

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL  
(NO 2) 1992

EXPLANATORY MEMORANDUM

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

## **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.

### **Australian Meat and Live-stock Corporation Act 1977**

3. This proposed amendment will correct a deficiency in relation to the giving of evidence of analysts in court proceedings by way of a certificate.

4. The Act currently provides that a certificate of analysis is prima facie evidence of the information it contains. However, the certificate fails to establish that the substances which have been analysed were those found in the possession of the accused, seized and passed on to the analyst for analysis. In the view of the Commonwealth Director of Public Prosecutions, the analyst needs to attend court to give evidence of continuity in support of other continuity witnesses.

5. The proposed amendment would allow the certificate of the analyst to contain information as to the date of receipt of the substance, the name of the person from whom it was received and a description of the substance, overcoming the gap in the chain of evidence and obviating the need for the analyst to attend court to give evidence.

### **Australian Wool Corporation Act 1991**

6. The proposed amendments

- . give more flexibility to the Australian Wool Corporation (AWC) in the timing of annual payments to the Commonwealth for exotic animal disease control
- . enable wool tax payers to be registered for the purposes of the annual general meetings (AGM) of the AWC and Wool Research and Development Corporation (WRDC) for a period of three years rather than the existing one year
- . extend the scope of AGMs to include, with notice, any motions relating to any matter within the AWC's responsibilities
- . clarify the provisions concerning persons who may not be appointed as a member of the AWC
- . enable the possibility of an organisation other than the National Association of Testing Authorities to be the registering body for wool sampling sites, laboratories and showfloors
- . insert new provisions concerning hedging contracts by the AWC.

### **Australian Wool Realisation Commission Act 1991**

7. The proposed amendments

- . provide for the debt repayment schedule to be placed on a cumulative basis

- enable the Minister for Primary Industries and Energy to determine, when surplus money is likely to be available in the Stockpile Fund, whether the surplus should be distributed to wool tax payers through a cash rebate or a rebate against wool tax or should remain in the Fund
- insert new provisions concerning hedging contracts by the Australian Wool Realisation Commission (AWRC)
- clarify the provisions concerning persons who may not be appointed as a member of the AWRC.

#### Primary Industries and Energy Research and Development Act 1989

8. The proposed amendments to this Act relate to certain annual general meeting provisions and are being made as a consequence of changes elsewhere in this Bill to the *Australian Wool Corporation Act 1991*.

#### Primary Industries Levies and Charges Collection Act 1991

9. The proposed amendments to the *Primary Industries Levies and Charges Collection Act 1991* are to rectify minor anomalies concerning the allowing of minimum quantity or minimum monetary levels for small producers.
10. In most levy or export charge schemes about 85% of levy income is paid by only 15% of the levy payer population, whereas 40 to 50% of the population would pay less than the limits proposed. The intention is to allow small producers a threshold before having to pay levy. Once the threshold is reached, levy would become payable **on the total quantity or amount**. The basis for setting the threshold is not linked to the actual levy rates but is related to the estimated collection cost per levy return. These provisions will permit different thresholds to be prescribed for future levy years according to changing economic circumstances.
11. With full cost recovery for levy collections operating since 1988/1989 there has been increasing pressure from participating industries for more economical collection techniques to be adopted by the Department.
12. These measures have the support of participating industries.

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

13. The change to the *Snowy Mountains Hydro-electric Power Act 1949* allows the Snowy Mountains Hydro-electric Authority to enter into contracts under \$2 million without needing to seek permission from the Minister for Resources. The Act has already undergone one amendment in 1979 to bring the contract approval level from \$0.2m to the existing \$0.5m level.

### **FINANCIAL IMPACT STATEMENT**

14. The amendments will have no net effect on revenue.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

15. Provides for the Act to be cited as the *Primary Industries and Energy Legislation Amendment Act (No 2) 1992*.

#### Clause 2 - Commencement

16. This Bill comes into effect on the day which it receives Royal Assent.

### PART 2 - AMENDMENT OF THE AUSTRALIAN MEAT AND LIVE-STOCK CORPORATION ACT 1977

#### Clause 3 - Principal Act

17. This clause provides that the Principal Act is the *Australian Meat and Live-stock Corporation Act 1977*.

#### Clause 4 - Evidence of analyst

18. Omits subsections 47J(2) and (3) from the Principal Act and inserts a new subsection 47J(2) which details the information that may be contained in a certificate issued by an analyst in relation to a substance analysed by that person.

### PART 3 - AMENDMENTS OF THE AUSTRALIAN WOOL CORPORATION ACT 1991

#### Clause 5 - Principal Act

19. This clause provides that the Principal Act is the *Australian Wool Corporation Act 1991*.

#### Clause 6 - Payments to Commonwealth in relation to exotic animal disease control

20. This clause amends section 26 to provide that the annual contribution to the Commonwealth for exotic disease control is that prescribed each year and that the payment for that year by the Australian Wool Corporation (AWC) may be made in quarterly instalments. This amendment replaces the requirement that the annual prescribed amount must be paid in one instalment on 1 July.

#### Clause 7 - Hedging through currency contracts etc

21. This clause replaces the provisions of section 27 of the Principal Act with a new section 27 which is similar to recent amendments to the *Australian National Railways Commission Act 1983*.

22. The purpose of the amendments is to ensure that the AWC has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts. Many Government authorities routinely make use of such transactions, as do many private business organisations, for example to minimise their exposure to adverse interest rate and exchange rate variations.

23. The new section authorises the AWC to enter into financial contracts for hedging purposes. The main improvements contained in the new section compared with the existing section 27 are definitions of currency and futures contracts; to enable the AWC to use hedging contracts to manage risks of variations in the cost of borrowings as well as in risks of adverse variations in foreign currency transactions by the AWC (for example for payments to the International Wool Secretariat for wool promotion); to enable the use of hedging to manage returns on investments; and to better define the types of contracts which may be hedged.

24. The Minister is empowered to make guidelines binding on the AWC, for the exercise of its power to enter into hedging contracts. The reference to "contracts of a kind approved in writing by the Minister" is not intended to authorise the AWC to engage in transactions not otherwise within the AWC's powers. It is included to enable the Minister to resolve any doubt in the minds of financiers in cases where the AWC proposes to enter into a transaction described in different words from those set out in new subsection 27(2), but which is nevertheless clearly within the general description of a hedging transaction as otherwise authorised by the new section 27 and the AWC's existing powers.

25. Similar amendments are being made to the *Australian Wool Realisation Commission Act 1991* elsewhere in this Bill (refer clause 21). Since the financial institutions with which the AWC deals are in many cases the same as those with which the AWRC deals, it is advantageous for both bodies to have comparable hedging provisions in their respective Acts.

#### Clause 8 - Interpretation

26. Amends the definition of registered wool-tax payer to align with the amendments in clause 9.

#### Clause 9 - Register of wool-tax payers

27. Subclause (a) replaces subsections 40(1) and (2) with seven new subsections principally to enable wool-tax payers to register for three year periods rather than the current one year, which removes the need for interested wool-tax payers to apply to register each year and at the same time simplifies administration of the register by the AWC.

28. New subsection 40(1) requires the AWC to establish and maintain a register which will show who is eligible to participate in debate and to vote at the annual general meeting and any special general meetings held in a particular financial year.

29. New subsection 40(1A) requires the AWC to enter on the register the particulars of any person who applies to be registered, was liable to pay wool tax in the financial year immediately before the year in which the application was made and who has paid that tax.

30. New subsection 40(1B) provides that if a person's particulars are on the register, their registration is renewed if the person applies for the registration to be renewed, was liable for and paid wool tax imposed in the financial year immediately prior to the year in which the application was made.

31. New subsection 40(1C) enables a registered person to request that their particulars be removed from the register at any time.

32. New subsection 40(1D) provides that, unless a person has asked for their particulars to be removed from the register, the particulars remain on the register for three years starting on 1 July in the year of first entry or of any subsequent renewal.

33. New subsection 40(1E) requires a person's particulars to be removed from the register if the person has asked for them to be removed or they have not reapplied to be registered.

34. New subsection 40(2) provides that the register maintained by the AWC is also to be used for the purposes of Wool Research and Development Corporation annual general meetings.

35. Subclause (b) enables the regulations made under paragraph 40(3)(b) to also apply to renewal of registrations made under the new subsection 40(1B).

36. Subclause (c) reflects that there is only one register of wool-tax payers.

#### Clause 10 - Purpose of annual general meeting

37. This clause extends the purpose of an annual general meeting (AGM) as specified in subsection 43(1) to also include, provided notice is given, any motions relating to any matter within the AWC's responsibilities. This amendment brings the purpose of AWC AGMs into line with those of the Wool Research and Development Corporation and also enables debate and voting to take place at the AGM on a wider range of issues for which the AWC is responsible.

#### Clause 11 - Membership of Corporation

38. This clause replaces the existing subsection 49(6) to clarify the provisions concerning persons who may not be appointed as a member of the AWC. A person who is to be ineligible is a Member of Parliament, an individual who is a member of a prescribed wool industry organisation, or an individual who is a member of the executive of a prescribed wool industry organisation. Subsections 6(b) and (c) reflect the different nature of the membership provisions in the constitutions of the major wool industry organisations, which were not taken into account in the existing subsection 49(6).

39. The major organisations representing sectors of the wool industry are the Wool Council of Australia, the Australian Council of Wool Exporters, the Federal Council of Private Treaty Wool Merchants, the National Council of Wool Selling Brokers of Australia and the Australian Wool Processors Council. Members of those organisations are to be ineligible for appointment as a member of the AWC because those organisations are represented on the Australian Wool Industry Council which is established under the *Australian Wool Industry Council Act 1991*.

40. When the new subsection 49(6) comes into force, it is proposed that the existing regulations on this matter will be replaced by regulations which will prescribe the Wool Council for the purposes of paragraph 49(6)(b) and the other four organisations for the purposes of paragraph 49(6)(c).

#### Clause 12 - Interpretation

41. This clause amends definitions to correspond with the amendments in clause 13.

#### Clause 13 - Registration authorities

42. Provides that the registration authority for wool sampling sites, laboratories or show floors is the National Association of Testing Authorities (NATA), Australia or such other body as is prescribed. The amendment, which has been supported by the Australian Wool Industry Council, enables the possibility, if required at some time in the future, for other suitable organisations to compete with NATA to be the registration authority for sampling sites, laboratories and show floors. However, at this point it is

not foreseen that the registration authority for laboratories will be other than NATA given a Memorandum of Understanding on this matter between the Commonwealth and NATA, dated July 1988.

#### **PART 4 - AMENDMENTS OF THE AUSTRALIAN WOOL REALISATION COMMISSION ACT 1991**

##### **Clause 14 - Principal Act**

43. This clause provides that the Principal Act is the *Australian Wool Realisation Commission Act 1991*.

##### **Clause 15 - Assessment and revision of debt repayment program**

44. Since the requirement in section 11 for the Australian Wool Realisation Commission (AWRC) to repay the debt over the shortest period possible will be inconsistent with the new provisions on rebates (clause 18), the section is amended to require the debt program to be managed prudently at all times.

##### **Clause 16 - Performance of functions etc. subject to guidelines**

45. This clause amends subsection 18(3) to enable the debt repayment schedule in the guidelines to be placed on a cumulative basis showing the maximum amount of debt that is to be outstanding at the end of each financial year. This will replace the existing requirement in the schedule to reduce the debt by a specified minimum amount each financial year.

##### **Clause 17 - Dealings with Stockpile Fund**

46. This clause enables money in the Stockpile Fund to be also used to pay cash rebates as provided for in section 24C (refer clause 18).

##### **Clause 18 - Division 2A - Surplus money in Stockpile Fund**

47. This clause inserts a new Division 2A, comprising five new sections, into the Principal Act.

48. Section 24A (**Interpretation**) defines shorn wool tax.

49. Section 24B (**Determination by Minister**) comprises ten subsections.

50. Subsection 24B(1) provides that the object of the section is to give power to the Minister to determine whether surplus money from the Stockpile Fund should be distributed to wool tax payers or retained in the Fund.

51. Subsections 24B(2) and (3) require the AWRC, before 1 June each financial year, to advise the Minister of whether there is likely to be at the end of that financial year money in the Fund that would not be reasonably required for the prudent management of the debt repayment program and the operation of the Fund and if so how much.

52. Subsection 24B(4) provides, that if in a financial year the AWRC advises the Minister that there is a surplus, then the Minister must, on or before 30 June in that year, make one or both of the following determinations

- that persons who are liable to pay shorn wool tax in that year should be entitled to receive a cash payment from the AWRC

that persons who will become liable to pay shorn wool tax in the following financial year should be entitled to a rebate of that tax

or decide not to make a determination.

53. Subsection 24B(5) provides that if the Minister makes a determination that there is to be a cash rebate, then the determination must specify the particular percentage of the shorn wool tax to be used to calculate the amount to be paid to each person. The payment is to be in proportion to the amount of shorn wool tax paid by each person.

54. Subsection 24B(6) provides that if the Minister makes a determination that there is to be a rebate of wool tax then the determination must specify the amount of the rebate as a percentage of the sale value of shorn wool which is subject to shorn wool tax.

55. Given the provisions of new subsections 24B(2), (3) and (4) in regard to timing of advice from the AWRC and of the Minister's determination and the likelihood of distribution of surplus money in the Stockpile Fund at the end of the 1991/92 financial year, subsection 24B(7) covers the possibility that the Division might come into force after 1 June 1992. In this event, a determination by the Minister is taken to have been made on 30 June 1992.

56. Subsection 24B(8) provides that before deciding whether to make a determination the Minister must consult the Wool Council, the Minister for Finance and the Treasurer.

57. Subsections 24B(9) and (10) respectively provide that a determination must be published in the Gazette and, if the Minister decides not to determine a rebate, the Minister must give reasons for his decision in the Gazette.

58. Section 24C (**Cash payments to persons who paid shorn wool tax**) comprises three subsections.

59. Subsection 24C(1) provides that, if the Minister has determined that there will be a cash rebate, and a person satisfies the AWRC that they were liable for and have paid the shorn wool tax, the AWRC must pay to the person an amount in proportion to the tax they have so paid.

60. Subsection 24C(2) specifies that cash payments are to be made within the period and in the manner provided in the regulations.

61. Subsection 24C(3) provides that if a person is liable to pay shorn wool tax and another person pays that tax, then for the purposes of the cash rebate the tax is taken to have been paid by the first mentioned person.

62. Section 24D (**Copy of registers under Administration Act to be given to Commission**) provides that the Commissioner of Taxation must give to the AWRC a copy of the registers kept under the specified sections of the Administration Act and notify the AWRC of alterations to the registers. The registers list wool-brokers, wool-dealers, manufacturers and exporters who collect wool tax at point of first transaction in a wool sale and remit the tax to the Australian Taxation Office.

63. Section 24E (**Information relating to wool tax to be given to Commission**) requires the Commissioner of Taxation to give, on request by the AWRC, such information as the AWRC requires in relation to wool tax that was imposed and tax payable in a financial year. The information in sections 24D and E would be used by the AWRC to assist in the audit process prior to payment of a cash rebate if a cash rebate was determined by the Minister.



#### Clause 19 - Payments to Commission

64. This clause amends section 25 of the Principal Act to provide that if the Minister makes a determination that there will be a rebate against wool tax in a financial year, then the amount of the tax payable to the AWRC from total wool tax collections by the Commonwealth will be that collected from the prescribed rate of tax for the AWRC less the rebate.

#### Clause 20 - Commission may charge for services

65. Corrects a typographical error.

#### Clause 21 - Hedging through currency contracts etc.

66. This clause replaces the provisions of section 29 of the Principal Act with a new section 29 which is similar to recent amendments to the *Australian National Railways Commission Act 1983*. The amendments are being made at the request of the AWRC.

67. The purpose of the amendments is to ensure that the AWRC has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts. Many Government authorities routinely make use of such transactions, as do many private business organisations, for example to minimise their exposure to adverse interest rate variations.

68. The new section authorises the AWRC to enter into financial contracts for hedging purposes. The main improvements contained in the new section compared with the existing section 29 are definitions of currency and futures contracts; to enable the AWRC to use hedging contracts to manage risks of variations in the cost of borrowings as well as in risks of adverse variations in foreign currency transactions by the AWRC; to enable the use of hedging to manage returns on investments; and to better define the types of contracts which may be hedged.

69. The Minister is empowered to make guidelines, binding on the AWRC, for the exercise of its power to enter into hedging contracts. The reference to "contracts of a kind approved in writing by the Minister" is not intended to authorise the AWRC to engage in transactions not otherwise within the AWRC's powers. It is included to enable the Minister to resolve any doubt in the minds of financiers in cases where the AWRC proposes to enter into a transaction described in different words from those set out in new subsection 29(2), but which is nevertheless clearly within the general description of a hedging transaction as otherwise authorised by the new section 29 and the AWRC's existing powers.

#### Clause 22 - Membership of the Commission

70. This clause makes similar amendments for the AWRC as are being made for the AWC (refer clause 11).

#### Clause 23 - Transitional

71. Inserts an omitted word.

## **PART 5 - AMENDMENTS OF THE PRIMARY INDUSTRIES AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989**

### **Clause 24 - Principal Act**

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

### **Clause 25 - Definitions**

73. Amends the definition of eligible levy payer.

### **Clause 26 - List of levy payers etc.**

74. Given the amendments being made to section 40 of the *Australian Wool Corporation Act 1991* (refer clause 9), this clause amends subsection 57(1A) of the Principal Act to provide that the register of wool-tax payers prepared by the AWC under its Act is taken to be a register prepared by the Wool Research and Development Corporation (WRDC).

### **Clause 27 - Regulations may provide for certain matters**

75. This clause amends section 61 to insert an omitted word ("R&D"). In addition, because of the amendments referred to in clause 26, amendments are made to paragraph 61(e) and a new paragraph 61(ea) inserted to provide that regulations may be made concerning the method of determining the number of votes that an eligible levy payer may cast at an annual general meeting of the WRDC.

## **PART 6 - AMENDMENT OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION ACT 1991**

### **Clause 28 - Principal Act**

76. This clause provides that the Principal Act is the *Primary Industries Levies and Charges Collection Act 1991*.

### **Clause 29 - Interpretation**

77. Two definitions are inserted into section 4(1) of the Principal Act. These additions allow for minimum levy thresholds below which levy would not be imposed. Previous collection legislation had similar provisions which were not incorporated in transitional arrangements nor the Principal Act.

## **PART 7 - AMENDMENT OF THE SNOWY MOUNTAINS HYDRO-ELECTRIC POWER ACT 1949**

### **Clause 30 - Principal Act**

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

### **Clause 31 - Contracts**

79. The Schedule amends section 31 of the Principal Act to increase the Authority contract approval level from \$0.5m to \$2m.













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