



Primary Industries and Energy Legislation Amendment Act 1993

No. 94 of 1993

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENTS OF THE AGRICULTURAL AND VETERINARY CHEMICALS ACT 1988

3. Principal Act
4. Repeal and substitution of new section:
 20. Disclosure of confidential commercial information
5. Insertion of new section:
 - 34A. Hearings
6. Exemption from suit

TABLE OF PROVISIONS—*continued*

Section

**PART 3—AMENDMENTS OF THE AGRICULTURAL AND VETERINARY
CHEMICALS (ADMINISTRATION) ACT 1992**

- 7. Principal Act
- 8. Insertion of new section:
 - 59A. NRA may give receipts on behalf of the Commonwealth
- 9. Staff

**PART 4—AMENDMENTS OF THE AUSTRALIAN HORTICULTURAL
CORPORATION ACT 1987**

- 10. Principal Act
- 11. Appointment of members
- 12. Term of office
- 13. Appointment
- 14. Term of appointment etc.
- 15. Appointment of members
- 16. Term of office of members

**PART 5—AMENDMENT OF THE AUSTRALIAN MEAT AND LIVE-STOCK
INDUSTRY SELECTION COMMITTEE ACT 1984**

- 17. Principal Act
- 18. Selection of persons for nomination

PART 6—AMENDMENTS OF THE DAIRY PRODUCE ACT 1986

- 19. Principal Act
- 20. Application of Industry Fund
- 21. Insertion of new section:
 - 94A. Import offset payments
- 22. Reconsideration and review of decisions

**PART 7—AMENDMENT OF THE FISHERIES LEGISLATION
(CONSEQUENTIAL PROVISIONS) ACT 1991**

- 23. Principal Act
- 24. Saving and transitional—arrangements with States and Territories

PART 8—AMENDMENTS OF THE FISHERIES MANAGEMENT ACT 1991

- 25. Principal Act
- 26. Insertion of new section:
 - 9A. Act not to apply so as to exceed Commonwealth power
- 27. Plans of management
- 28. Nature of a statutory fishing right
- 29. AFMA to establish system of statutory fishing rights
- 30. Grant of fishing permits
- 31. Grant of foreign fishing licences
- 32. Function
- 33. Reconsideration by AFMA and right to review by Administrative Appeals Tribunal

TABLE OF PROVISIONS—*continued*

Section

PART 9—AMENDMENTS OF THE HORTICULTURAL RESEARCH AND
DEVELOPMENT CORPORATION ACT 1987

- 34. Principal Act
- 35. Objects
- 36. Appointment of members
- 37. Term of office
- 38. Annual report
- 39. Appointment
- 40. Term of appointment etc.
- 41. Matching payments by Commonwealth

PART 10—AMENDMENTS OF THE MEAT RESEARCH CORPORATION
ACT 1985

- 42. Principal Act
- 43. Objects
- 44. Corporation to prepare and review research and development plan
- 45. Corporation to prepare annual operational plans
- 46. Matters to be included in annual report

PART 11—AMENDMENTS OF THE PRIMARY INDUSTRIES AND
ENERGY RESEARCH AND DEVELOPMENT ACT 1989

- 47. Principal Act
- 48. Objects
- 49. Definitions
- 50. Annual operational plans
- 51. Annual report
- 52. Government matching payments not to exceed levy and certain other payments
- 53. Commonwealth's matching payments not to exceed certain proportion of production
- 54. Expenditure of money of R&D Corporations
- 55. Insertion of new section:
 - 33A. Expenditure of money by an R&D Corporation established in respect of forest industries
- 56. Appointment of members
- 57. Selecting persons for nomination

PART 12—AMENDMENTS OF THE PRIMARY INDUSTRIES LEVIES AND
CHARGES COLLECTION ACT 1991

- 58. Principal Act
- 59. Interpretation
- 60. Liability of intermediaries
- 61. Liability of intermediaries—ancillary provisions
- 62. Collection agreements with States and Territories
- 63. Collection agreements with collection organisations
- 64. Schedule 1
- 65. Schedule 2

TABLE OF PROVISIONS—*continued*

Section

PART 13—AMENDMENTS OF THE SNOWY MOUNTAINS
HYDRO-ELECTRIC POWER ACT 1949

- 66. Principal Act
- 67. Contracts

PART 14—AMENDMENTS OF THE WHEAT MARKETING ACT 1989

- 68. Principal Act
- 69. Functions of the Board
- 70. Powers of the Board
- 71. Insertion of new section:
 - 26A. Delegation by Managing Director or Chairperson
- 72. Insertion of new section:
 - 65A. Total amount payable to a person for pool return wheat
- 73. Final payment

PART 15—MINOR AMENDMENTS

- 74. Minor amendments

SCHEDULE

MINOR AMENDMENTS

Australian Horticultural Corporation Act 1987

Australian Horticultural Corporation Amendment Act 1991



Primary Industries and Energy Legislation Amendment Act 1993

No. 94 of 1993

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

[Assented to 16 December 1993]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Primary Industries and Energy
5 Legislation Amendment Act 1993*.

Commencement

2.(1) Subject to subsections (2) and (3), this Act commences on the day
on which it receives the Royal Assent.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

(2) Paragraph 69(1)(b) is taken to have commenced on 1 July 1989.

(3) Parts 11 and 12 commence on 1 January 1994.

**PART 2—AMENDMENTS OF THE AGRICULTURAL AND
VETERINARY CHEMICALS ACT 1988**

Principal Act

3. In this Part, “**Principal Act**” means the *Agricultural and Veterinary Chemicals Act 1988*¹.

Repeal and substitution of new section

4. Section 20 of the Principal Act is repealed and the following section is substituted:

Disclosure of confidential commercial information

“20.(1) This section applies to:

(a) a person who was:

(i) a member (including the Chairperson) of the former Council;
or

(ii) a member of the staff of the former Council; or

(iii) a member of a committee of the former Council; or

(b) a person who is or has been:

(i) a director of the NRA; or

(ii) the Chief Executive Officer of the NRA; or

(iii) a member of the staff of the NRA; or

(iv) a consultant to the NRA; or

(v) a member of a committee of the NRA.

“(2) Except in the performance of functions or duties, or the exercise of powers, under this Act, a person must not intentionally or recklessly disclose, directly or indirectly, to another person any information about a chemical product or any of its constituents that:

(a) the person knows to be confidential commercial information; and

(b) was acquired by the person in the performance of such functions or duties or the exercise of such powers.

Penalty: Imprisonment for 2 years.

“(3) Subsection (2) does not prohibit the disclosure of information about a chemical product or constituent to a court in any proceeding but the court must do all things necessary to prevent disclosure of that information to any other person except for the purpose of the proceeding.

Primary Industries and Energy Legislation
Amendment No. 94, 1993

“(4) Despite subsection (2), a person (the ‘**authorised person**’) that the NRA has authorised to act under this subsection may:

- (a) disclose confidential commercial information about a chemical product or any of its constituents:
 - (i) if the product contains an active constituent that, before the clearance of the product, was not contained in a chemical product used in Australia—by disclosing a summary of an assessment that the NRA has made of the product; or
 - (ii) for the purposes of the NRA’s reconsideration of the clearance of the product under section 17—by disclosing particulars of the product; or
 - (iii) by disclosing, subject to any conditions prescribed by the regulations, information about the toxicology of the product; or
- (b) disclose confidential commercial information about a chemical product or any of its constituents to:
 - (i) a Government or authority of the Commonwealth, of a State or of a Territory; or
 - (ii) an overseas authority having similar functions to the NRA; or
 - (iii) a prescribed international organisation; or
 - (iv) any other prescribed authority or prescribed person; or
 - (v) a person who, in the opinion of the authorised person, is expressly or impliedly authorised by the person who applied for clearance of the chemical product to obtain the information.

“(5) A person who acquires information because of a disclosure under subsection (4), and any person under the control of that person, is, in respect of that information, subject to the same obligations and liabilities under subsection (2) as if that person were a person performing duties under this Act and had acquired the information in the performance of those duties.

“(6) Despite subsection (2), the authorised person may permit confidential commercial information about a chemical product or any of its constituents to be disclosed to a Government, authority, organisation or person for the purpose of enabling the Government, authority, organisation or person to give advice to the NRA in accordance with section 19.

“(7) Except for the purpose of providing advice to the NRA in accordance with section 19, a person who acquires information because of a disclosure under subsection (6), and any person who is or has been under the control of that person, must not intentionally or recklessly disclose that

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

“(8) If a person has disclosed to another person, except under subsection (4) or (6), any confidential commercial information about a chemical product or any of its constituents that was acquired by the first-mentioned person in the performance of functions or duties, or the exercise of powers, under this Act, the other person, and any person who is or has been under the control of the other person, must not intentionally or recklessly disclose that information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

“(9) The powers conferred by subsection (6) are in addition to, and do not prejudice, the powers conferred by subsection (4).

“(10) This section does not preclude the institution of an action or other civil proceeding against a person in respect of the disclosure, or the proposed, threatened or likely disclosure, by that person of confidential commercial information about a chemical product or any of its constituents.

“(11) This section does not affect the operation of the *Freedom of Information Act 1982*.

“(12) In this section:
‘**court**’ includes a tribunal, authority or person having power to require the production of documents or the answering of questions;
‘**disclose**’, in relation to information, means give or communicate in any way.”.

Insertion of new section

5. Before section 35 of the Principal Act the following section is inserted in Part V:

Hearings

“34A.(1) The NRA may hold hearings for the purposes of the performance or exercise of any of its functions or powers.

“(2) Before holding a hearing, the NRA must:

- (a) cause to be published in the *Gazette*; and
- (b) cause to be published, in each State, the Australian Capital Territory, the Northern Territory, and each external Territory to which this Act applies, in a daily newspaper circulating in that State or Territory;

a notice setting out the place and time for the hearing.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

“(3) Subject to subsection (4), a hearing is to be held in public.

“(4) The NRA, having regard to the confidential nature of any submissions or evidence or for any other reason, may direct that any part of a hearing be in private and may determine who may be present.

“(5) The NRA may give directions prohibiting or restricting the publication of submissions or evidence given at a hearing, whether in public or in private, or of matters contained in such submissions or evidence or in documents produced at such a hearing.

“(6) A person must not contravene, without reasonable excuse, a direction given under subsection (5).

Penalty: 20 penalty units.

“(7) If the NRA directs that a part of a hearing be in private, a person must not, without reasonable excuse, be present at the hearing unless he or she:

- (a) is a member of the NRA; or
- (b) is a member of the staff of the NRA that the NRA has authorised to be present; or
- (c) is entitled to be present because of a determination under subsection (4).

Penalty: 20 penalty units.

“(8) At a hearing the NRA may receive submissions or evidence, in a form determined by it, from persons who, in its opinion, are likely to be able to help it in the performance or exercise of the functions or powers to which the hearing relates.

“(9) A hearing is to be conducted with as little formality and technicality as is practicable and the NRA is not bound by the rules of evidence.”.

Exemption from suit

6. Section 45 of the Principal Act is amended by omitting from subsection (1) “or a person” and substituting “, the NRA or a person who is or has been”.

**PART 3—AMENDMENTS OF THE AGRICULTURAL AND
VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992**

Principal Act

7. In this Part, “**Principal Act**” means the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Insertion of new section

8. After section 59 of the Principal Act the following section is inserted:

Primary Industries and Energy Legislation
Amendment No. 94, 1993

NRA may give receipts on behalf of the Commonwealth

“59A. If the NRA, in the course of the performance of any of its functions or the exercise of any of its powers, receives an amount of money on the Commonwealth’s behalf, the NRA may give a receipt for the amount to the person who paid it.”.

Staff

9. Section 74 of the Principal Act is amended by omitting from subsection (1) “until the NRA determines otherwise” and substituting “subject to any determination or determinations made by the NRA under subsection 45(2)”.

**PART 4—AMENDMENTS OF THE AUSTRALIAN
HORTICULTURAL CORPORATION ACT 1987**

Principal Act

10. In this Part, “Principal Act” means the *Australian Horticultural Corporation Act 1987*³.

Appointment of members

11. Section 16 of the Principal Act is amended by omitting subsection (4).

Term of office

12. Section 18 of the Principal Act is amended by omitting subsection (3).

Appointment

13. Section 35 of the Principal Act is amended by omitting subsection (3).

Term of appointment etc.

14. Section 36 of the Principal Act is amended by omitting subsection (2).

Appointment of members

15. Section 87 of the Principal Act is amended by omitting subsection (5).

Term of office of members

16. Section 88 of the Principal Act is amended by omitting subsection (3).

**PART 5—AMENDMENT OF THE AUSTRALIAN MEAT AND
LIVE-STOCK INDUSTRY SELECTION COMMITTEE ACT 1984**

Principal Act

17. In this Part, “**Principal Act**” means the *Australian Meat and Live-stock Industry Selection Committee Act 1984*⁴.

Selection of persons for nomination

18. Section 10B of the Principal Act is amended by inserting after paragraph (1)(d) the following paragraphs:

- “(da) conservation and management of natural resources;
- (db) environmental and ecological matters;”.

PART 6—AMENDMENTS OF THE DAIRY PRODUCE ACT 1986

Principal Act

19. In this Part, “**Principal Act**” means the *Dairy Produce Act 1986*⁵.

Application of Industry Fund

20. Section 88 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(b) the following paragraph:
 - “(ba) in meeting expenses incurred in connection with the 1994 International Dairy Federation World Congress;”;
- (b) by inserting in subsection (3) “(ba),” after “(b),”.

Insertion of new section

21. After section 94 of the Principal Act the following section is inserted:

Import offset payments

“94A.(1) In this section:

‘**relevant year**’ means the year that began on 1 July 1991 or any later year up to and including the year beginning on 1 July 1999.

“(2) If:

- (a) a market support payment was paid or is payable to the manufacturer of dairy produce of a particular kind that was exported from Australia during a relevant year; and
- (b) at a time (the ‘**relevant time**’) during that year the manufacturer or a body corporate that was related to the manufacturer imported into Australia a number of units of dairy produce of the same kind as, or of a similar kind to, the first-mentioned dairy produce;

the market support payments that would otherwise be payable to the manufacturer under section 94 are, despite any other provision of this

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

Division, reduced by an amount equal to the amount of the market support payment that would have been payable to the manufacturer if at the relevant time the manufacturer had exported from Australia in accordance with paragraph 94(1)(b) the same number of units of the first-mentioned dairy produce.

“(3) The Corporation is to determine whether the market support payments that would otherwise be payable to a manufacturer of dairy produce under section 94 are reduced under subsection (2) of this section and, if so, the amount of the reduction.

“(4) The Corporation must give written notice to the manufacturer of its determination.

“(5) For the purposes of this section:

- (a) the question whether a particular kind of dairy produce is of a similar kind to dairy produce of another kind is to be determined by the Corporation; and
- (b) the question whether a body corporate is related to a manufacturer is to be determined in the same way as the question whether 2 bodies corporate are related to each other is determined for the purposes of the Corporations Law.

“(6) The Corporation must, from time to time, publish, in such manner as it thinks appropriate, notices:

- (a) listing the kinds of dairy produce in respect of which market support payments are payable; and
- (b) setting out, in relation to each kind of dairy produce so listed, any kind or kinds of dairy produce that it has determined to be of a similar kind to the first-mentioned kind of dairy produce.”.

Reconsideration and review of decisions

22. Section 118 of the Principal Act is amended:

- (a) by adding at the end of the definition of “relevant decision” in subsection (1) the following word and paragraph:

“; or (c) a relevant offset decision;”;

- (b) by inserting in subsection (1) the following definition:

“‘**relevant offset decision**’ means a determination of the Corporation under subsection 94A(3) or paragraph 94A(5)(a);”;

- (c) by omitting from subsection (1) the definition of “reviewable decision” and substituting the following definition:

“‘**reviewable decision**’ means a decision of the Corporation under subsection (9).”;

Primary Industries and Energy Legislation
Amendment No. 94, 1993

(d) by omitting subsections (2), (3), (5), (6), (9) and (10) and substituting the following subsections:

“(2) A person affected by a relevant licence decision, a relevant guarantee decision, a relevant payment decision or a relevant offset decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person (or within such further period as the Corporation, either before or after the end of the period of 28 days, by written notice served on the person allows), by written notice given to the Corporation, request the Corporation to reconsider the decision.

“(6) A request under subsection (2) must set out the reasons for making the request.

“(9) The Corporation must, within 45 days after receiving a request under subsection (2) in relation to a decision, reconsider the decision and make a decision:

- (a) in substitution for the first-mentioned decision, whether or not in the same terms as that decision; or
- (b) revoking the first-mentioned decision.

“(10) If, as a result of a reconsideration under subsection (9) of a decision, the Corporation makes a decision in substitution for the first-mentioned decision, the Corporation must, by written notice, served either personally or by post, on the person who requested the reconsideration, tell the person the result of the reconsideration and give the reasons for its decision.”.

**PART 7—AMENDMENT OF THE FISHERIES LEGISLATION
(CONSEQUENTIAL PROVISIONS) ACT 1991**

Principal Act

23. In this Part, “**Principal Act**” means the *Fisheries Legislation (Consequential Provisions) Act 1991*⁶.

Saving and transitional—arrangements with States and Territories

24. Section 7 of the Principal Act is amended by omitting from subsection (3) “2” and substituting “3”.

**PART 8—AMENDMENTS OF THE FISHERIES MANAGEMENT
ACT 1991**

Principal Act

25. In this Part, “**Principal Act**” means the *Fisheries Management Act 1991*⁷.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

26. After section 9 of the Principal Act the following section is inserted:

Act not to apply so as to exceed Commonwealth power

“9A.(1) Unless the contrary intention appears, if a provision of this Act:

- (a) would, apart from this section, have an invalid application; but
- (b) also has at least one valid application;

it is the Parliament’s intention that the provision is not to have the invalid application, but is to have every valid application.

“(2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision’s context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth’s legislative power; or
- (b) the provision’s operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth’s legislative power.

“(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

“(4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.

“(5) In this section:

‘application’ means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases;

‘invalid application’, in relation to a provision, means an application because of which the provision exceeds the Commonwealth’s legislative power;

‘valid application’, in relation to a provision, means an application that, if it were the provision’s only application, would be within the Commonwealth’s legislative power.”.

Plans of management

27. Section 17 of the Principal Act is amended:

- (a) by inserting after subsection (5) the following subsections:

Primary Industries and Energy Legislation
Amendment No. 94, 1993

“(5A) The measures to be set out under paragraph (5)(b) in a plan of management for a fishery include:

- (a) providing for AFMA, after such consultations (if any) as are set out in the plan of management, to direct that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods; and
- (b) providing for holders of fishing concessions in respect of the fishery to be notified of the direction; and
- (c) obliging those holders to comply with the direction.

“(5B) A direction under paragraph (5A)(a) in relation to a part of a fishery may identify the part concerned in any way or ways, including by reference to a particular area, a particular species or type of fish, a particular kind or quantity of fishing equipment, a particular method of fishing, or any combination of the above.”;

(b) by omitting paragraph (6)(a) and substituting the following paragraphs:

“(a) determine the method or methods by which the fishing capacity of the fishery or a part of the fishery is to be measured, which may be or include, but are not limited to, a method based on a particular area, a particular species or type or a particular quantity of fish, a particular kind, size or quantity of fishing equipment, a particular number of boats, a particular period of fishing, or any combination of the above; and

(aa) determine, or provide for AFMA to determine, the fishing capacity, measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods; and”;

(c) by inserting after subsection (6) the following subsections:

“(6A) Paragraph (6)(aa) authorises the making of a determination in respect of the fishing capacity of a fishery or a part of a fishery that has the effect that no fishing capacity is permitted for the fishery or that part of the fishery in respect of a particular period or periods.

“(6B) A direction given by AFMA under paragraph (5A)(a) or a determination made by AFMA under paragraph (6)(aa) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(6C) If a plan of management for a fishery provides for the management of the fishery by means of a system that consists of or includes statutory fishing rights, the plan:

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

- (a) may oblige a person who holds, in respect of the fishery, a fishing concession of a particular kind or fishing concessions of particular kinds also to hold, in respect of the fishery, a fishing concession of another kind or fishing concessions of other kinds, as stated in the plan; and
- (b) without limiting the generality of paragraph (a), may oblige a person who holds, in respect of the fishery, a fishing right of a particular kind or fishing rights of particular kinds also to hold, in respect of the fishery, a fishing right of another kind or fishing rights of other kinds, as stated in the plan; and
- (c) in respect of each kind of fishing right that a person holds in respect of the fishery—may do either or both of the following:
 - (i) oblige the person to hold not fewer than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated;
 - (ii) oblige the person not to hold more than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated.”;
- (d) by adding at the end the following subsection:

“(11) AFMA may, by writing under its common seal, delegate any powers conferred on it under a plan of management in accordance with paragraph (5A)(a) or (6)(aa) to the Managing Director of AFMA, but to no other person.”.

Nature of a statutory fishing right

28. Section 21 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) For the purposes of this Act, each of the following rights is a separate statutory fishing right:

- (a) a right to take a particular quantity of fish, or to take a particular quantity of fish of a particular species or type, from, or from a particular area in, a managed fishery;
- (b) a right to a particular proportion of the fishing capacity that is permitted, by or under a plan of management, for, or for a part of, a managed fishery;
- (c) a right to engage in fishing in a managed fishery at a particular time or times, on a particular number of days, during a particular number of weeks or months, or in accordance with any combination of the above, during a particular period or periods;
- (d) a right to use a boat in a managed fishery for purposes stated in a plan of management;

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

- (e) a right to use particular fishing equipment in a managed fishery;
- (f) a right to use, in a managed fishery, fishing equipment that is of a particular kind, of a particular size or of a particular quantity or is a combination of any of the above;
- (g) a right to use a particular type of boat in a managed fishery;
- (h) a right to use a boat of a particular size or having a particular engine power, or of a particular size and having a particular engine power, in a managed fishery;
- (i) any other right in respect of fishing in a managed fishery.

“(1A) A plan of management for a fishery may do any one or more of the following:

- (a) provide for a statutory fishing right of a kind mentioned in paragraph (1)(a) even though, in a particular period, the quantity of fish to which the fishing right relates is nil or negligible;
- (b) provide for a statutory fishing right of a kind mentioned in paragraph (1)(b) even though the proportion of fishing capacity to which the fishing right relates would result in a nil or negligible quantity of fish;
- (c) provide for a statutory fishing right of a kind mentioned in paragraph (1)(f) even though it may be impracticable to make or use fishing equipment of the size or quantity, or size and quantity, to which the fishing right relates;
- (d) provide for a statutory fishing right of a kind mentioned in paragraph (1)(h) even though it may be impracticable to build or use a boat of the size or having the engine power, or of the size and having the engine power, to which the fishing right relates.

“(1B) For the purposes of subsection (1C), the fishing rights in respect of a particular fishery that are referred to in any one of the following paragraphs together constitute a class of fishing rights:

- (a) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(a);
- (b) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(b);
- (c) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(c);
- (d) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(f);
- (e) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(h).

“(1C) If a person holds a class of fishing rights in respect of a managed fishery, the fishing rights in the class together confer fishing rights in respect of:

Primary Industries and Energy Legislation
Amendment No. 94, 1993

- (a) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(a)—a quantity of fish, or of fish of the relevant species or type, equal to the sum of the quantities of fish, or of fish of that species or type, in relation to, or in relation to the area in, the fishery, stated in the fishing rights in the class; or
- (b) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(b)—a proportion of fishing capacity equal to the sum of the proportions of the fishing capacity stated in the fishing rights in the class; or
- (c) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(c) and each fishing right relates to a particular number of days, weeks or months during a particular period or periods—a number of days, weeks or months equal to the sum of the numbers of days, weeks or months, as the case may be, during that period or those periods, stated in the fishing rights in the class; or
- (d) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(f)—fishing equipment the total size or quantity of which is not greater than the sum of the sizes or quantities, or the total size and total quantity of which are not greater than the sum of the sizes and the sum of the quantities, as the case may be, stated in the fishing rights in the class;
- (e) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(h)—a boat of a size not greater than the sum of the sizes, having an engine power not greater than the sum of the engine powers, or of a size not greater than the sum of the sizes and having an engine power not greater than the sum of the engine powers, as the case may be, stated in the fishing rights in the class.”.

AFMA to establish system of statutory fishing rights

29. Section 22 of the Principal Act is amended by omitting paragraph (3)(a) and substituting the following paragraph:

- “(a) the holder of the fishing right must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing right;”.

Grant of fishing permits

30. Section 32 of the Principal Act is amended by omitting paragraph (5)(a) and substituting the following paragraph:

- “(a) if the fishing permit authorises fishing in a specified managed fishery—the holder of the permit must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing permit;”.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

Grant of foreign fishing licences

31. Section 34 of the Principal Act is amended by omitting paragraph (4)(a) and substituting the following paragraph:

“(a) if the licence authorises commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a licence;”.

Function

32. Section 142 of the Principal Act is amended by adding at the end the following subsection:

“(2) It is not a function of the Panel to review the first decision to grant fishing rights made by AFMA under the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery.”.

Reconsideration by AFMA and right to review by Administrative Appeals Tribunal

33. Section 165 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The first decision made by AFMA to register persons under subsection 26(2) in connection with the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery is not a relevant decision for the purposes of this section.”.

**PART 9—AMENDMENTS OF THE HORTICULTURAL
RESEARCH AND DEVELOPMENT CORPORATION ACT 1987**

Principal Act

34. In this Part, “**Principal Act**” means the *Horticultural Research and Development Corporation Act 1987*⁸.

Objects

35. Section 5 of the Principal Act is amended by inserting after paragraph (b) the following paragraphs:

- “(ba) to further the sustainable use and sustainable management of natural resources; and
- (bb) to increase the economic, environmental and social benefits to members of the Australian horticultural industries and the community in general by improving the production, processing, storage, transport and marketing of the products of horticultural industries; and”.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

Appointment of members

36. Section 15 of the Principal Act is amended by omitting subsection (4).

Term of office

37. Section 17 of the Principal Act is amended by omitting subsection (3).

Annual report

38. Section 29 of the Principal Act is amended by omitting paragraph (1)(c) and substituting the following paragraph:

“(c) an assessment of the extent to which the Corporation has, during the period, contributed to the attainment of the objects set out in section 5.”.

Appointment

39. Section 33 of the Principal Act is amended by omitting subsection (3).

Term of appointment etc.

40. Section 34 of the Principal Act is amended by omitting subsection (2).

Matching payments by Commonwealth

41. Section 46 of the Principal Act is amended by omitting from subsection (5) “particular”.

**PART 10—AMENDMENTS OF THE MEAT RESEARCH
CORPORATION ACT 1985**

Principal Act

42. In this Part, “Principal Act” means the *Meat Research Corporation Act 1985*.

Objects

43. Section 5 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) to further the sustainable use and sustainable management of natural resources;”.

Corporation to prepare and review research and development plan

44. Section 30 of the Principal Act is amended by adding at the end the following subsection:

Primary Industries and Energy Legislation
Amendment No. 94, 1993

“(7) In preparing, reviewing and revising the plan, the Corporation must have regard to the objects set out in section 5.”.

Corporation to prepare annual operational plans

45. Section 35 of the Principal Act is amended by adding at the end the following subsection:

“(4) In preparing annual operational plans under this section, the Corporation must have regard to the objects set out in section 5.”.

Matters to be included in annual report

46. Section 50 of the Principal Act is amended by adding at the end the following word and paragraph:

“; and (c) an assessment of the extent to which the Corporation has, during the period to which the report relates, contributed to the attainment of the objects set out in section 5.”.

**PART 11—AMENDMENTS OF THE PRIMARY INDUSTRIES
AND ENERGY RESEARCH AND DEVELOPMENT ACT 1989**

Principal Act

47. In this Part, “**Principal Act**” means the *Primary Industries and Energy Research and Development Act 1989*¹⁰.

Objects

48. Section 3 of the Principal Act is amended by omitting from paragraph (a) “or” (first occurring) and substituting “and”.

Definitions

49. Section 4 of the Principal Act is amended by adding at the end of the definition of “levy” the following word and paragraph:
“; and (c) an import charge;”.

Annual operational plans

50. Section 25 of the Principal Act is amended by adding at the end the following subsection:

“(4) If charge imposed on forest products under the *Forest Industries Research Import Charge Act 1993* is attached as a levy to an R&D Corporation established in respect of forest industries, the R&D Corporation’s annual operational plan must include, in the broad groupings of R&D activities that the R&D Corporation proposes to fund, R&D activities that are relevant to forest products of a kind that are imported.”.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

Annual report

51. Section 28 of the Principal Act is amended by inserting after subparagraph (1)(a)(ii) the following subparagraph:

“(ia) which (if any) of those activities related to ecologically sustainable development; and”.

Government matching payments not to exceed levy and certain other payments

52. Section 31 of the Principal Act is amended:

(a) by omitting from subsection (1) “Where:” and substituting “Subject to subsection (4), where:”;

(b) by adding at the end the following subsection:

“(4) Where an amount is paid under paragraph 30(1)(b) to an R&D Corporation established in respect of forest industries, the amount is not to exceed one half of the sum of the amounts paid to the Corporation under subparagraphs 30(1)(a)(i) and (ii) in relation to levy payable under the *Forest Industries Research Levy Act 1993* and the *Forest Industries Research Export Charge Act 1993* (less the sum of any refunds in relation to research components of those levies).”.

Commonwealth’s matching payments not to exceed certain proportion of production

53. Section 32 of the Principal Act is amended:

(a) by omitting from subsection (1) “subsection (3)” and substituting “subsections (3) and (4)”;

(b) by adding at the end the following subsection:

“(4) Where levy is attached to an R&D Corporation established in respect of forest industries, the sum of the amounts that, during a particular financial year, are paid to the Corporation under paragraph 30(1)(b), in respect of amounts spent by the Corporation under section 33 for R&D activities in respect of goods to which the levy relates, is not to exceed an amount equal to 0.25% of the amount that the Minister determines to be the gross value of production, for that financial year, of those goods.”.

Expenditure of money of R&D Corporations

54. Section 33 of the Principal Act is amended:

(a) by omitting from paragraph (1)(d) “or 35”; and

(b) by inserting after paragraph (1)(d) the following paragraphs:

“(da) in payment to the Commonwealth of amounts payable under subsection 18(3) of the *Primary Industries Levies and Charges Collection Act 1991*; and

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

- (db) if the Corporation is established in respect of forest industries—in payment of amounts for which the R&D Corporation is liable under subsections 10(8) and 11(9) of the *Primary Industries Levies and Charges Collection Act 1991*; and”.

Insertion of new section

55. After section 33 of the Principal Act the following section is inserted:

Expenditure of money by an R&D Corporation established in respect of forest industries

“33A. If charge under the *Forest Industries Research Import Charge Act 1993* is attached to an R&D Corporation established in respect of forest industries:

- (a) the proportion of the research component of the charge that is spent on R&D activities must be spent on R&D activities that are relevant to forest products of the kind on which charge under that Act is imposed; and
- (b) the proportion referred to in paragraph (a) must be not less than the proportion of the total amounts of all the research components of levies attached to the Corporation and spent by the Corporation on R&D activities.”.

Appointment of members

56. Section 98 of the Principal Act is amended by omitting subsection (4).

Selecting persons for nomination

57. Section 131 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph:

“; (o) sociology.”.

**PART 12—AMENDMENTS OF THE PRIMARY INDUSTRIES
LEVIES AND CHARGES COLLECTION ACT 1991**

Principal Act

58. In this Part, “Principal Act” means the *Primary Industries Levies and Charges Collection Act 1991*¹¹.

Interpretation

59. Section 4 of the Principal Act is amended:

- (a) by inserting after paragraph (j) of the definition of “examinable documents” in subsection (1) the following subparagraphs:

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

- “(ja) importers;
- “(jb) importing agents;”;
- (b) by inserting in paragraph (g) of the definition of “producer” in subsection (1) “, logs within the meaning of the *Forest Industries Research Export Charge Act 1993*” after “is concerned)”;
- (c) by inserting after paragraph (d) of that definition the following paragraph:
 - “(da) in the case of logs within the meaning of the *Forest Industries Research Levy Act 1993*—the operator of the mill to which the logs were delivered;”;
- (d) by inserting after paragraph (g) of that definition the following paragraph:
 - “(ga) in the case of forest products within the meaning of the *Forest Industries Research Import Charge Act 1993* or in the case of such other products as are prescribed for the purposes of this paragraph—the person who imports the product into Australia;”;
- (e) by inserting in subsection (1) the following definitions:
 - “**forest industries levy or charge**” means:
 - (a) levy imposed by the *Forest Industries Research Levy Act 1993*; or
 - (b) charge imposed by the *Forest Industries Research Export Charge Act 1993* or the *Forest Industries Research Import Charge Act 1993*;
 - “**importing agent**” means a person who, in the course of carrying on a business, imports collection products into Australia on behalf of other persons (whether or not the other persons are the owners of the products);
 - “**R&D Corporation**” means an R&D Corporation established under section 8 of the *Primary Industries and Energy Research and Development Act 1989*.”

Liability of intermediaries

- 60. Section 7 of the Principal Act is amended:
 - (a) by adding at the end of subsection (3) the following Note:
 - “Note: under paragraph (g) of the definition of ‘producer’ in subsection 4(1), the producer is taken to be the person who exports the products from Australia.”
 - (b) by inserting after subsection (3) the following subsection:
 - “(3A) For better securing the payment of charge, an importing agent who imports prescribed products on which charge is imposed is liable to pay in accordance with subsection (4), on behalf of the producer, an amount equal to the sum of:

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

- (a) the amount of any charge due for payment on or in relation to the products that remains unpaid by the producer; and
- (b) any amount payable by the producer under subsection 15(1) in relation to that charge.

Note: under paragraph (ga) of the definition of 'producer' in subsection 4(1), the producer is taken to be the person who imports the products into Australia.”;

- (c) by omitting from subsections (4) and (5) “or (3)” and substituting “, (3) or (3A)”;
- (d) by inserting after paragraph (6)(d) the following paragraph:
“(da) imports collection products; or”.

Liability of intermediaries—ancillary provisions

61. Section 8 of the Principal Act is amended by omitting from subsections (1) and (2) “or (3)” and substituting “, (3) or (3A)”.

Collection agreements with States and Territories

62. Section 10 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “or (3)” and substituting “, (3) or (3A)”;
- (b) by adding at the end the following subsections:

“(7) An agreement under subsection (1) about collecting forest industries levy or charge may require a specified R&D Corporation established in respect of forest industries to pay to the collecting authority that is a party to the agreement amounts, worked out in accordance with the agreement, to reimburse the collecting authority for its expenses incurred in collecting forest industries levy or charge.

“(8) An R&D Corporation so specified is liable to pay those amounts as if it were a party to the agreement.”.

Collection agreements with collecting organisations

63. Section 11 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “or (3)” and substituting “, (3) or (3A)”;
- (b) by adding at the end the following subsections:

“(8) An agreement under subsection (2) about collecting forest industries levy or charge may require a specified R&D Corporation established in respect of forest industries to pay to the collecting organisation that is a party to the agreement amounts, worked out in accordance with the agreement, to reimburse the collecting organisation for its expenses incurred in collecting forest industries levy or charge.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

“(9) An R&D Corporation so specified is liable to pay those amounts as if it were a party to the agreement.”.

Schedule 1

64. Schedule 1 to the Principal Act is amended by inserting after “*Deer Velvet Export Charge Act 1992*”:

“*Forest Industries Research Export Charge Act 1993*
Forest Industries Research Import Charge Act 1993”.

Schedule 2

65. Schedule 2 to the Principal Act is amended by inserting after “*Dried Vine Fruits Equalization Levy Act 1978*”:

“*Forest Industries Research Levy Act 1993*”.

**PART 13—AMENDMENTS OF THE SNOWY MOUNTAINS
HYDRO-ELECTRIC POWER ACT 1949**

Principal Act

66. In this Part, “**Principal Act**” means the *Snowy Mountains Hydro-electric Power Act 1949*¹².

Contracts

67. Section 31 of the Principal Act is amended by adding at the end the following subsections:

“(2) Subsection (1) does not apply if the contract relates to the investment of money not immediately required for the purposes of the Authority:

- (a) in securities of, or guaranteed by, the Commonwealth; or
- (b) on deposit with an approved bank; or
- (c) in any other manner approved by the Treasurer.

“(3) The Treasurer, or a person authorised by the Treasurer to give approvals under this subsection, may declare a bank to be an approved bank in relation to the Authority.

“(4) For the purposes of subsection (2):

‘**approved bank**’, in relation to the Authority, means:

- (a) a bank as defined in subsection 5(1) of the *Banking Act 1959*; or
- (b) a bank declared to be an approved bank in relation to the Authority under subsection (3).”.

**PART 14—AMENDMENTS OF THE WHEAT MARKETING
ACT 1989**

Principal Act

68. In this Part, “**Principal Act**” means the *Wheat Marketing Act 1989*¹³.

Functions of the Board

69.(1) Section 6 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(f) “wheat” and substituting “grain of any kind”;
- (b) by omitting from subsection (4) “wheat” and substituting “grain, or grain products, of any kind”.

(2) Anything done, before the commencement of this subsection, by the Board in the purported performance of a function, or the purported exercise of a power, conferred on the Board by a State law referred to in subsection 6(4) of the Principal Act as amended by this Act (other than a law relating to the marketing of wheat or value adding activities) is taken to have been done in the performance of a function, or the exercise of a power, validly conferred on the Board.

(3) In subsection (2):

“**Board**” and “**value adding activities**” have the same meanings as in the Principal Act.

Powers of the Board

70. Section 7 of the Principal Act is amended by inserting after paragraph (2)(k) the following paragraph:

“(l) to make charges for services provided by the Board in the performance of its function under paragraph 6(1)(f);”.

Insertion of new section

71. After section 26 of the Principal Act, the following section is inserted:

Delegation by Managing Director or Chairperson

“26A. A Chairperson appointed in an executive capacity or the Managing Director may, in writing, delegate to an employee of the Board:

- (a) any of his or her functions or powers; or
- (b) any function or power that has been delegated to him or her by the Board under section 12.”.

Insertion of new section

72. After section 65 of the Principal Act the following section is inserted:

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

Total amount payable to a person for pool return wheat

“65A.(1) The Board must also determine the total amount payable to a person for pool return wheat bought by the Board from the person and allocated to a pool (“**wheat that the person has in the pool**”).

“(2) The total amount so payable to the person is calculated as follows:

- (a) multiply the quantity (expressed in tonnes) of wheat that the person has in the pool by the actual net return per tonne in respect of wheat in that pool; and
- (b) add to, or subtract from, the amount obtained under paragraph (a) any amount that, in accordance with sound commercial practice, the Board may decide so to add or subtract having regard to the following matters in relation to any wheat that the person has in the pool:
 - (i) the variety of the wheat;
 - (ii) the quality of the wheat;
 - (iii) any cost incurred by the Board for the transport, storage or handling of the wheat;
 - (iv) any other matter for which the Board considers it fair and reasonable to make an adjustment to the amount obtained under paragraph (a).

“(3) When deciding to add or subtract an amount under paragraph (2)(b), the Board must ensure, as far as possible, that the addition or subtraction does not result in any unfair advantage or disadvantage for any other person whose wheat has been allocated to the pool.

“(4) The Board must, by notice in the *Gazette*, issue guidelines for the exercise of its powers under paragraph (2)(b).

“(5) The Board must exercise its powers under paragraph (2)(b) in accordance with the guidelines issued under subsection (4).”.

Final payment

73. Section 66 of the Principal Act is amended:

- (a) by omitting from subsection (1) “, on the basis of the actual net return per tonne,”;
- (b) by inserting in subsection (1) “(see section 65A)” after “wheat” (first occurring);
- (c) by omitting from subsection (2) “, on the basis of the actual net return per tonne,”.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

PART 15—MINOR AMENDMENTS

Minor amendments

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

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

SCHEDULE

Section 74

MINOR AMENDMENTS

Australian Horticultural Corporation Act 1987

Paragraph 115H(2)(a):

Omit “or the first three months of the current financial year”.

Australian Horticultural Corporation Amendment Act 1991

Section 23 (definition of “Board”):

Omit “23”, substitute “25”.

NOTES

1. No. 91, 1988, as amended. For previous amendments, see No. 21, 1990; and No. 263, 1992.
2. No. 262, 1992.
3. No. 164, 1987, as amended. For previous amendments, see Nos. 51 and 99, 1988; No. 46, 1989; Nos. 26 and 42, 1991; and No. 122, 1992.
4. No. 59, 1984, as amended. For previous amendments, see Nos. 13 and 65, 1985; No. 155, 1987; and No. 39, 1991.
5. No. 54, 1986, as amended. For previous amendments, see No. 168, 1986; Nos. 141 and 162, 1987; Nos. 51, 111 and 114, 1988; Nos. 129 and 130, 1989; Nos. 15 and 17, 1990; Nos. 27 and 39, 1991; No. 67, 1992; and No. 16, 1993.
6. No. 163, 1991.
7. No. 162, 1991.
8. No. 166, 1987, as amended. For previous amendments, see Nos. 51 and 99, 1988; No. 46, 1989; No. 134, 1990; and Nos. 26 and 39, 1991.
9. No. 12, 1985, as amended. For previous amendments, see No. 155, 1987; No. 51, 1988; Nos. 16 and 139, 1990; and Nos. 26 and 39, 1991.
10. No. 17, 1990, as amended. For previous amendments, see No. 134, 1990; Nos. 26, 31, 109, 125 and 163, 1991; and No. 59, 1992.
11. No. 25, 1991, as amended. For previous amendments, see Nos. 20, 32, 59 and 247, 1992.
12. No. 25, 1949, as amended. For previous amendments, see No. 47, 1951; No. 35, 1952; No. 69, 1955; No. 45, 1956; No. 31, 1958; No. 93, 1966; No. 216, 1973; No. 29, 1975; No. 36, 1978; No. 156, 1979; No. 86, 1983; No. 65, 1985; No. 76, 1986; No. 21, 1989; No. 134, 1990; Nos. 122 and 199, 1991; and No. 59, 1992.

*Primary Industries and Energy Legislation
Amendment No. 94, 1993*

NOTES—continued

13. No. 58, 1989, as amended. For previous amendments, see No. 16 and 134, 1990; No. 26, 1991; and Nos. 17, 104 and 154, 1992.

[*Minister's second reading speech made in—
House of Representatives on 7 September 1993
Senate on 7 October 1993*]