

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WHEAT INDUSTRY FUND LEVY COLLECTION BILL 1989

(AMENDMENTS TO BE MOVED ON BEHALF OF THE GOVERNMENT)

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Primary Industries and Energy)

WHEAT INDUSTRY FUND LEVY COLLECTION(AMENDMENTS TO BE MOVED ON BEHALF OF GOVERNMENT)

OUTLINE AND FINANCIAL IMPACT STATEMENT

These amendments will alter the Bill to achieve the following objectives

- . To include within the provisions breaches of the Regulations as well as the Act.
- . To insert amended pecuniary provisions in line with updated levels.
- . To clarify and limit the liability for actions taken on behalf of a body corporate.
- . To limit to a specific class of persons those appointed as "authorised persons" under the Act.
- . To provide a number of other minor amendments to reflect established precedent.

None of these amendments is expected to have any effect on the financial impact statement which appears in the explanatory memorandum of the Bill.

Amendment (1)

Clause 11, page 5

Sub-clause 11(b) provides for verification of information provided to an authorised person. This provision is now considered unnecessary as provision is made in 15(3) for information provided to be true information. The sub-clause has thus been omitted and Clause 11 re-cast accordingly.

Amendment (2)

Clause 12, page 5, line 16

Clause 12(1) provides for an authorised person to enter premises to ascertain whether the Act has been breached. The proposed amendment to sub-clause 12(1) provides a similar provision regarding breach of the regulations.

Amendment (3)

Clause 12, page 5, end of clause

Clause 12(2) provides that where an authorised person enters premises the person may search for relevant evidence. The proposed new sub-clause 12(4) defines "premises".

Amendment (4)

Clause 13, page 5, line 30

Sub-clause 13(1) provides for an authorised officer to seize goods as evidence of a breach of the Act. The proposed amendment will extend this to enable seizure of goods as evidence of a breach of the Act "or the regulations".

Amendment (5)

Clause 14, page 6, insert new sub-clause (b)

This amendment makes the wording of this sub-clause, which relates to the purposes for which a warrant may be issued, consistent with that provided in the similar provision in sub-clause 12(1).

Amendment (6)

Clause 15, page 6, line 31

Sub-clause 15(3) provides that a person shall not knowingly provide false information. Based on Attorney-General's advice the amendment provides also that a person shall not recklessly provide false information.

Amendments (7) and (8)

Clause 15, page 6, lines 35 and 37

This amendment along with amendment (17) brings the pecuniary penalties in the Bill into line with updated pecuniary penalty levels which are to apply to all Commonwealth legislation. Previously, pecuniary penalties have been set in accordance with penalties set out in section 4B of the Crimes Act 1914. Those pecuniary penalties were originally set in 1982 and do not reflect current economic conditions. The Government intends that they be amended in the near future in the Crimes Legislation Amendment Bill 1989, in accordance with the views of the Gibbs Committee of Review of the Commonwealth Criminal Law.

The proposed penalty scheme in this clause is consistent with those views. The body corporate penalty has been set at 5 times the pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence (subsection 4B(3) of the Crimes Act 1914 applies.)

Amendment (9)

Clause 16, page 7, replace sub-clause (2)

The proposed amendment deletes the previous sub-clause 2(b) which provided that the actions of "any other person", whether acting explicitly or implicitly as the agent of a director, servant or agent of a body corporate shall be taken to be the actions of the body corporate. It now provides that only actions undertaken on behalf of a corporation by a director servant or agent shall be taken to be those of the body corporate.

This protects corporations from frivolous actions committed by persons outside their control.

Amendment (10)

Clause 16, page 7, replace sub-clause (4)

This amendment varies the previous provisions relating to the liability of a person other than a body corporate for actions carried out on his behalf, and provides instead that the person is not liable where it can be established that the person took reasonable precautions to avoid the conduct. It also removes reference to his liability for actions taken by "any other person".

Amendment (11)

Clause 16, page 7, end of clause

The proposed amendments introduce provisions which, like amendments (9) and (10), bring the Bill more closely into line with established precedent. The new sub-clause (6) provides that where a person is convicted of an offence, but would not have been other than for provisions which make him responsible for the actions of another (sub-clauses (3) and (4)), he is not punishable by imprisonment.

The new sub-clause (7) defines a director of a body corporate as including a constituent member of a body corporate.

Amendments (12) and (13)

Clause 17, page 7, lines 39 and 40

The proposed amendments follow established precedent by providing that "authorised persons" must be appointed from a class of people ie the Australian Public Service, rather than be simply "a person".

Amendment (14)

Clause 18, page 8, line 5

Provides that the photograph included in an identity card must be a "recent" photograph.

Amendments (15) and (16)

Clause 18, page 8, lines 10 and 11

Provide that where an authorised person proposes to enter premises he must present his identity card to the "person in charge" rather than simply the "occupier" of a building, as is presently provided for.

Amendment (17)

Clause 21, page 9, line 17

This amendment is based on Attorney-General's advice, and brings the penalties for offences against the regulations under the Act to \$1,000 for a person and \$5,000 for a body corporate.

