

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 122 2000–01

Dried Vine Fruits (Rate of Primary Industry
(Excise) Levy) Validation Bill 2001

ISSN 1328-8091

© Copyright Commonwealth of Australia 2001

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2001

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 122 2000–01

Dried Vine Fruits (Rate of Primary Industry (Excise) Levy)
Validation Bill 2001

Rosemary Bell
Law and Bills Digest Group
7 May 2001

Contents

Purpose	1
Background	1
Separate Acts to comply with section 55 of the Constitution	2
Main Provisions	3
Concluding Comments	4
Endnotes.	4

Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001

Date Introduced: 29 March 2001

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Royal Assent

Purpose

To validate the regulations that purported to set the rate of excise levy on dried vine fruits for the period between 1 January 2000 and 1 October 2000 inclusive.

Background

A primary industry excise levy is imposed on dried vine fruits by Schedule 15 of the *Primary Industries (Excise) Levies Act 1999*.¹ The proceeds of the levy and export charges paid by producers of sultanas, currants and raisins in Australia are used to finance the operations of the Australian Dried Fruits Board (the Board). The Board, as agent, collects the levies and export charges on behalf of the Commonwealth Government.² In 1999-2000 the income of the Board was \$381 807 of which industry levies and export charges made up 57 percent.³

On 29 August 2000 the Governor General made regulations under the *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* to reduce the rates of levy and export charge from \$10 to \$7 a tonne. The reduction was to have retrospective effect from 1 January 2000.⁴ In his Second Reading Speech on this Bill the Minister, Hon Warren Truss said that:

Contrary to the original advice received from the Attorney-General's Department, the regulations imposing the new levy or charge have been deemed to possibly contravene subsection 48(2) of the *Acts Interpretation Act 1901* which invalidates any regulation that is expressed to take effect at a time before it is gazetted and operates to the disadvantage of any person other than the Commonwealth.⁵

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations have no effect if they take effect before the date of notification and have an adverse effect on a person other than the Commonwealth. It states that:

- (2) A regulation, or a provision of regulations, has no effect if, apart from this subsection, it would take effect before the date of notification and as a result:
 - (a) The rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or
 - (b) Liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

According to the Explanatory Memorandum, the Office of Legislative Drafting revised its advice after the regulations reducing the rate from \$10 to \$7 a tonne, had been gazetted.⁶ New amendments were approved in September 2000 to give effect to the reduced rate and they came into operation on 2 October 2000. Since that date the levy payable has been \$7 a tonne. The purpose of this Bill is to validate the regulations for the period 1 January to 1 October 2000 inclusive.

Separate Acts to comply with section 55 of the Constitution

The imposition of industry levies and customs charges must comply with the requirements of section 55 of the Constitution, which states that:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

As a result, the excise levy on dried fruit processed for domestic consumption, and the customs charge on dried vine fruit that is exported, are imposed by two Acts, namely:

- *Primary Industries (Excise) Levies Act 1999*, and
- *Primary Industries (Customs) Charges Act 1999*.

The measures for the collection of the export levy and customs charge imposed by the two Acts are contained in the *Primary Industries Levies and Charges Collection Act 1991*.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main Provisions

The effect of **subclause 3(1)** is to declare that item 2 in Schedule 1 in the *Primary Industries (Excise) Levies Amendment Regulations 2000 (No. 3)* (being Statutory Rules 2000 No. 237) is taken to have commenced on 1 January 2000. This is the item that set the rate of excise levy on processed dried vine fruits at \$7 a tonne.

Subclause 3(2) is a consequential amendment and declares that item 2 in Schedule 1 in the *Primary Industries Levies and Charges Collection Amendment Regulations 2000 (No. 2)* (being Statutory Rules 2000 No. 238) is taken to have commenced on 1 January 2000.

Subclause 3(3) overrides subsection 48(2) of the *Acts Interpretation Act 1901* with respect to Schedule 1 in the Primary Industries (Excise) Levies Amendment Regulations 2000 (No. 3) and Schedule 1 in the Primary Industries Levies and Charges Collection Amendment Regulations 2000 (No. 2). This removes the legal retrospectivity problem under subsection 48(2) of the *Acts Interpretation Act 1901*.

The legislative approach taken by this Bill differs from that of the Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001. This is apparently because of the different timing in the process of amalgamating individual levy regulations into two sets of consolidated regulations covering excise levies (Primary Industries (Excise) Levies Regulations 1999) and customs charges (Primary Industries (Customs) Charges Regulations 2000).

The Primary Industries (Excise) Levies Regulations 1999 took effect on 1 January 2000. However, due to the process of consolidating groups of excise levies, this particular consolidation did not include dried vine fruits at that time. The consolidation that included dried vine fruits did not come into effect until 1 October 2000. Amendments that reduced the rate of levy were approved in September 2000 to come into effect on 2 October 2000. As a result this Bill seeks to validate the regulations setting the operative rate of excise levy from the period 1 January 2000 to 1 October 2000 inclusive.

The consolidated Primary Industries (Customs) Charges Regulations 2000 came into effect on 1 July 2000, and again, because of the stages of consolidating groups of charges, they also did not include dried vine fruits at that time. No amendments to reduce the rate of levy were sought, and the operative rate of charge has not been reduced as was intended. Consequently, the Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001 seeks to validate the regulations that set the customs charge on dried vine fruits from 1 January 2000.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Concluding Comments

The passing of an Act to validate delegated legislation has been used several times recently. On 25 November 1999 Parliament passed the *National Residue Survey Levies Regulations (Validation and Commencement of Amendments) Act 1999*⁷ in order to confirm that the levy system for sheep and lamb sales, purported to have been introduced by the Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998 (Amendment), was valid and effective from 1 August 1998.⁸ On 13 March 2000 Parliament also passed five Acts⁹ to validate determinations made by the Treasurer on 11 August 1998 that imposed levies totalling \$40 million on certain industries within the financial sector.¹⁰ These Acts declared that the determinations were valid and effective from 1 July 1998 despite subsection 48(2) of the *Acts Interpretation Act 1901*.

Endnotes

- 1 By definition in the *Primary Industries (Excise) Levies Act 1999* [PI(E) Levies Act] and Schedule 15 of the PI(E) Levies Regulations 1999 Part 9.1, dried vine fruits are leviable horticultural products.
- 2 Australian Dried Fruits Board, *Annual Report 1999-2000*, p. 22.
- 3 *ibid.*, p. 3.
- 4 Primary Industries (Excise) Levies Amendment Regulations 2000 (No. 3) (being Statutory Rules 2000 No. 237) and Primary Industries (Customs) Charges Amendment Regulations 2000 (No. 1) (being Statutory Rules 2000 No. 236).
- 5 House of Representatives, *Debates*, 29 March 2001, p. 25975.
- 6 *Explanatory Memorandum*, Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001, p. [2].
- 7 Act 163 of 1999.
- 8 For a discussion of this legislation see [Bills Digest](#) no. 72, 1999-2000, 'National Residue Survey Levies Regulations (Validation and Commencement of Amendments) Bill 1999', by Angus Martyn.
- 9 Acts 14-18 of 2000. The Acts were the *Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000*, *General Insurance Supervisory Levy Determination Validation Act 2000*, *Life Insurance Supervisory Levy Determination Validation Act 2000*, *Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000*, and *Superannuation Supervisory Levy Determination Validation Act 2000*.
- 10 For a discussion of the issues involved see [Bills Digest](#) no. 21, 1999-2000, 'Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Bill 1999', by David Kehl and Bernard Pulle, pp. 28-31.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.