

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT BILL (No 3)1995

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.3) 1995**

GENERAL OUTLINE

1. To introduce amendments to the Wool International Act 1993; the Australian Wool Research and Promotion Organisation Act 1993; the Farm Household Support Act 1992; the Agriculture and Veterinary Chemicals (Administration) Act 1992; the Agricultural and Chemicals Code Act 1994; and the Fisheries Management Act 1991.
2. To repeal the following inoperative Acts:
 - Apple and Pear Export Underwriting Act 1981
 - Beef Industry (Incentive Payments) Act 1977
 - Coal Production (War-time) Act Repeal Act 1948
 - Dairy Industry Stabilisation Act 1977
 - Dairy Industry Stabilization Levy Act 1977
 - Drought Assistance (Primary Producers) Act 1982
 - Fishing Industry Act 1956
 - Fishing Industry Research Act 1969
 - Fishing Industry Research and Development Act 1987
 - International Sugar Agreement Act 1978
 - Rural Industries Research Act 1985
 - Wheat Tax Act 1957
 - Wheat Tax Act 1979
 - Wheat Tax (Permit) Act 1984
 - Wheat Tax (Permit) Collection Act 1984
3. The Agricultural and Veterinary Chemicals (Administration) Act 1992 commenced on 15 March 1995. Experience with that Act has identified the need for a number of proposed amendments. These include amendments to ensure that the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) must comply with any lawful policy direction of the Governments involved in the National Registration Scheme for Agricultural and Veterinary Chemicals. In addition, the Department of Primary Industries and Energy will be able to meet its international obligations concerning the provision of information about restricted chemical products. Also included are amendments to permit the charging of fees for certificates concerning the export of agricultural and veterinary chemicals.
4. In addition, experience with the Agricultural and Veterinary Chemicals Code Act 1994, which also commenced on 15 March 1995, has identified a number of proposed amendments to improve the efficiency and specificity of certain sections of that Act, and hence benefit industry. These amendments include changes in the requirement to supply certain information, the

ability to issue a single notice to cover all relevant jurisdictions, and clarifying information

5. The proposed new Section 167A of the *Fisheries Management Act 1991* provides that if there is an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution, then reasonable compensation or compensation as determined by the Federal Court, is payable. Any damages or compensation recovered or other remedy given must be taken into account in assessing compensation under this section.
6. The amendments to the *Wool International Act 1993* will end the right of eligible wool tax payers to make voluntary (additional) contributions of wool tax up to a further 5.5 per cent of the sale value of shorn wool, other than carpet wool.
7. There is no need to retain the right for eligible wool tax payers to make voluntary contributions in view of the anticipated surplus arising from stockpile sales once the Government guaranteed debt has been retired.
8. These amendments will also ensure that larger well-off producers will not be able to increase their equity in a privatised Wool International, or their share of the distribution of grower funds derived from wool stockpile sales once the Government guaranteed debt has been retired, at the expense of other eligible wool tax payers. The amendments are to have effect from 20 June 1995 when the decision to cease voluntary contributions was announced.
9. In addition, the amendments to the *Wool International Act 1993* make provision for the amount payable to Wool International in respect of the debt component of wool tax, currently fixed at 4.5 per cent, to be set by regulation.
10. The amendments will allow the speedy implementation of the outcome of the review of the debt component of wool tax to be conducted in early 1996, which will ascertain if the tax can be reduced or eliminated from 1 July 1996.
11. Wool International is to be given the power to undertake, through its subsidiary, Wool International Holdings, wool marketing activities, including forward trading and the use of futures and currency contracts for hedging purposes. The amendments will facilitate Wool International's development of a broader range of risk management options for the industry. The proposal will be funded from revenue received from the management of non-wool assets as provided for under Section 51 of the legislation.

12. A consequential amendment to Section 51 of the *Australian Wool Research and Promotion Organisation Act 1993* is also needed. Under this section, wool tax payers are required to take into account the percentage of wool tax payable to Wool International when making recommendations on the proportion of the wool tax collected under the Wool Tax Acts payable to the Australian Wool Research and Promotion Organisation for research and development, and promotion.
13. The Bill further amends the *Australian Wool Research and Promotion Organisation Act 1993* by including provision for wool industry contributions to the proposed Australian Animal Health Council Limited.
14. Payments to the proposed Australian Animal Health Council Limited will be made by regulations, on the recommendation of the Wool Council of Australia.
15. The amendments to the *Farm Household Support Act 1992*, strengthen the arrangements that apply to the drought relief payment by clarifying the period of validity of a drought exceptional circumstances certificate for the purpose of obtaining the drought relief payment and correct a previous consequential amendment which erroneously omitted drought relief payment from subsection 43(1).
16. The amendment to the *Imported Food Control Act 1992* allows the Secretary of the Department of Primary Industries and Energy to appoint a person, other than an officer of the Australian Quarantine and Inspection Service (AQIS), to be an authorised officer.
17. The amendment will allow quarantine officers of the Departments of Agriculture in Western Australia, Tasmania and the Northern Territory to become involved in the inspection of food imported into Australia.

FINANCIAL IMPACT STATEMENT

18. The amendments to the *Agriculture and Veterinary Chemicals (Administration) Act 1992*, the *Agricultural and Chemicals Code Act 1994*, the *Wool International Act 1993*, the *Australian Wool Research and Promotion Organisation Act 1993* and the *Imported Food Control Act 1992* have no financial impact on the Commonwealth Budget.
19. Payments to the proposed Australian Animal Health Council Limited under the amendments to the *Australian Wool Research and Promotion Organisation Act 1993* will be drawn from general reserves held by the Australian Wool Research and Promotion Organisation and have no impact on the Commonwealth Budget.
20. There is no direct financial impact from the amendments to the *Fisheries Management Act 1991*. The amendments reflect the requirements of the Constitution. There is the potential for some existing sections of the Act to be found to be invalid because of conflict with the Constitution; this amendment confirms that the Constitution prevails.
21. The amendments to the *Farm Household Support Act 1992* will prevent payment of the drought relief payment outside of a specified period.

NOTES ON CLAUSES

Clause 1 - Short title

22. This clause provides for the Act to be called the Primary Industries and Energy Legislation Amendment Act (No. 3) 1995.

Clause 2 - Commencement

23. This clause provides for the Act to come into effect on the day it receives Royal Assent. It also provides that section 4 which deals with the repeal of a number of Acts is to come into effect after section 3 which deals with the closure of accounts and funds created by some of the Acts repealed.
24. The clause further provides that the amendments to the *Agricultural and Veterinary Chemicals Code Act 1994* in Schedule 2 and section 5 (so far as it relates to the schedule) are taken to have commenced on 15 March 1995.

Clause 3 - Closure of accounts and fund

25. This clause provides for the closure of the Fisheries Development Trust Account, the Fishing Industry Research Trust Account and the Fishing Industry Research and Development Trust Fund as the Acts establishing them are repealed by the following clause.

Clause 4 - Repeal of Acts

26. This clause repeals the following Acts:

Apple and Pear Export Underwriting Act 1981
Beef Industry (Incentive Payments) Act 1977
Coal Production (War-time) Act Repeal Act 1948
Dairy Industry Stabilisation Act 1977
Dairy Industry Stabilization Levy Act 1977
Drought Assistance (Primary Producers) Act 1982
Fishing Industry Act 1956
Fishing Industry Research Act 1969
Fishing Industry Research and Development Act 1987
International Sugar Agreement Act 1978
Rural Industries Research Act 1985
Wheat Tax Act 1957
Wheat Tax Act 1979
Wheat Tax (Permit) Act 1984
Wheat Tax (Permit) Collection Act 1984

Clause 5 - Schedules

27. This clause provides that the Acts referred to in the Schedules are amended as set out in the Schedules and the other items in the Schedules have effect according to their terms.

SCHEDULE 1**AGRICULTURAL AND VETERINARY CHEMICALS
(ADMINISTRATION) ACT 1992****Item 1: Section 9A - NRA to comply with policies
of Governments of Commonwealth, States and
participating Territories**

28. This section is proposed to be amended by repealing the existing provisions and replacing them with new provisions that remove any doubt that the NRA has an obligation to comply with any lawful policy direction of the Governments participating in the National Registration Scheme for Agricultural and Veterinary Chemicals. In particular, this includes the Government of the Australian Capital Territory which did not pass its own adopting legislation because it agreed to be bound by the Commonwealth's *Agricultural and Veterinary Chemicals Code Act 1994*.

Item 2: Paragraph 10(2)(a)

29. This proposed amendment is consequential to the amendment to section 9A.

Item 3: Paragraph 58(2)(a)

30. This paragraph is proposed to be amended so that fees received by the Commonwealth under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (as amended) are payable to the NRA, in addition to the other Acts cited in section 58.

Item 4: Subsection 69C(1)

31. This subsection is proposed to be amended so as to include the words "or arrangement" after the term "agreement": The amendment will allow the section to apply to both formal "international agreements" and "international arrangements".

Item 5: Paragraph 69C(2)(a)

32. This paragraph is proposed to be amended by substituting "a relevant agency" for "the NRA". The amendment will facilitate the Department of Primary Industries and Energy gazetting notices regarding its international obligations concerning certain restricted agricultural and veterinary chemicals.

Item 6: Subparagraph 69C(2)(a)(i)

33. This proposed amendment is consequential to the amendment to subsection 69C(1)

Item 7: Subparagraph 69C(2)(a)(iii)

34. This proposed amendment substitutes "agency" for "NRA".

Item 8: Subsection 69C(3)

35. This proposed amendment substitutes "A relevant agency" for "The NRA".

Item 9: Subsection 69C(4)

36. This proposed amendment substitutes "A relevant agency may" for "The NRA may", and also substitutes "agency" for "NRA" (second occurring).

Item 10: Paragraph 69C(4)(a)

37. This paragraph is proposed to be amended consequent to subsection 69C(1) by omitting the existing provision and substituting "the terms of the relevant international agreement or arrangement; and".

Item 11: Subsection 69C(5)

38. This subsection is proposed to be amended by omitting "for a contravention of this subsection". As a result, the penalty wording will be in common with that used elsewhere in the Act.

Item 12: Section 69C (add at the end)

39. This section is proposed to be amended by adding subsection (6) which defines "relevant agency" as meaning the Department of Primary Industries and Energy or the National Registration Authority for Agricultural and Veterinary Chemicals.

Item 13: Section 69D(1)

40. This subsection is proposed to be amended by inserting "and upon payment of the prescribed fee (if any)" after "foreign country". The amendment will enable fees to be charged for certificates of export following the repeal of the *Agricultural and Veterinary Chemicals Act 1988* on 15 March 1995.

Item 14: After subsection 69D(1)

41. It is proposed that subsection (1A) be inserted which provides that if the NRA refuses to give a certificate of export it must give written notice of the refusal to the applicant and include brief particulars of the reason for the refusal.
42. It is proposed that subsection (1B) be inserted which provides that an application may be made to the Administrative Appeals Tribunal for review of the

NRA's decision refusing to give a certificate of export.

43. It is proposed that subsections (1C) and (1D) be inserted which set out that the information which must be included in the notice issued by the NRA in accordance with subsection (1A), and that failure to comply with subsection (1C) does not affect the validity of the NRA's decision.

Item 15: Subsection 69E (add at the end)

44. It is proposed to add subsection (3) which provides that the NRA must give to the Department of Primary Industries and Energy a statement setting out the total quantities of each active constituent imported into, manufactured in, or exported from, Australia on an annual basis. That information will enable the Department to fulfil its international obligations regarding agricultural and veterinary chemicals.

SCHEDULE 2

**AGRICULTURAL AND VETERINARY CHEMICALS CODE
ACT 1994**

Item 1: Paragraph 32(2)(b)

45. It is proposed to omit the existing provisions and replace them with new provisions. Those provisions will provide the NRA with the option when reconsidering an active constituent or chemical product of either requiring a chemical organisation (ie the interested person) to provide all relevant information to which the organisation is aware (as the existing provision provides), or alternatively, to require that only certain specific information be provided, ie information that the NRA does not already hold. Thus the amendment will enable a more efficient and flexible means for the NRA to obtain relevant information from an organisation.

Item 2: Subsection 59(1)

46. This subsection is proposed to be amended so that the cross referencing reads "under paragraph 32(2)(b) or made under section 159".

Item 3: Subsection 103(1)

47. This subsection is proposed to be amended by inserting "in this jurisdiction" after "that batch" so as to remove any doubt that the notice issued by the NRA to the "notified person" only has effect in respect of that person's jurisdiction.

Item 4: Section 156 - The making of single applications or the giving of single notices under the Agvet Codes of all jurisdictions

48. It is proposed to amend this section so as to provide for the making of a single application by an applicant, and the giving of a single notice by the NRA, to cover the Agvet Codes of all relevant jurisdictions. In essence, the existing provision is expanded to include the giving of single national notices under the Agvet Codes by the NRA. A single notice covering all relevant jurisdictions is administratively more efficient as it removes the necessity for the NRA to make separate notices for each jurisdiction.

Item 5: After paragraph 180(c)

49. This proposed amendment inserts paragraph 180(ca) which clarifies that under the transitional provisions any information (other than particulars of trials and laboratory experiments which are covered by section 33) given to the NRA is done so under subsection 32(2) of the Agvet Code. This will ensure that any relevant information is subject to the compensation provisions of Part 3 as originally intended under the transitional provisions.

Item 6: After paragraph 180(d)

50. This proposed amendment omits "or other information" from paragraph 180(d) as that phrase is not relevant to the cross reference to section 33. That section is confined to trials and laboratory experiments.

SCHEDULE 3

FISHERIES MANAGEMENT ACT 1991

Item 1: After section 167

51. The proposed new Section 167A of the *Fisheries Management Act 1991* provides that if there is an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution, then reasonable compensation or compensation as determined by the Federal Court, is payable. Any damages or compensation recovered or other remedy given must be taken into account in assessing compensation under this section.

SCHEDULE 4**WOOL INTERNATIONAL ACT 1993****PART 1 - AMENDMENTS****Item 1: Section 9**

52. This item enables Wool International to hold shares in a subsidiary, subject to the Minister for Primary Industries and Energy's approval, which undertakes wool marketing activities, including forward trading and the use of futures and currency contracts for hedging purposes. It also provides for the Minister to place any conditions he thinks appropriate on the approval.

Item 2: Subsection 43(2)

53. The Commonwealth pays a percentage of the tax collected under the Wool Tax Acts each financial year to Wool International. This percentage is currently fixed in the legislation and is equal to 4.5 per cent of the sale value of shorn wool, other than carpet wool. This item will enable the percentage of the wool tax payable to Wool International to be set by regulation. Under this amendment, if the Government agrees to vary the rate, it can not be increased above the existing 4.5 per cent, but only lowered, including being reduced to zero.

Item 3: Section 45

54. This item will repeal section 45 which provides for voluntary contributions of up to 5.5 per cent of the value of shorn wool, other than carpet wool, being made over and above the compulsory wool tax payable under the Wool Tax Acts.

Item 4: Section 46

55. This item omits references to section 45 in order to be consistent with Item 3.

Item 5: Section 49

56. This item reflects the amendment under Item 6.

Item 6: After Section 49

57. This item enables Wool International to use revenue derived from non-wool assets (Section 51 income), such as rental from warehouses, as seed capital for Wool International Holdings program of wool trading activities. This use of revenue may be on a progressive basis over the two year term of the program.

Item 7: Section 52

58. This item omits references to section 45 in order to be consistent with Item 3.

Item 8: Paragraph 64(2)

59. This item omits references to voluntary contributions in order to be consistent with Item 3.

Item 9: Subsection 69(2)

60. This item omits reference to section 45 in order to be consistent with Item 3.

PART 2 - TRANSITIONAL PROVISIONS**Item 10: Interpretation**

61. This item provides definitions of 'Wool International' and 'Principal Act' to be used in this Part.

Item 11: Repayment of Addition Contributions

62. This section provides for the return of any voluntary contributions made to Wool International in accordance with Section 45 of the legislation, but after the Government's announcement of 20 June 1995 of the cessation of the right to make such contributions.

Item 12: Amendments of Register

63. This item provides that if Wool International's wool tax register records the receipt of an additional contribution made after 20 June 1995, then it must also record the return of the contribution to the wool tax payer by Wool International.

Item 13: Application

64. This item provides for any administrative costs incurred by the Commonwealth in respect of additional contributions made after 20 June 1995 to be paid by Wool International.

Item 14: Compensation for Acquisition of Property

65. This item provides for the right of compensation to any wool tax payer in the event that the operation of the legislation results in an acquisition of property otherwise than on just terms. This item ensures that Section 51(31) of the Constitution which provides for the acquisition of property on just terms is not contravened.

SCHEDULE 5

AUSTRALIAN WOOL RESEARCH AND PROMOTION ORGANISATION
ACT 1993

Item 1: Subsection 51(5)

66. This item is consequential to the amendments to the *Wool International Act 1993* to set the amount payable to Wool International in respect of the debt component of the wool tax by regulation. As amended, the legislation will require that wool tax payers, when making recommendations on the percentage of the wool tax collected under the Wool Tax Acts payable to the Australian Wool Research and Promotion Organisation for research and development, and promotion, take into account the percentage of wool tax payable to Wool International as set by regulation.

Item 2: Section 79

67. This item repeals the provision to make payments to the Exotic Animal Disease Preparedness Trust Account which is to be wound up pursuant to the *Exotic Animal Disease Control Act 1989*, and substitutes provision for payments to the Australian Animal Health Council Limited.
68. Subsection 79 (5) provides that regulations prescribing annual payments must take into consideration recommendation from the Wool Council of Australia, and regulations may not prescribe an amount greater than the recommended amount.

SCHEDULE 6

FARM HOUSEHOLD SUPPORT ACT 1992

Item 1: Paragraph 8A(2)(b)

69. This item provides for a drought exceptional circumstances certificate to be issued for a specific period.

Item 2: Section 8A

70. This item limits the validity of the drought exceptional circumstances certificate to the period specified in it.

Item 3 and Item 4: Subsection 43(1)

71. These items amend section 43(1) by reinserting drought relief payment to provide for the termination of drought relief payment if particular allowances, pensions or benefits become payable to a person or their partner.

SCHEDULE 7

IMPORTED FOOD CONTROL ACT 1992

Item 1: Section 3 (definition of authorised officer)

72. This item defines an authorised officer to mean an officer of AQIS or other person.

Item 2: Section 3 (definition of authorised officer)

73. This item removes a drafting ambiguity from the definition of authorised officer.

Item 3: Section 40

74. This item inserts "or other person" after "an officer of AQIS" in section 40 of the *Imported Food Control Act 1992*.

REPORT

ON THE PROGRESS OF THE WORK DURING THE YEAR 1900

IN THE DEPARTMENT OF AGRICULTURE, U. S. DEPARTMENT OF AGRICULTURE

BY THE CHIEF OF BUREAU, U. S. DEPARTMENT OF AGRICULTURE

WASHINGTON, D. C., 1901

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