

1993

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendment to be moved on behalf of the Government

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



AMENDMENTS OF PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
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OUTLINE

1. The amendments to Part 6 of this Bill make technical improvements to the provisions intended to provide a clear legislative basis for an "import offset" arrangement operated by the Australian Dairy Corporation when making market support payments.
2. The proposed amendment to Part 8 inserts a new clause 25A into the Primary Industries and Energy Legislation Amendment Bill 1993 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 operates to preserve Parliament's intention that the provision of the Principal Act has an application that is within the Commonwealth's legislative power.
3. 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. For example, in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 110 ALR 97, a majority of the High Court held that a section providing that a court 'is not to order the release from custody of a designated person' purported to apply, not only to lawful custody, but also to unlawful custody. The majority then proceeded to hold that the latter application was invalid and inseverable from the application of the section to lawful custody, and hence was wholly invalid.
4. The proposed clause is intended to 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.

FINANCIAL IMPACT STATEMENT

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

## NOTES ON AMENDMENTS AND NEW CLAUSES

### AMENDMENT 1

#### Clause 21 - Import offset arrangement

6. This amendment reduces a manufacturer's future entitlement to market support payments when similar dairy products have been imported.

### AMENDMENT 2

#### Clause 21 - Import offset arrangement

7. This amendment enables the Corporation to determine whether the market support payments should be reduced, and the amount of any reduction, resulting from a manufacturer importing dairy products.

### AMENDMENT 3

#### Clause 21 - Import offset arrangement

8. This amendment deletes proposed subsection 94A(5), which is redundant having regard to amendments (1) and (2).

### AMENDMENT 4

#### Clause 25A - Inserting new Section 9A - Act not to apply so as to exceed Commonwealth power

9. This clause provides for the insertion in the *Fisheries Management Act 1991* of a new section 9A.
10. 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.
11. Subsection 9A(2) will provide that the provision is not to have a particular valid action 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.
12. 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 or at the commencement of the new section 9A.

13. New subsection 9A(5) defines the terms 'application', 'invalid application' and 'valid application' for the purposes of the subsection.