



Primary Industries and Energy Legislation Amendment Act (No. 1) 1997

No. 22, 1997

**An Act to amend or repeal various Acts
administered by the Minister for Primary
Industries and Energy, and for related purposes**

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No. 22, 1997

An Act to amend or repeal various Acts administered by the Minister for Primary Industries and Energy, and for related purposes

[Assented to 7 April 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Primary Industries and Energy
Legislation Amendment Act (No. 1) 1997*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Item 1 of Schedule 3 commences immediately after the commencement of Item 2 of Schedule 3.

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- (3) Items 1 and 2 of Schedule 5 are taken to have commenced immediately after the commencement of Schedule 1 to the *Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991*.
 - (4) Items 4 of Schedule 5 is taken to have commenced on the day on which the *Primary Industries and Energy Research and Development Act 1989* received the Royal Assent.
 - (5) Items 5 to 9 of Schedule 5 are taken to have commenced on the day on which the *Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991* received the Royal Assent.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Agricultural and Veterinary Chemicals Code Act 1994

1 Section 3

Insert:

primary active constituent has the meaning given in section 59.

2 Section 3 (definition of *primary applicant*)

Repeal the definition, substitute:

primary applicant means:

- (a) in relation to a primary active constituent—the interested person by whom, or on whose behalf, protected information was given to the NRA in respect of the constituent; or
- (b) in relation to a primary chemical product—the interested person by whom, or on whose behalf, protected information was given to the NRA in respect of the product.

3 Section 3

Insert:

protected active constituent means an approved active constituent for a proposed or existing chemical product, being an active constituent to which both of the following paragraphs apply:

- (a) the constituent is or includes an invention in respect of which letters patent were granted under the *Patents Act 1952* or the *Patents Act 1990*;
- (b) the term of the letters patent (including any extension of that term) has ended, or will end, during the protection period that applies to protected information about that constituent.

4 Section 3 (paragraph (b) of the definition of *protected chemical product*)

Omit “protected registration information”, substitute “protected information”.

5 Section 3

Insert:

protected information, in relation to an active constituent for a proposed or existing chemical product or in relation to a chemical product, means information that has been obtained because of trials or laboratory experiments and relates to the interaction between the constituent or product, as the case may be, and:

- (a) the environment; or
- (b) living organisms or naturally occurring populations in ecosystems, including human beings;

but does not include information obtained only for the purpose of assessing the performance of the constituent or product in respect of its proposed use.

6 Section 3 (definition of *protected registration information*)

Repeal the definition.

7 Section 3 (definition of *protection period*)

Omit "registration".

8 Section 3

Insert:

secondary active constituent has the meaning given in section 59.

9 Section 3 (definition of *secondary applicant*)

Repeal the definition, substitute:

secondary applicant, in relation to a secondary chemical product, means:

- (a) if the NRA is considering an application for the registration of that product—the person who made the application; or
- (b) if the NRA has reconsidered or is reconsidering the registration of that product:
 - (i) subject to subparagraphs (ii), (iii) and (iv), the person (the *original applicant*) who applied for the registration or, in the case of a product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or

- (ii) subject to subparagraphs (iii) and (iv), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the NRA to have the other person's name entered in the relevant particulars in relation to the product, or to have a label approved in relation to containers for the product, and the other person's name is entered in those relevant particulars, or such a label is approved, on the application of the other person—the other person; or
- (iii) if the person who, apart from this subparagraph, would be the secondary applicant because of subparagraph (i) or (ii) was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering his or her affairs, as the case may be; or
- (iv) if the person who, apart from this subparagraph, would be the secondary applicant because of subparagraph (i) or (ii) was a body corporate—a successor in law of the body corporate.

secondary applicant, in relation to a secondary active constituent for a proposed or existing chemical product, means:

- (a) if the NRA is considering an application for the approval of that constituent—the person who made the application; or
- (b) if the NRA has reconsidered or is reconsidering the approval of that constituent:
 - (i) subject to subparagraphs (ii), (iii) and (iv), the person (the **original applicant**) who applied for the approval; or
 - (ii) subject to subparagraphs (iii) and (iv), if the original applicant has entered into a contract with another person in relation to the constituent under which, or as a result of which, the other person will or may apply to the NRA to have the other person's name entered in the relevant particulars in relation to the constituent and the other person's name is entered in those particulars on the application of the other person—the other person; or
 - (iii) if the person who, apart from this subparagraph, would be the secondary applicant because of subparagraph (i) or (ii) was an individual who has died or is an individual whose affairs are being lawfully administered by

another person—the legal personal representative of the individual or the person administering his or her affairs, as the case may be; or

- (iv) if the person who, apart from this subparagraph, would be the secondary applicant because of subparagraph (i) or (ii) was a body corporate—a successor in law of the body corporate.

10 Section 39

Repeal the section, substitute:

39 Suspension of approval or registration if compensation for use of protected information cannot be arbitrated

(1) If:

- (a) the primary applicant in relation to a primary active constituent and the secondary applicant in relation to a secondary active constituent or a secondary chemical product were parties to an arbitration under Division 3 of Part 3 as to the terms of compensation; and
- (b) the arbitrator gives notice to the NRA under section 68 in respect of the failure of each party to the arbitration to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator thinks reasonable;

the NRA may suspend the approval of the primary active constituent or may suspend the approval of the secondary active constituent or the registration of the secondary chemical product, as the case may be, or may do both of those things.

(2) If:

- (a) the primary applicant in relation to a primary chemical product and the secondary applicant in relation to a secondary chemical product were parties to an arbitration under Division 3 of Part 3 as to the terms of compensation; and
- (b) the arbitrator gives notice to the NRA under section 68 in respect of the failure of each party to the arbitration to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator thinks reasonable;

the NRA may suspend the registration of either or both of those products.

11 Subsections 57(1), (2) and (3)

Repeal the subsections, substitute:

- (1) This Part contains provisions that entitle a person who has provided protected information to the NRA in relation to a protected active constituent or in relation to a protected chemical product, in compliance with a requirement made of the person by the NRA, to receive compensation from anyone else who wishes the information to be used by the NRA in connection with an application for the approval, or continued approval, of another active constituent or the registration, or continued registration, of another chemical product.
- (2) Compensation is not payable in respect of the information unless:
 - (a) the protected active constituent or the protected chemical product is or includes a patentable invention and the term of the patent has ended or is about to end; and
 - (b) the information was obtained from trials or laboratory experiments and relates to the interaction between the constituent or product and:
 - (i) the environment; or
 - (ii) living organisms or naturally occurring populations in ecosystems, including human beings;and is not information that was obtained merely for the purpose of assessing the performance of the constituent or product.
- (3) Compensation is not payable in respect of information if the constituent or product is for use only in relation to a species of animals that is not a food-producing species.

12 Subsection 59(1)

Repeal the subsection, substitute:

- (1) Subject to subsection (2), if, in compliance with a requirement that the NRA:
 - (a) has made under paragraph 32(2)(b) or section 33; or
 - (b) has made under section 159 for the purposes of paragraph 159(1)(c) or (d);protected information has been given to the NRA in relation to:
 - (c) a protected active constituent for a proposed or existing chemical product (the *primary active constituent*); or

(d) a protected chemical product (the *primary chemical product*);

the NRA must not use the information in determining whether to approve, or to continue the approval of, another active constituent for a proposed or existing chemical product (the *secondary active constituent*), or whether to register, or to continue the registration of, another chemical product (the *secondary chemical product*).

Note: The heading to section 59 is altered by omitting "registration".

13 Subparagraph 59(2)(a)(i)

Omit "the secondary chemical product", substitute "the secondary active constituent or the secondary chemical product, as the case may be".

14 Paragraph 59(5)(a)

After "validity of any", insert "approval, or continued approval, of the secondary active constituent or the validity of any".

15 Paragraph 60(1)(a)

Repeal the paragraph, substitute:

- (a) the NRA is unable to complete its consideration of:
 - (i) the approval or continued approval of an active constituent for a proposed or existing chemical product;
or
 - (ii) the registration or continued registration of a secondary chemical product;
- under this Code unless it uses protected information; and

16 Paragraph 60(2)(a)

Repeal the paragraph, substitute:

- (a) stating that the NRA's consideration of:
 - (i) the approval or continued approval of the secondary active constituent; or
 - (ii) the registration or continued registration of the secondary chemical product;
- cannot be completed unless the NRA uses the information;
and

17 Subparagraphs 60(3)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) in respect of the notice to a primary applicant—the prescribed information about the secondary applicant and about the secondary active constituent or the secondary chemical product, as the case may be; or
- (ii) in respect of the notice to the secondary applicant—the prescribed information about the primary applicant and about the primary active constituent or the primary chemical product, or about each primary applicant and about each primary active constituent or primary chemical product, as the case may be; and

18 Paragraph 60(3)(b)

Repeal the paragraph, substitute:

- (b) stating that the NRA's consideration of the approval or continued approval of the secondary active constituent, or of the registration or continued registration of the secondary chemical product, cannot be completed unless the NRA uses protected information given by a primary applicant but the NRA is precluded from using that information except in circumstances prescribed by paragraph 59(2)(a), (b) or (d) and setting out those circumstances; and

19 Subparagraph 60(3)(d)(iii)

Repeal the subparagraph, substitute:

- (iii) if the arbitrator finds that no reasonable proposals were made, the NRA may suspend the approval of the primary active constituent or the registration of the primary chemical product (as the case may be), or the approval of the secondary active constituent or the registration of the secondary chemical product (as the case may be), or both; and

20 Paragraphs 61(a), (c) and (d)

Omit "protected registration information", substitute "protected information".

21 Subparagraphs 69(1)(b)(i) and (ii)

Omit “protected registration information”, substitute “protected information”.

22 Subsection 69(3)

Omit “protected registration information”, substitute “protected information”.

23 Subsection 72(3)

Repeal the subsection, substitute:

- (3) Section 73 contains special provisions relating to the application of this Part to veterinary surgeons.

24 Paragraph 167(1)(h)

Omit “registration”.

Schedule 2—Amendment of the Farm Household Support Act 1992

1 Subsection 3(1)

Insert:

non-benefit parenting allowance

2 After subsection 12(1)

Insert:

- (1A) If a person is a member of a couple, drought relief payment is not payable to the person for a period if the person's partner is receiving, or has received, farm household support or drought relief payment for that period.

3 Subsection 21(4)

After "section", insert "21A or".

4 Subsection 24A(1)

Repeal the subsection, substitute:

- (1) The fortnightly rate at which drought relief payment is payable to a person is the sum of the following rates:
- (a) the fortnightly rate at which newstart allowance would be payable to the person if the person were entitled to receive newstart allowance;
 - (b) if the person is a member of a couple and the partner allowance rate in relation to the person's partner exceeds the income support payment in relation to the person's partner—the fortnightly rate that is the difference between those rates;
 - (c) if the exempt assets family payment rate in relation to the person or the person's partner exceeds the family payment rate in relation to the person or the person's partner—the fortnightly rate that is the difference between those rates.

(1A) For the purposes of subsection (1):

exempt assets family payment rate, in relation to a person or a person's partner, means the fortnightly rate at which family payment would be payable to that person or that partner, taking into account the rule in subsection (2).

family payment rate, in relation to a person or a person's partner, means the fortnightly rate at which that person or that partner is receiving family payment (if any).

income support payment rate, in relation to a person's partner, means the fortnightly rate at which that partner is receiving one (if any) of the following payments:

- (a) social security pension;
- (b) a social security benefit (except newstart allowance);
- (c) non-benefit parenting allowance;
- (d) a pension under Part II, III or IV of the *Veterans' Entitlements Act 1986*.

partner allowance rate, in relation to a person's partner, means the fortnightly rate at which:

- (a) that partner is receiving partner allowance; or
- (b) partner allowance would be payable to that partner if that partner were entitled to receive partner allowance.

5 Subsection 24A(2)

Omit "subsection (1)", substitute "this section".

Schedule 3—Repeal of the Tobacco Marketing Act 1965

Part 1—Repeal of the Act

Tobacco Marketing Act 1965

1 The whole of the Act

Repeal the Act.

Part 2—Saving provisions

2 Transfer of rights, assets, obligations and liabilities

By force of this item, all rights, assets, obligations and liabilities of the Committee are transferred on the commencement day to the TRDC.

3 Annual report of the Committee

- (1) The TRDC must, as soon as practicable after the commencement day, prepare:
 - (a) a report on the operation of the *Tobacco Marketing Act 1965* during the period commencing on 1 January 1996 and ending on the day before the commencement day; and
 - (b) the financial statements of the Committee in respect of that period, in the form that the Minister for Finance approves.
- (2) Before giving the financial statements to the Minister, the TRDC must give the financial statements to the Auditor-General, who must report to the Minister on the matters set out in paragraphs 26(2)(a), (b), (c) and (d) of the *Tobacco Marketing Act 1965*.
- (3) If the commencement day occurs before the day on which the TRDC gives to the Minister its own annual report for the year ending on 30 June 1997, the TRDC must include the report and financial statements referred to in subitem (1) in its own report.
- (4) If the commencement day occurs on or after the day on which the TRDC gives to the Minister its own annual report for the year ending on 30 June 1997, the TRDC must, as soon as practicable after the commencement day, give to the Minister the report and financial statements referred to in subitem (1). The Minister must comply with subsection 26(3) of the *Tobacco Marketing Act 1965*.
- (5) For the purposes of this item:
 - (a) subsections 26(2) and (3) of the *Tobacco Marketing Act 1965* are taken to continue in force despite the repeal of that Act; and
 - (b) the reference to year in paragraph 26(2)(c) of the *Tobacco Marketing Act 1965* is taken to be a reference to the period referred to in paragraph (1)(a) of this item.

Note: The TRDC will be required to give to the Minister its own annual report for the year ending on 30 June 1997 under section 63H of the *Audit Act 1901* or, if the *Commonwealth Authorities and Companies Act 1997* commences before the TRDC gives the report to the Minister, under section 9 of that Act.

4 Definitions

In this Part:

commencement day means the day on which this Part commences.

Committee means the Australian Tobacco Marketing Advisory Committee established by section 5 of the *Tobacco Marketing Act 1965*.

Minister means the Minister for Primary Industries and Energy.

TRDC means the Tobacco Research and Development Corporation established by regulation 4 of the Tobacco Research and Development Corporation Regulations 1995.

Schedule 4—Amendment of the Australian Wool Research and Promotion Organisation Act 1993

1 Subsection 79(2)

Omit “1997”, substitute “2000”.

Schedule 5—Minor technical amendments of various Acts

Dried Vine Fruits Equalization Act 1978

1 Subsection 3(1) (definition of *levy*)

Repeal the definition.

2 Section 31

Repeal the section.

Forestry and Timber Bureau Act 1930

3 Subsection 2(1) (definition of *the Territories*)

Omit “, Papua New Guinea”.

Primary Industries and Energy Research and Development Act 1989

4 Schedule 2, amendment of subsection 5(3) of the *Honey Export Charge Act 1973*

Omit “5(3)”, substitute “7(3)”.

Note: This amendment corrects a misdescribed amendment of the *Honey Export Charge Act 1973*.

Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991

5 Schedule 1, first amendment of subsection 3(1) of the *Dried Vine Fruits Equalization Act 1978*

Omit “‘month’”.

Note: This amendment corrects a misdescribed amendment of the *Dried Vine Fruits Equalization Act 1978*.

6 Schedule 1, amendment of paragraph 7(1)(b) of the *Dried Vine Fruits Equalization Act 1978*

Repeal the amendment.

Note: This amendment corrects a misdescribed amendment of the *Dried Vine Fruits Equalization Act 1978*.

7 Schedule 1, amendment of the *Dried Vine Fruits Equalization Act 1978* to omit Part III

Repeal the amendment.

Note: This amendment corrects a misdescribed amendment of the *Dried Vine Fruits Equalization Act 1978*.

8 Schedule 1, amendment of the *Dried Vine Fruits Equalization Act 1978* to repeal section 29

Repeal the amendment.

Note: This amendment corrects a misdescribed amendment of the *Dried Vine Fruits Equalization Act 1978*.

9 Schedule 1, amendment of section 30 of the *Dried Vine Fruits Equalization Act 1978*

Repeal the amendment.

Note: This amendment corrects a misdescribed amendment of the *Dried Vine Fruits Equalization Act 1978*.

[Minister's second reading speech made in—
House of Representatives on 12 December 1996
Senate on 24 February 1997]