

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT BILL (No 2) 1996

EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL (No 2) 1996

GENERAL OUTLINE

1. To introduce amendments to the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, the *Agricultural and Chemicals Code Act 1994*, the *Fisheries Management Act 1991*, the *Farm Household Support Act 1992*, the *Imported Food Control Act 1992*, and the *Quarantine Act 1908*.
2. The Bill will also 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 Stabilization 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 *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).
7. The Bill will also amend the *Farm Household Support Act 1992* by exempting from the income test applicable to the drought relief payment any proceeds from the forced disposal of livestock.
8. Under current arrangements, farmers receiving the drought relief payment who are forced to dispose of livestock because of drought conditions, have the proceeds received from livestock disposals assessed by the Department of Social Security under the drought relief payment income test. This provides the basis for the estimate of annual income used to set the rate of payment for drought relief payment for the next six months. The inclusion of proceeds from forced livestock disposals may therefore result in a farmer becoming ineligible for drought relief payment altogether or having his or her entitlement reduced for a period of six months.
9. 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.
10. 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.
11. The amendment to the *Quarantine Act 1908* will enable regulations to be made providing for a person entering Australia to be issued with a penalty notice where it is alleged that the person has failed to declare goods of quarantine interest or concern.
12. It is proposed that where a penalty notice is issued, the person subject to the notice would have the option of paying the penalty stipulated in the notice or opting for a court hearing. Payment of the amount specified in the notice would not result in the recording of a conviction and would guarantee that

prosecution for the alleged offence would not follow. Major breaches of quarantine would continue to be dealt with through the courts.

FINANCIAL IMPACT STATEMENT

13. The amendments to the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, the *Agricultural and Chemicals Code Act 1994*, the *Imported Food Control Act 1992*, and the *Quarantine Act 1908* have no financial impact on the Commonwealth Budget.
14. 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.
15. The amendments to the *Farm Household Support Act 1992* that clarify the period of validity of a drought exceptional circumstances certificate will prevent payment of the drought relief payment outside of a specified period.
16. The amendment to the *Farm Household Support Act 1992* in relation to the forced disposal of livestock may result in an estimated cost of up to \$9 million to the Commonwealth for 1996/97. This will be funded through the standing appropriation for the drought relief payment.

NOTES ON CLAUSES

Clause 1 - Short title

17. This clause provides for the Act to be called the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1996*.

Clause 2 - Commencement

18. This clause provides for the Act to come into effect on the day it receives Royal Assent. It also provides that schedule 1 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.
19. The clause further provides that the amendments to the *Agricultural and Veterinary Chemicals Code Act 1994* in Schedule 3 are taken to have commenced on 15 March 1995.

Clause 3 - Closure of accounts and fund

20. 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 Schedule 1.

Clause 4 - Schedule(s)

21. This clause provides, subject to section 2, 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

REPEAL OF ACTS

Item 1- Repeal of Acts

22. This schedule repeals 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 Stabilization 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

SCHEDULE 2

AMENDMENT OF THE AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992

Item 1: Section 9A - NRA to comply with policies of Governments of Commonwealth, States and participating Territories

23. 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)

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

Item 3: Paragraph 58(2)(a)

25. 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)

26. 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)

27. 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)

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

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

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

Item 8: Subsection 69C(3)

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

Item 9: Subsection 69C(4)

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

Item 10: Subsection 69C(4)

32. This proposed amendment substitutes "agency" for "NRA" (second occurring).

Item 11: Paragraph 69C(4)(a)

33. 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 12: Subsection 69C(5)

34. 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 13: At the end of section 69C

35. 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 14: Subsection 69D(1)

36. 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 15: After subsection 69D(1)

37. 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.
38. 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.
39. 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 16: At the end of section 69E

40. 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 3

AMENDMENT OF THE AGRICULTURAL AND VETERINARY CHEMICALS CODE ACT 1994

Item 1: Paragraph 32(2)(b)

41. 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 of 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)

42. 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)

43. 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

44. 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)

45. 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)

46. 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 4**AMENDMENT OF THE FISHERIES MANAGEMENT ACT 1991****Item 1: After section 167****167A Compensation for acquisition of property**

47. 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 5**AMENDMENT OF THE FARM HOUSEHOLD SUPPORT ACT 1992****Item 1: Subsection 3(2)**

48. This item amends subsection 3(2) of the *Farm Household Support Act 1992* to insert a definition of exempt livestock proceeds. Under the definition, proceeds are exempt to the extent to which they are deposited in accordance with paragraphs (a) and (b). The intention in this amendment is for a sum of money equivalent to the proceeds from the disposal to be invested.
49. The term “exempt livestock proceeds” also requires a “forced disposal of farm livestock”. “Forced disposal” refers to situations where, under normal circumstances, a farmer would not have disposed of the livestock, however due to the adverse effects of the drought, there was no other choice. Following are some examples that indicate a disposal was forced:
- the disposal was of core breeding stock;
 - the disposal was in consequence of the loss or destruction of pastures or the absence of adequate water supplies by reason of drought;
 - the disposal of all livestock.
50. This list is not exclusive and represents possible examples only.

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

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

Item 3: At the end of section 8A

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

Item 4: At the end of section 24A

53. This item adds subsection 24A(3) which provides for exempt livestock proceeds to be disregarded from the income test in calculating a rate for the drought relief payment.

Item 5: Application

54. The amendment will only apply to proceeds from disposals that occur after the commencement of this schedule.

55. At the time of application for drought relief payment or at the time of a six monthly income review, a farmer will be required to produce evidence of the livestock disposal, of the forced nature of the sale and of the investment of the proceeds in order to have the proceeds exempt from the income test.

Item 6 and Item 7: Subsection 43(1)

56. 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 6

AMENDMENT OF THE IMPORTED FOOD CONTROL ACT 1992

Item 1: Section 3 (definition of *authorised officer*)

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

Item 2: Section 3 (definition of *authorised officer*)

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

Item 3: Section 40

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

SCHEDULE 7

AMENDMENT OF THE QUARANTINE ACT 1908

Item 1: After paragraph 87(1)(s)

60. This item provides for the making of regulations to enable a penalty notice to be issued to a person alleged to have breached a provision of the *Quarantine Act 1908* or the regulations. Payment of the notice is offered as an alternative to prosecution for the breach.