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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL
(NO. 2) 1991

EXPLANATORY MEMORANDUM

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

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL
(NO. 2) 1991

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.

Meat Inspection Act 1983

3. The Bill amends the definition of "authorised officer" to limit the number of such officers to only those people appointed by the Secretary. The amendment also removes the references to monetary penalties where there is also a reference to an imprisonment penalty. Such references to monetary penalties where there is a reference to the imprisonment penalty are no longer necessary since provisions in the *Crimes Act 1914* confer on the court a discretion to impose a monetary penalty instead of or in addition to the imprisonment penalty. The Bill also amends the regulation making power to enable the making of regulations to provide for the remission of fees paid. The Bill also includes the introduction of an offence for authorised officers to receive goods or services from the owner of a prescribed premises unless approved by the Secretary.

National Water Resources (Financial Assistance) Act 1978

4. This Bill amends the Act to improve efficiency of administration of programs managed under the Act in respect of acquittal of and accounting for funds expended and to make the Northern Territory and the Australian Capital Territory eligible to receive assistance under the Act on the same basis as the States.

Petroleum (Submerged Lands) Act 1967

5. The Bill corrects a drafting error to enable delegation of Joint Authority powers under the *Petroleum (Submerged Lands) Act 1978* to also cover the subsidiary Acts.

Wheat Marketing Act 1989

6. This Bill amends the Act to extend by two months, to 1 September, the date by which the Australian Wheat Board (AWB) is required to submit its Corporate Plan (CP) to the Minister for Primary Industries and Energy for approval. This change will better align the CP with the AWB's financial year and budgetary cycle and allow for the preparation of an Annual Operational Plan (AOP) which better reflects the AWB's budgetary cycle. The requirement for the AOP to be approved by the Minister is being removed, in line with an agreed recommendation from the Davis Review of the Commonwealth Primary Industry Statutory Marketing Authorities. This aspect of the Davis Review has already been implemented for the wool industry, in sections 35 and 36 of the *Australian Wool Corporation Act 1991*. The amendment will maintain a requirement for the AWB to submit its AOP to the Minister before the commencement of its financial year, but it will be for information only.

FINANCIAL IMPACT STATEMENT

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

NOTES ON CLAUSESPART 1 - PRELIMINARYClause 1 - Short title

8. Provides for the Act to be cited as the *Primary Industries and Energy Legislation Amendment Act (No 2) 1991*.

Clause 2 - Commencement

9. This Bill comes into effect on the day which it receives Royal Assent. However subsection 2(2) provides for the amendments to the *Wheat Marketing Act 1989* to commence on 30 June 1992 if the Bill has not received Royal Assent by that time. This is to enable the new submission dates for the AWB's Corporate and Annual Operational Plans to apply for the 1992/93 year.

PART 2 - AMENDMENTS OF THE MEAT INSPECTION ACT 1983Clause 3 - Principal Act

10. This clause provides that the Principal Act is the *Meat Inspection Act 1983*.

Clause 4 - Interpretation

11. This clause alters the definition of the term "authorised officer" in section 3 of the Principal Act to remove the reference to officers of the Department. Officers of the Department of Primary Industries and Energy will no longer automatically be authorised officers for the purposes of the Principal Act. A person will become an authorised officer only by being appointed as such under section 32 of the Principal Act. That section empowers the Secretary of the Department to appoint a person to be an authorised officer or persons to be authorised officers for the purpose of the exercise by that person or those persons of the powers of an authorised officer under the Principal Act.

Clause 5 - Regulations with respect to inspection of meat

12. This clause amends paragraph 20(2)(b) of the Principal Act to confirm that the regulations may provide for the remission of fees, as well as the imposition of such fees. It is reasonable to argue that a regulation providing for the remission of fees may be regarded as an order "in relation to ... the imposition of fees". But the later addition of paragraph 20(2)(ba) which specifically provides for the making of regulations to allow for the remission of fees, casts doubt on that argument. This amendment removes that doubt.

Clause 6 - Obstructing authorised officers

13. This clause amends section 27 of the Principal Act by omitting the reference to a monetary penalty thereby leaving reference to an imprisonment penalty only. Under subsection 4B(2) of the *Crimes Act 1914* a court may exercise a discretion as to whether to convert the imprisonment term to a monetary penalty in accordance with the formula specified from time to time in that subsection. The amendment from time to time of the formula ensures the maintenance of the correlation between the imprisonment penalty and the monetary penalty. Under subsection 4B(2) of the *Crimes Act 1914* the court has the power to impose the monetary penalty in addition to the imprisonment penalty.

Clause 7 - Persons to assist authorised officers

14. This clause amends section 28 of the Principal Act by similarly removing the reference to the monetary penalty. The effect of this is as described in the above note regarding clause 6.

Clause 8 - Indictable offences

15. This clause amends section 29 of the Principal Act by doubling the maximum monetary penalty in subsection 29(1) in seeking to maintain the intended level of maximum real monetary penalty. The reference to body corporate in that subsection is removed from subsection 29(1) of the Principal Act leaving reference only to a maximum penalty for a natural person. Subsection 4B(3) of the *Crimes Act 1914* empowers a court to impose on a body corporate a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum monetary penalty that can be imposed on a natural person.

16. Similarly to maintain close to real levels of maximum penalty, the clause also amends subsection 29(3) of the Principal Act by increasing the maximum monetary penalty from \$2000 to \$5000 for a natural person. Again subsection 4B(3) of the *Crimes Act 1914* allows for this to be multiplied by 5 if the offence is found to have been committed by a body corporate.

17. The clause amends subsection 29(4) of the Principal Act by omitting references to monetary penalties from that subsection. The effect of this is as described in the above note regarding clause 6.

Clause 9 - Authorised officers

18. This clause makes a formal drafting amendment to section 32 of the Principal Act.

Clause 10 - Supply of any goods or services to authorised officers

19. This clause makes formal drafting amendments to subsection 35(1) of the Principal Act.

20. The clause also removes the reference to the monetary penalty for subsection 35(1). The effect of this is explained in the note on clause 6 above.

21. The clause also introduces a new offence provision of authorised officers receiving goods or services from the owner of a registered establishment or from an employee or agent or such an owner. Authorised officers perform inspection services for such persons and the receipt of goods or services from them may compromise the officer's integrity. Existing section 35 makes it an offence to supply an authorised officer with goods or services and this amendment complements that offence provision.

Clause 11 - Saving - Meat Inspection (Fees) Orders

22. This clause saves order 18 of the Meat Inspection (Fees) Orders as amended, made under the regulations, which provides for the remission of fees in circumstances where the Secretary thinks there is sufficient reason. Thus any fees remitted under order 18 will have been remitted validly, even if the doubt referred to in the note to clause 5 proves to be well founded.

PART 3 - AMENDMENTS OF THE NATIONAL WATER RESOURCES (FINANCIAL ASSISTANCE) ACT 1978

Clause 12 - Principal Act

23. This clause provides that the Principal Act is the *National Water Resources (Financial Assistance) Act 1978*.

Clause 13 - Interpretation

24. This clause makes the Australian Capital Territory and the Northern Territory eligible to receive assistance under the Act. When the Act was drafted the Territories were administered by the Commonwealth, but with the introduction of Self-Government for the Territories, it is desirable to treat them on the same basis as the States with regard to eligibility for funding under the Act.

Clause 14 - Evidence of expenditure

25. This clause transfers responsibility for determining the form of audited financial statements required under the Act, from the Minister for Finance to the Minister for Primary Industries and Energy. It brings under the responsibility of the one Minister, all aspects of administration of assistance programs under this Act and brings them into line with other similar assistance programs administered by the Department of Primary Industries and Energy.

26. It will also permit either State Auditors-General or the senior executive officer of the State organisation or approved body receiving Commonwealth funds to acquit program expenditures. This would expedite acquittal of program expenditures and ensure conformity of the Act with Finance Direction 13F (1989/24) which directs, inter alia, that "... Departments must not attempt to impose tasks on State Auditors-General for audit or acquittal of program expenditures unless the State Auditors-General have first agreed to accept the tasks".

PART 4 - AMENDMENTS OF THE PETROLEUM (SUBMERGED LANDS) ACT 1967Clause 15 - Principal Act

27. This clause provides that the Principal Act is the *Petroleum (Submerged Lands) Act 1967*.

Clause 16 - Delegation

28. This clause amends section 8H of the *Petroleum (Submerged Lands) Act 1967* by extending the provision to enable delegation of routine Joint Authority powers under subsidiary Acts (eg the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* and the *Petroleum (Submerged Lands) (Royalty) Act 1967*). Section 8H which was included in the *Petroleum (Submerged Lands) Amendment Act 1991* was intended to also cover subsidiary Act powers. This amendment is to correct a drafting error to ensure that section 8H does cover the subsidiary Acts.

PART 5 - AMENDMENTS OF THE WHEAT MARKETING ACT 1989Clause 17 - Principal Act

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

Clause 18 - Development

30. This clause changes the date, from 1 July to 1 September in each year, by which the Australian Wheat Board (AWB) is required to submit its Corporate Plan to the Minister for Primary Industries and Energy. The submission date which applied in 1989, to take account of the fact that the Act did not commence until 1 July in that year, is also removed.

Clause 19 - Development

31. Paragraph 19(a) changes the date, from 1 August to 1 October in each year, by which the AWB is required to submit its Annual Operational Plan to the Minister for Primary Industries and Energy. The submission date which applied in 1989, to take account of the fact that the Act did not commence until 1 July in that year, is also removed.

32. Paragraph 19(b) inserts two new subsections to ensure that (i) an Annual Operational Plan is consistent with the Corporate Plan even if variations are made to the latter; and (ii) to specify the commencement date for each Plan. Similar, current provisions in the Principal Act, which are linked to Ministerial approval of the Plan or variations to it, are being repealed by clause 20.

Clause 20 - Variation

33. This clause removes the requirement for the Minister for Primary Industries and Energy to approve each Annual Operational Plan or variation to it (sections 55 and 56 of the Principal Act). Consistent with this approach the provision for the Minister to request a variation to the Plan is also removed. This implements an agreed recommendation from the Davis Review of the Commonwealth Primary Industry Statutory Marketing Authorities.

34. A new section 55, Variation, provides for the AWB to vary its Annual Operational Plan, with the changes to take effect from the day they are made. Any such variations must be notified to the Minister within 28 days.

Clause 21 - Annual Report

35. Provides for consequential amendments to subparagraph 89(3)(b)(viii) of the Principal Act to take account of the removal of the requirement for Ministerial approval of variations to the Annual Operational Plan.

