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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**INDUSTRY, TOURISM AND RESOURCES LEGISLATION  
AMENDMENT BILL 2003**

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Tourism and Resources,  
the Honourable Ian Macfarlane MP)

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

## INDUSTRY, TOURISM AND RESOURCES LEGISLATION AMENDMENT BILL 2003

### OUTLINE

The Industry, Tourism and Resources Legislation Amendment Bill 2003 (the Bill) makes a series of minor amendments to:

- the *ACIS Administration Act 1999*;
- the *Bounty (Computers) Act 1984*;
- the *Bounty (Ships) Act 1989*;
- the *Petroleum (Submerged Lands) Legislation Amendment Act 2001*;
- the *Pooled Development Funds Act 1992*;
- the *States Grants (Petroleum Products) Act 1965*; and
- the *Trade Practices Act 1974*.

The Bill also repeals:

- the *Aluminium Industry Act 1960*; and
- the *Management and Investment Companies Act 1983*.

#### ***ACIS Administration Act 1999 Amendments***

The Bill makes a minor change to the *ACIS Administration Act 1999* (the ACIS Act) that will clarify the purposes for which duty credits earned under the Automotive Competitiveness and Investment Scheme (ACIS) can be used. Participants in the scheme earn incentives for eligible production and investment in plant and equipment and research and development. Incentives are paid in the form of ACIS duty credits which can either be used to offset customs duty liability on eligible imports, or sold or transferred to another person. In the early months of the scheme's operation, it became clear that, contrary to intentions, the ACIS Act did not give clear authority for duty credits to be used to gain refunds of customs duty previously paid on eligible goods. This Bill makes specific provision in the ACIS Act for this use of ACIS duty credits.

#### ***Aluminium Industry Act 1960 Repeal***

The Bill repeals the *Aluminium Industry Act 1960*. The aluminium smelter at Bell Bay in Tasmania was established in the 1950s as a joint venture between the Commonwealth and Tasmanian Governments. The *Aluminium Industry Act 1960* subsequently provided the legislative approval for the Commonwealth's interest in the smelter to be sold to a subsidiary of Comalco Limited. The *Aluminium Industry Act 1960* served its purpose well, but is now redundant. There are no consequential impacts and both the Tasmanian Government and the company involved concur with the proposed repeal.

***Bounty (Computers) Act 1984 Amendments***

The definition of “operating software” in subsection 3(1) of the *Bounty (Computers) Act 1984* refers to “the Standards Association of Australia”. The Bill makes a technical correction to substitute this reference with “Standards Australia International Limited”. This change reflects the incorporation of the organisation as an Australian company in 1999.

***Bounty (Ships) Act 1989***

The Bill makes a series of minor changes to the *Bounty (Ships) Act 1989* to enable progress payments on eligible research and development bounty, or R&D bounty. This will establish consistency between payments of both production and R&D bounties. The amendments to the Act will enable progress payments against R&D expenditure. The Bill also validates progress payments made prior to the introduction of these provisions. Currently, the Act allows for progress payments on production bounty, but does not allow progress payments for R&D bounty.

***Management and Investment Companies Act 1983 Repeal***

The Bill repeals the *Management and Investment Companies Act 1983* (the MIC Act). The MIC Act ceased to operate in 1991 (as a result of the conclusion of the MIC Program), and the related claw-back provisions became inactive in 1995-96. The repeal of the MIC Act is in keeping with the Government’s commitment to remove unnecessary and/or redundant legislation. The repeal will have no impact on business.

***Petroleum (Submerged Lands) Legislation Amendment Act 2001 Amendments***

The Bill makes a technical amendment to the *Petroleum (Submerged Lands) Legislation Amendment Act 2001* to correct a misdescription of an amendment to the principal Act, the *Petroleum (Submerged Lands) Act 1967*. Text that was to be replaced in subsection 85(1) of the principal Act was misquoted in Item 17 of Schedule 1 of the amending Act, omitting the word “to” before the word “make”. This amendment corrects that misquote.

***Pooled Development Funds Act 1992 Amendments***

The Bill amends the *Pooled Development Funds Act 1992* (the PDF Act) to correct an error in the legislation that resulted following an amendment to the *Superannuation Industry (Supervision) Act 1993* (the SI(S) Act), which repealed, effective from 8 October 1999, the definition of an “excluded superannuation fund” in the SI(S) Act. As a consequence of that amendment, the reference in section 4A of the PDF Act to an “excluded superannuation fund” within the meaning of the SI(S) Act became inoperative. This effectively removed from the PDF Act the definition of a “widely-held complying superannuation fund” for the purposes of section 31 of the PDF Act, which relates to limits on shareholdings in a Pooled Development Fund.

***States Grants (Petroleum Products) Act 1965 Amendments***

The *States Grants (Petroleum Products) Act 1965* contains a number of obsolete references to the Chief Executive Officer of Customs, which the Bill updates to refer to the Secretary of the Department. Administrative responsibility for the *States Grants (Petroleum Products) Act 1965*, which implements the Petroleum Products Freight Subsidy Scheme, was transferred from the Australian Customs Service to the forerunner of the Department of Industry, Tourism and Resources on 15 April 1999.

***Trade Practices Act 1974 Amendments***

On 13 August 1998, the *Trade Practices Amendment (Country of Origin Representations) Act 1998* came into effect. That legislation clarified the permissible use under the *Trade Practices Act 1974* of the most common country of origin descriptors, including “made in” and “product of”. The proposed amendments in the Bill are required to ensure that the country of origin defences available under the *Trade Practices Act 1974* are extended to another existing provision prohibiting false or misleading representations under which a country of origin action might be taken.

**FINANCIAL IMPACT STATEMENT**

The Bill will not have any financial impact on Commonwealth revenue or expenditure.

## INDUSTRY, TOURISM AND RESOURCES LEGISLATION AMENDMENT BILL 2003

### NOTES ON CLAUSES

#### **Clause 1      Short Title**

1.            Clause 1 provides for the Act to be cited as the *Industry, Tourism and Resources Legislation Amendment Act 2003*.

#### **Clause 2      Commencement**

2.            Clause 2 provides for the commencement of the Act. Subclause 2(1) provides that each provision of the Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

#### **Clause 3      Schedule(s)**

3.            Clause 3 provides for the Schedule to the Act. It provides that the Acts specified in the Schedule to the Bill are amended or repealed as set out in that Schedule.

#### **Schedule 1    Miscellaneous amendments**

##### ***ACIS Administration Act 1999***

#### **Item 1        Subsection 4(1)**

4.            This item amends the overview of the *ACIS Administration Act 1999* (the ACIS Act), providing for duty credits to be used either to extinguish customs duty payable on eligible imports, or to gain a refund of customs duty already paid on eligible imports.

#### **Item 2        Subsection 4(1)**

5.            This item provides a reference in the overview of the ACIS Act to the new section 75A, which provides that duty credits may be used to gain a refund of duty previously paid.

#### **Item 3        After paragraph 4(10)(b)**

6.            This item adds a further use to which duty credits can be put, i.e. to obtain a refund of duty previously paid on eligible imports.

**Item 4 Subsection 6(1) (definition of *eligible imports*)**

7. This item expands the definition of eligible imports against which duty credits can be applied to include not just those goods which *have been* imported under column 2 of item 41E of Schedule 4 to the Tariff, but also those goods which *are eligible* to be imported under this tariff heading. This is needed because duty previously paid on eligible imports for which a refund is now being sought would not have been imported under column 2 of item 41E, even though they may have been eligible.

**Item 5 After paragraph 66(a)**

8. This item requires the Secretary to amend the ACIS ledger when a person uses duty credits to receive a refund of duty already paid on eligible imports.

**Item 6 Section 74**

9. This item repeals the overview to Part 7 and inserts a new overview which includes reference to the new Division 2A, providing that duty credit may be applied against previously paid duty.

**Item 7 After Division 2 of Part 7**

10. This item inserts a new Division 2A which provides for duty credits to be applied against previously paid duty. It also creates a new section 75A which sets out the circumstances in which duty credit may be used in this way, and provides for the Regulations to specify further the manner in which a request for refund should be made.

**Item 8 After paragraph 76(1)(c)**

11. In the circumstance where it may be necessary to limit the uses to which certain modulated duty credits earned on eligible investment may be put, this item provides the Minister with a further option for how such a limit might be provided i.e. by allowing that duty credits may only be used against an earlier payment of duty on the importation of eligible goods.

**Item 9 After paragraph 77(1)(c)**

12. In the circumstance where it may be necessary to limit the uses to which modulated duty credits earned on eligible production may be put, this item provides the Minister with a further option for how such a limit might be provided, i.e. by allowing that duty credits may only be used against an earlier payment of duty on the importation of eligible goods.

**Item 10 At the end of subsection 115(2)**

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13. This item includes, in the powers the Secretary may delegate to the Chief Executive Officer of the Australian Customs Service, the power to amend the ledger when duty credit is applied against previously paid duty.

***Aluminium Industry Act 1960***

**Item 11 The whole of the Act**

14. This item repeals the *Aluminium Industry Act 1960*.

***Bounty (Computers) Act 1984***

**Item 12 Subsection 3(1) (definition of *operating software*)**

15. This item replaces an out of date reference to “the Standards Association of Australia” with the correct reference, “Standards Australia International Limited”.

***Bounty (Ships) Act 1989***

**Item 12A Subsection 12(1)**

**Item 12B Subsection 12(2)**

**Item 12C Subsection 12(2)**

**Item 12D Subsection 12(3)**

**Item 12E Subsection 12(3)**

16. These amendments to subsection 12(1), subsection 12(2) and subsection 12(3) of the *Bounty (Ships) Act 1989* provide for progress payments of the R&D expenditure bounty. The amendments also provide for repayment to the Commonwealth in the event of overpayment. This will bring consistency in the treatment of payments between production and R&D bounties.

**Item 12F Treatment of past payments purporting to be advances on account of eligible research and development expenditure bounty**

17. This item puts shipbuilders in the same position they would have been if past R&D expenditure progress payments had been made validly.

***Management and Investment Companies Act 1983***

**Item 13 The whole of the Act**

18. This item repeals the *Management and Investment Companies Act 1983*.

***Petroleum (Submerged Lands) Legislation Amendment Act 2001***

**Item 14 Item 17 of Schedule 1**

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19. Before the amendments made by the *Petroleum (Submerged Lands) Legislation Amendment Act 2001*, subsection 85(1) of the *Petroleum (Submerged Lands) Act 1967* read as follows:

“The Designated Authority may require any person to produce to him or to make available for inspection by him or by or on behalf of the Joint Authority any documents in the possession or under the control of that person and relating to a transfer or dealing in relation to which approval is sought under this Division.”

20. The amendment made by item 17 of the *Petroleum (Submerged Lands) Legislation Amendment Act 2001* was to delete all words from the first mention of “him” to “Authority” inclusive and substitute certain other words. However, in quoting the words to be deleted, item 17 omitted to mention the word “to” before “make”. This item corrects the quotation of the words that were deleted.

### ***Pooled Development Funds Act 1992***

#### **Item 15 Paragraph 4A(1)(a)**

21. This item amends the definition of a “widely-held complying superannuation fund” in paragraph 4A(1)(a) of the *Pooled Development Funds Act 1992* (the PDF Act). This definition is particularly relevant to the operation of section 31 of the PDF Act, which relates to limits on shareholding in a Pooled Development Fund. The amendment retains the intent that a “widely-held complying superannuation fund” be defined as a fund comprising at least 5 members. The amendment is not retrospective.

#### **Item 16 Certain shareholdings in PDFs do not contravene section 31**

22. This item deals with possible contraventions of section 31 of the PDF Act during the period commencing on 8 October 1999 until the date this Act receives the Royal Assent. Subject to some limited exceptions, this item provides that investments that may have been made over that period that would otherwise have contravened section 31 of the PDF Act are not to be taken into account when applying section 31.

### ***States Grants (Petroleum Products) Act 1965***

- Item 17 Section 1A**
- Item 18 Subsection 5(2)**
- Item 19 Paragraph 5(3)(a)**
- Item 20 Paragraph 5(3A)(a)**
- Item 21 Paragraph 5(3A)(b)**
- Item 22 Section 7**

23. These amendments to section 1A, subsection 5(2), paragraph 5(3)(a), paragraph 5(3A)(a), paragraph 5(3A)(b) and section 7 of the *States Grants (Petroleum Products) Act 1965* have the same wording and same effect. That is, they substitute a



reference to the Chief Executive Officer of Customs with a reference to the Secretary of the Department. This reflects the transfer of administrative responsibility for the Petroleum Products Freight Subsidy Scheme (the Scheme) from the Australian Customs Service to the forerunner of the Department of Industry, Tourism and Resources. The amendments allow the Secretary of the Department administering the Scheme to carry out the functions necessary to transfer funds to States and Territories to enable them to make payments to eligible fuel distributors.

**Item 23 Reference in scheme to Chief Executive Officer of Customs**

24. This item ensures that any references in the Scheme formulated under section 4 to the Chief Executive Officer of Customs would be a reference to the Secretary of the relevant Department. This means that the administration of the Scheme will be consistent with the changes to the Act which underpins the Scheme, and reflects the transfer of responsibility for administration of the Scheme from the Australian Customs Service.

**Item 24 Transitional provision - things previously done by the Chief Executive Officer of Customs**

25. This is a transitional provision to ensure that any actions taken by the Chief Executive Officer of Customs before the amendments come into force are taken to be done by the Secretary of the Department.

***Trade Practices Act 1974***

**Item 25 Section 65AA**

26. This item modifies the overview of the country of origin defences and extends their scope to include false and misleading country of origin representations under section 53(a) of the *Trade Practices Act 1974* (the TPA).

**Item 26 Sections 65AB and 65AC**

27. This item extends the general test for country of origin representations and the test for representations that goods are product of/produce of a country to include false and misleading country of origin representations under section 53(a) of the TPA.

**Item 27 Subsection 65AD(1)**

28. This item extends the description of the permissible use of a logo as a representation of country of origin to include false and misleading country of origin representations under section 53(a) of the TPA.

**Item 28 Paragraph 65AN(1)(a)**

29. This item extends the existing provisions on the evidential burden required if proceedings are brought against a person for an action on country of origin

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representation to include false and misleading country of origin representations under section 53(a) of the TPA.

**Item 29      Application of amendments**

30.            In the event of proceedings being brought under any additional paragraphs while the Bill is in Parliament, the above amendments are to apply only to representations made after those items commence.

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