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Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002

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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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Egg Industry Service Provision (Transitional and
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25 September 2002

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Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002

Date Introduced: 28 August 2002

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Schedule 1 commences immediately after the commencement of the *Egg Industry Service Provision Act 2002*. The remaining provisions commence on Royal Assent.

Purpose

To facilitate the establishment of the Australian Egg Corporation Limited (AECL)

Background

This Bill is related to the Egg Industry Service Provision Bill 2002. It creates a flexible restructuring environment for the transfer of egg promotion and research and development functions from the Rural Industries Research and Development Corporation (RIRDC) to the proposed Australian Egg Corporation Limited (AECL).

Main Provisions

Transitional Functions

The Bill requires RIRDC to facilitate the transfer to AECL and assist relevant entities in meeting associated expenses (**proposed section 7**). The Minister may give written directions which RIRDC must follow (**proposed subsection 7(3)**). The directions must be tabled in Parliament within 15 sitting days (**proposed subsection 7(4)**).

Transfer of Assets and Liabilities

The Bill provides exemptions from certain legal conveyance procedures.

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The Minister may, by written declaration, transfer assets and liabilities of RIRDC. S/he may also substitute the inaugural industry services body (the 'successor body') in respect of related instruments and succession. Each declaration has immediate effect according to its terms. It has effect irrespective of any particular formal transfer, conveyance or assignment (**proposed sections 10 and 11**). There are no publication requirements. In the horticulture, wool and pig industries, declarations must be published in the *Gazette*.¹

Provision is made for certificates which will allow declarations in relation to assets to have effect under State and Territory law. A certificate signed by the Minister and lodged with a State or Territory official may have the same effect as an instrument prepared and lodged in accordance with State or Territory law (**proposed section 14**).

Similarly, there is a blanket exemption from stamp duty or other tax payable under State or Territory laws for 'exempt matters' (**proposed sections 12 and 13**). These include:

- the transfer or sale of an asset to the successor body, or
- the transfer of a liability to the successor body.

These 'exempt matters' are also covered by certificates (**proposed subsection 12(2)**).

Also, the certificates are evidence 'in all courts and for all purposes' of the matters stated (**proposed subsection 12(3)**). This presumptive rule would *seem* to apply to declarations relating to the transfer of assets or liabilities, but this is not clear. In the pig and wool industries, the certificates, whether they relate to exemptions or transfers, have effect according to their terms and are prima facie evidence.²

In this Bill, although it applies 'for all purposes', the presumptive rule only applies to certificates that identify a transfer or other matter as an exempt matter, not to certificates that state that an asset has become vested in a successor body.

Exemptions from GST

The Bill sets up a mechanism to protect the successor body from GST liability (**proposed section 13**). The transfer of assets to the successor body is a 'taxable supply' for the purposes of the GST law. The entry by the successor body into obligations under the funding contract is also a 'taxable supply'. Thus, the successor body would pay GST to the Commonwealth (*for the transfer*) and the Commonwealth would pay GST to the successor body (*for the act of entering into obligations under the contract*) and each would remit the GST to the Australian Tax Office. But, because each body is involved in some form of 'business' activity, each is entitled to an input tax credit which it can use to offset its GST.

The problem is that the value of the assets will far exceed the value of the obligations under the funding contract. Thus, the input tax credit available to the successor body in respect of the contract is far less than the GST liability it has in relation to the transfer. The transfer of assets is therefore deemed by the Bill to be consideration paid by the Commonwealth for the successor body's entry into the funding contract (**proposed section**

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13). Effectively, the Bill ties the value of the assets to the value of the obligations. Thus, the successor body is entitled to receive an input tax credit corresponding to the full GST liability in relation to the transfer. The Commonwealth has an equivalent entitlement.

A similar provision was included in one of the Horticulture Acts.³ It was inserted into the Bill by an amendment during consideration in detail. Its purpose was to 'ensure that the new company is able to receive an input tax credit to meet its GST liabilities when the assets of the existing statutory corporation are transferred to it'. Ultimately the amendment would ensure that the new corporation was not 'disadvantaged by the assets transfer'.⁴

Endnotes

- 1 *Horticulture Marketing and Research and Development Services Act 2000* subsections 11(4); *Wool Services Privatisation Act 2000*, subsections 11(7), 12(4), 17(4) and *Pig Industry Act 2001*, section 42.
- 2 *Pig Industry Act 2001*, section 41, *Wool Industry Privatisation Act 2000*, section 37.
- 3 *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, section 19A
- 4 Warren Truss, *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Bill 2000*, consideration in detail, House of Representatives, *Debates*, 1 November 2000, p. 21943.

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