



Primary Industries and Energy Legislation Amendment Act 1988

No. 111 of 1988

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AMENDMENTS OF ACTS



Primary Industries and Energy Legislation Amendment Act 1988

No. 111 of 1988

**An Act to amend and repeal various Acts relating to
matters dealt with by the Department of Primary Industries
and Energy, and for related purposes**

[Assented to 12 December 1988]

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Primary Industries and Energy
Legislation Amendment Act 1988*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which
it receives the Royal Assent.

(2) Subsection 6 (1) and section 7 commence on 1 December 1988.

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(3) The remaining provisions of Part III, and the amendments of the *Administrative Decisions (Judicial Review) Act 1977*, commence on 1 January 1989.

PART II—AMENDMENTS AND REPEAL OF VARIOUS ACTS

Amendment of Acts

3. The Acts specified in the Schedule are amended as set out in the Schedule.

Repeal

4. The *Dairying Industry Act 1967* is repealed.

PART III—REPEAL OF CANNED FRUITS LEGISLATION

Interpretation

5. In this Part:

“Corporation” means the Australian Canned Fruits Corporation;

“repealed Marketing Act” means the *Canned Fruits Marketing Act 1979* (as amended and in force immediately before the commencement of this section).

Repeal

6. (1) The following Acts are repealed:

Canned Fruits Levy Act 1979

Canned Fruits Levy Amendment Act 1982

Canned Fruits Levy Amendment Act 1984

Canned Fruits Levy Collection Act 1979

Canned Fruits Levy Collection Amendment Act 1984.

(2) The following Acts are also repealed:

Canned Fruits Marketing Act 1979

Canned Fruits Marketing Legislation Repeal and Amendment Act 1982

Canned Fruits Marketing Amendment Act 1984.

Continued application of Levy and Levy Collection Acts

7. In spite of the repeals effected by subsection 6 (1), the *Canned Fruits Levy Act 1979*, and the *Canned Fruits Levy Collection Act 1979*, (as amended and in force immediately before the commencement of this section) continue to apply in relation to canned fruits, within the meaning of those Acts, produced before that commencement.

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Corporation to continue in existence for certain purposes

8. In spite of the repeals effected by subsection 6 (2):

- (a) the Corporation continues in existence, by force of this section, for the purpose of complying with this Part, until a notice is published in the *Gazette* under section 14; and
- (b) section 3, Part III, sections 14, 17, 17A, 18, 19, 20 and 21, subsections 22 (1), (6) and (7) and 23 (2) and sections 24 to 34 (inclusive), 44, 46, 47, 48, 49, 50 and 51 of the repealed Marketing Act continue, subject to this Part, to have effect while the Corporation continues in existence.

Re-appointment of existing members of Corporation

9. The persons who were, on 31 December 1988, members and deputies of members of the Corporation are, by force of this section, re-appointed to the respective offices that they held under the repealed Marketing Act on that day.

Corporation to prepare final report

10. (1) The Corporation shall, as soon as practicable after the commencement of this section, and, in any event, before 1 July 1989, prepare and submit to the Minister a report of the operation of the repealed Marketing Act during the period that commenced at the end of the last period in relation to which a report of the operations of the Corporation was furnished to the Minister under that Act and ended on 31 December 1988, together with financial statements in relation to the period in such form as the Minister for Finance approves.

(2) Before submitting the financial statements to the Minister, the Corporation shall submit them to the Auditor-General, who shall report to the Minister:

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the Corporation;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Corporation during the period were in accordance with the repealed Marketing Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause a copy of the report and financial statements, together with a copy of the Auditor-General's report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

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Discharge of obligations of Corporation

11. The Corporation shall, as soon as practicable after the commencement of this section, pay or discharge all of its debts, liabilities and obligations, including its obligations under contracts and arrangements to which it is or becomes a party.

Corporation to prepare final financial statements

12. (1) The Corporation shall, as soon as practicable after the commencement of this section, prepare and submit to the Minister financial statements, in such form as the Minister for Finance approves, in relation to its operations during the period that commenced on 1 January 1989 and ended when it complied with sections 10, 11 and 13.

(2) Before submitting the financial statements to the Minister, the Corporation shall submit them to the Auditor-General, who shall report to the Minister:

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the Corporation;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Corporation during the period have been in accordance with the continued provisions of the repealed Marketing Act and this Part; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause a copy of the financial statements, together with a copy of the Auditor-General's report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Disposal of Corporation's assets

13. (1) The Corporation shall, as soon as practicable after the commencement of this section, make written recommendations to the Minister in relation to the disposal of the assets of the Corporation remaining after this section and sections 10, 11 and 12 have been given effect to.

(2) The Minister may, in writing, approve, or refuse to approve, the recommendations.

(3) The assets of the Corporation referred to in subsection (1) shall be disposed of by the Corporation in accordance with recommendations made under that subsection that have been approved by the Minister.

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Dissolution of Corporation

14. When the Minister:

- (a) has approved recommendations made under subsection 13 (1); and
- (b) is satisfied that the Corporation has complied with sections 10 to 13 (inclusive);

the Minister shall, by notice published in the *Gazette*, declare that, on the publication of the notice, the Corporation is to cease to exist.

Exemption of certain instruments from taxation

15. (1) Where the Secretary to the Department, or an officer of the Department authorised in writing by the Secretary for the purpose, certifies, in writing, that an instrument specified or described in the certificate is made or given because of, or for a purpose connected with or arising out of, the operation of this Part, the instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory.

(2) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been duly given.

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Section 3

AMENDMENTS OF ACTS

Administrative Decisions (Judicial Review) Act 1977

Schedule 2 (paragraph (k)):

- (a) Omit "Australian Canned Fruits Corporation".
- (b) Omit "Australian Meat and Livestock Corporation", substitute "Australian Meat and Live-stock Corporation".

Australian Meat and Live-stock Corporation Act 1977

Subsection 50B (3):

Omit the subsection, substitute the following subsection:

"(3) A person (other than the Corporation) shall not make a contract for the carriage of meat, by sea, to a country or place outside Australia unless:

- (a) the person is the holder of a meat export licence;
- (b) the person makes the contract as the agent of the holder of a meat export licence; or
- (c) the person makes the contract with the holder of a meat export licence and, under the contract, the person is to carry the meat, by sea, to the country or place outside Australia."

Subsection 50B (6):

Omit the subsection, substitute the following subsection:

"(6) A person (other than the Corporation) shall not make a contract for the carriage of live-stock, by sea, to a country or place outside Australia unless:

- (a) the person is the holder of a live-stock export licence;
- (b) the person makes the contract as the agent of the holder of a live-stock export licence; or
- (c) the person makes the contract with the holder of a live-stock export licence and, under the contract, the person is to carry the live-stock, by sea, to the country or place outside Australia."

Dairy Produce Act 1986

Subsections 82 (4), (5) and (6):

Omit "on Public Accounts", substitute "of Public Accounts".

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Export Control Act 1982

Section 3 (definition of “authorized officer”):

Omit the definition, substitute the following definition:

“‘authorized officer’ means a person appointed under section 20 to be an authorized officer;”.

Paragraph 10 (3) (g):

Omit “and examine”, substitute “, examine, photograph or make other visual recordings of”.

After paragraph 25 (2) (d):

Insert the following paragraph:

“(daa) the imposition of penalties for the non-payment or late payment of fees, and the remission of penalties so imposed;”.

Subsection 25 (3):

Add at the end “for an offence”.

Fishing Industry Research and Development Act 1987

Section 7:

Add at the end “and, in particular, may enter into an arrangement with the Minister for the provision of administrative and clerical services to the Council by the Commonwealth.”.

Paragraph 35 (1) (b):

Omit “and” (last occurring).

After paragraph 35 (1) (b):

Insert the following paragraph:

“(ba) in payment of any fee payable to the Commonwealth under an arrangement for the provision of administrative and clerical services to the Council by the Commonwealth; and”.

Meat Inspection Act 1983

After paragraph 20 (2) (b):

Insert the following paragraph:

“(ba) the imposition of penalties for the non-payment or late payment of fees, and the remission of penalties so imposed;”.

Paragraph 25 (3) (g):

Omit “or examine”, substitute “, examine, photograph or make other visual recordings of”.

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Subsection 37 (2):

Add at the end “for an offence”.

Minerals (Submerged Lands) Act 1981

Subsection 3 (1) (definitions of “Northern Territory Minister” and “State Minister”):

Omit “under the law of”, substitute “by”.

Pig Industry Act 1986

Paragraph 30 (8) (b):

Omit “makes,”, substitute “makes, or”.

Paragraph 46 (5) (a):

Omit “remuneration of”, substitute “remuneration for”.

Plant Variety Rights Act 1987

Subsection 3 (1) (paragraph (d) of definition of “new plant variety”):

Omit “public”, substitute “common”.

Paragraph 3 (7) (a):

Omit “public”, substitute “common”.

Section 46:

Repeal the section, substitute the following section:

Remuneration and allowances

“46. (1) The members referred to in paragraphs 45 (1) (b), (c), (d) and (e) shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal;
and
- (b) such allowances as are prescribed.

“(2) Subsection (1) has effect subject to the *Remuneration Tribunals Act 1973*.”.

Rural Industries Research Act 1985

Paragraph 61 (8) (a):

Omit “established by section 50 of the *Wool Industry Act 1972*”, substitute “continued in existence by section 90 of the *Wool Marketing Act 1987*”.

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Wool Marketing Act 1987

Subsection 3 (1) (definitions of “export auction” and “wool stores strategic plan”):

Omit the definitions.

Subsection 3 (1):

Insert the following definitions:

“‘sale for export’, in relation to wool, means sale (at auction or otherwise) as a result of which the wool may be exported;

‘wool stores strategic plan’ means a wool stores strategic plan developed by the Wool Stores Board under section 117;”.

Paragraph 12 (3) (g):

Omit “opportunity employment”, substitute “employment opportunity”.

Subsection 19 (2):

Omit “variation to”, substitute “variation of”.

Paragraph 49 (3) (a):

Omit “, manufacturing and selling wool”, substitute “and selling wool, and manufacturing wool products,”.

After section 51:

Insert the following sections:

Copy of registers under Administration Act to be given to Corporation

“51A. (1) The Commissioner of Taxation shall, as soon as practicable after the commencement of this section, give to the Corporation a copy of the registers kept, at that commencement, under sections 13, 14, 15 and 16 of the Administration Act.

“(2) The Commissioner of Taxation shall, as soon as practicable after an alteration is made to one of those registers, give to the Corporation a copy of the alteration.

Information relating to wool tax to be given to Corporation

“51B. The Commissioner of Taxation shall, as soon as practicable after each financial year, give to the Corporation, from returns lodged with the Commissioner under the Administration Act, such information as the Corporation requires in relation to:

- (a) wool that was participating wool in that year; and
- (b) tax payable under section 5 of a Wool Tax Act.”.

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Subsection 71 (2):

Omit “sections 67 and”, substitute “67 or”.

Paragraph 74 (1) (a):

Omit “at any export auction”, substitute “for export”.

Paragraph 74 (1) (c):

Omit “any export auction”, substitute “sale for export”.

Paragraph 74 (1) (e):

Omit “at any export auction”, substitute “for export”.

Paragraph 74 (2) (a):

Omit “an export auction”, substitute “sale for export”.

Paragraph 74 (2) (d):

Omit “at an export auction”, substitute “for export”.

Subsection 119 (4):

Omit the subsection.

After section 126:

Insert the following section:

Conduct of directors, servants and agents

“126A. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by:

(a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

“(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

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- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate by:

- (a) a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person.

“(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.”.

Paragraphs 127 (2) (c) and (d):

After “registration” insert “and inspection”.

Paragraph 137 (d):

Omit “repealed Act”, substitute “*Wool Industry Act 1972*”.

[*Minister’s second reading speech made in—
House of Representatives on 13 April 1988
Senate on 29 August 1988*]