill receives Royal Assent. The remaining provisions will come into effect on a day to be fixed by Proclamation

Clause 3: Interpretation

2. There is a need for amendment to the Interpretation section of the Act to reflect the revised appointment procedures, structure, and functions of the Australian Meat and Live-stock Corporation
3. The clause omits the definitions of "Live-stock Exporters Consultative Group", "Meat Exporter and Abattoir Consultative Group", and "Producer Consultative Group", as the provision establishing these groups are repealed by this Bill.

Clause 4: Functions of the Corporation

4. Deletes from the Act paragraph 7(d), the policy advising function of the Corporation, consistent with the intention of the Bill to confine the Corporation's functions essentially to activities associated with commerce.

Clause 5: Powers generally

5. The purpose of this clause is to amend section 8 of the Act to enable the AMLC to charge fees in connection with the performance of its services. The Corporation is also required to exercise its powers consistent with the provisions of the Corporate Plan and Annual Operational Plan in force at that time. Details of these plans are provided under clause 22 (Part IIIB - Development of Corporate Plans, Divisions 1 and 2).

Clause 6: Trading power

6. Removes the provision in section 9 which restricts the Corporation to trading only in meat and live-stock which it owns. The purpose of this amendment is to enhance the Corporation's ability to carry out market development.
7. The clause also omits sub-sections 9(2), (3) and (4) which require Ministerial approval and the adoption by the Corporation of appropriate trading policies, because those matters are, under the Bill, adequately addressed through the provisions requiring the Minister's approving of the Corporation's five year Corporate Plan (Part IIIB of the Bill).

Clause 7: Corporation may consult industry representatives

8. Provides an effective consultative mechanism for the Corporation to replace the three statutory consultative groups which are abolished by this Bill. It provides the Corporation with a general power to consult various persons and bodies to gain advice on topics for which a wider view is desirable. Provision is also made for the Corporation to agree to meet the costs reasonably incurred by a person or body in connection with that consultation.

Clause 8 Application for licence

9. Amends section 16c of the Act to clarify that the Corporation may charge a fee for the licensing of meat or live-stock exporters. The amendment is not retrospective.

Clause 9: Meat quotas

10. Amends section 16J of the Act to clarify the Corporation's power to operate a scheme for allocating export quotas to individual exporters in circumstances not only where another country imposes entry restrictions but also where the Australian Government agrees or is expected to agree with the Government of another country to restrict exports of meat.

Clause 10: Restriction of persons who may export to certain markets

11. Extends this provision to enable the Corporation to engage in sole trading or to restrict the number of licencees permitted to export to a market, for the purpose of developing that market. The Corporation is to incorporate into its five year Corporate Plan for approval by the Minister, criteria that it will observe in exercising this power. Consistent with this approach the requirement is removed for specific approval by the Minister in the situation where the AMLC exercises its sole trading power in trading with a monopoly importer against the test of the criteria specified in the Act.

Clause 11: Renewal of licences

12. Amends section 16Q of the Act to provide clarification that the AMLC may charge fees for the renewal of a meat or live-stock export licence. The clause is not retrospective.

Clause 12: Membership of Corporation

13. Amends the Principal Act by removing membership of the Corporation based on industry sector representation and substituting provisions specifying the new structure of the Corporation, and providing for appointment by the Minister of members (other than the Managing Director) eight of whom are to be selected and nominated to the Minister by the Australian Meat and Live-stock Industry Selection Committee.

Clause 13: Repeal of sections 19, 20 and 21

14. Repeals provisions specifying arrangements for appointing persons to the membership positions which are removed by clause 12.

Clause 14: Term of office of members

15. Amends section 22 of the Principal Act to specify that for the first appointments made under the amended Act, four of the 8 "other members" of the Corporation, are to be appointed for a period of three years and that the other four are to be appointed for a period of 2 years, but are eligible for re-appointment. The purpose is to retain a continuity of experienced members on the Corporation by staggering the initial appointments.

Clause 15: Deputy Chairman

16. Amends section 23 of the Principal Act to provide for the Minister to appoint, after consultation with the Chairman, a Deputy Chairman from amongst the "eight other members". The Minister is also empowered to remove a Deputy Chairman from office. The Deputy Chairman may resign by writing delivered to the Minister.

Clause 16: Deputies of other members

17. Amends section 25 of the Principal Act to provide that the Minister may, upon nomination by a member appointed under paragraph 18(1)(d), appoint a deputy to that member.

Clauses 17, 18, 19 and 20

18. Amend the Act to exclude the Managing Director from those provisions applicable to AMLC staff concerning remuneration, leave of absence, resignation and termination of appointment. Such provisions relating to the Managing Director, who is the only full-time Corporation member, are provided in clause 23 of the Bill.

Clause 21: Meetings of the Corporation

19. Amends sub-section 30 (4) by deleting the requirement to have a live-stock producer representative as one of a quorum of 6 members at a meeting. The reason for this is that specific industry groups are no longer represented on the Board of the Corporation. The clause also omits the provision for the Corporation to select the Deputy Chairman in sub-section 30(10). The Minister will assume responsibility for appointing the Deputy Chairman.

Clause 22 Insertion of new parts: Part 111A - The Annual
General Meeting of the Industry; Part 111B -
Development of Corporate Plans

20. Inserts, after Part III of the Principal Act, new provisions covering the Annual General Meeting of the industry and development of Corporate Plans.

Annual General Meeting

21. Inserts a new part IIIA entitled "The Annual General Meeting of the Industry" after Part III of the Principal Act which establishes a requirement for the AMLC to hold annual general meetings (AGM).
22. Inserts section 30A and interpretation provisions concerning eligibility to attend the AGM with respect to partnerships and trusts. Only one member of the partnership may exercise the partnerships rights to participate at the AGM. Rights conferred on a trust may be exercised by the trustee or his proxy. The producer who holds live-stock which is the subject of a mortgage or other security is to be eligible to vote at the AGM in accordance with such live-stock holdings.

23. Inserts section 30B which provides for the Corporation to convene each year an annual general meeting within 3 months of tabling of the annual report. The Corporation will be required within 7 days after the tabling of the Report to give notice in the Commonwealth of Australia Gazette of the proposed date of the meeting, the cut-off date for persons seeking to register to attend the AGM, and of any proposal to vary the rates of levy or charge which fund the Corporation. This section also sets out the purposes of the AGM which are: to consider the Corporation's most recent annual report; to receive an address by the Chairman in respect to the performance of the Corporation; to question the members of the Corporation concerning any aspect of the Corporation's activities; and to debate and vote upon any motions relating to a matter within the responsibilities of the Corporation, any Corporation motion to vary the rate of levy or charge or any motion of no confidence in the Chairman or in the Corporation. The purpose of this section is to greatly expand the Corporation's accountability to industry.

24. Inserts section 30C which provides for notice of formal motions (excluding motions by the AMLC to vary the rate of levy or charge) to be furnished to the Corporation 49 days before the annual general meeting. The purpose of this timing is to provide the AMLC with 7 days to make the necessary administrative arrangements to incorporate these motions into the advices which are sent to industry members under section 30D.

25. Inserts section 30D which provides that not less than 42 days before the meeting, the Corporation is to advise each registered person of the meeting and the motions to be considered. The section also provides that motions proposed to be put to the annual general meeting relating to a matter within the responsibility of the Corporation or of no confidence in the Chairman or Corporation will not be circulated unless they have the support of at least 100 registered persons.
26. Inserts section 30E which provides for the use of proxies which must be lodged with the Corporation not less than 14 days before the AGM. The Minister is to approve the form of the instrument appointing a proxy.
27. Inserts section 30F which specifies who may attend and preside at annual general meetings, and also provides for minutes to be kept.
28. Inserts section 30G which specifies persons eligible to vote at AGMs and includes provision to be made in the regulations for voting in accordance with the numbers of live-stock owned. A person who is an exporter of meat or live-stock or a processor of meat is entitled to one vote.

29. The section also specifies the voting requirements to pass, or defeat, motions. These requirements vary according to the nature of the motion. To pass a motion of no confidence in the Chairman or Corporation, a supporting vote is required on both registers of votes, and on both registers the supporting vote must exceed 75% of the total registered voting entitlements. The same requirement (but in the negative) applies to defeat a motion to endorse a recommendation to the Minister to vary the livestock slaughter levy or livestock export charge. Motions on issues other than the above shall be passed if supported by a majority of votes cast at the meeting from each register.

30. Inserts section 30H which provides for the consideration of no confidence motions in the Chairman or Corporation, and the action to be taken by the Minister in the event such a motion is passed. If such a motion is passed the Minister is to set in train procedures to dismiss and replace the Chairman or Corporation in accordance with the Act. The Bill also empowers the Minister to establish an interim Corporation of 4 members with limited powers where the Minister is satisfied that it is not practicable to replace all members within 1 month of an annual general meeting. The interim Corporation cannot continue beyond 6 months.

31. Inserts section 30J which requires the Corporation to establish and maintain a register of live-stock producers, and a register of exporters/processors. The manner in which the registers are to be maintained and eligibility criteria of persons to be entered in the registers are to be established by regulation.
32. Inserts section 30K which provides for the Corporation to remove details of persons from a register in accordance with the Act. Clause 27 of the Bill provides for review of such decisions of the Corporation by the Administrative Appeals Tribunal.
33. Inserts section 30L which precludes the entry of persons on a register after it has been closed in respect of a particular annual general meeting, until after that meeting has taken place.
34. Inserts section 30M which requires the Corporation to provide to the Australian Meat and Live-stock Industry Policy Council a copy of the text of all motions passed at an AGM relating to matters within the responsibilities of the Corporation, but excluding motions to vary the rate of levy or charge or motions of no confidence.

Part III B: Development of Corporate Plans

35. Inserts a Part IIIB Division 1, entitled "Corporate Plans"
36. Inserts section 30N which requires the Corporation to prepare a five year Corporate Plan setting out its objectives, key programs and priorities. In so doing, the Corporation is also required to provide a statement of its assessment of the market and economic outlook for live-stock and meat. The purpose of the Corporate Plan which is subject to the Minister's approval is to enhance the effectiveness of the operation of the Corporation and to reduce the day to day Ministerial involvement in the Corporation's affairs but at the same time retaining a sound basis for accountability to the Minister.
37. Inserts section 30P which provides for the Minister to approve the Corporate Plan, and makes provision for the Minister to be able to request revisions of the plan.
38. Inserts sections 30Q and 30R which provide for variations to be made to the Corporate Plan either on the initiative of the Corporation or at the Minister's request. Any such variation of the Corporate Plan shall be submitted to the Minister for approval.

39. Inserts section 30S providing for amended and approved plans to operate as if the original plan had been approved as so varied.
40. Inserts a new Division 2 to Part IIIB entitled "Annual Operational Plans".
41. Inserts section 30T which requires the Corporation to prepare an Annual Operational Plan setting out details of its objectives and programs for the relevant 12 month period ahead to give effect to the Corporate Plan.
42. Inserts section 30U requiring the Minister to approve the Annual Operational Plan, providing for revisions to the Annual Operational Plan, and providing for the Annual Operational Plan to remain consistent with the Corporate Plan.

Clause 23 Insertion of new Division and new Division heading of Part IV: Division 1 - The Managing Director; Division 2 - Other Staff of the Corporation

43. Amends the Principal Act by inserting a new Part IV having 2 Divisions.

44. Inserts section 30V which provides that the Corporation is to have a Managing Director appointed by the Corporation itself; allows the Corporation to determine, subject to the approval of the Minister, the terms and conditions of his appointment, including remuneration and allowances; and sets out provisions to govern such matters as leave of absence, resignation and termination of appointment of the Managing Director.
45. Inserts section 30W which enables the Corporation to appoint an acting Managing Director when the Managing Director is temporarily unavailable or when the position is vacant. The section further specifies the conditions governing such appointments.
46. Inserts section 30X which directs that the Managing Director shall manage the affairs of the Corporation in accordance with the policies of the Corporation.
47. Inserts Section 30Y which provides that if a motion of no confidence in the Corporation is passed at an annual general meeting, the Managing Director ceases to be a member of the Corporation on the date on which the appointments of the other members are terminated. Pending the reconstitution of the Corporation there is provision for the Managing Director to continue as Managing Director. The newly appointed Corporation is then to endorse, or terminate the appointment of the Managing Director.

Clause 24: Repeal of section 35

48. Repeals section 35 of the Principal Act which deals with the borrowing powers of the Corporation, and substitutes a new section 35 which, in line with the Corporation's commercial role, expands its borrowing powers to enable it to raise moneys by the issue of securities. This clause also requires that the raising of all moneys by the Corporation whether by borrowing or by issuing securities is to be subject to approval by the Minister. Any borrowings involving a Commonwealth guarantee are to be approved by the Treasurer.

Clause 25: Application of Moneys

49. Amends section 37 of the Principal Act by inserting paragraphs to provide authority to the Corporation to incur expenditure for the purpose of meeting the costs of industry conferences to be convened by the Australian Meat and Live-stock Industry Policy Council as well as all costs of the Australian Meat and Live-stock Industry Selection Committee.

Clause 26: Repeal of Part VI

50. Repeals Part VI of the Principal Act, which establishes specific industry consultative groups. More general arrangements are provided for the AMLC to consult industry and to meet the costs of those consultations under clause 7 of the Bill. The existing function of these groups to consider AMLC proposals regarding rates of levy/charge will be taken over by the referral of such proposals to the annual general meeting.

Clause 27: Insertion of section in Part VII

51. Provides for review by the Administrative Appeals Tribunal of Corporation decisions relating to the entry or removal of persons from the voting register.

Clause 28: Regulations

52. Provides for regulations to be made concerning the payment of fees for meat or live-stock export licenses, and their renewal.