



This is a new edition of a Bills Digest (no.3 2004-05) previously prepared for the 40th Parliament

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004

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Agriculture, Fisheries and Forestry Legislation Amendment Bill (No.2) 2004

Date Introduced: 17 November 2004

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The operative provisions of the Bill commence on Royal Assent. Some technical provisions commence retrospectively.

Purpose

To amend the *Australian Meat and Live-stock Industry Act 1997*, the *Primary Industries (Customs) Charges Act 1999*, and the *Primary Industries (Excise) Levies Act 1999* to allow an industry organisation representing live-stock exporters to be declared as a marketing body and as a research body for the purpose of receiving revenue raised by compulsory levies applied to the live-stock export industry. The amendments will give effect to a recommendation of the Livestock Export Review (the Keniry review).

Legislative History

This Bill is the same as the Bill of the same name introduced into the House of Representatives on 23 June 2004, with the following two additions:

- **Item 28** adds a new Division 4 ‘Reporting to Parliament in relation to live-stock export bodies’, and
- **Schedule 2** deals with ‘Prescribed animals for purposes of certain definitions in the Australian Meat and Live-stock Industry Act’.

Background

The original Agriculture, Fisheries and Forestry Legislation Amendment Bill (No.2) 2004 was introduced into the House of Representatives on 23 June 2004 and passed on 12 August. It was introduced into the Senate on 30 August 2004.

On 4 August 2004 the Bill was referred for inquiry to the Senate Rural and Regional Affairs and Transport Committee on the recommendation of the Selection of Bills Committee. The Selection of Bills Committee gave as its reason for referral:

The Bill will establish a regime that will provide LiveCorp with funding from an industry levy and consolidated revenue for marketing and research and development.

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An inquiry is required to ensure that accountability arrangements imposed on LiveCorp in relation to these funds is adequate.¹

The Rural and Regional Affairs and Transport Committee presented its report on 2 September 2004 and recommended that the Bill be amended to improve the arrangements by which the livestock export industry might be accountable to Parliament. The wording of the Committee's two recommendations is as follows:

Recommendation 1: The Committee therefore recommends that the bill be amended to place a statutory requirement on the Minister to table in both Houses of Parliament, within 14 days of the signing of the statutory funding agreement, the funding agreement between the Commonwealth and LiveCorp, any subsequent variation to the agreement and an annual statement of LiveCorp's compliance with the provisions of the statutory funding agreement.

Recommendation 2: The Committee also recommends that the bill be amended to place a statutory requirement on the Minister to table in both Houses of Parliament the annual report provided by LiveCorp.²

The reintroduced Bill includes additional provisions to give effect to these recommendations. The reintroduced Bill also includes amendments to the definitions of 'meat', 'live-stock' and 'edible offal' in section 3 of the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act) so as to separate the definition of 'live-stock' from the definitions of 'meat' and 'edible offal'.

Live-stock export industry

The live-stock export industry reached a value of over \$1 billion in 2002. Activity has eased subsequently due to a number of factors, but the industry remains of significance.³ In 2002-2003 live-stock exports represented about 3% of the gross value of agricultural production. In gross value terms the industry was similar to sugar cane and worth slightly more than the poultry and cotton industries.⁴

It is also significant to note the relative importance of the live-stock export industry as an aspect of the red meat industry. In the 5 years to 2002, the total value of red meat exports averaged around \$5 billion each year. All live cattle, sheep and goat exports combined constituted around \$1 billion on average each year.⁵

The Keniry Report

A review of the livestock export industry (the Review) was announced on 10 October 2003 by the Minister for Agriculture, Fisheries and Forestry. This followed the events surrounding the voyage of the *Cormo Express* and its cargo of 54,000 live sheep. The shipment was rejected in Saudi Arabia and eventually unloaded in Eritrea at a cost to the Government of about \$10 million.⁶

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A number of recommendations were made by the Review. On 30 March 2004 the Minister for Agriculture, Fisheries and Forestry announced that the Government had accepted most of the recommendations in full and the remainder with modification. Most of the legislative changes required to give effect to the Government's response to the Review are contained in the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004.⁷

The amendments contained in this Bill are designed to give effect to the second aspect of Recommendation 2 of the Review, that is:

Industry should be responsible for research and development and management of quality assurance systems to support its members translate best practice standards into outcomes consistent with best practice:

-its activities should be funded by compulsory levies.⁸

Section 60 of the AMLI Act currently allows the Minister to declare a body to be the marketing body for the meat and live-stock industry and to declare a body to be the research body for the meat and live-stock industry. Subsection 60(3) permits the Minister to declare the same body to be both the marketing body and the research body, but expressly prohibits the declaration of more than one marketing body or more than one research body at any one time. The amendments made by this Bill to the AMLI Act will allow the declaration of a marketing body or a research body for the live-stock export sector of the industry in addition to the marketing body or research body for the meat and live-stock industry generally. This will enable the live-stock export sector of the industry to take more responsibility for marketing and research relating to the requirements of that sector of the industry.

Funding of research – compulsory charges and matching funds

The research body for the meat and live-stock industry currently receives funding on two bases (under sections 64 and 66 of the AMLI Act). Funding under section 64 of the AMLI Act relates to compulsory charges imposed on the industry under customs and excise legislation. Funding under section 66 relates to the Commonwealth 'matching' funds expended by the research body on specified purposes (principally research and development).

Compulsory charges

Under section 64 of the AMLI Act the Commonwealth is required to pay to the research body amounts equal to levies received by the Commonwealth under various provisions of the *Primary Industries (Excise) Levies Act 1999* and charges received by the Commonwealth under various provisions of the *Primary Industries (Customs) Charges Act 1999* (the Customs Charges Act).

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The live-stock export sector is currently not required to pay compulsory levies. Provision for charges under the Customs Charges Act has been made but the rate has been set at zero.⁹ Instead funding for research and marketing has been obtained from voluntary contributions. The recommendation of the Keniry Report that activities of the live-stock export research body be funded by compulsory charges is to be given effect through amendment of the relevant regulations.

Matching funds

Section 66 of the AMLI Act requires the Commonwealth to pay amounts to the research body that are determined by reference to the amounts paid by that body for industry research and development purposes and other specified purposes. These are referred to in the industry as ‘matching funds’ (the amounts to be paid by the Commonwealth are one-half of the amounts paid out by the research body for research and other specified purposes, so ultimately one-half of the total cost is met by the research body and one-half by the Commonwealth).

Under the Bill matching funds will continue to be directed to the industry research body (and not to the live-stock export research body). The Explanatory Memorandum states that this:

reflects an industry position that the most appropriate body for coordinating the delivery of research activity on behalf of the industry remains MLA [Meat and Live-stock Australia]. The Bill will therefore provide that MLA, or the body determined to be the industry research body, will be the only body eligible to receive Commonwealth matching funds for research.¹⁰

Main Provisions

Items 1 to 4 of Schedule 1 insert in section 58 of the AMLI Act definitions of ‘industry marketing body’, ‘industry research body’, ‘live-stock export marketing body’ and ‘live-stock export research body’. These facilitate the distinction between the body or bodies that will deal with marketing and research for the live-stock industry generally and the body or bodies that will deal with marketing and research for the live-stock export sector of the industry.

Item 7 of Schedule 1 inserts provisions in section 60 of the AMLI Act that allow the Minister to declare a body to be the live-stock export marketing body or the live-stock export research body. The Minister can declare a body to be both the live-stock export marketing body and the live-stock export research body. However, the Minister cannot declare one organisation to be not only the live-stock export marketing body and/or the live-stock export research body, and also the industry marketing body and/or the industry research body.

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Item 10 of Schedule 1 inserts criteria of which the Minister must be satisfied in order to declare a body to be the live-stock export marketing body or the live-stock export research body. These mirror the criteria that currently apply to the declaration of a body as the marketing body or the research body for the overall live-stock industry.

Item 21 of Schedule 1 inserts new **sections 64A** and **64B** into the AMLI Act. These provide for amounts of charge received by the Commonwealth from the live-stock export industry (under the Customs Charges Act) to be paid to the live-stock export marketing body and the live-stock export research body.

Item 23 of Schedule 1 converts references in section 66 of the AMLI Act to the ‘research body’ to references to the ‘industry research body’.

Item 26 of Schedule 1 inserts new **subsections 67(3)** and **67(3B)** into the AMLI Act. These provisions restrict the purposes for which the live-stock export marketing body and the live-stock export research body may spend money received from the Commonwealth under sections 64A and 64B. These restrictions mirror those currently imposed on the marketing body and the research body for the industry generally.

Item 28 adds a **new Division 4** ‘Reporting to Parliament in relation to live-stock export bodies’. The new Division provides that when the Minister enters into any funding agreement with the live-stock bodies under the Act (either or both the live-stock export marketing body or the live-stock export research body), he or she is required to report to Parliament and to table a copy of the funding agreement, or a copy of a variation to an agreement, within 14 sitting days. In addition, the Minister has to arrange for a report on the compliance of the live-stock export body with the funding agreement to be tabled in Parliament after the end of each financial year. Thirdly, the Minister is to table a copy of the annual report of the live-stock export body in both Houses of Parliament, if the live-stock export body gives the Minister a copy of its annual report. **However, there appears to be no provision in either the amendment or the principal act to require the live-stock export body to give the Minister a copy of its annual report.**

Items 32 to 65 of Schedule 1 amend the Customs Charges Act to reflect the fact that amounts collected by the Commonwealth under this Act that were previously paid to the marketing body for the industry and the research body for the industry will now be paid to the live-stock export marketing body and the live-stock export research body.

New Schedule 2 amends the definitions of ‘edible offal’, ‘live-stock’ and ‘meat’ that appear in section 3 of the AMLI Act. The effect of these amendments will be to separate the definition of edible offal from the definition of live-stock and link the definition of edible offal with the definition of meat.

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Concluding Comments

A key issue in the privatisation of government owned entities is the shift from the ‘public’ accountability requirements under legislation such as the *Commonwealth Authorities and Companies Act 1997* (CAC Act) to the ‘private’ reporting regime under the *Corporations Act*. Instead of CAC Act requirements such as the tabling of annual reports in Parliament and an obligation to keep the responsible Minister informed of significant developments, a privatised entity is ‘accountable’ through annual financial and director’s reports that are sent to members, tabled at company meetings and lodged with the Australian Securities and Investment Commission (ASIC). While reports lodged with ASIC are obtainable by members of the public, the privatisation process removes the element of enforced parliamentary scrutiny.

The amendments in this Bill will include in legislation the requirement for the Minister to table any statutory funding agreement with LiveCorp, to report annually on LiveCorp’s compliance with the terms of the statutory funding agreement, and to table a copy of LiveCorp’s annual report, if LiveCorp provides it. Similar requirements for public accountability are included in the terms of the statutory funding agreements between the Minister and Dairy Australia,¹¹ and the Minister and Australian Wool Innovation.¹²

New section 64A will provide for amounts of charge received by the Commonwealth from the live-stock export industry to be paid to the live-stock export research body. Section 66 of the AMLI Act currently provides for payment by the Commonwealth to the research body for the industry of additional amounts (‘matching funds’) determined primarily by reference to the amounts expended by the research body on research. Under the Bill matching funds will be payable only to the industry research body. That is, they will not be payable to the live-stock export research body for amounts expended by that body on research. This will have the effect that if the live-stock export research body expends moneys on research directly (rather than via the industry research body) the Commonwealth will not be required to pay matching funds in relation to that research. The Explanatory Memorandum appears to suggest that there is an expectation that the live-stock export research body would arrange for research through the industry research body;¹³ however this is not required by the legislation.

Where the live-stock export research body arranges for research through the industry research body, the amounts payable by the Commonwealth will be determined by reference to amounts paid out by the industry research body, not by reference to amounts paid by the live-stock export research body to the industry research body. It is not clear what, if any, difference this distinction would make in practice.

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Endnotes

- 1 Selection of Bills Committee Report no. 10 of 2004, Senate, *Debates*, 4 August 2004, p. 25650.
- 2 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004*, September 2004.
- 3 The scope and nature of the live animal export industry are outlined in Peter Hicks and Jerome Davidson, 'Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004' *Bills Digest*, no.165, Parliamentary Library, Canberra, 2003-04. <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd165.pdf> (site visited 20 July 2004).
- 4 *ibid* p. 1.
- 5 J Keniry et al *Livestock Export Review A Report to the Minister for Agriculture, Fisheries and Forestry*, 23 December 2003 p. 13.
<http://www.daff.gov.au/content/publications.cfm?Category=Animal%20fixand%20Plant%20Health&ObjectID=056153D8-2885-4ACD-9A0BF0E15B1B6DDB> (site visited 20 July 2004).
- 6 The events surrounding the voyage of the Cormo Express are summarised in Hicks and Davidson, *op. cit.* pp. 3-4.
- 7 The *Digest* in respect of this Bill (Hicks and Davidson, *op. cit.*) is available at <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd165.pdf> (site visited 20 July 2004).
- 8 Keniry *op. cit.* p. 38.
- 9 *ibid.* pp. 2-3.
- 10 Explanatory Memorandum p. 3.
- 11 Dairy Australia website at www.dairyaustralia.com.au (About Us/Membership/Funding). Site visited 22 November 2004.
- 12 AWI website at <http://www.wool.com.au> (About Us/Company funding). Site visited 25 November 2004.
- 13 Explanatory Memorandum p. 3.

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