



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 111 2002–03

Agriculture, Fisheries and Forestry Legislation
Amendment Bill (No. 2) 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

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, 2003

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. 111 2002–03

Agriculture, Fisheries and Forestry Legislation Amendment
Bill (No. 2) 2002

Nathan Hancock
Law and Bills Digest Group
12 February 2003

Contents

Purpose	1
Main Provisions	2
Schedule 1— <i>Australian Wine and Brandy Corporation Act 1980</i>	2
Wine Trading Agreements and the Food Standards Code	2
'Statute of Limitations'	3
Schedule 2— <i>Export Control Act 1982</i>	3
Export Orders and the Food Standards Code	3
Schedule 3— <i>National Residue Survey Administration Act 1992</i>	3
Schedule 4— <i>Quarantine Act 1908</i>	4
Schedule 5— Christmas Island Amendments	5
Schedule 6— <i>Dairy Industry Legislation Amendment Act 2002</i>	5
Endnotes	5

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002

Date Introduced: 12 December 2002

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Various.

Purpose

To amend the

- *Australian Wine and Brandy Corporation Act 1980* to deal with a European Union wine trading agreement and to extend the time limit for prosecutions of an offence
- *Export Control Act 1982*: to permit regulation pursuant to the *Australia New Zealand Food Standards Code*, similar United States code, etc;
- *National Residue Survey Administration Act 1992*: to clarify the way in which the National Residue Survey Reserve may be applied and to implement privacy principles;
- *Quarantine Act 1908*: to bring offence provisions into line with the *Criminal Code*;
- *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2002*: to allow some amendments to be brought forward, depending on that Act's commencement; and
- *Dairy Industry Legislation Amendment Act 2002*: to correct a technical error.

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

Schedule 1—*Australian Wine and Brandy Corporation Act 1980*.

Schedule 1 amends the *Australian Wine and Brandy Corporation Act 1980*.

Wine Trading Agreements and the Food Standards Code

Item 1 expands the powers of the Australian Wine and Brandy Corporation so that it may give effect to a 'prescribed wine-trading agreement' (**new paragraph 8(2)(aaa)**). **Item 5** allows the regulations to impose obligations to give effect such an agreement (**new paragraph 46(1)(b)**).

In 1995 Australia and New Zealand agreed to establish a joint food standards regime. The new *Australia New Zealand Food Standards Code* (the Code) was gazetted in December 2000. Essentially, the Code 'aims to reduce the prescription of existing food regulations in both countries and lead to greater industry innovation, competition and trade'.¹

The *Australia New Zealand Food Standards Code* was intended to replace the Australian *Food Standards Code* and to become the sole food code for both countries by December 2002. The *Food Standards Code* had been subject to a standards-by-standards review by the Australia New Zealand Food Authority (ANSFA) since 1994. It was also subject to a review under the National Competition Policy in February 2002.² During the latter review, ANZFA identified anti-competitive anomalies arising from an EU wine trade agreement:

ANZFA determined that some of the production provisions for wine that underpin Australia's Agreement with the EU (and contained in Volume 1 of the *Food Standards Code*) were inappropriate in a joint wine standard because they prescribed practices relating to wine quality that could become technical barriers to trade.

Under the *Australia New Zealand Food Standards Code*, wine and wine products are regulated by various food standards including Standard 2.7.4. This 'sets general definitions for wine and wine product and provides permissions for the addition of certain foods during the production of wine'.³ While it recognises 'accepted wine practices throughout the world', it was not to be strict enough to give effect to the wine trade agreement which 'relies on Australian wine being recognised as wine of designated quality and origin'.

The issue was resolved by amending the *Australia New Zealand Food Standards Code*. A new standard was included that only applies to relevant wine made in Australia. Standard 4.1.1 'regulates the production of traditional wine, sparkling wine and fortified wine'.⁴ It duplicates the effect of the production provisions in Volume 1 of the *Food Standards Code*.

It was considered impractical to amend the *Australian Wine and Brandy Corporation Act 1980* as the Act was limited by legislative powers under the Commonwealth Constitution. It did not cover all wine made and sold in Australia,

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.

'particularly wine manufactured by unincorporated bodies and not traded interstate or internationally'.⁵

Items 1 and 5 allow the Australian Wine and Brandy Corporation and the regulations to resolve some residual regulatory issues surrounding the EU wine trading agreement.

'Statute of Limitations'

Item 3 inserts a provision that extends the time limit for prosecutions of offences in relation to the export of grape products. Ordinarily the time limit would be one year. The time limit proposed by the amendment would be 7 years.

Commencement

Schedule 1 commences on Royal Assent.

Schedule 2—*Export Control Act 1982*

Schedule 2 amends the *Export Control Act 1982*.

Export Orders and the Food Standards Code

Regulations under the *Export Control Act 1982* may empower the Minister to make orders in relation to any matters covered by the Regulations (paragraph 25(2)(g)). Orders may deal with a matter by 'applying, adopting or incorporating, with or without modification,' various matters including provisions of principal or subordinate legislation and overseas importation guidelines relating to the production of goods in Australia (subsection 25(5)).

Item 1 provides that, in the absence of such importation guidelines, an order may apply, etc. any matter contained in the *Australia New Zealand Food Standards Code* or the equivalent United Nations document, the *Codex Alimentarius*.⁶

Commencement

Schedule 2 commences on Royal Assent.

Schedule 3—*National Residue Survey Administration Act 1992*

Schedule 3 amends the *National Residue Survey Administration Act 1992*.

The National Residue Survey (NRS) monitors residues of agricultural and veterinary chemicals in raw agricultural produce to meet national and international requirements. This is generally required for access agreements for both export and domestic markets.⁷

The *National Residue Survey Administration Act 1992* establishes the National Residue Survey Reserve, a fund comprising levies, penalties, matching payments, etc. that may be

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.

spent primarily on monitoring, reporting, testing and prevention in respect of contaminants in food products, animal feed, or fibre products that are produced in Australia or are produced from animals or plants that are themselves produced in Australia (section 8(1)).

Items 1–6 restructure and clarify the provisions regulating expenditure from the Reserve.

Instead of '*food products, animal feed, or fibre products*' the Act would refer to 'food products', 'products of a primary industry' or items used in producing these products.

As is presently the case, the Reserve would be applicable to testing of contaminants. This would extend expressly to testing of the environment and would encompass potential sources and causes of contaminants rather than merely actual sources and causes *per se*.

Similarly, the Reserve would be applicable to prevention. This would extend also to risk management in relation to contamination of applicable products.

Item 7 replaces an existing provision governing release of information to better reflect privacy issues, particularly by imposing a penalty on unlawful disclosure.

Commencement

Schedule 3 commences on Royal Assent.

Schedule 4– *Quarantine Act 1908*

Schedule 4 amends the *Quarantine Act 1908*.

Most of these amendments bring offence provisions into line with the *Criminal Code*.

Item 3 clarifies the operation of a provision governing 'first ports of entry'. Currently, it is an offence to enter Australia or the Cocos Islands otherwise than by a 'first port of entry' without the permission of the Minister (section 20). The amendment clarifies that:

- (a) the issue of permission is a defence rather than an element of the offence, making this a matter for which the defendant owes an evidential burden, and
- (b) the offence applies to Christmas Island.

Item 4 makes a similar amendment in relation to overseas aircraft.

Item 5 restructures a provision dealing with aircraft entering Australia. It splits the offence into two provisions, one dealing with commanders and the other with operators. It also clarifies that the offence applies to Christmas Island.

Item 6 clarifies the operation of a provision governing boarding and approaching vessels. It separates the offence and defence provisions in accordance with the *Criminal Code*.

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.

Items 8–21, 23–25, 27–28 and 30–33 have similar aims in relation to other offences.

Commencement

Most of **Schedule 4** commences 28 days after Royal Assent. The commencement of **items 3–5 and 23** are contingent upon the commencement of item 1 of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2002*.

Schedule 5– Christmas Island Amendments

Schedule 5 contains amendments relating to Christmas Island that are contingent upon the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2002*. If item 1 of Schedule 1 of that Act commences before **item 1 of Schedule 4** of the principal Bill, then **Schedule 5** is redundant and its amendments do not come into operation.

Commencement

Schedule 5 commences 28 days after Royal Assent, subject to the commencement of the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2002*.

Schedule 6– *Dairy Industry Legislation Amendment Act 2002*

Schedule 5 amends the *Dairy Industry Legislation Amendment Act 2002* to correct a technical error among the amendments made by that Act.

Commencement

Schedule 6 commences immediately after the time specified for the relevant amendment in the *Dairy Industry Legislation Amendment Act 2002*.

Endnotes

- 1 Australia and New Zealand Food Authority, [Initial/Draft Assessment Report P253; Wine Production \(Australia Only\)](#), 8 May 2002, p. 3.
- 2 Food Standards Australia New Zealand, [National Competition Policy Review on the Food Standards Code](#), February 2002.
- 3 Food Standards Australia New Zealand, *Food Standards Code* at <http://www.anzfa.gov.au/foodstandardscode/>, Standard 2.7.4.
- 4 Australian Wine and Brandy Corporation, *Standard P4 Wine, Sparkling Wine and Fortified Wine* at http://www.awbc.com.au/winelaw/standard_p4.asp.

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.

- 5 Australia and New Zealand Food Authority, [*Initial/Draft Assessment Report P253: Wine Production \(Australia Only\)*](#), 8 May 2002, p. 7.
- 6 See generally the Website of the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization: <http://www.codexalimentarius.net/>.
- 7 For example, since 1985 a national residue monitoring program and certification has been a mandatory requirement for nations exporting meat and poultry products to the United States.

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.