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## Egg Industry Service Provision Bill 2002

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Egg Industry Service Provision Bill 2002

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25 September 2002

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# **Egg Industry Service Provision Bill 2002**

**Date Introduced:** 28 August 2002

**House:** House of Representatives

**Portfolio:** Agriculture, Fisheries and Forestry

**Commencement:** Royal Assent.

## **Purpose**

To provide for:

- the establishment of the Australian Egg Corporation Limited (AECL), and
- the imposition of a compulsory promotional levy on egg producers.

## **Background**

### **The Egg Industry**

Many readers will be aware of some of the issues facing the egg industry in recent years. The egg industry, and the poultry industry in general, has faced controversy over animal welfare issues, antibiotics in growth promotants, and outbreaks of Newcastle Disease.<sup>1</sup> In the past decade, there have been other issues such as the deregulation of egg marketing and a decline in the comparatively low annual consumption of eggs in Australia. Most of these issues have some form of direct or indirect connection with the measures in this Bill.

### **Some Issues**

#### **Putting the Chicken Before the Egg**

One of the most conspicuous issues in the egg industry has been 'battery hen' cages. The *Put the Chicken Before the Egg* campaign by the RSPCA, and the *Free Chook by 2000* campaign supported by Animals Australia, were designed to phase out 'caged' production systems and to shift consumer perceptions via branding of 'barn laid eggs' (see below).<sup>2</sup>

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The conflict came to a head at a meeting of the Agriculture and Resource Management Council (ARMCANZ) in August 2000. At that meeting, attended by RSPCA and AEIA, ARMCANZ decided to 'support caged layer hen housing for the foreseeable future'.<sup>3</sup> (The Australian Egg Industry Association (AEIA) is the peak representative body for 'commercial egg producers, processors of egg products and the marketers thereof'.<sup>4</sup>) This decision was alleged to have violated an agreement among stakeholders regarding a phase out of cages<sup>5</sup> and an earlier alleged undertaking by AEIA to review caged production systems based on community concern arising out of the animal liberation campaigns.<sup>6</sup>

### **Cholesterol and Consumption**

A single egg yolk contains almost 200 to 250mg of cholesterol.<sup>7</sup> This fact seems to have had a strong impact on demand and consumption of eggs in Australia. But eggs may be unfairly associated with cholesterol problems.<sup>8</sup> The real problem may be saturated fats and, perhaps, an association between eggs and other foods such as bacon or sausages.

## **Deregulation**

### **Overview**

From the 1920's processing and marketing of primary produce was increasingly controlled by statute and compulsory cooperatives. The statutory marketing arrangements typically involved demand/supply management using market entry barriers, production control mechanisms, such as quotas and licences, along with various pricing and vesting powers.

From the 1970's these arrangements were increasingly subject to scrutiny and review. The focus was driven partly by competition principles and by other environmental changes:

For example, better and cheaper communications, the development of new financial tools to manage risk, and the adoption of a flexible exchange rate, have substantially reduced the need for statutory arrangements to smooth out the effects of fluctuations.<sup>9</sup>

In the late 1980's and 1990's many statutory marketing arrangements were deregulated. The focus was on irregularities or inefficiencies produced by the regulatory arrangements, with the prospect of further corporatisation or privatisation of the residual public bodies.<sup>10</sup>

In the late 1990's corporatisation and privatisation received renewed attention under the National Competition Policy and the Competition Principles Agreement among the Commonwealth and State and Territory Governments.<sup>11</sup> The focus in this debate has been review of legislative arrangements and privatisation of marketing and research and development bodies. The recent history at the Commonwealth level, is discussed below.

### **Application to the Egg Industry**

The egg industry has followed the trend above. Deregulation has occurred in New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and

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Northern Territory.<sup>12</sup> 'Statutory marketing' still exists in Tasmania and Western Australia. But it has been reviewed in Tasmania<sup>13</sup> and is under review in Western Australia.<sup>14</sup>

## Privatisation

### Overview

This Bill follows three sets of Acts passed in 2000-2001 which deal with privatisation or corporatisation in the Agriculture, Fisheries and Forestry Portfolio. These are:

- the *Wool Industry Privatisation Act 2000* (the Wool Act);
- the *Horticulture Marketing and Research and Development Services Act 2000* and *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* (the Horticulture Acts); and
- the *Pig Industry Act 2001* (the Pig Act).

All of these Acts seek to transfer control over marketing and research and development activities from government to industry participants. They provide for private control in relation to the use of participant levies whilst retaining an element of public control in relation to the use of government subsidies. Where relevant they are discussed below. More detail appears in [Bills Digest No. 52 1999-2000](#); [No. 58 1999-2000](#) and [No. 93 2000-2001](#). For a comparative table showing the key similarities and differences among these Acts see **Appendix 1 – Comparison of 'Privatisation' Measures in AFFA Portfolio**.

### Application to the Egg Industry

The Bill will facilitate the creation of the Australian Egg Corporation Limited (AECL). This will be a company limited by guarantee which will undertake the generic promotion (see discussion below) and research and development activities that are currently undertaken under the auspices of the Rural Industries Research and Development Corporation. AECL will also assume the role in setting levies exercised by AEIA.

The proposed transition date is **1 January 2003**.

The Bill would also introduce a compulsory levy to support generic promotion by AECL.

At present, producers pay a compulsory statutory 'laying chicken levy' under the *Primary Industries Excise Levies Act 1999*. The levy is imposed on hatcheries which supply laying chicks to egg producers. It is set at 7.87 cents/bird, which is distributed as follows:

- 7.2 cents goes to the Rural Industries Research and Development Corporation
- 0.4 cents goes to the National Residue Survey,<sup>15</sup> and
- 0.27 cents goes to the Australian Animal Health Council Ltd.

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Total laying chicken levy collection was \$738 000 in 1998-99 and \$716 000 in 1999-00.<sup>16</sup>

The proposed compulsory promotional levy would be imposed on producers, but collected by hatcheries along with the laying chicken levy. The compulsory levy would be 32.5 cents/bird, *in addition to the existing 7.87 cent/bird levy.*

## Statistics

### Consumption

The Explanatory Memorandum states that in the 1990's, average annual egg consumption in Australia fell from 146 to 137 eggs per person. By contrast, the AEIA estimates that in the same period consumption only fell from 159 to 152 eggs per person. In either case, egg consumption in Australia is well below per capita consumption levels in a number of other countries and is significantly short of an egg industry target of 200 eggs per person.

- Figure 1 below shows the annual egg consumption in Australia 1960/61–1998/99. It is an estimate by AEIA based on an Australian Bureau of Statistics database.<sup>17</sup>
- Figure 2 shows the annual egg consumption in Australia compared to other countries.<sup>18</sup>

Various conclusions may loosely be drawn from these figures:

- There has been a downward trend in the past 40 years in Australia (from 166 to 152)
- Australian consumption fluctuates over a 5–10 year period (average of  $162.5 \pm 5.6$ )
- Australian consumption has never gone close to the industry target of 200
- Australian consumption is not high among other countries, and
- Many developed and less developed countries have less than 200.

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Figure 1: Consumption of Eggs in Australia (1960-1999)<sup>19</sup>

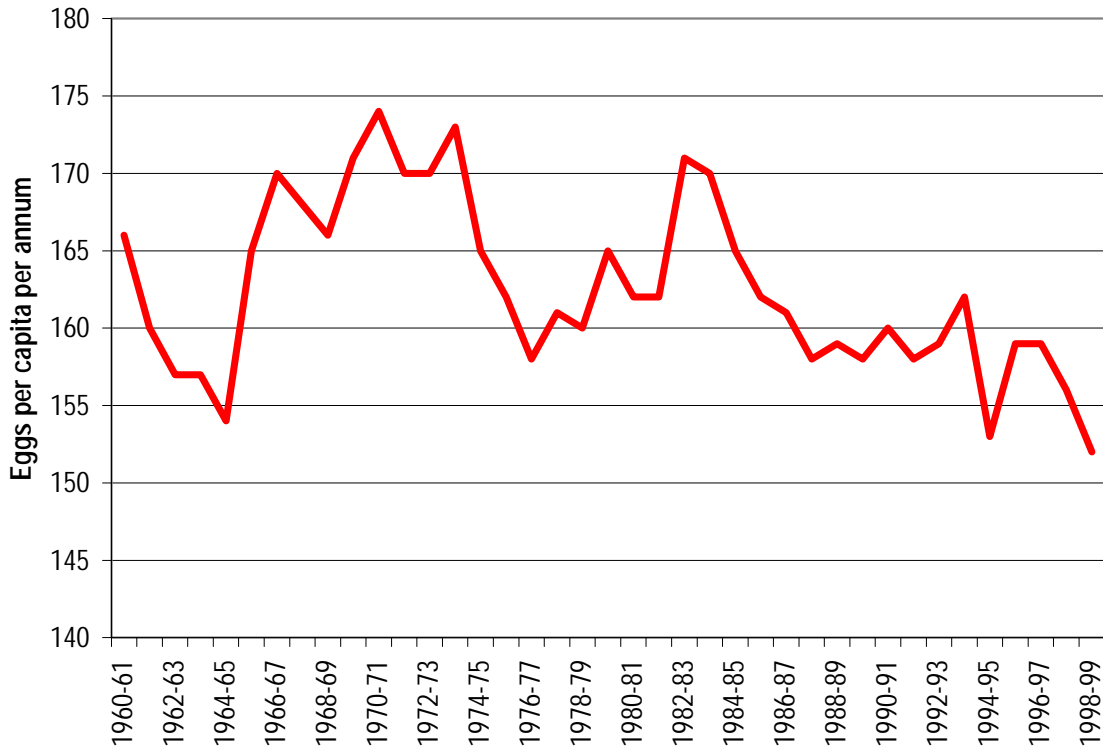
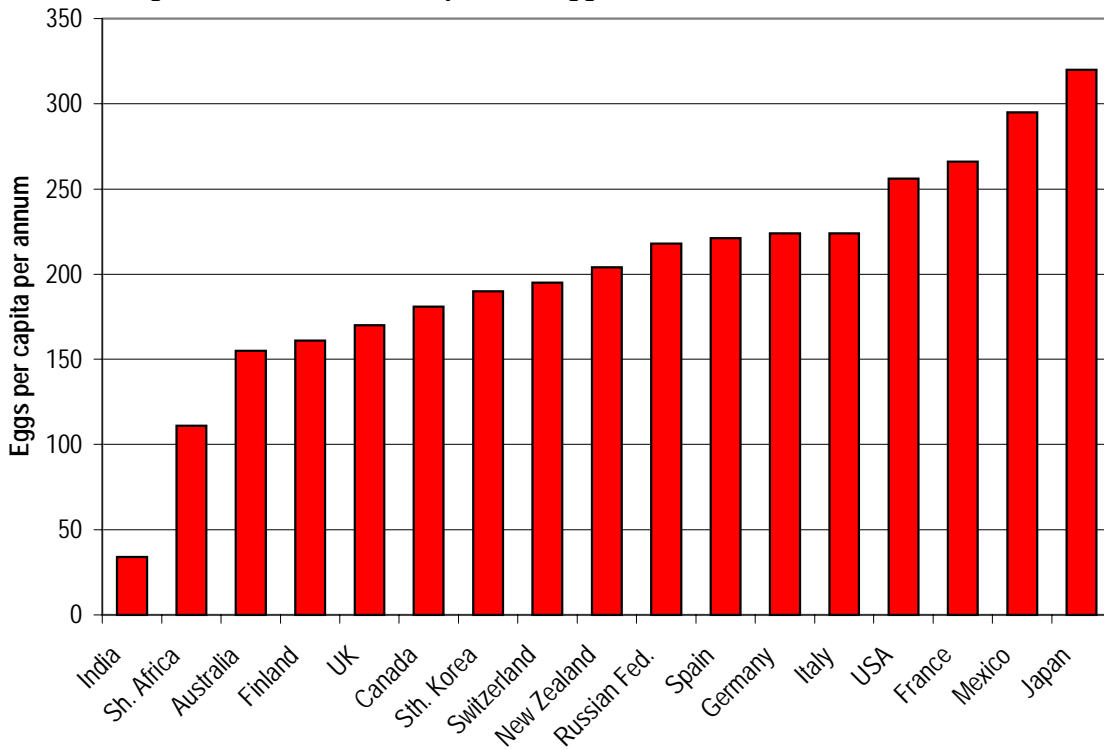


Figure 2: Annual Consumption of Eggs in Various Countries (1999)<sup>20</sup>



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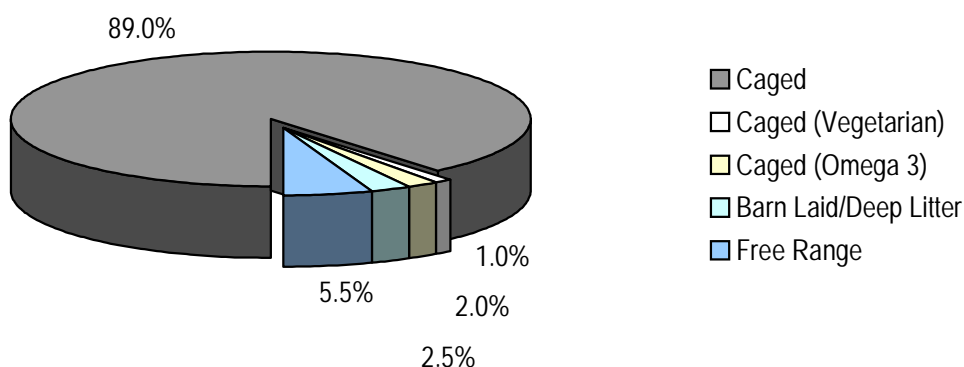
## Production

Three different production categories exist: 'caged', 'barn laid/deep litter' and 'free range':<sup>21</sup>

- *caged*: birds are housed in welded wire cages that are 'big enough for hens to stand erect and move about'. The advantages are that virtually every aspect of the production environment can be automated, including lighting, water supply and feed supply. The average cage layer farm houses 20 000 birds
- *barn laid*: birds are housed on a shed floor with a wider freedom of movement. The average flock size is around 5 000 birds, and
- *free range*: birds are housed in weatherproof sheds but have a very wide freedom of movement during the day. The average free range flock is 1 000 to 2 000 birds.

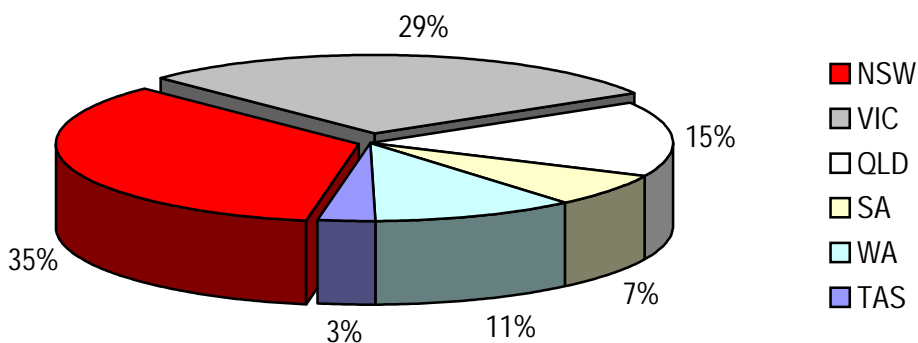
By far the largest proportion of eggs are produced in cage production systems:

Figure 3: Production Systems: Market Share<sup>22</sup>



And the vast bulk of the Australian flock is held in New South Wales and Victoria:

Figure 4: State Flock Percentages<sup>23</sup>



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In caged production systems, there is a minimum space requirement of 550 cm<sup>2</sup>/bird. That is, new cages constructed after 2001 must comply with a 1995 standard of 550 cm<sup>2</sup>/bird. There will be a phase-out of old cages of less than 550 cm<sup>2</sup>/bird by 1 January 2008. There will also be a requirement that each cage have a commercial life of at least 20 years.<sup>24</sup> These standards, which reflect a compromise between production and animal welfare, aim to provide certainty to producers and to promote investment in new infrastructure. Perhaps significantly, AEIA said that '[t]his will cause considerable hardship for some producers with cages installed prior to 1995, which must be phased out by 2008'.<sup>25</sup>

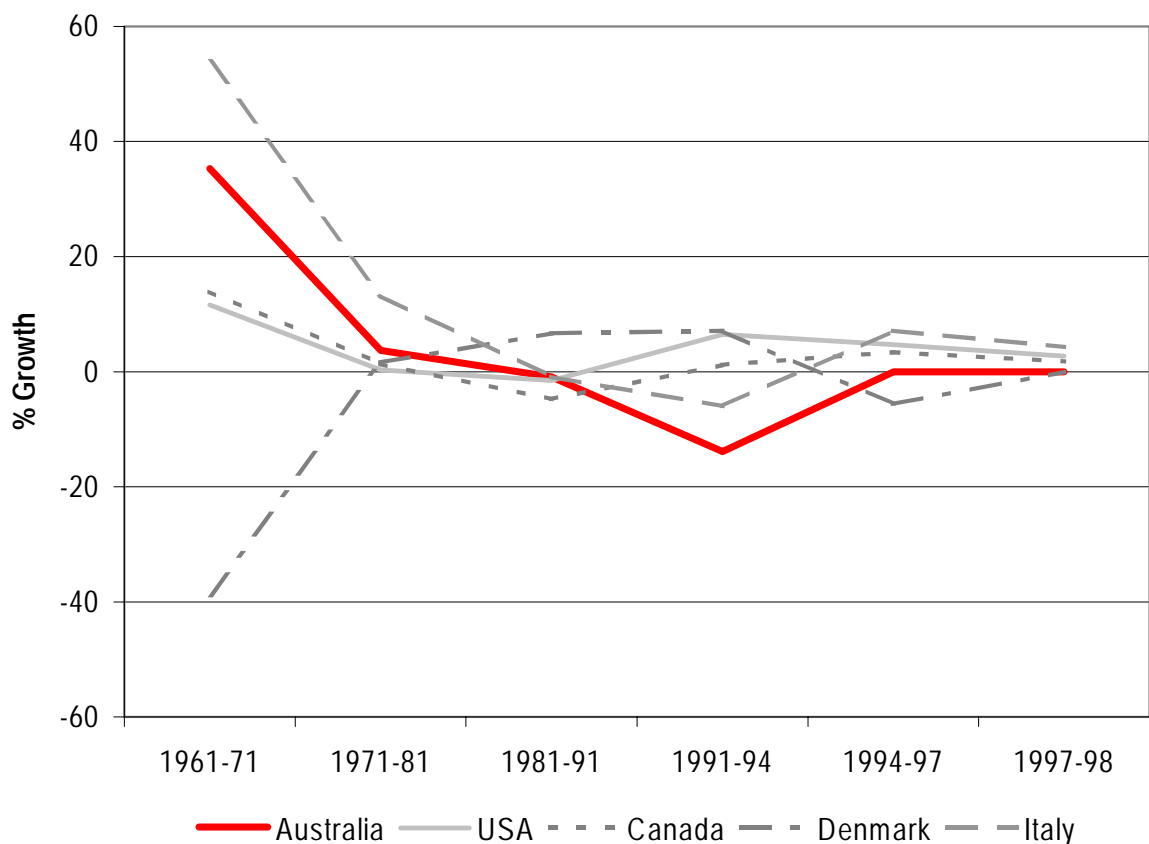
It is perhaps significant that the present minimum space requirement in the European Union is 750 cm<sup>2</sup>/bird. The EU will phase-out cages of less than 750 cm<sup>2</sup>/bird by 2012.<sup>26</sup>

At present, an estimated 25% of commercial egg producers (≥ 1000 laying hens) operate a free range production system, suggesting a substantial niche market in free range eggs.<sup>27</sup> Some large commercial producers (≅ 20 000 hens) operate all types of production systems.

## Growth

There has been little growth in the egg industry in Australia as in other countries:

Figure 5: Egg Industry Growth (Various Countries) (1961-71 to 1997-98)<sup>28</sup>



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And there may be small prospects for growth, except perhaps in processed products:

**Limited Growth Prospects:** About 65-70% of egg consumption is in the household sector with little growth. Prospects for growth rely on processed products supplied to the food service sector, including restaurants and take-away foods as well as prepared pre-packaged meals. The processed market is where imports have grown strongly.<sup>29</sup>

## Generic Promotion

One of the hot issues in the egg industry, as in other industries, is generic promotion. Its significance is underscored by the apparent decline in egg consumption in Australia.

The AEIA has argued that the decline in Australia is a result of 'a market failure in egg promotion' and that the decline will continue without generic promotion. However, this may be an unproven or contestable claim, at least in relation to generic promotion.

The fact that there has been a market failure may not be surprising. But there are various forms of promotion and various returns on each form of promotion. Generic promotion includes the promotion of eggs vis-à-vis other foods. One alternative is brand promotion, or the promotion of eggs by individual companies. Another alternative would seem to be niche promotion, or the promotion of eggs from different production systems. What are the returns on the various forms of promotion in terms of consumption and demand?

Attempts have been made at generic promotion in the past. The Explanatory Memorandum provides the example of the *Incredible Egg Company*, established by AEIA in 1987 to promote egg consumption and the egg industry generally. While the company initially enjoyed widespread support, it failed 'due, to a large extent, [to] resentment at the large number of "free riders" benefiting at the expense of those producers who paid their contributions'.<sup>30</sup> Other factors included the administrative costs of compliance.

The case for generic promotion would seem to be based on the fact that there are few consumer substitutes for eggs and that generic promotion will assist all producers. Moreover, it is argued, brand promotion and the creation of brand recognition 'has not been enough to redress declining per capita consumption'.<sup>31</sup> Specifically, it is suggested that, 'the nature of the marketing system, which is dominated by supermarkets, means that generic promotion is the most appropriate method of communicating to consumers'.<sup>32</sup>

The case against generic promotion may be more complex. In other industries, such as the dairy industry, various studies have been conducted into the effects of generic promotion. Some of these studies suggest that the returns on generic promotion may be affected by the extent of government regulation or competition, producer and consumer segmentation, brand marketing by larger producers, product substitutes and substitute promotion, and the elasticity of demand or the extent to which demand for a product is affected by price.<sup>33</sup>

One study cautioned that there may be greater returns from investment in research and development than in generic promotion.<sup>34</sup> Another study found that there were low returns

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on generic promotion and even smaller returns or profits for producers: 'It is not profitable to increase raw milk promotion expenditure on the domestic or on the export market ... a \$1 increase in domestic raw milk promotion returns only \$0.21 to dairy farmers'.<sup>35</sup> A one per cent increase in promotion expenditure was associated with a 0.004 per cent increase in dairy revenue and producer surplus but a 0.018 per cent *decrease* in net profits.<sup>36</sup>

Arguably, the strongest returns, or the strongest *incentives*, exist for brand promotion. As noted above, labelling of eggs as 'free range' or 'barn laid' may have little or no effect on consumption in these niche markets. Moreover, as a recent dairy industry study noted, the increasing importance of brands and the investment by national producers in them has the potential to render generic [or niche] promotion irrelevant.<sup>37</sup> This statement would seem to have particular relevance to the egg industry which is dominated by large producers.

Ultimately, more research may be required on promotion. As one of the studies concluded: '[o]n-going cost-benefit analysis may help to determine future activities in this area'.<sup>38</sup>

### Lessons from Wool?

It is worth noting that generic promotion was a major issue in wool industry privatisation. In that industry, expenditure on promotion had far exceeded research and development. A reform task force concluded that generic advertising did not have clearly measurable benefits for growers and should be the responsibility of retailers and brand owners. These concerns were reflected in specific legislative measures to focus promotion expenditure.<sup>39</sup>

### Consumption and Demand

A related issue is likely to be the volume of demand. While the Australian Bureau of Statistics and AEIA have compiled historical databases of consumption, there has been little research on demand. This may be critical: whereas consumption is a static measure, demand is a variable reflecting factors such as prices, incomes, dietary preferences, etc. As noted above, returns on generic promotion are affected by the elasticity of egg demand. It may be that eggs have a very low price or income elasticities, suggesting that reducing costs or prices may not improve consumption. *Advertising* elasticities may be negligible, suggesting there may be little correlation between generic promotion and egg demand.<sup>40</sup>

A recent Australian study identified a range of determinants of egg demand in Australia. The study associated a range of factors with decreasing demand in Australia: age, price of substitutes, household income, female workforce, and urbanisation. A particularly high correlation existed between demand and concerns over cholesterol. In terms of advertising, the study found a 'general increasing trend in the importance of advertising over-time' in respect of sales, but less so, if at all, in respect of total retail revenue. The authors said that the results 'do not suggest that, universally, advertising expenditure will always have a positive effect on egg sales' although they noted that 'advertising can have a significant influence on sales' particularly in relation to health or cholesterol concerns.<sup>41</sup>

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However, the positive outcomes were variable, with national advertising having a strong marginal effect in Queensland and state advertising having a similar effect in Victoria. Also, the impact of advertising on total revenue varied considerably from year to year.

Overall, expenditure on generic promotion may have less effect on sales than the manner in which an advertising campaign is pursued.<sup>42</sup> Arguably, it may not be possible to predict the costs and benefits of generic promotion without further examination of egg demand and the determinants identified above to determine whether they can be directly affected.

## Consultation

The Explanatory Memorandum states that the Bill is supported by hatchery operators and by large and small producers alike. Moreover, it is supported by 'those involved in niche products' on the basis that 'any increase in egg consumption will ultimately feed through into their products as well'.<sup>43</sup> Payers will also be eligible to 'register for membership of [AECL] and will be able to vote on issues such as the rate of the levy'.

These claims are based on consultations undertaken by AEIA in April–September 2001 to assess support for the establishment of AECL and the introduction of the compulsory levy. Of 508 egg producers across Australia, AEIA obtained responses from 238 (47%) representing over 96% of the 'ownership of laying hens in Australia'. Of those, 93.7% supported the creation of AECL and 87% supported the promotional levy.<sup>44</sup>

Opposition seemed to be limited. The Explanatory Memorandum stated the concerns identified by AEIA as being 'philosophical dislike of generic ideas', duplication of existing local marketing and 'lack of understanding of the proposal and industry issues'.<sup>45</sup>

There may be a disparity between large and small producers. Of the 508 egg producers in Australia (ABS), AEIA estimate that 340 are commercial producers ( $\geq 1000$  laying hens). The statistics above suggest that most if not all of the responses were received from the larger commercial producers. While this suggests a strong representation of the 'ownership of laying hens', it suggests a weak representation of smaller or niche producers.

It is perhaps significant that these smaller or niche producers are likely to be associated with non-cage production systems or 'barn laid' or 'free range' eggs.

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## Main Provisions

### Part 2 – Declaration of industry services body

#### Contract

The Minister for Agriculture, Fisheries and Forestry may enter into a contract with an 'eligible body' involving payments for promotion and research and development activities (**proposed section 7**). An 'eligible body' must be registered as a company limited by guarantee (**proposed section 4**). The Minister must be satisfied that the contract makes adequate provision to ensure that each payment is spent on relevant activities (see Table 3). Once a contract has been made, the Minister may declare the eligible body to be the 'industry services body' for the purposes of the Bill (**proposed section 6**).

**Table 3: Commonwealth funding for 'eligible body'**

<i>Payment</i>	<i>activities</i>	<i>for the benefit of</i>	<i>financial source</i>	<i>total limit</i>	<i>annual limit</i>
<i>promotion payments</i>	promotion and other services	Australian egg industry	egg levies (+penalties)	total egg levy after <i>transfer time</i>	N/A
<i>research and dev't payments</i>	R&D only	Australian egg industry	laying chicken levy (+penalties)	total laying chicken levy after <i>transfer time</i>	N/A
<i>matching payments</i>	R&D only	Australian egg industry & Australian community	laying chicken levy	total laying chicken levy after <i>transfer time</i>	lesser of: <ul style="list-style-type: none"> <li>• 0.5 % of the gross value of egg production in Australia<sup>46</sup></li> <li>• 50% of the industry services body's annual expenditure on R&amp;D</li> </ul>

In addition, an allowance is made for a carry forward of 'unmatched R&D excess' (**proposed subsections 8(5) and (6)**). This is the amount spent by the industry services body in a given year that is not met by 'matching payments' because of the total or annual limits on funding. No such allowance is made in the horticulture, wool and pigs industries.

#### Directions

The Minister may give written directions to the industry services body if s/he is satisfied that the direction is in the national interest 'because of exceptional and urgent circumstances' (**proposed section 9**). The directions are binding and must be tabled in Parliament within 15 sitting days, unless doing so would be likely to prejudice the national interest or the commercial interests of the body (**proposed subsections 9(3) and (4)**).

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Despite these powers, the Minister is not taken to be a director of, or to be in a position to exercise control over, the industry services body (**proposed subsections 9(5) and (6)**).

The Minister may delegate any or all of his or her powers and functions to the Secretary or an SES employee (**proposed section 10**). In relation to the horticulture industry, the power to give directions cannot be delegated, indicating that it must be exercised personally.<sup>47</sup>

In giving directions, the Minister must not require the body to incur expenses that exceed the public payments made under the funding contract. This restriction applies to payments made in the present year *and* to unspent or uncommitted payments from previous years (**proposed subparagraph 9(1)(a)(ii)**). In the horticulture and pig industries this restriction is only expressed to apply to payments 'under this Act'. If it is assumed that the restriction in the other industries applies to payments *in the present year* this may suggest that there will be more ministerial control over unspent or uncommitted payments in the egg industry. It permits retrospective control over the financial arrangements of the body. Alternatively, it may suggest that there is to be greater protection for spent or committed payments, if it is assumed that the restriction in the other industries applies to payments *in previous years*. It prohibits retrospective burdens on the financial resources of the body.

Given the emphasis on 'exceptional and urgent circumstances', and the need to make calls upon the resources of the industry body, the latter interpretation is probably correct. Given the scope in the funding contract to control use of payments, the former seems redundant.

## Concluding Comments

What has this got to do with the Price of Eggs?

As indicated, this Bill may be loosely compared or contrasted with these other sets of Acts in the Agriculture, Fisheries and Forestry Portfolio which deal with privatisation:

- the *Wool Industry Privatisation Act 2000*
- the *Horticulture Marketing and Research and Development Services Act 2000*, and
- the *Pig Industry Act 2001*.

The push toward privatisation might be seen as an extension of the National Competition Policy and the Competition Principles Agreement. However, while the deregulation of the egg industry might have had a strong relationship with competition principles, by virtue of removing market entry barriers, production controls and pricing and vesting powers, the privatisation of the research and development program may have a weaker relationship. Does privatisation in this area necessarily have a positive effect on competition?

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Arguably, there is and will continue to be, a general 'market failure' in relation to research and development and promotion activities. On this basis, as tradition would have it, the government has a positive intervention role. However, by recreating the 'market' in terms of stakeholders, and with minimum intervention in the form of compulsory statutory levies, the government is able to deal with 'market failure' by ordinary market processes.

The argument is that the shift from public to private has less to do with competition than with accountability. In a sense, there is a simple shift from administrative law and public political processes to corporations law and private political processes. In the Government's view this has certain advantages in terms of giving stakeholders greater control over the regulatory process and greater responsibility for the welfare of the industry.<sup>48</sup> However, it may have certain disadvantages for the egg industry and the wider community.

Once established, AECL will be a private company which receives the bulk of its income from a compulsory levy and matching public funding. It will perform a public function for Australian egg producers and the Australian community. As such, it might be expected to have special accountability obligations. To some degree it will be accountable to its members (in a management sense) and accountable to the public (in a financial reporting sense) under the *Corporations Act 2001*. It will also be accountable to the Executive (in both senses) in terms of funding contracts for research and development. But, it will not be accountable to Parliament. This is not unusual in the context of Government Business Enterprises. It reflects a compromise resolving a tension between private sector structure and public sector accountability.<sup>49</sup> But, it would seem to be unusual given the history of the egg industry and the level of government regulation of research and development in the wider agricultural sector. It may place pressure on accountability mechanisms, such as the terms and conditions of the funding contract and the constitution, etc. of AECL.

## Counting Your Chickens before they Hatch

The main reason given for creating AECL is to establish a system of generic promotion backed by a compulsory levy. But, there may be little evidence that generic promotion will achieve the desired outcome of increasing per capita consumption of eggs.

The Explanatory Memorandum states that '[i]n New Zealand, the egg industry has been turned around by generic promotion'.<sup>50</sup> However, this claim appears to be questionable. Statistics New Zealand reported in 1998 '[t]otal egg production has remained relatively static for the past decade, with slight drops in per capita consumption – now around 200 eggs per person annually'.<sup>51</sup> The Poultry Industry Association of New Zealand reported in 2001 '[t]otal egg production has remained relatively static for the past decade, with a slight increase in per capita consumption - now around 203 eggs per person annually'.<sup>52</sup>

It may be that the increase in per capita consumption from 200 to 203 is part of the short term variability in consumption patterns evidenced in Figure 1. Neither the Government nor the industry have produced any independent substantive analysis proving that generic promotion has produced a significant turn around in egg consumption in New Zealand.

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## Separating the Egg Industry

Despite the move to alternative housing systems (free range and barn laid) which now represent 8% of the market the egg industry and hence AEIA is still dominated by caged production systems and is therefore committed to large commercial producers ( $\cong 20\ 000$  hens). But, there appears to be a significant number of medium sized producers ( $1000 \leq x \leq 2000$  hens) or large producers whose operations are segmented in both markets.

The comments in the background relating to statistics and generic promotion suggest that in either of these sectors, producers may be unlikely to benefit from generic promotion. Consumption seems highly unlikely to reach the annual industry target of 200 eggs per capita, based on historical patterns and uncertainties in the effect of promotion on demand. Large and niche producers may benefit from brand promotion, but competing promotion may result in substitution between egg types rather than increased consumption.

These issues would seem to be complicated by social factors, such as lingering concerns over cholesterol, and the simmering conflict over animal welfare issues. Moreover, there may be market factors such as the overwhelming dominance of cage production systems.

The possibility of divergent views between large and niche producers, and the dominance of large producers in the egg industry, may create complex governance issues for AECL. Significantly, the measures above set no standards relating to the constitution of AECL. In the horticulture and wool industries, the industry services body must have an appropriate constitution. In the wool industry, voting rights for members are based on shareholding and the process for acquiring shares is defined in the relevant statute. In the pig industry, voting rights are based on aggregation of producers into cells of 7000 sows. Thus, the three relevant Acts had more detail on structure, constitutions, voting rights, etc.

## Some Other Issues to Brood on

Marketing services companies have previously been established for agricultural industries such as wool, horticulture and pigs. However, compared to these and most other agricultural industries, the egg industry has a number of features worth noting, including:

- an industry structure dominated by larger businesses with 34% of operators having an Estimated Value of Agricultural Operations (EVAO) of over \$500,000. This compares with 13% for all agricultural industries and 22%, 3% and 2% respectively for specialist grain, cattle and sheep farms<sup>53</sup>
- egg farms have an average Gross Value of Production of \$616,000 which is three times that for all farms<sup>54</sup>
- 70% of production may be accounted for by just nine producers<sup>55</sup>
- the product that leaves the farm is in consumer ready form

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- individual producers have or are engaged in promotion, and
- the industry is almost entirely domestically oriented.

If the egg industry is sufficiently different the question could be raised as to whether the service delivery model which has been implemented for other industries is the most suitable for the egg industry.

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## Appendix 1 – Comparison of 'Privatisation' Measures in AFFA Portfolio

<i>Provision</i>	<i>Pigs</i>	<i>Horticulture</i>	<i>Wool</i>	<i>Eggs</i>
<b>Agreement and declaration for levies funding:</b>				
• body must be registered as a company	✓	✓ <sup>56</sup>	✓ <sup>57</sup>	✓ <sup>58</sup>
• body must have appropriate constitution	✗	✓ <sup>59</sup>	✓ <sup>60</sup>	✗
• body must be limited by ...	guarantee	guarantee	shares <sup>61</sup>	guarantee <sup>62</sup>
• prescribed members/shareholders	✗	✗	✓ <sup>63</sup>	✗
• declaration precedes or follows contract	follows	follows <sup>64</sup>	precedes	follows
• 'marketing' and 'R&D' defined in Act	✗	✓ <sup>65</sup>	✗	✗
• special provision for revoking declaration	✗	✓ <sup>66</sup>	✗	✗
<b>Public v Private aspects:</b>				
• Minister may give directions, but ...	✓	✓ <sup>67</sup>	✗	✓
– Minister is not a director, etc	✓	✓ <sup>68</sup>	✗	✓
– body is not a statutory authority	✗	✗	✓ <sup>69</sup>	✗
– power can be delegated	✓	✗		✓
• body performs a public statutory function	✗	exports licences <sup>70</sup>	levy setting <sup>71</sup>	levy setting <sup>72</sup>
• public access to contract/agreement	✗	✓ <sup>73</sup>	✗	✗
<b>Flexible restructuring environment:</b>				
• flexible transfer by ... of	declaration	legislation <sup>74</sup>	declaration	declaration
– assets and liabilities	✓	✓ <sup>75</sup>	✓ <sup>76</sup>	✓ <sup>77</sup>
– contractual rights and obligations	✗	✓ <sup>78</sup>	✓ <sup>79</sup>	✗
• exemption from conveyance procedures <sup>80</sup>	✓	✓	✓	✗
• exemption from stamp duty for:				
– transfers to principal	✓	✓	✓	✓ <sup>81</sup>
– transfers to subsidiaries, etc	✗	✗	✓ <sup>82</sup>	✗
• exemptions for Capital Gains Tax	✗	✗	✓ <sup>83</sup>	✗
• exemptions for Goods and Services Tax	✓	✓ <sup>84</sup>	✗	✓ <sup>85</sup>
<b>Power for the Commonwealth to:</b>				
• acquire assets and liabilities	✓	✗	✗	✗
• sell assets and discharge liabilities	✓	✗	✗	✗
<b>Body liable for restructure expenses</b>	✓ <sup>86</sup>	✗	✗	✓
<b>Provision for transfer of employees</b>	✓	✓ <sup>87</sup>	✗	✗

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## Endnotes

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- 1 Newcastle Disease is a highly contagious viral disease affecting most birds, including domestic poultry. Its symptoms include respiratory failure and diarrhoea: Queensland. Department of Primary Industries, '[Newcastle Disease](#)'.
- 2 RSPCA, '[Put the Chicken Before the Egg](#)'.
- 3 Australian Egg Industry Association, '[Egg Industry Welcomes Ministers' Decision on Hen Housing](#)', *Media Release*, 18 August 2000.
- 4 Australian Egg Industry Association, 'About Us' at <http://www.aeia.org/aeia/index.html> [16/09/02].
- 5 Animals Australia, '[Egg Industry Reneges on Battery Hen Phase-Out Deal—ignores welfare evidence](#)', *Media Release*, 18 August 2000.
- 6 RSCPA, '[50 000 Consumers call for ban on Battery Cages](#)', *Media Release*, 13 August 2000.
- 7 Victoria. Better Health Channel, '[Cholesterol](#)'.
- 8 CSIRO, '[CSIRO Achievements 1990 to 1995: Health and Nutrition – Dietary Cholesterol in Eggs](#)'.
- 9 Productivity Commission, '[Impact of Competition Policy Reforms on Rural and Regional Australia Inquiry Report](#)', 14 October 1999, p. 195.
- 10 Industry Commission, *Statutory Marketing Arrangements for Primary Producers*, Report No. 10, March 1991.
- 11 Productivity Commission, '[Impact of Competition Policy Reforms on Rural and Regional Australia Inquiry Report](#)', 14 October 1999. See [Appendix C](#).
- 12 Australian Egg Industry Association, '[Marketing Regulatory Framework](#)'.
- 13 Productivity Commission, '[Impact of Competition Policy Reforms on Rural and Regional Australia Inquiry Report](#)', 14 October 1999. See [Appendix C](#), p. 450.
- 14 Western Australia. Department of Agriculture, '[Discussion Paper: Review of the Marketing of Eggs Act 1945](#)', June 2002.
- 15 *National Residue Survey Administration Act 1992*, for background see Ian Ireland, National Residue Survey Administration Amendment Bill 1998, [Bills Digest No. 167 1997-98](#).
- 16 <http://www.daffa.gov.au/content/levies/client.cfm>
- 17 'While [the ABS] figures represent the official aggregate, there is considerable volatility and, in all certainty, an overestimation of consumption until 1981-82 and an underestimation of consumption in subsequent years. [The graph] attempts to adjust these weaknesses in ABS statistics': Australian Egg Industry Association, '[AEIA Estimates of Egg Consumption in Australia](#)'.
- 18 Australian Egg Industry Association, '[Total Consumption \(Shell & Product\) 1999](#)'.
- 19 Australian Egg Industry Association, '[Total Consumption \(Shell & Product\) 1999](#)'.
- 20 Australian Egg Industry Association, '[Per Capita Egg Consumption 1999](#)'.
- 21 Australian Egg Industry Association, '[Production Systems](#)'.
- 22 Australian Egg Industry Association, '[Egg Industry Facts](#)'.

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- 23 Australian Egg Industry Association, '[Egg Industry Facts](#)'.
- 24 Australian Egg Industry Association, '[Layer Hen Housing](#)'.
- 25 Australian Egg Industry Association, '[Egg Industry Welcomes Ministers' Decision on hen Housing](#)', *Media Release*, 18 August 2000.
- 26 European Union, '[Laying Hens](#)'. See also European Union, [Council Directive 88/166/EC](#) 7 March 1988; European Union, [Council Directive 1999/74/EC](#), 19 July 1999.
- 27 Australian Egg Industry Association, '[Production Systems](#)'.
- 28 Australian Egg Industry Association, '[Country Profiles](#)'.
- 29 Western Australia. Department of Agriculture, [Discussion Paper: Review of the Marketing of Eggs Act 1945](#), June 2002, p. iii.
- 30 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 5.
- 31 Warren Truss, MP, [Egg Industry Service Provision Bill 2002](#), Second Reading Speech, House of Representatives, *Debates*, 28 August 2002, p. 5906.
- 32 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 5.
- 33 Xueyan Zhao, Kym Anderson and Glyn Wittwer, 'Who Gains from Australian Generic Wine R&D and Promotion?', Centre for International Economic Studies, [Discussion Paper No. 0204](#), February 2002; D.J. Hill, R.R. Piggott and G.R. Griffith, 'Profitability of Incremental Generic Promotion Expenditure by Australian Dairy Farmers', University of New England, Graduate School of Agricultural and Resource Economics, *Working Paper Series in Agricultural and Resource Economics*, [No. 99-8](#), May 1999; Fred Frost, '[The Changing Role of Governments' Involvement in the Dairy Industry—A Delphi Study of its Future Role](#)', *Journal of Contemporary Issues in Business and Government*, Vol. 6(2).
- 34 Xueyan Zhao, Kym Anderson and Glyn Wittwer, 'Who Gains from Australian Generic Wine R&D and Promotion?', Centre for International Economic Studies, [Discussion Paper No. 0204](#), February 2002.
- 35 D.J. Hill, R.R. Piggott and G.R. Griffith, 'Profitability of Incremental Generic Promotion Expenditure by Australian Dairy Farmers', University of New England, Graduate School of Agricultural and Resource Economics, *Working Paper Series in Agricultural and Resource Economics*, [No. 99-8](#), May 1999, p. 16.
- 36 *ibid.*, p. 21.
- 37 Fred Frost, '[The Changing Role of Governments' Involvement in the Dairy Industry—A Delphi Study of its Future Role](#)', *Journal of Contemporary Issues in Business and Government*, Vol. 6(2), p. 52.
- 38 Fred Frost, '[The Changing Role of Governments' Involvement in the Dairy Industry—A Delphi Study of its Future Role](#)', *Journal of Contemporary Issues in Business and Government*, Vol. 6(2), p. 52.
- 39 See generally Nathan Hancock, Peter Hicks and Brad Hinton, Wool Services Privatisation Bill 2000, [Bills Digest No. 52 2000-01](#).
- 40 Edward Oczkowski and Tom Murphy, '[Influencing Factors of Domestic Egg Demand: A report for the Rural Industries Research and Development Corporation](#)', November 1999. See also RIRDC, '[Modelling the Determinants of Domestic Egg Demand: The Short Report](#)', Report No. 51.

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- 41 Edward Oczkowski and Tom Murphy, '[Influencing Factors of Domestic Egg Demand: A report for the Rural Industries Research and Development Corporation](#)', November 1999, p. 48.
- 42 Edward Oczkowski and Tom Murphy, '[Influencing Factors of Domestic Egg Demand: A report for the Rural Industries Research and Development Corporation](#)', November 1999, p. 48, citing a United Kingdom study: Hallam, D. (1986) 'The Eggs Authority: A Critical Appraisal', *Journal of Agricultural Economics*, 37, 185–191.
- 43 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, pp. 6–7.
- 44 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 8.
- 45 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 8.
- 46 The gross value of 'egg production' in Australia is to be determined by the Minister. The way in which its value is to be determined may be dealt with in regulations (**proposed subsection 8(4)**).
- 47 *Horticulture Marketing and Research and Development Services Act 2000*, section 29.
- 48 Warren Truss, MP, [Egg Industry Service Provision Bill 2002](#), Second Reading Speech, House of Representatives, *Debates*, 28 August 2002, p. 5906.
- 49 On the issue of accountability of public sector companies see generally: Stephen Bottomley, 'Government Business Enterprises and Public Accountability through Parliament', *Research Paper No 18 1999-2000*, at: <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp18.htm> [10/10/00].
- 50 Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 7.
- 51 Statistics New Zealand, '[Pigs Poultry and Bees](#)'.
- 52 Poultry Industry Association of New Zealand, '[An Outline of the New Zealand Poultry Industry](#)'.
- 53 ABS Cat. no. 7113.0 *Agriculture Australia 1999-2000*
- 54 ABS Cat. no. 7113.0 *Agriculture Australia 1999-2000* and ABS Cat. no. 7501.0 *Value of Agricultural Commodities Produced Australia 2000-01*
- 55 According to the Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p. 5 the *Incredible Egg Company* initially involved organisations which supplied 70% of the Australian Market while a report in 'National Egg Week cracks new market', *The Land*, 1 October 1998, stated the company represented nine major egg producers.
- 56 *Horticulture Marketing and Research and Development Services Act 2000*, section 9 (declaration of 'industry services body'), section 12 (entering into deeds of agreement).
- 57 *Wool Industry Privatisation Act 2000*, section 30 (declaration of 'research body'), section 31 (funding contract with the research body).
- 58 **Proposed section 4**, definition of 'eligible body'.
- 59 *Horticulture Marketing and Research and Development Services Act 2000*, paragraph 9(1)(c).
- 60 While there is no requirement that the constitution be 'appropriate' to the performance of its duties under the funding agreement, the Minister must approve the constitution of 'HoldCo/'Australian Wool Services' before the company is registered by ASIC: *Wool Industry Privatisation Act 2000*, section 8.

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- 61 The Minister may enter into a contract with a body provided it is registered as a company under the Corporations Law. There is no requirement that the company be limited by shares or by guarantee. However, it is intended that the contract will be with 'Australian Wool Innovation Limited', a company established under the control of 'Australian Wool Services' a company established pursuant to the Act, registered under the Corporations Law and limited by shares: see 'Proposed Company Structure: October 2000' in [Bills Digest No. 52 1999-2000](#).
- 62 **Proposed section 4**, definition of 'eligible body'.
- 63 Provision is made for determining a 'list of eligible woolgrowers' from which the shareholders of Australian Wool Services are drawn: *Wool Industry Privatisation Act 2000*, Division 5 of Part 2.
- 64 While a deed of agreement with a body may precede its declaration as the 'industry services body', the deed must be with a body which is proposed to be the industry services body: *Horticulture Marketing and Research and Development Services Act 2000*, subsection 12(1). One benefit of being able to enter into a deed of agreement before a declaration is that the deed may prescribe conditions on the transfer of assets, etc which is otherwise dealt with by legislation (see below in relation to flexible transfer by legislation of assets, etc).
- 65 See *Horticulture Marketing and Research and Development Services Act 2000*, section 4 (definitions of 'marketing' and 'research and development').
- 66 *Horticulture Marketing and Research and Development Services Act 2000*, section 10 and 11.
- 67 *Horticulture Marketing and Research and Development Services Act 2000*, section 29.
- 68 *Horticulture Marketing and Research and Development Services Act 2000*, subsection 29(4).
- 69 *Wool Industry Privatisation Act 2000*, section 33.
- 70 *Horticulture Marketing and Research and Development Services Act 2000*, sections 22 and 23.
- 71 *Wool Industry Privatisation Act 2000*, section 32.
- 72 Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002, **Schedule 1** amending Schedule 16 of the *Primary Industries (Excise) Levies Act 1999*.
- 73 *Horticulture Marketing and Research and Development Services Act 2000*, section 14.
- 74 *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, Division 3 of Part 2. Note that the transfers can be made subject to conditions in a Deed of Agreement between the Minister and the (proposed) industry services body: section 15 (deeds of agreement are dealt with in the *Horticulture Marketing and Research and Development Services Act 2000*, Division 3 of Part 2).
- 75 *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, Division 3 of Part 2.
- 76 *Wool Services Privatisation Act 2000*, Division 3 of Part 2.
- 77 **Proposed sections 10 and 11.**
- 78 The industry services body is substituted in any instrument which relates to the statutory authority: *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, section 20. In addition, there is a provision relating to pending proceedings by which the industry services body becomes the successor in relation to any asset, liability, right, benefit or obligation involved: section 18.

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- 79 *Wool Services Privatisation Act 2000*, section 11.
- 80 That is, the ability to transfer assets without any conveyance, transfer or assignment.
- 81 **Proposed sections 10 and 11.**
- 82 Following the establishment of 'HoldCo/'Australian Wool Services', the Minister may certify the transfer of assets or liabilities between restructuring bodies (eg subsidiaries established by 'HoldCo/'Australian Wool Services') as 'exempt matters': *Wool Services Privatisation Act 2000*, section 24.
- 83 *Wool Services Privatisation Act 2000*, sections 28 and 29.
- 84 *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, section 19A.
- 85 **Proposed section 13.**
- 86 In the pig industry, provision was made for payments to reimburse the Commonwealth or any other person or body for expenses or liabilities associated with restructure: *Pig Industry Act 2001*, section 45. The sum of those payments, less any adjustment payments to the new body, were effectively made from money or proceeds of the sale of assets in the restructure process.
- 87 *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, Division 4 of Part 2.

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