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No. 171 2000–01

Alcohol Education and Rehabilitation Account Bill  
2001

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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

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No. 171 2000–01

Alcohol Education and Rehabilitation Account Bill 2001

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Law and Bills Digest Group  
26 June 2001

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# Alcohol Education and Rehabilitation Account Bill 2001

**Date Introduced:** 20 June 2001

**House:** House of Representatives

**Portfolio:** Health and Aged Care

**Commencement:** On Royal Assent

## Purpose

To establish the Alcohol Education and Rehabilitation Account which will disburse funding for education, rehabilitation and prevention of alcohol and other licit substance abuse.

## Background

### Opposition to the beer excise

From 1 July 2000, the Government has collected an increased excise on beer and other alcoholic beverages. This is because the Government amended the manner in which excise was calculated, to give effect to its tax reform measures, particularly the replacement of the wholesale sales tax with the goods and services tax.<sup>1</sup>

When the increase in beer prices was foreshadowed in May 2000, there was considerable media attention given to the issue. It was predicted that the price of draught beer could rise by up to 20 cents a glass or 9 per cent, whereas the Prime Minister in his 1998 election campaign had promised that the price of 'ordinary beer' would rise by no more than 1.9 per cent.<sup>2</sup> The Government has consistently maintained that 'ordinary beer' means packaged beer only, whereas Labor and the Democrats interpreted the Government's promise as applying also to draught beer.<sup>3</sup> At that time, the Australian Labor Party and the Australian Democrats signalled their opposition to the Government's proposed increase, and their intention to amend the legislation introducing the excise amendments in the Senate.<sup>4</sup>

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The difficulty arose from the manner in which excise duties are introduced. Duties of excise are usually not initiated by a bill, because of considerations relating to timing and drafting. Rather, excise tariff proposals are generally introduced by way of motion in the House of Representatives, or, if the Parliament is adjourned, by notice published in the Gazette. Collection of the excise commences from the date of the motion or gazettal, and is later validated by the introduction of an excise tariff amendment bill, which imposes the excise retrospectively from the date on which collection commenced.<sup>5</sup>

### Proposals to refund the beer excise

The proposals to amend the beer excise were introduced on 21 June 2000, to commence on 1 July 2000.<sup>6</sup> This put hotel owners in the position of having to collect the excise from 1 July 2000, while knowing that Labor and the Democrats had signalled an intention to oppose the changes when the relevant excise tariff amendment bill was debated in the Senate.<sup>7</sup> The brewers announced that they would pay the higher excise under protest, and major brewers including Lion Nathan and Foster's Brewing Group signalled an intention to challenge the collection of the excise in the Federal Court.<sup>8</sup>

By January 2001, it was reported that major brewers had lodged statements of claim against the Federal Government seeking a return of the disputed beer excise, and were working on plans to either refund the tax to drinkers - possibly through price reductions - or give it to charities.<sup>9</sup> In February, the brewing industry announced results of a survey in which 75 per cent of drinkers voted to put any excise refund towards alcohol-related medical research, remedial programs and charities, rather than lowering the price of beer. The Australian Associated Brewers then stated it intended to use any refund from the Government to establish the Beer Drinkers Foundation, which would be the biggest charitable foundation in the country, with well over \$100 million to invest.<sup>10</sup>

### Alcohol Education and Rehabilitation Foundation to be established

On 3 April 2001, in the midst of prolonged debate in the Senate over the Excise Tariff Amendment Bill (No 1) 2001, the Government announced it had reached agreement with the Democrats to prospectively reduce the excise rate on draught beer to no more than a 1.9 per cent increase. The Democrats agreed to legislation that would validate the excise collected on draught beer from 1 July 2000 to 3 April 2001, and allocate most of the amount collected in excess of the new reduced excise rate to establish a new independent foundation, the Alcohol Education and Rehabilitation Foundation (the Foundation).<sup>11</sup> Five million dollars from the excise surplus would be allocated to the Historic Hotels initiative, which provides dollar-for-dollar grants to preserve historic hotels in regional and country areas which do not have gaming machines.<sup>12</sup>

According to the Memorandum of Understanding signed by the Government and the Democrats, the objectives of the Foundation will be to:<sup>13</sup>

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- prevent alcohol and other licit substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth
- support evidence-based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programs
- promote community education encouraging responsible consumption of alcohol and highlighting the dangers of licit substance abuse
- provide funding grants to organisations with appropriate community linkages to deliver the above-mentioned services on behalf of the Foundation, and
- promote public awareness of the work of the Foundation and raise funds from the private sector for the ongoing work of the Foundation.

A copy of the Memorandum of Understanding is annexed as Appendix A.

There has been some attempt to ensure that the money allocated to the Foundation is not consumed in administrative costs. The Memorandum of Understanding requires the Foundation to spend:<sup>14</sup>

- at most 10% on administration and promotion
- at least 30% on treatment and rehabilitation
- at least 10% on public education
- at least 20% on prevention, and
- at least 20% of total expenditure (including in categories described above) on projects targeting indigenous Australians.

These percentages are only prescribed for the first year of the Foundation's operation. No percentages are prescribed for later financial years. However, the Government and the Democrats will have to approve of the budget covering all four years of operation. Further, under the proposed constitution of the Foundation, the annual budget will be subject to approval by the board, and reports will be provided annually to Parliament on grant allocation decisions and overall operations.<sup>15</sup>

At least 85% of all of the Foundation's expenditure must be outsourced to professional and community organisations, who will apply to the Foundation for grants. Grants will be approved by the board. The Foundation must establish procedures for monitoring and reporting on the cost effectiveness and social impact of funded programs.<sup>16</sup>

The decision to establish the Foundation was re-announced in the Federal Budget 2001-2002, and a total amount of \$115 million has been allocated to the Foundation over four years.<sup>17</sup>

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## Support for the establishment of the Foundation

The Alcohol and other Drugs Council of Australia and the Australian Medical Association have welcomed the establishment of the Foundation, while calling for further commitment to an integrated strategy for the prevention and treatment of drug-related problems, including alcohol, tobacco and illicit drugs.<sup>18</sup>

Similarly, the Aboriginal and Torres Strait Islander Commission has supported the establishment of the Foundation. The Chair of the ATSIC Peninsula Regional Council noted the urgent need for education programs and rehabilitation facilities in Cape York, and voiced the hope that the Foundation could provide resources to meet some of these needs. However, he expressed concern that the Foundation may be yet another once-off initiative, with no guarantee of ongoing funding once the initial appropriations are spent, and with no provision for financial support from the alcohol industry.<sup>19</sup>

## Main Provisions

**Clause 3** states that the object of the Act is to establish the Alcohol Education and Rehabilitation Account, which will provide money to the Foundation to spend on the five purposes listed above as the objectives of the Foundation.

### Alcohol Education and Rehabilitation Account

**Clause 5** establishes a ‘Special Account’ called the Alcohol Education and Rehabilitation Account (the Account). A ‘Special Account’ is an account established either by a determination of the Finance Minister or (as in this case) by an Act, for certain identified purposes. It is a way of setting aside money in a notional separate ledger within the Consolidated Revenue Fund for a particular purpose, and ensuring that the money is used only for those purposes.<sup>20</sup>

### Funding

**Clause 6** appropriates money into the Account annually over the next four years. The amounts of the appropriations are \$10 million on Royal Assent (for the 2001-2002 financial year), \$24 million on 1 July 2002, \$40 million on 1 July 2003 and \$41 million on 1 July 2004, a total of \$115 million.

All money standing to the credit of the Account must be paid out under one or more funding agreements by 1 July 2005 (**clause 8**).

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## Funding agreements

**Clause 9** permits the Minister to make a funding agreement with the Foundation for making payments to the Foundation for the Foundation to distribute.

**Clause 10** permits the Minister to terminate the funding agreement with the Foundation unilaterally if either:

- the objectives of the Foundation are inconsistent with any of the purposes of the Bill listed in **clause 3**, or
- the Foundation fails to comply with a condition of the funding agreement.

The Minister's determination to terminate a funding agreement will be disallowable by the Parliament.

If the Minister has terminated a funding agreement with the Foundation, he or she may nominate one or more 'replacement bodies', whose objectives are consistent with all the purposes listed in **clause 3**, to replace the Foundation (**clause 11**). Any determinations nominating replacement bodies are also disallowable instruments.

The Minister may then enter into a funding agreement with the replacement body or bodies, authorising him or her to make payments to the body or bodies for distribution (**clause 12**). The Minister may terminate these funding agreements in the same circumstances that a funding agreement with the Foundation may be terminated, and the determination to terminate will be disallowable (**clause 13**).

Unlike determinations to appoint replacement bodies, or to terminate funding agreements, the Minister's decision to enter into funding agreements, either with the Foundation or with replacement bodies, will not be disallowable. However, the Minister must table a copy of every funding agreement in each House of Parliament within 15 sitting days (**clause 14**).

## Concluding Comments

This section makes a number of comments based on a comparison of the Bill with the Natural Heritage Trust, a prominent current example of a Special Account established by legislation.<sup>21</sup>

### Establishment of Foundation by statute or otherwise

The Bill establishes the Account and enumerates its purposes, but does not establish the Foundation, which will be an incorporated charitable trust.<sup>22</sup> The Memorandum of Understanding sets out the composition of the board of directors of the Foundation. The

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board of directors will be broadly representative, consisting of a Chairman, three community-based treatment and education representatives, and one representative each from medical, research, church, Aboriginal and Torres Strait Islander, sporting and youth bodies.<sup>23</sup>

In contrast, the *Natural Heritage Trust of Australia Act 1997* establishes the Natural Heritage Trust Ministerial Board (consisting of the Minister for the Environment and the Minister for Primary Industries and Energy<sup>24</sup>) and the Natural Heritage Trust Advisory Committee. It contains provisions dealing specifically with Committee membership, appointment procedures, disclosure of conflicting interests, remuneration, termination of appointment and other terms and conditions. None of these details are contained in the present Bill.

The Bill envisages that in certain circumstances other bodies may replace the Foundation as the body which distributes money from the Account to professional and community programs. These bodies could have a significant role in evaluating and approving grants of money to such programs. However, the Bill imposes no requirements on these bodies, other than that their objectives must not be inconsistent with the purposes of the Account contained in clause 3.

### Who approves of projects

Grants from the Natural Heritage Trust are made directly by the Ministerial Board. The role of the Natural Heritage Trust Advisory Committee is, as its name suggests, to provide advice to the Ministers.

The present Bill has chosen an alternative model, outsourcing decisions on disbursement of funds to approved programs directly to the Foundation, or to replacement bodies, without Ministerial oversight.

### Accountability

The *Natural Heritage Trust of Australia Act 1997* makes the Ministerial Board accountable in a number of ways:

- preparation and tabling in Parliament of an annual report
- preparation of estimates of money available in the Natural Heritage Trust Special Account
- auditing of financial statements, and
- monitoring the effectiveness of funded programs in achieving the Natural Heritage Trust's objectives.

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The Memorandum of Understanding similarly requires that the Foundation must report annually to Parliament on grant allocation decisions and overall operations, will be subject to independent auditing both of its accounts and performance, and must establish procedures for monitoring and reporting on the cost effectiveness and social impact of funded programs.<sup>25</sup> The key difference is that these accountability mechanisms will be imposed on the Foundation through its constitution, not legislation. This fact is important, given that the Bill envisages the possibility of the Minister terminating a funding agreement with the Foundation, and entering into one with a replacement body or bodies. Neither the Bill nor the Memorandum of Understanding contain any requirements that replacement bodies will be accountable to Parliament or through other mechanisms, such as auditing or monitoring. These matters are left to the discretion of the Minister when entering into funding agreements with such bodies.

Arguably in significant respects the Foundation will be more accountable to the Government and the Democrats than to Parliament. Under the terms of the Memorandum of Understanding, the Government and the Democrats will agree on the constitution of the Foundation, will approve the four-year budget drawn up by the Foundation, and will agree on the directors to be appointed to the board of the Foundation.<sup>26</sup>

The Memorandum of Understanding is not legally enforceable, and its status would be uncertain if the Government were to change. This could have some ramifications, given that a number of important matters such as the accountability requirements and the appointment of directors to the board of the Foundation are contained only in the Memorandum of Understanding and not in the Bill.

## Endnotes

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- 1 For more information on the excise, see Ian Ireland, Bills Digest No 107 of 2000-01 on the Excise Tariff Amendment Bill (No 1) 2001, 23 March 2001.
- 2 Transcript of radio interview between Prime Minister the Hon. John Howard MP and John Laws, 23 September 1998.
- 3 Michael McGuire, 'Froth and trouble: brewers are furious at the 'dishonesty' of the federal government over excise increases', *Australian*, 23 June 2000; Ross Peake, 'Liberals condemn beer cuts campaign', *Canberra Times*, 5 April 2001; Ross Peake, 'Howard pays for ambiguity', *Canberra Times*, 31 March 2001.
- 4 See Steve Lewis, 'Beer excise faces Senate hurdle', *Australian Financial Review*, 8 May 2000; Laura Tingle, 'Row over beer excise sets up a bar-room brawl', *Sydney Morning Herald*, 3 June 2000.
- 5 See L M Barlin (ed) *House of Representatives Practice*, (3<sup>rd</sup> ed, 1997), p. 401.

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- 6 Mr Peter Slipper, MP, Excise Tariff Proposal (No 2) 2000 and Customs Tariff Proposal (No 2) 2000, House of Representatives, *Hansard*, p. 17848, 21 June 2000.
- 7 See Phillip Hudson, 'Cheerless thought: each pot will cost 20c more', *The Age*, 1 July 2000.
- 8 Kath Cummins and Simon Evans, 'Costello's beer tactics 'offensive'', *Australian Financial Review*, 5 July 2000.
- 9 'Brewers take action over beer excise', *Canberra Times*, 19 January 2001; Jason Koutsoukis, 'Brewers go to court over beer excise', *Australian Financial Review*, 19 January 2001; Michelle Grattan, 'Brewers chase \$100m in court', *Sydney Morning Herald*, 19 January 2001.
- 10 Michelle Grattan, 'Brewers raise glasses to charitable drop', *Sydney Morning Herald*, 8 February 2001.
- 11 See Prime Minister the Hon. John Howard, MP, 'Excise on Draught Beer', *Media Release*, 3 April 2001.
- 12 See Senator Meg Lees, '\$115million Foundation for Alcohol Education and Rehab', *Media Release*, 4 April 2001; Prime Minister the Hon. John Howard, MP, 'Excise on Draught Beer', *Media Release*, 3 April 2001.
- 13 Alcohol Education and Rehabilitation Foundation Memorandum of Understanding between the Government and the Democrats, incorporated in speech by Senator Ian Campbell on the Customs Tariff Amendment Bill (No 2) 2001, Senate, *Hansard*, p. 23783, 5 April 2001.
- 14 *ibid.*
- 15 *ibid.*
- 16 *ibid.*
- 17 The Hon. Dr Michael Wooldridge, MP, '2001-2002 Health Budget: people, care, quality' *Press Release*, 22 May 2001.
- 18 See Alcohol and other Drugs Council of Australia and the Australian Medical Association, 'A lost chance on drugs', *Media Release*, 22 May 2001; Dr Kerry Phelp, 'Health Budget is all 'Smoke and Mirrors'', *Press Release*, 23 May 2001.
- 19 'ATSIC welcomes grog foundation – but more is needed', *Media Release*, 3 May 2001.
20. Section 81 of the Constitution requires that all revenues or moneys raised by the Commonwealth must be credited to the Consolidated Revenue Fund. Section 83 of the Constitution provides that moneys cannot be drawn out of the Consolidated Revenue Fund without Parliamentary approval. The 'Special Account' provisions in the *Financial Management and Accountability Act 1997* provide that when an amount of money is appropriated for the purposes of the Special Account, that money is set aside within the Consolidated Revenue Fund and can only be spent for those purposes. All funds appropriated and amounts spent are deemed to have gone into or come from the Special Account which notionally exists within the Consolidated Revenue Fund. See sections 20 and 21 of the *Financial Management and Accountability Act 1997*.
- 21 Formerly the Natural Heritage Trust Reserved Money Fund.

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- 22 Alcohol Education and Rehabilitation Foundation Memorandum of Understanding between the Government and the Democrats, incorporated in speech by Senator Ian Campbell on the Customs Tariff Amendment Bill (No 2) 2001, Senate, *Hansard*, p. 23783, 5 April 2001.
- 23 *ibid.*
- 24 Section 40 of the *Natural Heritage Trust of Australia Act 1997*. The Minister for Primary Industries and Energy has been replaced on the Natural Heritage Trust Ministerial Board by the Minister for Agriculture, Fisheries and Forestry, <http://www.nht.gov.au/overview.html>.
- 25 *ibid.*
- 26 *ibid.*

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## Appendix A

### Alcohol Education and Rehabilitation Foundation

#### Memorandum of Understanding Between the Government and the Democrats

An appropriation bill will be introduced in the autumn sittings 2001. This bill will ensure that the full equivalent of the increase in excise collected on draught beer since 1 July 2000, less \$5 million allocated to the Historic Hotels initiative, is appropriated and allocated to a Foundation, to be called the Alcohol Education and Rehabilitation Foundation.

The Foundation will be established as an incorporated charitable trust with a constitution, to be agreed between the Government and the Democrats by letter, by mid-April 2001.

A board of approximately ten directors will be appointed for the Foundation, by agreement between the Government and the Democrats, with board members appointed in the following expert and representative capacities:

- Chairman (1)
- Community-based treatment and education (3)
- Medical (1)
- Research (1)
- Churches (1)
- Aboriginal and Torres Strait Islander (1)
- Sporting (1)
- Youth (1)

The objectives of the Foundation will be to:

- Prevent alcohol and other licit substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth;
- Support evidence-based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programmes;
- Promote community education encouraging responsible consumption of alcohol and highlighting the dangers of licit substance abuse;

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- Provide funding grants to organisations with appropriate community linkages to deliver the above mentioned services on behalf of the Foundation;
- Promote public awareness of the work of the Foundation and raise funds from the private sector for the ongoing work of the Foundation.

The Foundation will submit by August 2001 a detailed business plan for approval by the Government and the Democrats, encompassing:

- A Budget for the first four years of operation. The budget will be designed to expend 80% of the initial endowment within four years and adhere to the following prescribed percentages of total expenditure in the first year:
  - Administration and promotion at most 10%
  - Treatment and rehabilitation at least 30%
  - Public education at least 10%
  - Prevention at least 20%

Particular priority, with at least 20% of total expenditure, will be given to projects targeting indigenous Australians.

- An operational plan detailing procedures for the disbursement of funds, encompassing:
  - Procedures for enabling professional and community organisations to apply for grants.
  - Procedures for avoiding cost shifting from existing or intended alcohol and related funding at the Commonwealth, state and territory level.

The constitution of the proposed trust will include:

- A requirement that at least 85% of all Foundation expenditure is outsourced to professional and community organisations;
- Procedures for seeking approval of the annual budget by the board;
- Procedures for seeking approval of professional and community grants by the board;
- Procedures for reporting annually to Parliament on grant allocation decisions and overall operations;
- Procedures for independent auditing of the accounts and performance of the Foundation;
- Procedures for monitoring and reporting on the cost effectiveness and social impact of funded programs.

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