

**1994**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**PRIMARY INDUSTRIES AND ENERGY LEGISLATION**  
**AMENDMENT (NO.2) BILL 1994**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Primary Industries and Energy,  
Senator the Hon Bob Collins)



**PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT  
BILL (NO.2) 1994**

**GENERAL OUTLINE**

1. The amendments to the Australian Meat & Livestock Industry Policy Council Act 1984, Biological Control Act 1984, Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985, Rural Industries Research Act 1985, Pig Industry Act 1986, Horticultural Policy Council Act 1987, Exotic Animal Disease Control Act 1989 and the Primary Industries Council Act 1991 result from the amalgamation of the former Ministerial Councils that dealt with agriculture, water resources, soil conservation and rural adjustment issues into the Agriculture and Resource Management Council of Australia and New Zealand. Of these former Ministerial Councils, the Australian Agricultural Council was referred to in these Acts. It is necessary, therefore, that these Acts be amended.
2. This Bill proposes to amend the Australian Wine and Brandy Corporation Act 1980 to ensure that all producers who pay wine grapes levy are entitled to vote at the Australian Wine and Brandy Corporation's Annual General Meeting.
3. Part IVB of the Australian Wine and Brandy Corporation Act 1980 ('Annual General Meetings of the Industry') has definitions of "eligible winemaker" and "list of winemakers" which refer to winemakers who pay levy under the Wine Grapes Levy Act 1987. The Wine Grapes Levy Act 1987 imposes levies on "producers" as defined under the Primary Industries Levies and Charges Collection Act 1991, who are then entitled to attend, speak and vote at the Annual General Meeting of the wine industry. The amendments to the Australian Wine and Brandy Corporation Act 1980 will ensure that consistent terminology is used in the three Acts for clarity of interpretation.
4. The Bill proposes to amend the Australian Wool Research and Promotion Organisation Act 1993
  - (a) to ensure that the Australian Wool Research and Promotion Organisation, when performing its research and development function, has regard to the principles of Ecologically Sustainable Development and that these principles are reflected in the Australian Wool Research and Promotion Organisation's corporate and related operational plan. The amendment also requires that the Board membership of the Australian Wool Research and Promotion Organisation include a

person who has qualifications relevant to, or experience in, environmental and ecological matters.

- (b) to provide for the Australian Wool Research and Promotion Organisation to allocate funds received from patents or trademarks associated with non-research and development activities to activities other than research and development. Currently all funds received from patents and trademarks must be paid into the Australian Wool Research and Promotion Organisation's Wool Research and Development Fund.
5. The amendments to the Farm Household Support Act 1992, implement a range of measures to improve the delivery of Farm Household Support to farmers experiencing financial difficulties, and to allow for the more efficient administration of Farm Household Support.
  6. The Bill proposes to amend the Fisheries Administration Act 1991
    - (a) to clarify the sources of funding the Australian Fisheries Management Authority, as a matter of policy, is entitled to receive from the fishing industry as cost recovery. The amendments will enable all relevant levies, fees and payments to be identified and provide a clearer distinction between Government and industry contributions to fisheries management
    - (b) to change the reference to the "Australian Fisheries Council" to the "Ministerial Council on Forestry, Fisheries and Aquaculture" and make provision for future updates to be inserted into the Fisheries Administration Act 1991 by regulation.
  7. The Bill amends the Fisheries Management Act 1991 to allow fishing permit holders greater flexibility in nominating the boat to be used with that permit and to clarify the emergency powers available to the Australian Fisheries Management Authority in fisheries management as well as some powers and obligations of fisheries officers.
  8. The amendments to the National Residue Survey Act 1992 will establish arrangements to enable funds collected from the cattle industry to be used for target testing programs and for education and extension programs aimed at reducing contamination on farm.
  9. The proposed amendments to the Primary Industries and Energy Research and Development Act 1989 will eliminate an anomaly in funding arrangements for the Fisheries Research and Development Corporation.

10. This Bill amends the definition of sugar industry organisations contained in Section 4(1) of the Sugar Cane Levy Act 1987 by providing that the organisations will be prescribed for the purposes of the definition. The amendment is necessary following the consolidation of the sugar industry organisations currently listed in this section which has led to the formation of three separate organisations. The new organisations have been prescribed for the purposes of the definition.
11. The Bill proposes to amend the Wool Legislation (Repeals and Consequential Provisions) Act 1993 to correct a small drafting error in paragraph 36(3)(c) which refers to the Australian Wool Realisation Commission Act 1993 which should be Australian Wool Realisation Commission Act 1991.
12. The Bill proposes to amend the Wool Tax Act (No. 3) 1964 to remove the reference to "registered" as part of the title of wool dealers. All wool dealers are now required to be registered to deal in wool (unlike past practice) and the addition of "registered" to describe "wool dealers" is therefore superfluous.
13. The Bill amends the Wheat Marketing Act 1989 to extend the definition of "grain". The new definition extends the coverage from the common cereal grains to pasture, horticultural and tree seeds, but only for the purposes of seed testing and seed certification. To ensure the viability of its seed testing unit, and to provide a broad based service to the grains and seeds industries, the Australian Wheat Board's analytical and research division (the Academy of Grain Technology) must be able to conduct seed testing and certification on a wide range of species.
14. Other minor changes to the Wheat Marketing Act 1989 will improve the allocation of levy payments to equity holders in the Wheat Industry Fund, and remove the age limit restriction on Australian Wheat Board members.

#### **FINANCIAL IMPACT STATEMENT**

15. The amendments will have no significant impact on Government expenditures and will have no staffing implications for the Department of Primary Industries and Energy.

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

16. This clause provides for the Bill to be called the Primary Industries and Energy Legislation Amendment Act (No. 2) 1994.

**Clause 2 - Commencement**

17. This clause provides for the Bill to come into effect on the day it receives Royal Assent unless otherwise provided.
18. The amendments to the Australian Wine and Brandy Corporation Act 1980 commence on the first day of the second month that begins after the day on which this Act receives Royal Assent;
19. The amendments to Section 52 of the Farm Household Support Act 1992 will commence on 20 September 1994.
20. The amendment to the Wool Legislation (Repeals and Consequential Provisions) Act 1993 is taken to have commenced on 1 December 1993 which is immediately after commencement of that Act.

**Clause 3 - Amendments**

21. This clause provides that the Acts referred to in the Schedule are amended as set out in the Schedule.

**Clause 4 - Saving**

22. This clause provides that regulations defining "sugar industry organisations" (in subsection 4(1) of the Sugar Industry Levy Act 1987) that were in force immediately before the commencement of the amendment of the Sugar Industry Levy Act 1987 made in this Act, continue in force after that commencement.

**SCHEDULE 1****AMENDMENTS OF ACTS*****Australian Meat and Live-stock Industry Policy Council Act 1984*****Section 3**

23. The amendment defines the *Agriculture and Resource Management Council of Australia and New Zealand* and substitutes it for the Australian Agricultural

Council. It also provides for any future change of the name of the *Agriculture and Resource Management Council of Australia and New Zealand* to be made by regulation rather than by legislation.

Paragraph 5(1)(c)

24. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the Australian Agricultural Council

Subsection 9(6)

25. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the Australian Agricultural Council

Subsection 11(2)

26. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the Australian Agricultural Council

***Australian Wine and Brandy Corporation Act 1980***

Subsection 29U(1)

27. The definitions of "eligible winemaker" and "list of winemakers" are replaced by definitions of "eligible producer" and "list of producers" without changing the meanings of the terms.

Section 29V(1) and 29V(2)

28. This Section requires the Department of Primary Industries and Energy to prepare the list of producers for the purposes of the Annual General Meeting as soon as practicable after 30 September in each year. The Australian Wine and Brandy Corporation is not permitted to use the list for any purpose other than those set out in the Part (ie. for the Annual General Meeting). It is amended by clarifying the language of both subsections by deleting the phrase "list of persons" and replacing it with "list of producers" in subsection (2).

Subsection 29W(1)

29. The section is amended by replacing the term "winemakers" with "producers"

Subsection 29W(2)

30. The section is amended by replacing the term "winemaker" with "producer"

Section 29X

31. The section is amended by replacing the term "winemakers" with "producers"

Paragraph 29Y(b)

32. The section is amended by replacing the term "winemakers" with "producers"

Subsection 29Z(1)

33. The section is amended by replacing the term "winemaker" with "producer"

**Australian Wool Research and Promotion Organisation  
Act 1993**

Section 6

34. This amendment will require the Australian Wool Research and Promotion Organisation to have regard to the principles of Ecologically Sustainable Development in fulfilling its function of investigating and evaluating the requirements for research and development in relation to the wool industry.

Section 10

35. This amendment will require the Australian Wool Research and Promotion Organisation to have regard to the principles of Ecologically Sustainable Development in the research and development component of its corporate plan. Similarly, these principles must also be taken into account in the Australian Wool Research and Promotion Organisation's operational plan because, by definition, the operational plan must reflect the objectives set out in the corporate plan.

Subsection 28(2)

36. This amendment provides for the inclusion of qualifications relevant to, or experience in, environmental and ecological matters in the mix of skills required in the Australian Wool Research and Promotion Organisation's Board membership.

Subparagraph 54(1)(d)(iii)

37. This amendment provides for the Australian Wool Research and Promotion Organisation to allocate funds received from patents or trademarks associated with non-research and development activities to activities other than research and development. Currently all funds received from patents and trademarks must be paid into the Australian Wool Research and Promotion Organisation's Wool Research and Development Fund.

**Biological Control Act 1984**Subsection 2(1) - definition of "Council"

38. The amendment defines the *Agriculture and Resource Management Council of Australia and New Zealand* and substitutes it for the *Australian Agricultural Council*. It also provides for any future change of the name of the *Agriculture and Resource Management Council of Australia and New Zealand* to be made by regulation rather than by legislation.

**Exotic Animal Disease Control Act 1989**Section 3 - definition of "approved veterinary emergency plan"

39. The proposed amendment changes the name of the *Australian Agricultural Council* to the *Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ)* and provides for any future change of the name of the Council to be made by regulation rather than by legislation.

## Paragraph 11(1)(c)

40. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the *Australian Agricultural Council*

**Farm Household Support Act 1992**

## Paragraph 4(2)(a):

41. As proof of eligibility for Farm Household Support assistance, an applicant must provide a certificate validated by a financial institution that has refused the applicant further commercial finance. This clause extends the period available to a Farm Household Support applicant to return such a certificate from the present 14 days to 30 days (or longer if allowed by the Secretary to the Department of Social Security). This will avoid farmers in difficult financial circumstances having access to assistance impeded by factors outside of their control.

Subsection 5(5)

42. This amendment allows Farm Household Support recipients who are dissatisfied with a decision by the Secretary to the Department of Primary Industries and Energy or his/her delegate under subsection 5(4) of the Act to appeal to the Administrative Appeals Tribunal.



Section 5A - Review of decision in relation to grant periods

43. This amendment provides for Farm Household Support recipients who are dissatisfied with a decision by the Secretary or his/her delegate under Subsection 5(4) of the Act, to request a review of that decision by the Secretary to the Department of Primary Industries and Energy, even if they have applied to the Administrative Appeals Tribunal for a review of the decision.

Section 50A - Notice of certain matters to be given

44. This amendment improves control of the Farm Household Support loan portfolio by requiring a former Farm Household Support recipient who has a debt to the Commonwealth under section 50 of the Act, to provide notice to the Secretary to the Department of Primary Industries and Energy of a change in their place of residence, the sale of their farm, or a change in their financial circumstances affecting their ability to repay the amount concerned. The penalty for failure to provide information to the Secretary to DPIE is consistent with existing penalties under Sections 41 and 42 for failure to provide information to the Secretary to the Department of Social Security.

Section 52

45. This amendment allows a farmer to access the lump sum payout of the nine month grant period once only. This ensures that available funds are directed equitably to those who are committed to re-establishing their families outside of the farm sector.

Section 53

46. This amendment provides the Secretary to the Department of Primary Industries and Energy, a power to delegate all or any of his/her responsibilities under the Act, to an officer of the Department of Primary Industries and Energy, in order to increase the efficiency of the administration of Farm Household Support.

***Fisheries Administration Act 1991***

Subsection 4(1) - Definition of "Australian Fisheries Council"

47. This amendment substitutes definition of the "Australian Fisheries Council" with the "Ministerial Council on Forestry, Fisheries and Aquaculture". The amendment will also provide for any future change in the structure or title of the Ministerial Council to be made by regulation.

Paragraph 28(1)(c)

48. This amendment substitutes the "Australian Fisheries Council" with the "Ministerial Council on Forestry, Fisheries and Aquaculture"

Paragraph 29(1)(d)

49. This amendment substitutes definition of the "Australian Fisheries Council" with the "Ministerial Council on Forestry, Fisheries and Aquaculture".

Subsection 80(1)

50. This amendment substitutes, for subsection 80(1), new subsections 80(1) and (1A). These more accurately describe the formula determining the special appropriation payable to the Australian Fisheries Management Authority.

Paragraph 81(c) - Payments to Australian Fisheries Management Authority for publications

51. This paragraph is extended to make it clear that Australian Fisheries Management Authority's money includes proceeds from the sale of publications and related revenue such as that from advertising.

**Fisheries Management Act 1991**Subsection 32(1) - Grant of fishing permits

52. This amendment replaces subsection 32(1) of the Act with three new subsections that include provision for the issue of a fishing permit with or without a boat being specified on the permit on the date on which it is granted. If no boat is specified at that time, the permit will remain in force for its duration with or without a boat being nominated after the date on which the permit was granted. Provision is also made for the boat on the permit to be replaced. Levy is payable in respect of a fishing concession and this provision enables levy to be collected whether or not a boat is nominated by the permit holder during the currency of the permit.

Paragraph 43(1)(a)

53. This amendment replaces paragraph 43(1)(a) of the Act with a new paragraph that establishes that temporary orders may be invoked by Australian Fisheries Management Authority, not only to deal with emergencies, but also with situations related to the management of a fishery where prompt action is required.

Paragraph 84(1)(f)

54. This amendment adds a new paragraph 84(1)(fa) to provide that, where a fishing concession provides for the use of equipment of a certain type, officers carrying out an inspection of equipment in the possession of the concession holder will be empowered to require the concession holder to assist in the measuring of that equipment. The amendment is necessary because, in some circumstances, it is physically impossible for an officer to inspect equipment without assistance.

Paragraph 84(1)(g)

55. This amendment makes the provision relating to seizure subject to the requirement set out in the new subsection 84(1A).

Paragraph 84(1)(k)

56. This amendment substitutes a new paragraph for paragraph 84(1)(k) to clarify the powers of an officer to detain a boat at sea or at a place in Australia in cases where there is suspicion of an offence against the Act. Currently, the wording of the paragraph allows an officer to detain the boat only if that officer has ordered the boat to be brought to the place where it is to be detained. The new paragraph removes this anomaly.

Subsection 84(1A)

57. This amendment inserts a new subsection 84(1A) to provide that, where catch, a boat or equipment is seized under paragraph 84(1)(g), written notice of the grounds of seizure shall be forwarded within seven days to the fisher, processor, carrier or boat owner affected by the seizure.

Subsection 91(1) and paragraph 91(4)(a)

58. This amendment extends the provision in section 91 whereby fish receiver permits may be required to include fisheries not subject to a management plan. Under the new provision, fishing permits may include a condition that fish landings be made only to holders of fish receiver permits.

Subsection 106(1) and paragraphs 106(1)(a) and 106(1)(b)

59. This amendment clarifies the meaning of subsection 106(1) to the effect that forfeiture can be ordered against any or all of a boat, net, trap or equipment used in the commission of an offence against the Act, fish on board such a boat at the time of the offence and the proceeds of the sale of any such fish.

Paragraph 168(2)(e)

60. This amendment adds a new paragraph making the nomination of a boat for a fishing permit under subsection 32(1) subject to such fees as may be prescribed.

**Horticultural Policy Council Act 1987**

Section 3

61. The proposed amendment changes the name of the *Australian Agricultural Council* to the *Agriculture and Resource Management Council of Australia and New Zealand* and provides for any future change of the name of the Council to be made by regulation rather than by legislation.

Paragraph 9(1)(e)

62. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the *Australian Agricultural Council*.

**National Residue Survey Administration Act 1992**

Section 7

63. This amendment will direct contributions from bodies, such as Research and Development Corporations, who wish the National Residue Survey to undertake specific tasks for those bodies

Paragraph 7(e)

64. This amendment will allow Parliamentary appropriations to be paid directly into the National Residue Account.

Paragraph 8(1)(a)

65. This paragraph provides for payments to be made for purposes relating to the prevention of contamination in food products to be extended to animal feed and fibre products and widening the scope of the random monitoring program to include targeted testing, educational and extension programs. Expenditure for these programs can only be done at the request of a relevant industry body approved by the Minister.

Subparagraph 8(1)(b)(iii)

66. This subparagraph provides for reimbursement to the Commonwealth for expenses or administrative costs incurred in conducting the functions of the National Residue Survey under paragraph 8(1)(a).

Paragraph 8(1)(b)

67. Provides for the reimbursement of the unspent amount of monies not expended for the purposes of paragraph 7(da).
68. Provides for the reimbursement of the unspent amount of monies not expended for the purposes of sub-clause 7(e).

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

Paragraph 30A(2)(c)

69. This amendment eliminates an anomaly in the current wording of the Act whereby the Commonwealth may match research and development moneys from the States and Northern Territory if those moneys are remitted to the Fisheries Research and Development Corporation but not if they are remitted to the Consolidated Revenue Fund. The new wording allows matching in either case.

***Primary Industry Councils Act 1991***

Section 4

70. The proposed amendment changes the name of the *Australian Agricultural Council* to the *Agriculture and Resource Management Council of Australia and New Zealand* and provides for any future change of the name of the Council to be made by regulation rather than by legislation.

Schedule

71. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the *Australian Agricultural Council*

***Rural Industries Research Act 1985***

Subsection 4(1)

72. The proposed amendment changes the name of the *Australian Agricultural Council* to the *Agriculture and Resource Management Council of Australia and New Zealand* and provides for any future change of the name of the Council to be made by regulation rather than by legislation.

Paragraph 43(1)(c)

73. This amendment substitutes ARMCANZ (the *Agriculture and Resource Management Council of Australia and New Zealand*) for the *Australian Agricultural Council*

**Rural Industries Research (Transitional Provisions and  
Consequential Amendments) Act 1985**

Schedule 1

74. This amendment substitutes ARMCANZ (the Agriculture and Resource Management Council of Australia and New Zealand) for the Australian Agricultural Council

**Sugar Cane Levy Act 1987**

Subsection 4(1) (definition of "sugar industry  
organisations")

75. This clause amends the definition of sugar industry organisations specified in the Principal Act.

**Wheat Marketing Act 1989**

Subsection (3)(1) (definition of "grain")

76. For the purposes only of research, and seed testing or seed certification value adding activities, undertaken by the Australian Wheat Board, this subsection extends the definition of "grain" to include pasture, horticultural and tree seeds, or other seeds declared by regulations.
77. The current provision in the definition of "grain" which allows for any product of the soil to be declared by regulation to be "grain" for all purposes of the Wheat Marketing Authority, including marketing, is retained separately from the proposed extension to the definition.

Section 15

78. This amendment removes the 65 years age limit restrictions on the appointment of persons as members of the Board of the Australian Wheat Board.

Subsection 94(3)

79. This amendment inserts a new paragraph to allow for the making of regulations which impose a penalty not exceeding 10 penalty units, which is currently equivalent to \$1,000. It is intended that such a penalty will be applied by proposed regulations which will make it mandatory (rather than voluntary as at present) for wheat levy payers and collectors to provide certain information concerning the levy payment. The information is used for the management of the Wheat Industry Fund and the allocation to individual levy payers of equity in the Fund. The current provision in subsection 94(4) of the Wheat Marketing Authority, which requires the Minister to consider a report from the Grains Council of Australia

before regulations concerning certain matters relating to the Fund are made, will apply.

**Wool Legislation (Repeals And Consequential Provisions) Act 1993**

Paragraph 36(3)(c)

80. This amendment deletes the reference, Australian Wool Realisation Commission Act 1993, which has an incorrect date, and replaces it with the corrected reference, Australian Wool Realisation Commission Act 1991.

**Wool Tax Act (No. 3) 1964**

Title

81. This amendment deletes the word "registered" from the title of the Act. All wool dealers are now required to be registered to deal in wool (unlike past practice) and the use of "registered" to describe "wool dealers" is therefore superfluous.

Paragraph 4(1)(b)

82. This amendment removes the reference to "registered" in relation to "wool dealers" wherever occurring in this paragraph.

Section 5

83. This amendment removes the reference to "registered" in relation to "wool dealers" wherever occurring in this section.

