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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (NO 2) 1999

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, the Hon Mark Vaile, MP)

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GENERAL OUTLINE

Schedule 1 – Plant Breeder's Rights Act 1994

The Bill amends the *Plant Breeders Rights Act 1994* (PBR Act) by: providing relief to applicants affected by a reduction of the allowable period for 'prior sale' during the transition from the *Plant Variety Rights Act 1987* to the current Act; improving the efficiency of the Plant Breeders Rights (PBR) office by removing the requirement to maintain multiple copies of the Register; attributing costs associated with a request for a test growing; improving public access to information; clarifying the payment of prescribed fees and correcting transcription errors.

The amendments are of a minor technical nature and are aimed at improving the efficient operation of the PBR scheme.

When the PBR Act was introduced it replaced the previous *Plant Variety Rights Act 1987* and in doing so, reduced the allowable period of prior sale for most new plant varieties from 6 years to 4 years. A number of applicants found that the change meant their eligibility to apply for rights had expired up to two years earlier. The proposed transitional arrangement will allow affected applicants the opportunity to have their applications reinstated.

Currently a person who objects to an application must bear the cost of any test growing. The proposed amendment requires the unsuccessful party in the opposition to bear the costs of the test growing and is in line with the normal practice of the court in awarding costs. It is anticipated that this change will remove the 'up-front' financial barrier which may inhibit genuine objections whilst at the same time maintaining the disincentive for frivolous and vexatious claims.

These amendments will also ensure that costs to the Commonwealth associated with any test growing conducted on behalf of another country can be recovered in full. Australia is one of approximately 43 countries who are members of the International Union for the Protection of New Varieties of Plants (UPOV). There is a spirit of cooperation amongst these countries and test growings are commonly conducted on behalf of another where facilities or expertise do not exist in the requesting country. This amendment will ensure the costs associated with conducting these test growings are recovered even if no application is lodged for the variety in Australia.

Currently the Registrar is required to maintain a copy of the Register in each state capital. These Registers are seldom if ever used so it is proposed that a single hard copy of the Register be maintained by the PBR Office and an electronic version be included on the Internet. This will provide a better service at lower cost. Copies of individual entries on the Register can still be obtained on request.

Amendments are also suggested to clarify the time, manner and circumstances in which fees, imposed under the PBR Act, are paid to the Commonwealth may be specified in the regulations. In addition, it is specified that the prescribed fee must be paid before an application for objection or revocation is accepted.

The amendments also include an extension of time for the notification of assignments from 7 days to 30 days and corrects a number of transcription errors.

Schedule 2 – Primary Industries Levies and Charges Collection Act 1991

The *Primary Industries Levies and Charges Collection Act 1991* contains measures which allow for cost effective and efficient levy and export charge collection. It provides a single Act to deal with levy and export charge collection. It allows for uniformity of collection methods and permits a consistency of approach to procedural matters.

The levies and charges collection system operates on a self-assessment basis. For better securing the payment and to reduce the collection costs to industry, levies and charges are for the most part collected by intermediaries such as first purchasers, buying agents, selling agents, exporters, exporting agents and importers and importing agents.

The effect of the amendments will be to update and enhance the levy and export charge collection techniques. Many of the amendments clarify and update customs used in rural industries; such as the use of settlement agents and solicitors in arranging property sales incorporating the sale of live-stock.

Other amendments sought relate to the association between producers and intermediaries. In many horticultural industries, there are growers who operate stands at licensed wholesale produce markets but shun lodgement of payments and returns (other than annually, as is the case for most producer retail (farm gate) sales). They deal with not only their own produce but also that of other producers. This gives them an unfair advantage over their counterparts, who act for producers generally, and must lodge returns and make payments on a monthly or quarterly basis. Changes are being made so that all will operate on an even playing field.

The powers for authorised persons are being upgraded to bring them into line with those used by inspectors under the *Export Control Act 1982.* This is consistent with administrative arrangements made within the portfolio after the 1998 general election.

Schedule 3 – Technical Amendments

Schedule 3 of the Bill provides for technical corrections to the following Acts:

Australian Horticultural Corporation Act 1987;
Farm Household Support Act 1992; and
Primary Industries and Energy Legislation Amendment Act (No 1) 1996.

Schedule 4 – Natural Resources Management (Financial Assistance) Act 1992

To amend the *Natural Resources Management (Financial Assistance) Act 1992* for the purpose of replacing the name National Landcare Advisory Committee with a new name, the Australian Landcare Council.

The National Landcare Advisory Committee was established under the *Natural Resources Management (Financial Assistance) Act 1992*, to advise the Minister for Agriculture, Fisheries and Forestry (then the Minister for Primary Industries and Energy) and the Minister for the Environment and Heritage (then the Minister for the Arts, Sport, the Environment and Territories) on natural resource management issues.

In July 1997 the then Minister for Primary Industries and Energy, the Hon John Anderson MP announced that the National Landcare Advisory Committee was to be called the Australian Landcare Council.

The structure and the functions of the body remain unchanged.

Schedule 5 – Primary Industry Councils Act 1991

The Schedule in the *Primary Industry Councils Act 1991* which provides for the establishment of a Grains Industry Council is to be repealed. The need for a forum to advise the Government on the strategic direction of the grains industry is no longer relevant following privatisation of the Australian Wheat Board and on going reforms to State grain marketing arrangements.

Schedule 6 – Rural Adjustment Act 1992

The Bill amends the *Rural Adjustment Act 1992* by changing the name of the Rural Adjustment Scheme Advisory Council (RASAC) to the National Rural Advisory Council, and changing the role and functions of the Council.

The amendments are relatively minor, aimed at redefining the roles and functions of the advisory council in the light of the wind-down of the Rural Adjustment Scheme (RAS).

Previously, the major role for the advisory council was advising the Minister on direction and funding for RAS. Currently, its primary role is to advise the Minister on exceptional circumstances applications and adjustment issues generally.

As RAS no longer provides new funding, the amendments more appropriately define the functions for the advisory council to undertake. The redefined roles and functions include advising the Minister on rural adjustment and regional issues generally, as well as exceptional circumstances applications.

Schedule 7 – Australian Wine and Brandy Corporation Act 1980

The amendments to the *Australian Wine and Brandy Corporation Act 1980* are to sections dealing with inspection powers and record keeping and clarify the definitions for wine and the origin of wine.

No new requirements have been added rather the existing requirements in relation to label law have been made clearer.

Also the amendments rectify the anomalous situation where the Australian Wine and Brandy Corporation was required to prove whether a wine was a single wine or a blend in order to successfully prosecute.

The amendments also provide for a more consistent Act with the removal of a few cross-referencing errors.

FINANCIAL IMPACT STATEMENT

As the intention of the amendments to the *Plant Breeder's Rights Act 1994* is to facilitate the operation of the Plant Breeders Rights scheme there are no foreseeable financial implications for the Commonwealth, other than savings involved when improvements are made to operations.

As the intention of the amendments to the *Primary Industries Levies and Charges Collection Act 1991* is to update and enhance the levy and export charge collection techniques there are no immediate financial implications for the Commonwealth, other than savings involved when improvements are made. As the incidence of collection of levy and charge improves, there will be a small increase in the amount required for the Commonwealth's matching contribution to research and development.

There are no financial implications for the Commonwealth from the amendments to the *Rural Adjustment Act 1992*. The current Rural Adjustment Scheme Advisory Council (RASAC) is funded through Departmental running costs, and the new National Rural Advisory Council can be accommodated within Budget arrangements.

REGULATION IMPACT STATEMENT

Australian Wine and Brandy Corporation Act 1980

Introduction

The Australian Wine and Brandy Corporation (AWBC) commenced operations on 1 July 1981, succeeding the Australian Wine Board which had operated since 1929. The chief functions of the Corporation were initially to promote and control the export of grape products from Australia; and to promote and control the sale and distribution, after export, of Australian grape products. As a consequence of Australia's Wine Agreement with the EU (signed in 1994), these functions have been expanded to include a compliance regime for exports to the EU and the determination of conditions for the registration and use of wine expressions such as geographical indications and traditional expressions.

The AWBC has the responsibility to enforce the Label Integrity Program under Part VIA of the *Australian Wine and Brandy Corporation Act 1980* (the Act). The Label Integrity Program was introduced in 1989 amendments to the Act to enforce truth in labelling in relation to claims made on wine labels. Such claims would include date of manufacture,

vintage, variety and region of origin. Wine manufacturers are required to keep records on wine including: date of receipt, quantity, supplier, vintage, variety and region of origin, and composition of blended wines. Other information required to be kept includes records of wine disposals, transfers and sales. Since 1994 LIP has also ensured compliance with treaty obligations under the EU/Australia Wine Agreement (date of effect - 1 March 1994).

In 1993 amendments to the Act were introduced to reflect new obligations to be entered into under the EU/Australia Wine Agreement. Firstly, existing Australian wine blending requirements under the Food Standards Code were updated and transferred to the Regulations under the Australian Wine and Brandy Corporation (AWBC) Act. This had little effect on wine manufacturers, amending allowable blending percentages slightly (which in some cases resulted in more flexible rules than the original blending rules). This was done to give the AWBC control of matters for which it is seen in the treaty as being responsible ("the competent body").

Secondly, the EU/Australia Wine Agreement provided for mutual protection of the Contracting Parties' wine names including geographical indications and traditional expressions. The Act included protection against false or misleading claims as to a country or region of origin of wine and included phase-out provisions on the use of certain EU names which historically had been commonly used in Australia.

The Wine Agreement with the EU allows wine shipments to be cleared in Australia by the Australian Wine and Brandy Corporation which ensures all export labels are in accordance with EU requirements. Further, the required analytical testing is able to be performed in Australia by accredited laboratories. This saves considerable time and ensures that in most cases exports reach their destinations promptly. In non-EU countries, exporters may have to commit considerable resources to ensuring wine labels meet the requirements of national regulatory bodies. The USA market is an example of this. Major wine exporters have offices in the USA to liaise with the Bureau of Alcohol, Tobacco and Firearms to gain permission for each and every wine label.

In most cases, Australian wine is subject to the same rules in the EU as wine which originates in the EU. Both parties have agreed to accept each other's differing wine manufacturing practices but also adhere to the labelling laws of the importing Party. Thus the Agreement allows for Australian wines made by certain winemaking practices which are not common in the EU to be exported to the EU and a similar standard is adopted for EU wines imported into Australia.

The Australian Wine Industry is regulated sufficiently to ensure the health and safety of consumers and to prevent false and misleading labelling. There is no desire by industry to introduce regulations which go beyond these parameters. Nevertheless, industry has a well defined strategic plan to increase Australia's share of the world wine market from just over 2% to 6.5% by 2025 and accepts that to gain market access there are some obligations that need to be undertaken. Exports have become increasingly important to the industry comprising over 35% of total Australian production.

Problem being addressed

Due to several anomalies in the legislation the Corporation is finding it extremely difficult to enforce compliance of the Act. The proposed amendments do not impose any new

compliance measures but seek to clarify provisions which have made the enforcement of the AWBC Act difficult and thus also jeopardise Australia's ability to meet its international obligations.

The proposed amendments relate to the definition of inspection powers under Section 39C; requirements to make and keep an audit trail Part VIA (covering sections 39A - 39ZL); alter Part VIA so that it is not necessary to establish for prosecution purposes whether a wine is a "single wine" or a "blend", clarify the meaning of the word "exclusively" under Section 40G (2) (Part VIB) and ensure consistent definition of "grape (wine) products" and "blend of grapes".

At present investigations are limited to "wine premises" which means investigations are unable to extend to other premises such as a vineyard, contract storage facilities, agents, blenders, wholesalers, retailers, exporters, transport storage and vehicles. Being unable to inspect vineyards and vineyard records particularly hampers any investigation into label claims made either by the grape grower and/or wine manufacturer. Without sufficient inspection powers the AWBC is unable to ensure all label claims accord with Australia's agreement on wine trade to the EU.

LIP provisions have been widely disseminated to industry and there is a very high level of compliance, as evidenced by the several hundred LIP audits conducted to date. The Australian Wine and Brandy Corporation supplies at no cost to manufacturers up to date brochures on Australian Wine Law, Australian Wine Label Law and the Label Integrity Program. Changes to compliance requirements are also advised through its newsletter, The Wine Contact.

The wine industry as a whole recognises that in the competitive international marketplace the image of Australian wine, and thus all Australian wine businesses, could be seriously affected by one unscrupulous operator. Thus it is important to maintain high standards of compliance.

Only a very small minority of wine manufacturers keep LIP records to the letter of the law, as they see it, where these records do not enable an audit trail to be followed. In the AWBC Act, the object of LIP is to achieve truthfulness in labelling. This cannot be achieved unless the records required to be kept provide an audit trail from grape crush to point of sale.

Proposed amendments will remove the need to establish whether a wine is a single wine or a blend as it is in fact irrelevant to the central issue of whether proper records have been kept. In a recent case, where no records were found to have been kept, it was impossible to prove whether the wine was a single wine or a blend, highlighting the need to clarify the Act.

Amendments to the LIP legislation do not impose any new requirements on wine manufacturers and therefore no cost is involved. Around 90% of wine is manufactured by the largest 20 companies and these use sophisticated computer systems which fully meet requirements and can provide an adequate audit trail. The majority of the remaining wine companies, over 900, also record an adequate audit trail. To meet the law, the rest only need to link the wine manufacturing records they already keep. Compliance costs are absolutely minimal. Clearly, Part VIA, Division 2, implies an unbroken audit trail by setting out records to be kept at various steps involved in the manufacture and sale of wine but does not clearly spell out that every step in the manufacturing and blending process must be recorded so that a label claim for the final blend can be justified.

Clarification of the meaning of the word “exclusively” under Section 40G (2) (Part VIB) and ensuring consistency in the legislation of the definitions of “grape (wine) products” and “blend of grapes” are to remove ambiguity and ensure the provisions are operable.

Necessity for Government Action

Under the provisions of the EU/Australia Wine Agreement (Article 3) Australia is required to take all general and specific measures to ensure treaty obligations are fulfilled. While proposed amendments to the Act arose out of the knowledge that it would be difficult to enforce compliance, a recent case further highlights the problems that will continue to be encountered unless the amendments are made. Also, there is increasing potential Australia will be unable to assure the EU that label claims are accurate. Given Australia exports $400 million worth of wine to the EU per year it is important to ensure necessary compliance especially as some matters under the EU/Australia Wine Agreement are still to be finalised. Any doubt about Australia’s ability to meet its treaty obligations could stall further negotiations creating a deal of uncertainty over retention of current market share in the EU.

Objectives

To meet Australia’s obligations under the EU/Australia Wine Agreement by giving surety to our trading partner that the treaty is adequately protected by domestic legislation and thus facilitating Australia’s wine trade with the EU.

Identification of Options

Option 1. Provide winemakers with sufficient information to meet their obligations.

As explained above winemakers are supplied with sufficient information to understand their obligations, at no additional cost. The AWBC Act already incorporates penalty provisions for non-compliance. The amendments do not seek to change or extend these penalty provisions, only to ensure that the regulator is able to carry out legislative functions to ensure compliance where the law is breached. The amendments seek to clarify requirements for compliance so that wine audit trails can clearly be followed and so that definitions are unambiguous and consistent.
The cost of non-compliance even by one business may have a significant commercial effect on the industry as a whole if provisions in the Act cannot be enforced.

Option 2. Amend the Legislation.

While this clearly addresses the problem of legislative anomalies it does not necessarily inform or educate the winemakers of their responsibilities and could engender an “us and them” mentality between the regulator and the industry. This is not desired and is also not the present circumstance where the AWBC and industry work cooperatively in formulating a low regulation, high compliance, export oriented industry.

Option 3. Amend the Legislation and Provide Information to Wine Businesses.

As explained, the AWBC already notifies the wine industry on requirements which need to be met. Notification on changes to the AWBC will be provided through established

processes: letters to all winemakers, AWBC newsletter and the existing LIP and Wine Law labels will be amended and issued widely to industry, educational bodies etc. This will not involve additional costs to industry. Clearly Option 3 is the preferred one.

Impact

The impact on the Australian wine industry will be negligible as the amendments directly relating to the Australia/EU Agreement are just that, amendments to clarify the existing legislation which complements the Agreement. The impact of these amendments on small business is the same as for the rest of the industry. Small wine businesses will not be subject to any increase in requirements for record-keeping.

While the widened inspection powers will have potential implications for all participants in the wine industry they will have no significant impact on the industry in practice as the industry as a whole seeks to meet its legislative obligations. The proposed amendments provide for the AWBC to investigate label claims made by a wholesaler, retailer or any other person already covered by the Act. The power to investigate is not extended beyond investigation of possible breaches of "label law". Nevertheless, ensuring that the legislation is effective where prosecutions are sought will maintain appropriate respect for the regulator and for Australia's wine label compliance regime. It is not expected there will be any increase in the rate of charges brought against non-compliant businesses.

The AWBC will not be increasing audit activity as a result of these legislative changes and no extra AWBC resources will be required.

Any impact on consumers or the community will be positive as a well run Label Integrity Program ensures the integrity of wine sold domestically and internationally.

Consultation

All proposed amendments are the result of extensive consultation within industry and between industry, the Australian Wine and Brandy Corporation and Government and have been agreed by the relevant parties in particular the Legislative Review Committee of the Australian Wine and Brandy Corporation and the Technical Committee of the Winemakers' Federation of Australia.

The Legislative Review Committee of the Australian Wine and Brandy Corporation (AWBC) which recommends legislative changes to the Department of Primary Industries and Energy (DPIE) is chaired by an AWBC Board member and comprises staff of the AWBC, a staff member of the Australian Wine Research Institute (AWRI), industry representatives, a staff member of the Australia and New Zealand Food Authority (ANZFA) and an officer of DPIE. The Winemakers Federation of Australia (WFA) Technical Committee which recommends legislative changes to the AWBC Legislative Review Committee comprises industry representatives, and staff members of WFA, AWRI and AWBC.

WFA is the peak winemakers' industry body comprised of two electoral colleges; the Australian Regional Winemakers' Forum, representing regional (small) winemakers and the Australian Wine and Brandy Producers' Association representing medium and large winemakers. Thus there are appropriate channels to ensure winemaking businesses are part of the process.

Conclusion and Recommended Option

The recommended option is Option 3 to amend legislation so that compliance obligations are met including international treaty obligations under the EU/Australia Wine Agreement and make certain that sufficient information is circulated to wine businesses, educational bodies etc. ensuring compliance requirements are well known and understood.

Implementation and Review

The AWBC will not require further staff or procedures to implement the proposed amendments.

Industry has been closely informed of intended changes. The amendments to the Act have been referred to the AWBC Legislative Review Committee and the WFA Technical Committee for clearance, to ensure they are operable and satisfactory to the industry. Winemakers will again be notified by WFA and the AWBC when the legislation has passed to ensure they are fully aware of their compliance responsibilities.

There are no sunset clauses to be built into these amendments as the functions of the AWBC are ongoing, however, the existing committee processes will ensure that the legislation remains relevant and sufficient to maintain a viable wine industry without imposing burdensome regulation.

Further, under the AWBC Act there is an annual meeting of industry at which winemaking businesses can vote to recommend changes to industry policy and legislation.

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Act to be called the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No 2) 1999*.

Clause 2 - Commencement

This clause provides for the Act to commence on Royal Assent other than the items listed below.

Schedule 2 will commence on the first day of the first month after the Act receives Royal Assent.

Items 2 and 3 of Schedule 3 commence on 28 June 1996. This is the day that the *Primary Industries and Energy Legislation Amendment Act (No 1) 1996* commenced which these technical amendments are correcting.

Schedule 4 is taken to have commenced on 1 April 1999. The key changes reflect the cessation of the Rural Adjustment Scheme. On 1 April 1999, a new Council was appointed, with their period of appointment ending on 31 December 2001. It is the intention that this new Council concentrate on the new role of the Advisory Council and not continue with its currently legislated role in reporting on the outgoing Rural Adjustment Scheme. Therefore, it is important that the changes to the Act be backdated so that the new Council can concentrate on this new role.

Clause 3 - Schedule(s)

This clause provides that the Acts referred to in the Schedules are amended as set out in the Schedules and the other items in the Schedules have effect according to their terms.

SCHEDULE 1 – PLANT BREEDER'S RIGHTS ACT 1994

Item 1: Subsection 21(1)

This item extends the notification of change in assignment by the applicant from 7 days to within 30 days.

Item 2: Subsection 21(3)

This item extends the time in which the Registrar must notify all parties of a change in the assignment of rights from 7 days to within 30 days.

Item 3: After subsection 35(2)

This item determines that before an objection can be accepted by the Secretary it must be accompanied by the prescribed fee.

Item 4: Paragraph 37(5)(c)

This item determines who bears the cost of a test growing in dealing with a request for revocation of a PBR. If revocation action is successful, the grantee bears the cost otherwise costs are borne by the objector.

Item 5: After subsection 37(5)

This item ensures that the full costs of undertaking a test growing of a variety on behalf of another UPOV Member State are met by that country.

Item 6: Subsection 43(6)

This item corrects a transcription error. It clarifies that a variety is ineligible for protection if it has been sold in Australia for one year or more or 4 to 6 years overseas, depending on the species.

Item 7: Transitional provision

This item provides opportunity for specific applications to be reinstated which were made ineligible due to the reduction of the allowable prior sale period from 6 to 4 years when the *Plant Breeder's Rights Act 1994* was introduced.

Item 8: Subsection 50(5)

This item corrects an error of placement in the definition of 'initial variety'.

Item 9: After subsection 50(9)

This item specifies that before an application for revocation of a grant or an application for revocation of a declaration that a plant variety is essentially derived from another variety is accepted by the Secretary it must be accompanied by the prescribed fee.

Item 10: Subsection 61(2)

This item removes the requirement to maintain a copy of the Register of Plant Varieties in each State and Territory. A replacement provision allows the use of alternative media in disseminating information contained in the Register.

Item 11: Subparagraph 80(2)(a)(iv)

This item is a consequential change resulting from item 12.

Item 12: At the end of paragraph 80(2)(a)

This item clarifies that, if not already specified in the Act, the time, circumstances and manner in which prescribed fees are paid may be specified in the regulations.

SCHEDULE 2 – PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION ACT 1991

Item 1: Subsection 4(1) (definition of *buying agent*)

This item amends the definition of buying agent to cover persons (*including settlement agents or solicitors*) who in the course of operating a business buy products on behalf of first purchasers or processors. Settlement agents and solicitors often act as agents for producers in transactions involving the purchase or sale of property that also include live-stock ("walk-in-walk-out" sales). Where they arrange the purchase of property, they are to be regarded as buying agents. [See also item 9: Subsection 4(1) (definition of *selling agent*)].

Item 2: Subsection 4(1) (paragraphs (b) and (c) of the definition of *examinable documents*)

This item amends the definition of examinable documents to ensure that where persons are involved in the buying and selling of collection products or prescribed goods and services relating to collection products, an authorised person will be able to access those records and documents relating to *all* transactions.

Item 3*:* Subsection 4(1) (definition of *leviable weight*)

This item repeals the definition of leviable weight. As all grains' levies are now struck on a value basis, the definition is redundant.

Item 4: Subsection 4(1) (at the end of paragraphs (da), (fa), (fb), (fc) and (ga) of the definition of *producer)*

This item corrects minor typographical omissions by adding **"or"** at the end of each of the paragraphs.

Item 5: Subsection 4(1) (subparagraph (h)(ii) of the definition of *producer*)

This item, and the next, amends the definition of producer in relation to fresh grapes, dried grapes or grape juice and any other prescribed products. The changes update the attributes mirrored in changes to the administration of the Wine Grapes Levy in 1994/95 and shown in subparagraph (ah) of the definition of *producer.*

Item 6: Subsection 4(1) (subparagraph (h)(iii) of the definition of producer)

This item, and the previous one, amends the definition of producer in relation to fresh grapes, dried grapes or grape juice.

The effect of the amendments is to redefine:

a) the person, who is *both* the grower of the grapes *and* the proprietor of the place where the grapes are processed, as the producer, or
b) in any other case, confirm that it is the owner of the grapes immediately before delivery to the processing establishment who is the producer.

Item 7: Subsection 4(1) (at the end of paragraphs (hb) and (ha) of the definition of *producer*)

This item corrects minor typographical omissions by adding **"or"** at the end of each paragraph.

Item 8: Subsection 4(1) (definition of *proprietor*)

This item redefines who is meant to be the proprietor of an abattoir or another processing establishment.

Anomalies had been highlighted as to who is *legally* the proprietor or operator of a processing establishment, particularly an abattoir. Under laws of most States and Territories, it is necessary for a proprietor to have a licence to carry out the activities of an abattoir. Thus, the person who holds this kind of licence will, for levy collection purposes, be deemed to be the proprietor. In other cases where such a licence is not mandatory, the proprietor is being defined as the person carrying on the business of operating the processing establishment. It is **not** intended to mean just the person in charge, because this could merely be the head slaughterer or office manager, but it is intended that the *"proprietor"* be the person who has overall legal responsibility for the operations of the establishment (such as an owner or lessee). In the case of an abattoir, the proprietor is taken to be the person who holds the necessary licence to conduct the activities at an abattoir, or where no licence is needed, the proprietor is the person who is carrying on the business of operating the establishment. For other processing establishments, such as canneries, juicing plants or wineries, the proprietor is taken to be the person who is carrying on the business of operating the establishment.

Item 9: Subsection 4(1) (definition of *selling agent*)

This item amends the definition of selling agent to clarify the intention that persons (*including settlement agents or solicitors*) who in the course of operating a business sell products, on behalf of first purchasers or processors, are to be regarded as selling agents. Settlement agents and solicitors often act as buying or selling agents for persons in transactions involving the sale or purchase of property that also include live-stock (these are sometimes known as "walk-in-walk-out" sales). Where they arrange the sale of property for a producer, they are to be regarded as selling agents. [See also item 1: re subsection 4(1) (definition of *buying agent*)].

Item 10: Paragraphs 7(1)(d), (2)(c), (3)(a) and (3A)(a)

The item amends each of the listed paragraphs to clarify the role of the intermediary in relation to payments of levy, charge and related penalties. The intermediary is liable to pay, *on behalf of the producer*, amounts of levy, charge and related late payment penalties. Despite these changes, subsection 7(6) continues to operate so that the intermediary will not have to pay anything under section 7 if the producer has already paid the amount of levy, charge or related late payment penalties. Nevertheless, this and the next item place the emphasis onto the intermediary to collect moneys out of the producers' proceeds in order that the intermediary can pay amounts of levy, charge or related late payment penalties on the producers' behalf. There is no intention that both the intermediary and the producer pay the same occurrence of levy, charge or related late payment penalty.

Item 11: After subsection 7(3A)

This item inserts a new subsection 7(3B). The intention is to ensure that where an intermediary would be liable to pay an amount in relation to levy or charge, on behalf of the producer, then any arrangement (express or implied) that would change this obligation is void.

The practice of making arrangements to thwart this purpose or by pressuring producers to pay their own levy (particularly if that intermediary or person controls the gross proceeds of the dealings) merely to avoid a duty to assist their industry maximise levy collections is unsatisfactory. This and the previous item put the emphasis onto the intermediary to collect moneys out of the producers' proceeds so the intermediary can pay amounts in relation to levy, charge or late payment penalties on the producers' behalf.

As an intermediary often deals with many producers, it is reasonable to expect, and to minimise the number of collection points, that the intermediary ought to deduct any levy payable from the gross proceeds of the dealing before paying the balance of them to the producer. The intermediary would then be able to aggregate all such deductions and pay the moneys deducted to the collecting authority (where there is an agreement under section10), or the collection organisation (where there is an agreement under section11), or to direct to the Commonwealth, in accordance with the provisions of subsection 7(4).

Item 12: Subsection 8(1)

The item clarifies the provision. It makes unambiguous that the reference is to the amount of levy or charge that the intermediary is liable to pay on behalf of the producer. The subsection allows an intermediary to deduct from proceeds payable to the producer, an amount necessary to pay any levy or charge on behalf of the producer.

Item 13: Subsection 8(2)

The item replaces the existing subsection 8(2). It is intended to put beyond doubt that the producer is discharged from further liability to pay levy or charge to the extent of the amount that the intermediary has deducted moneys from the producers' proceeds.

In addition, there is a new requirement for the intermediary to provide acknowledgment, to the producer, of the amount deducted and pay it on behalf of the producer. It is anticipated that most intermediaries will either issue a formal receipt or provide a suitable record on other documents, such as sale invoices or payment advices.

This subsection is one of the ancillary provisions in relation to intermediaries and should be read in conjunction with section 7.

Item 14: Paragraph 15(3)(a)

This item and the next correct previous drafting errors in subparagraph 15(3)(a). In the original drafting the terms "collection products" and "prescribed goods" were inadvertently substituted by the hybrid expression "collection goods".

The paragraph outlines when penalty for late payment of levy is due with respect to purchase of prescribed goods or services and collection products.

Item 15: Paragraph 15(3)(a)

This item and the previous item correct previous drafting errors. In the original drafting the terms "prescribed goods" and "collection products" were inadvertently substituted by the hybrid expression "collection goods".

Item 16: Paragraph 15(4)(a)

This item corrects a previous drafting error in subparagraph 15(4)(a). In the original, drafting the terms "prescribed goods" and "collection products" were inadvertently substituted by the hybrid expression "collection goods".

The heading to section 15 is also amended to reflect the true intention of the section. The section heading previously referred to "**penalty for non-payment**", the fairer description is "**penalty for late payment**". The penalty described in the section is applied to late payment of levies and charges rather than to non-payment of those amounts. It accrues at the rate of 2% per month compounding on outstanding balances so long as any primary levy or charge debt remains.

Item 17: Paragraph 16(2)

This item changes the upper limit of penalty that an authorised person may remit from $2,000 to $5,000. The limit relates to each instance of penalty incurred. This change reflects the change of many levies and changes from being struck on a flat by weight (*avoirdupois*) or unit rate basis to an *ad valorem* (by value) rate. Consequently the number of routine cases in the $2,000 to $5,000 bracket has increased. To achieve proper administrative efficiencies the

increase in the upper limit that an authorised person may remit from $2,000 to $5,000 is appropriate.

Item 18: Subsection 19(1)

This item amends the subsection to include the "person in charge" as being able to give consent for an authorised person to enter premises to carry out an inspection of examinable documents or other matters under the Act.

Item 19: Subsection 19(2)(b)

This item amends the subsection to ensure that an authorised person can physically examine and inspect examinable documents.

Item 20: After section 19

- ***New section 19A*: Offence of obstructing an authorised officer acting under a warrant**

This item makes it an offence for a person to obstruct or hinder an authorised person carrying out his/her duties if the authorised person has entered using a warrant.

The maximum penalty, on conviction, is 30 penalty units ($3,300). As at 1 June 1999, one penalty unit equals $110. The value of a penalty unit is prescribed by subsection 4AA(1) of the ***Crimes Act 1914*** (Clth.). Subsection 4AB(1) of the ***Crimes Act 1914*** (Clth.) also converts pecuniary penalties expressed in dollar amounts to penalty units.

- ***New section 19B*: Persons to assist authorised person acting under a warrant**

This item provides a new subsection specifying that the occupier or person in charge of any premises must provide reasonable assistance to an authorised person carrying out his/her duties in accordance with a warrant issued under section 20. For example, an authorised person enters premises under a warrant and it becomes necessary to examine records stored in a computer or other electronic device, it would be reasonable to expect that the occupier or person in charge should assist the authorised person with access to those documents.

The maximum penalty for failing to render assistance, on conviction, is 30 penalty units.

Item 21: Subsection 22(5)

This item adds to the subsection by obliging an authorised person to present their identity card to the occupier **or** the person in charge before entering premises to carry out inspections or audits.

Item 22: Subsection 24(1) (penalty)

This item replaces the existing penalty, expressed in dollars, with one expressed in penalty units. The penalty of 60 penalty units equates to $6,600 as at June 1999. The value of a penalty unit is prescribed by subsection 4AA(1) of the ***Crimes Act 1914*** (Clth.). Subsection

4AB(1) of the ***Crimes Act 1914*** (Clth.) also converts pecuniary penalties expressed in dollar amounts to penalty units

Item 23: At the end of section 24

This item provides that where a person fails to provide a return or information, under subsection 24(1), a Court may direct that the person to provide the return or information and within the time specified.

Item 24: After paragraph 30(2)(b)

This item inserts a provision into the section to clarify that the regulation making powers include the power to require persons who produce, or are involved in the production of, prescribed goods and services to make and keep proper accounts and records.

Item 25: After paragraph 30(2)(c)

This item inserts a provision into the section to clarify that the regulation making powers include the power to require persons who produce, or are involved in the production of, prescribed goods and services to give returns or information for the purposes of the Act.

Item 26: Paragraph 30(2)(d)

This item replaces the existing wording to clarify that the provision is intended to allow offences to be established under the regulations for failure to comply with the requirements of the regulations. The penalty, on conviction, is a fine not exceeding 10 penalty units.

Item 27: Saving Provision

Despite the repeal and substitution of paragraph 30(2)(d), this item allows for the continuation of offences as if they occurred under the amended provision and proceedings, already in progress, to continue unaffected by the amendments.

SCHEDULE 3 – TECHNICAL AMENDMENTS

Australian Horticultural Corporation Act 1987
Farm Household Support Act 1992
Primary Industries and Energy Legislation Amendment Act (No 1) 1996

These items provide for technical amendments to correct errors in the Acts.

SCHEDULE 4 – NATURAL RESOURCES MANAGEMENT (FINANCIAL ASSISTANCE) ACT 1992

Part 1 – Change of name of Committee

Item 1: Title

This item changes the name of the National Landcare Advisory Committee to the Australian Landcare Council.

Item 2: Subsection 4(1) (definition of Committee)

This item repeals the definition of Committee as it is to be replaced with Council to mean the Australian Landcare Council.

Item 3: Subsection 4(1)

This item inserts Council which means the Australian Landcare Council established by section 13.

Item 4: Part 4 (heading)

This item repeals the heading National Landcare Advisory Committee and substitutes it with Australian Landcare Council.

Item 5: Division 1 of Part 4 (heading)

This item omits “Committee” and is substituted with “Council”.

Item 6: Subsection 13(1)

This item omits “a National Landcare Advisory Committee” and is substituted with “an Australian Landcare Council”. The heading to section 13 is replaced by the heading “Australian Landcare Council”.

Item 7: Division 2 of Part 4 (heading)

This item omits “Committee” and is substituted with “Council”.

Item 8: Subsection 27(3)

This item is repealed because the reference, ‘the first report of the Committee’, becomes redundant. The Council reports continue unaffected by the name change.

Part 2 – Amendments of references to “Committee”

Item 9: Multiple amendments

These items under Part 2 change the name of the “Committee” to the “Council”, as specified below.

Item 10: Subsection 4(1) (definition of *Chairperson*)
Item 11: Subsection 4(1) (definition of *member*)
Item 12: Paragraph 11(5)(b)
Item 13: Subsection 13(2)
Item 14: Subsection 14(1)
Item 15: Subsection 14(7)
Item 16: Subsection 15(1)
Item 17: Subsection 19(1)
Item 18: Paragraph 20(3)(a)
Item 19: Subsection 20(4)
Item 20: Subsection 23(1)
Item 21: Subsection 23(2)
Item 22: Subsection 23(3)
Item 23: Subsection 27(1)

These items change the name of "Committee" to "Council".

Part 3 – Transitional

Item 24: Transitional – continuity of membership etc. not effected by amendments

This item means that the continuity of membership etc. is not affected by amendments. That is, the amendments made by this Schedule do not affect:

> the continuity of the existence of the newly renamed body, the Australian Landcare Council; or
> the continuing validity of the appointment of the members, the Chairperson, and any deputy members, of the Council.

SCHEDULE 5 – PRIMARY INDUSTRY COUNCILS ACT 1991

Item 1: Part 1 of the Schedule

This item repeals Part 1 of the Schedule to the Act which provided for the establishment of a Grains Industry Council. With the repeal of this Part there will be no industry councils established by this Act.

SCHEDULE 6 – RURAL ADJUSTMENT ACT 1992

Item 1: Section 4 (definition of *Council*)

The definition of "Council" is being changed from the Rural Adjustment Scheme Advisory Council (RASAC) to the 'National Rural Advisory Council'. This definition change is consistent with the dissolution of the Rural Adjustment Scheme (RAS) and will reflect the broader role that the Council will undertake in advising the Minister on adjustment issues.

Item 2: Part 2 (heading)
Item 3: Section 5

Therefore, the references to the Council in the heading to Part 2 and in section 5 of the Act need to be changed to read "National Rural Advisory Council".

Item 4: Subsection 6(4)

Omitting the word "functions" and substituting the word "function" is consistent with drafting practice whereby the singular is used rather than the plural.

Item 5: Section 8

As RAS will no longer be providing any new funding, the whole of Section 8 has been deleted and replaced with more appropriate functions for the National Rural Advisory Council to undertake.

This new Council will provide the Minister with such advice and any other information as the Minister requests about the following matters:

- rural adjustment generally;
- regional issues, particularly matters regarding entering into agreements with States relating to rural adjustment;
- matters relating to declarations of exceptional circumstances;
- training issues, and in particular the Farm Business Improvement Program; and
- any other matter that the Minister requests advice or information about.

Item 6: Section 9

Omitting the word "functions" and substituting the word "function" is consistent with drafting practice whereby the singular is used rather than the plural.

Item 7: Transitional – continuity of Council not affected by amendments

This item ensures that the amendments do not affect the continuity of the existence and the membership of the body that is renamed as the National Rural Advisory Council.

SCHEDULE 7 – AUSTRALIAN WINE AND BRANDY CORPORATION ACT 1980

Item 1: Subsection 4(1) (at the end of the definition of *wine*)

This item, together with item 4, provides a single definition for wine in the Act.

Item 2: Paragraph 5D(a)

The origin of wine is accepted by the Australian wine industry to be the region from where the grapes are sourced not the place where the wine is made. This item clarifies this principle.

Item 3: Section 39C (at the end of the definition of *examinable document*)

Part VIA of the Act, which includes Section 39C, provides for the Label Integrity Program. Item 3 adds to the definition of 'examinable document' to allow inspection of other relevant documents.

Item 4: Section 39C (definition of *wine*)

The definition for wine that applies only to Part VIA of the Act is deleted by this item.

Item 5: Section 39C (definition of *wine premises*)

Item 5 repeals the existing definition for wine premises and adds a new definition to allow inspection of relevant records which may be kept at a location away from a winery building.

Item 6: Paragraph 39G(2)(c)
Item 7: Paragraph 39H(2)(c)
Item 8: Paragraph 39J(2)(c)
Item 9: Paragraph 39K(2)(c)
Item 10: Paragraph 39M(2)(e)
Item 11: Paragraph 39N(3)(c)
Item 12: Paragraph 39P(2)(c)
Item 13: Paragraph 39Q(2)(c)
Item 14: Paragraph 39R(3)(e)

The addition of the words "and other details" to these paragraphs, in conjunction with changes to Section 39W, is to ensure adequate records are made and kept to ensure an unbroken audit trail to verify label claims.

Item 15: At the end of section 39W

The additional words are to ensure an unbroken audit trail is made to enable the verification of label claims.

Item 16: Application of amendments

This item makes clear that amendments to Items 6-15 will not apply retrospectively.

Item 17: At the end of section 39ZAAA

Item 17 clarifies the intention of the Act is not to require proof as to whether a wine is a blend or a single wine but rather whether adequate records have been kept about the wine to enable label verification.

Item 18: Section 39ZK

This item corrects a cross-referencing error.

Item 19: Subsection 39ZL(2)

This item corrects a cross-referencing error.

Item 20: At the end of Part VIB

Item 20 adds Section 40ZF which clarifies that inspection powers under Part VIA and Part VIB are the same.

Item 21: At the end of section 44

Inspection powers under Part VIA and Part VIB also apply to the export of grape products. The addition to Section 44 clarifies this.