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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT
BILL (No. 1) 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joe Ludwig)

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 1) 2012

GENERAL OUTLINE

The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2012 will make minor amendments to a range of portfolio legislation.

The Bill will amend eight portfolio Acts to improve the operation of existing legislation and make technical amendments. Consistent with the government's policy of improving the effectiveness and efficiency of regulation, reducing red tape and creating clearer Commonwealth laws, the proposed amendments will reduce complexity and unnecessary regulation, provide consistency, amend outdated or unclear provisions and reduce the likelihood of reader confusion. The Bill will also repeal one redundant Act in its entirety.

The Department of Agriculture, Fisheries and Forestry consulted relevant Australian Government departments and agencies on the proposed amendments. The department also consulted relevant industry stakeholders on the proposed amendments to the wine legislation.

The proposed amendments involve minor policy changes to four portfolio Acts. These are the *Wine Australia Corporation Act 1980*, the *Fisheries Management Act 1991*, the *Fisheries Administration Act 1991* and the *Primary Industries Levies and Charges Collection Act 1991*.

Wine legislation amendments

Schedules 1 and 2 of the Bill will make two amendments to the *Wine Australia Corporation Act 1980*. The first amendment relates to the Label Integrity Program. The program aims to ensure the truthfulness of label claims on vintage, variety or geographical indication of wine manufactured in Australia. It relies on accurate record keeping so that wine goods and their labels may be audited effectively.

The program was amended in 2010 to extend record keeping requirements to all participants in the wine supply chain. Before these amendments, the program focused on 'wine manufacturers' and did not provide for an adequate audit trail throughout the supply chain. However, since these amendments were implemented, retailers and wholesalers have raised concerns that the record keeping requirements are too onerous. The proposed changes respond to these concerns and have been agreed by retailer, wholesaler and wine industry representative bodies.

The proposed amendments would reduce the record keeping requirements of people who supply or receive wine goods that are packaged for sale to a consumer. Suppliers and retailers who do not change or affect any label claims about wine goods would be required to provide the Wine Australia Corporation auditors with details of the manufacturer or supplier of the wine goods rather than with full details of the supplier, recipient, goods receiver, vintage and geographic indication. This maintains the integrity of the program, while meeting the practical requirements of suppliers and retailers.

The second amendment to the *Wine Australia Corporation Act 1980* relates to the definition of 'vintage'. A producer does not have to describe the vintage year on a label but if a

producer chooses to describe the vintage they must follow the rules relating to ‘vintage’ claims. The ‘vintage’ indicates the year in which the grapes used to make a wine were grown.

At present, when specifying ‘vintage’ on a label, a vintage year is considered to be the period from 1 July to 30 June the following year and appears on the label as the second of the two calendar years.

Harvest normally occurs from the late summer finishing before 30 June. Sometimes producers make wines from grapes harvested after 30 June but before 1 September. For example, producers of sweet dessert wine styles leave grapes on the vine for extended periods to increase sugar levels and develop dessert wine characteristics. To provide for more accurate labelling of these late-harvested products, this amendment will change the definition of ‘vintage’ so that a vintage year is considered to be the period of 1 September to 31 August. For example, a wine made from grapes harvested between 1 September 2012 and 31 August 2013 could be labelled as a 2013 wine.

The proposed changes respond to concerns raised by producers and are supported by wine industry representative bodies.

Fisheries legislation amendments

Schedule 3 of the Bill will amend the *Fisheries Management Act 1991* to explain requirements for directions to close a fishery, or a particular part of a fishery, to fishing. Amendments will be made to section 41A to correct grammatical errors and delete redundant text. These amendments will better reflect the intention of the provision.

Amendments will also be made for consistency and to simplify the administration of section 41A. It is an express condition of most types of fishing concessions, permits and licences granted under the *Fisheries Management Act 1991*, that the holder comply with a direction given under subsection 41A(2) to close a fishery, or part of a fishery. The amendments will remove the need for a separate decision or regulatory process to make the condition apply to statutory fishing rights. They will also ensure consistency among provisions that make compliance with directions a condition of other types of fishing concessions.

These amendments do not change the meaning of section 41A, or of other provisions on conditions on concessions, but they will explain the meaning of such provisions to ensure consistency, reduce the likelihood of reader confusion and simplify the administration of the Act.

Schedule 4 of the Bill will amend the *Fisheries Administration Act 1991* to correct a drafting error in the *Fisheries Legislation Amendment Act (No. 2) 2010*, whereby a delegation of powers provision was applied to section 93 instead of section 92. Applying the provision to section 92 will give effect to the previous amendment by allowing the implementation of co-management arrangements, in which stakeholders will assist the Australian Fisheries Management Authority to perform powers and functions for the sustainable management of fisheries.

Levies legislation amendments

Schedule 5 of the Bill will amend the *Primary Industries Levies and Charges Collection Act 1991* to allow the departmental secretary to consider all requests made by levy payers for the remission of penalties. The amendments do not make any change to the substance of the law. Levy payers who are not satisfied with a decision made by the department will still have an opportunity to approach the minister to review a decision made by the department. At present, only the portfolio minister can remit amounts of penalty exceeding \$5000.

Technical amendments

Schedule 6 of the Bill makes technical amendments to the *Fisheries Management Act 1991*, the *Primary Industries and Energy Research and Development Act 1989*, the *Export Control Act 1982* and the *Quarantine Act 1908* as follows. None of the amendments make any change to the substance of the law.

Fisheries Management Act 1991—the Act is being amended to remove redundant text, including several cross-references to provisions that have been repealed. These amendments will promote consistency in the Act and prevent reader confusion.

Primary Industries and Energy Research and Development Act 1989—the amendment will re-number an alphabetical list to insert the letters (i) and (l) into subsection 131(1) of the Act. The list, currently numbered (a) to (p), omits the letters (i) and (l). The list sets out the statutory selection criteria for the nomination and appointment of non-executive directors to the various agricultural research and development corporations that are established by this Act. The list is referred to by the corporations' selection committees and members of the public who are considering applying for appointment to these corporations. The list is being renumbered to insert the letters (i) and (l) to remove any doubt about whether the list is incorrect or incomplete.

The Bill also contains amendments to modernise language in two Acts. Amendments to the *Export Control Act 1982* and the *Quarantine Act 1908* will replace the United States spelling of 'authorized' with the Australian spelling of 'authorised'. These amendments will ensure spelling is consistent throughout the two Acts and that they conform to the preferred style for Commonwealth legislation.

References to specific departments and secretaries

Schedule 7 of the Bill will amend the *Farm Household Support Act 1992* to remove specific references to departments and secretaries in the Act so that when changes are made to the Administrative Arrangements Orders the Act will not require amendment.

Repeal of Act

Schedule 8 of the Bill repeals a redundant Act—the *States Grants (War Service Land Settlement) Act 1952*. The Australian Government negotiated the sale and transfer of the War Service Land Settlement Scheme to each of the respective States. Western Australia was the

last jurisdiction to operate the scheme. The Commonwealth and Western Australia executed a cessation deed on 3 May 2011. The legislation is now redundant and may be repealed.

FINANCIAL IMPACT STATEMENT

The proposed amendments have no financial impact on the Australian Government.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The proposed amendments in the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The amendments make minor policy and technical changes that will improve administration of portfolio legislation and do not engage any human rights issues.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 1) 2012

NOTES ON ITEMS

Section 1: Short Title

Section 1 is a formal provision specifying that the short title of the Act may be cited as the *Agriculture, Fisheries and Forestry Legislation Amendment Act 2012*.

Section 2: Commencement

Section 2 provides for the commencement of the Act.

Sections 1 to 3 of the Act will commence upon the Royal Assent.

Schedules 1 and 2 will commence on the day after the Act receives the Royal Assent.

Schedule 3 will commence on the 28th day after the Act receives the Royal Assent.

Schedules 4, 5 and 6 will commence on the day after the Act receives the Royal Assent.

Schedule 7 will commence on the 28th day after the Act receives the Royal Assent.

Schedule 8 will commence on the day after the Act receives the Royal Assent.

Section 3: Schedule(s)

Section 3 provides that each Act specified in a schedule to the Act is amended or repealed as set out in the applicable items of the schedule concerned and that any other item in a schedule to the Act has effect according to its terms.

Schedule 1—Label integrity program

Wine Australian Corporation Act 1980

Item 1 Subsection 4(1) (definition of *direct sale*)

This definition is being repealed as all references to direct sale have been repealed from the Act, making 4(1) (definition of *direct sale*) redundant.

Item 2 Subsection 39F(1) (note 2)

This item repeals and substitutes note 2 at section 39F. The new note refers the reader to relevant rules under 39G and 39H following amendment to section 39G.

Item 3 Subsection 39F(3)

The phrase “(except as provided by subsection 39G(2))” is omitted as the reference is redundant following the amendments to section 39G.

Item 4 Subsections 39G(2) and (3)

This amendment reduces the record keeping requirements of persons, or their agents, who supply or receive wine goods that are packaged in a container for the purpose of sale of wine goods to a consumer. This section will apply only if the person or their agent does not take steps to change or affect any label claims made about the packaged wine goods before the wine goods are sold to the consumer. For example, where a retailer receives a bottle of wine and then supplies it to a consumer without altering any label claims, the retailer is not required to keep a record showing details required under paragraph 39F(1)(e) to (l) in relation to the supply and receipt of the bottle of wine. However, if the retailer were to receive a bottle of wine and then label or relabel the bottle—that is, changing or affecting any label claims—before selling it to a consumer, the retailer would be required to keep records, as detailed in paragraph 39F(1)(e) to (l).

There would be no changes to record keeping requirements of wine manufacturers or those in the supply chain that take any steps to change or affect any label claims made about the wine goods.

Item 5 Paragraph 39J(1)(c)

The phrase “39G or” is omitted as the reference is redundant following the amendments to section 39G.

Item 6 Application

These provisions state that the amendments apply to a supply, receipt or taking possession of wine goods that occurs on or after the commencement of the schedule.

Under the *old Act*, defined in subsection 4(1) to mean the *Wine Australia Corporation Act 1980* as in force before the commencement of these amendments, there were reduced record keeping requirements for wine goods that were sold by a person in direct sales. Subsections (2) and (3) state that a defined class of person who, before these amendments, were required to keep records are taken not to have been required to keep those records. This amendment will have the practical affect that any records generated by this defined class of person do not need to be kept once these amendments commence.

Schedule 2—Vintage

Wine Australian Corporation Act 1980

Item 1 – Subsection 4(2A)

This item omits “1 July” and substitutes “1 September”.

The amended definition will change the period, for the purpose of defining ‘vintage’ presentation and description of the wine goods, to allow producers to label wine goods containing grapes grown in the same growing season with the same vintage date. Grapes harvested after 1 September but before the end of the calendar year will be labelled with the following calendar year’s vintage, whereas those harvested before 1 September will be labelled with the vintage of the current calendar year. For example, producers will be able to label wine made from grapes harvested from 1 September 2012 through to 31 August 2013 as 2013 wine, which better reflects the growing season of the grapes.

Schedule 3—Conditions

Fisheries Management Act 1991

Item 1 – Subsection 22(3) (note)

This item repeals and substitutes the note at subsection 22(3). The new note incorporates additional cross-references to provisions in the Act to better assist in explaining the operation of the Act.

Item 2 – After subsection 22(4)

This item inserts a new subsection 22(4A), which makes it an express condition of a fishing right that the holder of the right comply with a direction made under section 41A in relation to the fishery. The insertion will ensure consistency with other provisions that make compliance with a direction given under section 41A a condition on a concession, permit or licence.

Item 3 – Subsection 22(5)

This item inserts “or (4A)” after “subsection (3)” in subsection 22(5) and is consequential upon the insertion of subsection 22(4A). The amendment will ensure that directions made under section 41A (compliance with which will constitute a condition of a statutory fishing right under the new subsection 22(4A)) can only be varied or revoked in accordance with section 41A.

Item 4 – Subsection 32(5) (note)

This item repeals and substitutes the note at subsection 32(5). The new note incorporates additional cross-references to provisions in the Act to better assist in explaining the operation of the Act.

Item 5 - Subsection 32(7A)

This item repeals and substitutes subsection 32(7A). The meaning and application of the subsection will not change but the substitute wording is simpler. It is also consistent with the new subsection 22(4A), which refers to conditions on statutory fishing rights, and with other provisions that impose the same conditions on other fishing concessions, permits or licences.

Item 6 – Subsection 33(3) (note)

This item repeals and substitutes the note at subsection 33(3). The new note incorporates additional cross-references to provisions in the Act to better assist in explaining the operation of the Act.

Item 7 – Subsection 33(5A)

This item repeals and substitutes subsection 33(5A). The meaning and application of the subsection will not change but the substitute wording is simpler. It is also consistent with the new subsection 22(4A), which refers to conditions on statutory fishing rights, and with other provisions that impose the same conditions on other fishing concessions, permits or licences.

Item 8 – At the end of subsection 34(4)

This item adds a note after subsection 34(4). The note provides cross-references to other provisions in the Act to assist in explaining the operation of the Act.

Item 9 – Subsection 34(6A)

This item repeals and substitutes subsection 34(6A). The meaning and application of the subsection will not change but the substitute wording is simpler. It is also consistent with the new subsection 22(4A), which refers to conditions on statutory fishing rights, and with other provisions that impose the same conditions on other fishing concessions, permits or licences.

Item 10 – At the end of subsection 40(3)

This item adds a note after subsection 40(3). The note provides cross-references to other provisions in the Act to assist in explaining the operation of the Act.

Item 11 – Subsection 40(4A)

This item repeals and substitutes subsection 40(4A). The meaning and application of the subsection will not change but the substitute wording is simpler. It is also consistent with the new subsection 22(4A), which refers to conditions on statutory fishing rights, and with other provisions that impose the same conditions on other fishing concessions, permits or licences.

Item 12 – Subsection 41A(2)

This item clarifies the subsection by omitting the words “engaged in any part of the fishery” and substituting “engaged in in the fishery”. This corrects a grammatical error and removes redundant wording.

Item 13 – Application of item 2, 5, 7, 9, and 11

Item 13(a) defines the application of the new subsection 22(4A) and amendments to subsections 32(7A), 33(5A), 35(6A) and 40(4A). It ensures that the new subsection applies consistently to all statutory fishing rights, fishing permits, scientific permits, foreign fishing licences and foreign master fishing licences.

Item 13(b) saves obligations where they already exist under a specific condition placed on the instrument by the Commission. This item saves existing obligations and will not retrospectively impose conditions. This condition had been specified in order to overcome the removal of Statutory Fishing Right specific Directions and the obligation to comply, now uniformly governed by s41A Directions. For all other concessions, permits and licences, this item consistently re-expresses/continues existing obligations. It imposes an applicable condition to comply with any existing and future Direction under s41A and will not retrospectively impose any new obligation.

Schedule 4—Delegation

Fisheries Administration Act 1991

Item 1 – After paragraph 92(3)(e)

This item inserts a new paragraph (f) to allow the Australian Fisheries Management Authority Chief Executive Officer to delegate general functions and powers to a “primary stakeholder in a fishery under a co-management arrangement”. The insertion rectifies an error made in the drafting of the *Fisheries Legislation Amendment Act 2010 (No. 2)*, whereby an amendment was erroneously applied to subsection 93(1) instead of subsection 92(3).

Item 2 – Paragraph 93(1)(e)

This item omits the words “1984; or” and substitutes “1984;” and is consequential upon the repeal of paragraph 93(1)(f).

Item 3 – Paragraph 93(1)(f)

This item repeals paragraph (f) to rectify an error made in the drafting of the *Fisheries Legislation Amendment Act 2010 (No. 2)*, whereby an amendment was erroneously applied to subsection 93(1) instead of subsection 92(3).

Schedule 5—Remission of penalty amount

Primary Industries Levies and Charges Collection Act 1991

Item 1 – Section 16

This item repeals and inserts a new section 16. The new section will allow the secretary to remit all or part of a penalty imposed for the late payment of levy or charge. The amendment moves the authority to remit penalty from the minister to the secretary.

Item 2 – Subsection 28(9) (paragraph (a) of the definition of *relevant decision*)

This item amends the cross-reference to the new section 16. It ensures that the correct reference is used for the minister’s authority to review decisions by the secretary to refuse to remit penalty.

Item 3 – Application

This item sets out that the amendments in this schedule apply to all penalties that become payable after the commencement of this schedule or that became payable before the commencement but where a remission decision had not been made before the commencement. A new definition for ‘old Act’ is added to clarify the application.

Schedule 6—Technical amendments

Export Control Act 1982

Items 1 to 50

Items 1 to 50 make minor changes to spelling in provisions of the *Export Control Act 1982* to ensure the provisions accord with current drafting style.

The amendments at items 1 to 50 will replace the United States spelling of ‘authorized’ with the Australian spelling ‘authorised’. Currently, both spellings are used in the Act. The amendments will improve readability by ensuring consistent spelling throughout the Act.

The ‘ise’ spelling is recommended by the *Australian Oxford* and *Macquarie* dictionaries and by the Australian Government *Style manual* for Australian government documents. Parliamentary Counsel Drafting Direction No. 2.1 *English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling* supports this recommendation.

Items 1 to 50 amend specific occurrences of the above word.

Item 51 – Application of items 1 to 50

This item sets out that the amendments in items 1 to 50 do not apply to appointments under section 20 of the *Export Control Act 1982* in force before commencement of this item.

Fisheries Management Act 1991

Item 52 – Paragraph 22(3)(c)

This item omits “or, under subsection 79(3), cease to apply to a fishery”, to remove a cross-reference to a provision that has been repealed.

Item 53 – Paragraph 32(5)(c)

This item omits “or, under subsection 79(3), cease to apply to a fishery” to remove a cross-reference to a provision that has been repealed.

Item 54 – Paragraph 33(3)(b)

This item omits “or, under subsection 79(3), cease to apply to a fishery” to remove a cross-reference to a provision that has been repealed.

Item 55 – Subsection 41A(2)

This item omits “If, after” and substitutes “After” to remove redundant text.

Item 56 – Paragraph 91(4)(b)

This item omits “or, under subsection 79(3), cease to apply to a fishery”, to remove a cross-reference to a provision that has been repealed.

Primary Industries and Energy Research and Development Act 1989

Item 57 – Paragraphs 131(1)(j) to (p)

The existing subsection 131(1) of the Act contains an alphabetic list from (a) to (p) that omits the letters (i) and (l). This item will re-letter the list to insert the letters (i) and (l). The amended list re-letters paragraphs (j) to (p) as (i) to (n).

The list at subsection 131(1) sets out the statutory selection criteria applying to the selection and appointment of non-executive directors to the various agricultural research and development corporations that are established by the Act. As the list is referred to by the corporations’ selection committees and members of the public who are considering applying for appointment to these corporations, the list is being renumbered to insert the letters (i) and (l) to remove any doubt about whether the list is incorrect or incomplete.

Quarantine Act 1908

Items 58 to 73

Items 58 to 73 make minor changes to spelling in provisions of the *Quarantine Act 1908* to ensure the provisions accord with current drafting style.

The amendments at items 58 to 73 will replace the United States spelling of ‘authorized’ with the Australian spelling ‘authorised’. Currently, both spellings are used in the Act. The amendments will improve readability by ensuring consistent spelling throughout the Act.

The ‘ise’ spelling is recommended by the *Australian Oxford* and *Macquarie* dictionaries and by the Australian Government *Style manual* for Australian government documents. Parliamentary Counsel Drafting Direction No. 2.1 *English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling* supports this recommendation.

Items 58 to 73 amend specific occurrences of the above word.

Item 74 – Application of items 58 to 73

This item sets out that the amendments in items 58 to 73 do not apply in relation to authorizations in force before commencement of this item.

Schedule 7—References to specific Departments and Secretaries

Farm Household Support Act 1992

There are currently a number of references to specific Departments and Secretaries in the *Farm Household Support Act 1992*, including obsolete references to the Department of Social Security and the Department of Primary Industries and Energy. Whenever there is no longer a particular Department, or the title of a Department is changed under the Administrative Arrangements Order, the Governor-General needs to make an Order under section 19B or 19BA of the *Acts Interpretation Act 1901* so that any incorrect references to Departments or Secretaries in the Act can be read correctly. This means that users have to read the Act in conjunction with these Orders.

The Bill replaces the specific references with a generic reference to the ‘Department’ or the ‘Secretary’. This will mean any references to Department or Secretary are related to the correct portfolio responsible for administering the Act and will reduce the need for future amendments arising from changes to the Administrative Arrangements Orders.

Item 1 – Subsection 3(2) (definition of *Department*)

This item repeals the definition of *Department*. Subsection 3(2) defines “Department” as the Department of Social Security.

Item 2 – Subsection 3(2) (definition of *Secretary*)

This item repeals the definition of *Secretary*. Subsection 3(2) defines “Secretary” as the Secretary to the Department of Social Security.

Item 3 – Subsection 4(1)

This item omits a specific reference to the Secretary of the Department of Social Security. The item also omits a reference to “relevant” Secretary, which is defined in subsection 4(4).

Item 4 – Subsection 4(4) (definition of *relevant Secretary*)

This item repeals the definition of *relevant Secretary*. Currently, subsection 4(4) defines “relevant Secretary” for the purposes of section 4 of the Act. For farm household support,

‘relevant Secretary’ means the Secretary of the Department of Primary Industries and Energy. For dairy exit payments, farm help income support or re-establishment grants, ‘relevant Secretary’ mean the Secretary of the Department of Social Security.

Item 5 – Paragraph 15(b)

This item repeals specific references to “Secretary” as it relates to the requirement that the Secretary approve in writing the form of a proper claim for claims made for farm household support and a claim for exceptional circumstances relief payment or farm help income support.

Item 6 – Subsection 53(1)

The item repeals the subsection. Subsection 53(1) relates to the secretary’s powers of delegation.

Item 7 – Subsection 53(2)

Subsection 53(2) also relates to the delegation of powers. This item substitutes the definition of “Secretary of the Department of Primary Industries and Energy” to “Secretary”.

Item 8 – Subsection 53(2)

This item replaces the specific ‘that Department’ with the generic ‘the Department’.

Item 9 – Subsection 57A(2)

This item amends the definition of “Secretary of the Department of Primary Industries and Energy” to “Secretary”.

Item 10 – Transitional—amendments do not affect things done

Transitional provisions are included to ensure that the changes to references to specific departments do not affect the validity of things done prior to the commencement of the changes.

Item 11 – Regulations may deal with transitional etc. matters

Item 9 is a provision for transitional, savings and application provisions to ensure that the amendments made by this schedule do not result in any unintended consequences.

Schedule 8—Repeal of Act

States Grants (War Service Land Settlement) Act 1952

Item 1 – The whole of the Act

This item repeals the *States Grants (War Service Land Settlement) Act 1952* in its entirety.

The War Service Land Settlement Scheme commenced in 1945 to assist returned soldiers into farming after World War II. Under the scheme, parcels of land were provided on a perpetual lease basis at low rentals, together with low-interest loans. Authority for the scheme was originally established under the *War Service Land Settlements Agreement Act 1945* (Commonwealth), which provided for agreements to be made between the Commonwealth and each state, under which land would be granted to suitably qualified war veterans. The 1945 Act was repealed and replaced by the *States Grants (War Service Land Settlement) Act 1952*. Agreements made under the 1945 Act remain valid.

The Australian Government has negotiated the sale and transfer of the War Service Land Settlement Scheme to each of the respective states, with Western Australia (WA) being the last state to operate the Scheme. A cessation deed was executed on 3 May 2011 by the Commonwealth and the state of WA. A payment from the WA Government was made to the Commonwealth on 27 May 2011 for purchase of the War Service Land Settlement Scheme. The *States Grants (War Service Land Settlement) Act 1952* is now redundant and may be repealed.