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## National Residue Survey Excise Levy Rate Correction (Lamb Transactions) Bill 2003

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(Lamb Transactions) Bill 2003

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# National Residue Survey Excise Levy Rate Correction (Lamb Transactions) Bill 2003

**Date Introduced:** 26 November 2003

**House:** House of Representatives

**Portfolio:** Agriculture, Fisheries and Forestry

**Commencement:** Royal Assent

## Purpose

To amend the *National Residue Survey (Excise) Levy Act 1998* (the Act) so as to validate levy already collected under the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998* (the Regulations) in respect of lambs with a sale price of more than \$75 a head.

## Background

This Bill is complementary to the National Residue Survey Customs Levy Rate Correction (Lamb Exports) Bill 2003. Two bills are required to satisfy section 55 of the Constitution which in part provides that ‘laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only’. This bill ensures that lamb sold on the domestic market is subject to the same levy arrangements as lamb that is exported from Australia.

## National Residue Survey

The National Residue Survey (NRS) is a program that monitors chemical residues and environmental contaminants in the products of participating Australian industries. Residue monitoring is part of a national strategy that seeks to minimise unwanted residues and environmental contaminants in food for health and other reasons. Monitoring activities are limited to chemical residues in raw food commodities. The Residues and Standards Branch in the Department of Agriculture, Fisheries and Forestry – Australia implements the program.<sup>1</sup>

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

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The NRS was set up in the early 1960s in response to growing concerns by major export markets about pesticide residues in meat. Since that time, the number of commodities covered by NRS monitoring has grown so that now about 15 animal, 14 plant and selected fisheries and aquaculture products are monitored regularly.<sup>2</sup> The data collected by the surveys helps both certification of commodities for export when this is required, and compliance with requirements for domestic consumption.

The main source of funding for the NRS is levies on participating industries raised and collected under the *National Residue Survey (Customs) Levy Act 1998*, the *National Residue Survey (Excise) Levy Act 1998*, and the *National Residue Survey Administration Act 1992*. Other sources of revenue include direct payments received for survey work undertaken under contract, and payments for proficiency testing, sale of services and fees charged for the supply of information.<sup>3</sup> The NRS operates on a cost recovery basis. NRS funds are not used to cross-subsidise between participating industries and each industry program is operated as a separate cost-centre.

The legislation provides for both a maximum rate of the levy and an operative rate of the levy. The operative rate may be varied by regulations, but the maximum rate may only be amended by legislation. The legislation also provides for a different operative rate of levy depending on the sale price per head of sheep or lambs.<sup>4</sup> In June 1998 the operative levy for lambs with a sale price of more than \$75 was agreed by producers and their peak industry body, the Sheep Meat Council of Australia, and set at 8 cents per head. The operative rate of the levy has been varied several times by regulation since June 1998. Between 1 July 2000 and 15 November 2001 inclusive, the operative rate of levy was halved.<sup>5</sup> According to the *Explanatory Memorandum* a drafting fault in the Regulations has apparently made it appear as though the operative rate of levy for lambs selling at more than \$75 a head was only 4.7 cents instead of the agreed 8 cents.<sup>6</sup> This fault was corrected by amendments included in regulations that commenced on 30 May 2003.<sup>7</sup> The Minister said in his second reading speech that the Sheep Meat Council of Australia has formally requested that this drafting fault be amended so as to validate the levy already collected.<sup>8</sup>

The amendments proposed by this Bill will have an effect retrospectively and validate the rate of levy already paid. The retrospective amendments cannot be made by regulation because of the *Acts Interpretation Act 1901* which invalidates any regulation that is expressed to take effect at a time before it is gazetted, and operates to impose a liability on a person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of notification.<sup>9</sup>

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## Main Provisions

**Clause 3** provides for definitions of certain terms to have the same meaning as those in the Act and the Regulations that were in force prior to 30 May 2003. On 30 May 2003 Schedule 1 of the *Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations (No. 2)*, 2003 commenced and corrected the drafting fault in the Regulations from that date.

**Clause 4** has the effect of correcting retrospectively the operative rate of levy on lambs where the sale price exceeds \$75 a head. **Subsection 4(1)** provides that the period to which this correction applies is between 1 July 2000 and ending immediately before 30 May 2003. **Paragraph 4(2)(a)** allows for a levy rate of 4 cents per head to have applied between 1 July 2000 and ending before 16 November 2001. This period corresponds to that when the levy was halved. **Paragraph 4(2)(b)** allows for a levy rate of 8 cents to have applied for the period starting on or after 16 November 2001 and ending before 30 May 2003. **Subsection 4(3)** gives effect to the corrected levy rates in **subsection 4(2)** despite the provisions of the Act and the Regulations in force before 30 May 2003.

## Endnotes

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- 1 Information about the National Residue Survey is available online at: [www.affa.gov.au](http://www.affa.gov.au). Go to: 'Product Integrity/Animal and Plant Health', then choose National Residue Survey, (NRS) (28/11/03).
- 2 *ibid.*, Information under 'History'.
- 3 *ibid.*, Information under 'Sources of funding'.
- 4 Subsection 3(1) of the *National Residue Survey (Excise) Levy Act 1998*.
- 5 *Primary Industries Levies and Charges (National Residue Survey Levies) Regulation*. Subregulation 240(3) as in force on 15 November 2001.
- 6 *Explanatory Memorandum*, National Residue Survey Excise Levy Rate Correction (Lamb Transactions) Bill 2003, p. 2.
- 7 *Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations (No. 2)*, 2003 No. 99. Schedule 1 Amendments commenced on gazettal, that is, on 30 May 2003.
- 8 Hon Warren Truss, Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech', National Residue Survey Excise Levy Rate Correction (Lamb Transactions) Bill 2003, House of Representatives, *Debates*, 26 November 2003, p. 22731.
- 9 Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations have no effect if they take effect before the date of notification and have an adverse effect on a person other than the Commonwealth.

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