

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES CHARGES BILL 1995

EXPLANATORY MEMORANDUM

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



PRIMARY INDUSTRIES CHARGES BILL 1995

GENERAL OUTLINE

The purpose of this Bill is to set the framework under which regulations may be made for the imposition of charges on products of primary industry. The charges in question are not imposed by the Government but are sought by industry in order to undertake marketing and research and development that would be beyond the scope of small scattered enterprises on their own. It is highly likely that charges will be requested for marketing and research and development purposes for more industries in the future.

The Bill will replace 12 separate charge Acts for a variety of primary industry products and allow the operative rates of those charges to be set by regulations specific to each industry or product as is the case at present. The maximum rate of each charge will be set by special regulations that provide for commencement only after the disallowance period in Parliament has been completed. Proposed increases in maximum rates will also be required to be published in a daily newspaper in the States and Territories.

A large proportion of the Department's legislation program is taken up with amending charge Acts. This amalgamation of charges into a standard framework will streamline the processes and will involve significant savings in Parliamentary time. It will enable the operative rates of charges to be amended expeditiously at the request of the designated body/bodies by the tabling of a disallowable instrument rather than inclusion on the legislative program. This will only occur after consultation with industry and their endorsement.

The Act will commence on 1 July 1996. The current charge collection arrangements will still apply until the Bill is passed and the new regulations are in place.

FINANCIAL IMPACT STATEMENT

There is no net financial impact.

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be called the Primary Industries Charges Act 1995.

Clause 2 - Commencement

This clause provides for certain sections to commence on the date of Royal Assent, namely:

- . the short title;
- . the commencement provisions;
- . the definitions;
- . the binding of the Crown;
- . the provisions for making regulations to set the maximum rate of charge, for publicising those regulations and for disallowing those regulations; and
- . the provisions for designating a designated body.

The remainder of the Act will come into effect on 1 July 1996.

Clause 3 - Simplified outline

This clause provides a simplified outline of the Act showing that the Act allows for the making of regulations

- . to impose charges on primary industry products,
- . to set the operative rate of a charge and
- . to identify who will have to pay the charge and who will be exempt from payment;

and also provides

- . for the setting of the maximum charge rate for each type of product through special regulations that do not take effect until the end of a Parliamentary disallowance period; and
- . that a charge must be a duty of customs.

Clause 4 - Definitions

This clause defines 'charge', 'designated body', 'produce of a primary industry' and 'product'. Clause 19 sets out the mechanism for establishing a designated body and Clause 21 sets out the mechanism for making regulations to set charge rates.

Clause 5 - Act to bind Crown

This clause provides that the Act will apply to the Crown in the form of the Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island, but does not make the Crown liable in any of its capacities to be prosecuted for an offence.

PART 2 - REGULATIONS MAY IMPOSE CHARGES ON PRIMARY INDUSTRY PRODUCTS

Clause 6 - Imposition of charge

This clause provides that regulations may be made that impose a charge on primary industry products that are specified in any way by those regulations and in any circumstances described in those regulations. The initial charges imposed are expected to be the same charges that are now imposed by the various charges Acts or regulations that are about to be repealed.

Clause 7 - Duties of customs

This clause provides that the charge may only be imposed if it is a duty of customs according to section 55 of the Constitution.

Clause 8 - 2 or more charges

This clause provides that any number of charges may be imposed on any product. This allows the current situation to continue where there are a number of charges for specified purposes imposed on particular products.

PART 3 - RATE OF CHARGE

Clause 9 - Rate of charge

This clause provides that the operative rate of the charge is to be set by the regulations. The initial rates to be imposed, unless otherwise proposed by the relevant designated body or bodies, will be identical to the current charge rates imposed under the various charge Acts that are about to be repealed. Any changes to the operative rate of the charge through the regulations will be disallowable by Parliament.

Clause 10 - Composite rate of charge

This clause provides that the rate of a charge equals the sum of all the components set out in the regulations but does not limit what can be included in those regulations. This reflects the situation that now applies under the various charge Acts that are about to be repealed.

Clause 11 - Flexibility in relation to rates of charge

This clause allows for there to be differing rates of charge for different kinds of products but does not affect any other provisions of the Act. This will mean that, for example, different charge rates can be applied to different varieties of a particular product as is currently the case under some of the charge Acts about to be repealed.

Sub-clause 11(3) provides that even though this Act gives the Minister specific power to prescribe variable rates it does not mean that the general power described in section 33(3A) of the *Acts Interpretation Act 1901* does not also apply. That section allows regulations to be made for all, or only some, of the matters covered by the regulation-making power or for regulations to apply different provisions to different classes of matters.

Clause 12 - Maximum rate of charge

This clause provides that the maximum rate of a charge can be set by regulations and that the total operative rate of a charge or charges cannot be more than the maximum rate set. The clause also provides for special disallowance arrangements for these regulations (set out in the following section) and for publication of the maximum rates in daily newspapers.

Clause 13 - Disallowance of regulations relating to the maximum rate of charge

This clause provides special disallowance provisions for the regulations setting the maximum rate of charge. The regulations must be tabled in Parliament and are subject to disallowance by either House within 15 sitting days but, unlike other regulations which come into effect on gazettal, these regulations will not take effect until the disallowance period is over.

Clause 14 - Disallowance rules have effect despite other Acts

This clause provides that the special disallowance arrangements for regulations setting maximum charge rates are not overridden by the *Acts Interpretation Act* or the *Legislative Instruments Act*.

Clause 15 - No maximum rate regulations, no charge

This clause provides that where there is no maximum rate of charge set under the special regulations then there can be no operative rate of charge.

PART 4 - MISCELLANEOUS

Clause 16 - Person liable to pay charge

This clause provides that the charge is payable by the person specified in the regulations. Initially this will be the same person as is currently liable under the various charge Acts about to be repealed.

Clause 17 - Exemptions from charge

This clause provides that exemptions from a charge can be set out in the regulations.

Clause 18 - Charges to be numbered

This clause provides for charges set out in the regulations to be specified by a unique number. This will ensure that there is no confusion between charges and who is liable to pay a charge.

Clause 19 - Designated bodies

This clause allows the Minister to specify a body to be the designated body/bodies in relation to particular products and to specify the date on which this will have effect, which must be within 28 days of the declaration of the body/bodies. The Minister's declaration of a designated body will be subject to disallowance by the Parliament.

Clause 20 - Act does not authorise the imposition of a tax on property of a State

This clause provides that the Act does not authorise the imposition of a tax on the property of a State.

Clause 21 - Regulations

This clause provides that regulations can be made for any purpose required or permitted by the Act and that

- before making regulations the Governor-General must consider relevant recommendations of the designated body/bodies to the Minister;
- where there is more than one designated body the bodies must make consistent recommendations to the Minister;
- the designated body cannot make recommendations to the Minister without consulting any other bodies specified in the regulations; and
- the regulations can give functions or powers to
 - the Minister,
 - a Departmental officer,
 - a designated body or one of its officers or employees
 but that those functions or powers cannot involve arbitrary taxation.

