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Industry, Tourism and Resources Legislation
Amendment Bill 2002

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Industry, Tourism and Resources Legislation Amendment
Bill 2002

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13 August 2002

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Industry, Tourism and Resources Legislation Amendment Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The various measures have differing commencement dates which are detailed below.

Purpose

To:

- make technical amendments to the legislation in the portfolio, and
- repeal redundant legislation

Background

As there is no central theme to the Bill, the background to the measures will be described below.

Main Provisions

Amendments to *ACIS Administration Act 1999*

The Australian Competitiveness and Investment Scheme (ACIS) was established to provide transitional assistance to encourage competitive investment and innovation in the Australian automotive industry.

The Act provides incentives for registered organisations for eligible production, investment in plant equipment, research and development. Currently these incentives come in the form of duty credits that may be sold or transferred to other people, or used to 'offset' customs duty liability on eligible imports.

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At present, it is not clear whether there is authority for those duty credits to be used for refunds on duties that have already been paid. To clarify this, **items 1-10** contain amendments that specifically enable duty credits earned under the ACIS to be used to gain refunds on duty already paid on eligible imports since the commencement of the ACIS on 1 January 2002. This is consistent with the intention of the scheme. **New section 75A** requires that the Secretary be notified of an application for duty credit in an approved form and comply with any further applicable requirements specified in regulations.

Commencement: **items 1-10** will commence on a single day to be fixed by Proclamation or no later than 6 months after the Act receives Royal Assent.

Amendments to *Pooled Development Funds Act 1992*

Section 31 of the *Pooled Development Funds Act 1992* (the PDF Act) restricts certain persons that are not (among other things) widely-held complying superannuation funds, from holding more than 30% of a pooled development fund (PDF) subject to the approval of the PDF Registration Board.

Subsection 4A(1) of the PDF Act defined a widely-held complying superannuation fund as one that was not an 'excluded superannuation fund' under the *Superannuation Industry (Supervision) Act 1993* provided it met certain tests. From 8 October 1999, the definition of an 'excluded superannuation fund' was repealed from the *Superannuation Industry (Supervision) Act 1993*. This meant that the definition of a widely-held complying superannuation fund became inoperative. **Item 15** replaces the reference to the repealed definition and, according to the [Explanatory Memorandum](#), retains the intention that a widely-held complying superannuation fund be defined as a fund containing at least 5 members. **Item 16** is designed to ensure that no action is taken against widely-held superannuation funds that may otherwise have been liable between 8 October 1999 and the commencement of the proposed amendment.

Commencement: the day after Royal Assent.

Amendments to *Trade Practices Act 1974*

The *Trade Practices Act 1974* currently protects certain conduct and representations as to the place of origin of products. If a product meets a general test for country of origin representations, then it cannot be the subject of litigation for misleading or deceptive conduct under section 52, nor for false or misleading representations as to place of origin under paragraphs 53(eb) and 75AZC(1)(i).¹

According to the [Explanatory Memorandum](#), it may also be possible to make a false or misleading representation about the country of origin under the general false or misleading provisions in paragraphs 53(a) and 75AZC(1)(a).² These state that a corporation must not:

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falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use.

Items 25-28 broaden the scope of the exemption to cover potential actions taken under these paragraphs as well. Provisions relating to the use of logos representing country of origin and the evidential burden are also amended accordingly. This accords with the intention to protect country of origin representations that meet the legislative criteria.

Commencement: the day after Royal Assent. **Item 29** in effect clarifies that proceedings on foot are unaffected because the expansion of the defence only applies to representations made after the commencement of the proposed amendments.

Amendments to repeal Acts

Items 11 and 13 of the Bill repeal two Acts that are no longer relevant. The *Aluminium Industry Act 1960* provided the legislative approval to allow for the Commonwealth's interest in the Bell Bay smelter in Tasmania to be sold to Comalco Limited. The *Management and Investment Companies Act 1983* established a scheme that ceased to operate in 1991, with the related clawback provisions (protective refund clauses) becoming inactive in 1995-96.

Commencement: the day after Royal Assent.

Other Technical Amendments

On 1 July 1999, Standards Australia changed its name and status as an association to become incorporated as a company limited by guarantee under the Corporations Law. **Item 12** updates the reference to 'the Standards Association of Australia' to 'Standards Australia International Limited' in the definition of 'operating software' in the *Bounty (Computers) Act 1984*.

Commencement: **1 July 1999**.

On 15 April 1999, administrative responsibility for the *States Grants (Petroleum Products) Act 1965* transferred from the Australian Customs Service to the then Department for Industry, Science and Resources. Accordingly, references to the Chief Executive Officer of Customs have been changed to the 'Secretary of the Department' (**items 17-24**).

Commencement: the day after Royal Assent.

Item 14 is a minor grammatical change to the *Petroleum (Submerged Lands) Legislation Amendment Act 2001* that arose from an oversight in earlier amendments to that Act.

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Commencement: immediately after the time specified in the *Petroleum (Submerged Lands) Legislation Amendment Act 2001* for the commencement of item 17 of Schedule 1 to that Act.

Endnotes

- 1 These two paragraphs are identical provisions, the latter being a strict liability offence attracting a criminal penalty. For further background to the introduction of the country of origin test see the [Bills Digest](#) for the Trade Practices Amendment (Country of Origin Representations) Bill 1998, No. 213, 1997–98.
- 2 It is worth noting that the [Explanatory Memorandum](#) only refers to the inclusion of paragraph 53(a) in the defence and does not refer to the addition of the equivalent strict liability offence under paragraph 75AZC(1)(a). The proposed amendments, however, cover both of these paragraphs.

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