

The Senate

Rural and Regional Affairs and
Transport Legislation Committee

Provisions of the Egg Industry Service
Provision Bill 2002

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

October 2002

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ABBREVIATIONS

AAHC	Australian Animal Health Council
AEIA	Australian Egg Industry Association
AECL	Australian Egg Corporation Limited
AFFA	Department of Agriculture, Fisheries and Forestry
NRS	National Residue Survey
RIRDC	Rural Industries Research and Development Corporation
RSPCA	Royal Society for the Prevention of Cruelty to Animals

Chapter One

The Committee's Inquiry

Reference of the Bill to the Committee

1.1 On 18 September 2002 the Senate referred the following two Bills to this Committee for examination and report by 22 October 2002:

- a) Egg Industry Service Provision Bill 2002 and
- b) Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002.

1.2 The Committee has been asked to examine and report on the following matters related to the Bills:

- a) The potential impacts on the improvement and enforcement of animal welfare;
- b) The impacts on public accountability and transparency of the activities of the egg industry as a result of the planned move to establish the Australian Egg Corporation Limited and
- c) Whether opportunities for Parliamentary and public scrutiny of the administration and use of industry levies will be enhanced by the proposed changes.

Purposes of the Bills

1.3 The main purpose of the Bills is to establish a company to be named the Australian Egg Corporation Limited (AECL). The new company will be limited by guarantee under the Corporations Act. It will be responsible for providing generic promotion and research and development (R&D) services to the egg industry currently provided under a sub-programme in the Rural Industries Research and Development Corporation (RIRDC).

1.4 The *Egg Industry Service Provision Bill 2002* provides for the imposition of a statutory promotional levy for generic egg promotion to address issues associated with negative consumer perceptions about the nutritional benefits of eggs and animal welfare concerns.¹

1 Explanatory Memorandum, Egg Industry Service Provision Bill 2002

1.5 The second Bill, the *Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002* allows for the transfer of the egg promotion and R&D functions, assets and liabilities of the current egg sub-programme from RIRDC to the new company, AECL.

1.6 It is proposed that the Australian Egg Corporation Limited (AECL) be established on 1 January 2003.

The Committee's Inquiry

1.7 Following the referral of the provisions of the Bills, the Committee advertised in *The Australian*. The Committee also wrote to some key stakeholders, including animal welfare organisations to invite submissions. A total of 8 written submissions was received. A list of written submissions is included at Appendix 1.

1.8 The Committee held a public hearing on the Bills in Canberra on Thursday, 17 October 2002. The witnesses who appeared at the hearing are listed at Appendix 2 of the report.

1.9 Published submissions and the *Hansard* of the Committee's hearing on the Bills are tabled with this report. The *Hansard* of the hearing is available at the Hansard site on the Parliament House homepage on the Internet (www.aph.gov.au).

Consideration of the Committee's Report

1.10 The Committee met on 22 and 23 October 2002 to consider its report.

Acknowledgements

1.11 The Committee acknowledges the assistance and contribution made to its inquiry by all those who prepared written submissions on this inquiry. The Committee also acknowledges the assistance provided at its public hearing on the Bills by all witnesses.

Chapter Two

Background and Issues

The Australian Egg Industry – Current Arrangements

2.1 The egg industry is currently supported by the Australian Egg Industry Association (AEIA) and a sub-programme within the Rural Industries Research and Development Corporation (RIRDC).

2.2 Egg producers currently pay a statutory laying chicken levy under the *Primary Industries Excise Levies Act 1999*. The levy is imposed on hatcheries where more than 1000 laying chickens are hatched annually and supplied to egg producers. The levy is set at 7.87 cents per chicken and allocated for research and development, residues testing and animal welfare issues as follows:

- a) 7.2 cents to RIRDC,
- b) 0.4 cents to the National Residue Survey (NRS) and
- c) 0.27 cents to the Australian Animal Health Council (AAHC).¹

Industry Issues

2.3 A number of issues have impacted on the egg industry. Deregulation of statutory marketing arrangements in the States in the late 1980s and 1990s has impacted on the industry. Other issues concerning animal welfare and Newcastle Disease outbreaks² have resulted in considerable costs to producers and the industry in general.

2.4 The industry is also experiencing the consequences of negative consumer perceptions regarding animal welfare and dietary issues concerning the consumption of eggs. Egg producers have been unable to adopt a whole-of-industry approach to addressing these issues and communicating the health benefits of egg consumption to consumers. Attempts to facilitate voluntary levies for generic promotion, most notably, the now defunct Incredible Egg Company, have failed.

2.5 In the 1990's, average annual egg consumption in Australia declined from 146 to 137³ eggs per person. While the AEIA estimates that during the same period,

1 Explanatory Memorandum, Egg Industry Service Provision Bill 2002, p.3 and Bills Digest, No. 40. Egg Industry Service Provision Bill 2002, p. 3

2 Explanatory Memorandum, Egg Industry Service Provision Bill 2002, p. 3

3 Explanatory Memorandum, Egg Industry Service Provision Bill 2002, p. 3

consumption only fell to 152 from 159 eggs per person, these statistics indicate that current levels of egg consumption are well below that of a number of other countries and the industry per capita target of 200⁴.

2.6 The industry has concluded that current per capita consumption levels are a result of a market failure in generic egg promotion. It is suggested that per capita egg consumption will continue to decline or stagnate without generic promotion, resulting in reduced profit margins, fewer producers and inadequate investment in new infrastructure and technologies.

Objectives of the Bills

2.7 The objectives of the Bills are to:

- a) Assist the egg industry to become more sustainable, competitive and profitable through generic promotion and
- b) To develop a structure to effectively and efficiently manage promotion activities, industry R&D and other service provision.

2.8 The Bills will create the Australian Egg Corporation Limited (AECL). The new company will be limited by guarantee under the Corporations Act and will be responsible for the generic promotion and R&D activities currently undertaken by RIRDC.

Levies

2.9 The Bills provide for the regulation of a statutory promotional levy, administered by AECL and used to fund generic promotion functions. The promotional levy proposed by the Bills will be in addition to the laying chicken levy of 7.87 cents under the present arrangements.

2.10 The promotional levy is to be set at a rate of 32.5 cents per laying chicken purchased from a hatchery by egg producers. Whereas the laying chick levy is imposed on the hatchery operator, the new promotional levy will be imposed directly on egg producers.

2.11 As with current arrangements, the levy will be collected by hatcheries at the time of purchase and remitted to the Commonwealth through the Department of Agriculture, Fisheries and Forestry (AFFA) on a monthly basis. AFFA will disburse collected monies to AECL.

2.12 The aim of the promotional levy is to equitably spread the costs of generic promotion across the industry according to the size of egg producers. Those producers with larger laying chicken operations will pay a larger levy than smaller operators. A further aim is that the compulsory nature of the promotional levy means

4 Bills Digest No. 40 2002-03, p.4.

that all egg producers will be eligible for membership of the Australian Egg Corporation Limited. Members will have voting rights on all issues concerning the levy.

Animal Welfare Issues

2.13 The Bills do not contain specific provisions for animal welfare. Concerns about this were addressed to the Committee in submissions from animal welfare groups and in evidence during the Committee's hearing into the legislation.

2.14 The Bills Digest notes that although the alternative barn and free-range production systems represent eight percent of the market, egg production in Australia is dominated by the caged hen housing system.⁵

2.15 Objections to the Bills from animal welfare groups focussed on the assumption that an increase in consumption as a result of generic promotion activities would increase the number of hens housed in the caged system of egg production.⁶

2.16 Another issue related to the use of generic promotion to only focus on the dietary benefits of eggs and not addressing community concerns regarding caging and educating the public about the three systems of egg production or providing adequate labelling on egg cartons.

2.17 Dr Jones from RSPCA Australia stated:

Our concern is that the industry is not willing to educate the public properly about that system....If this promotion is successful, it will mean in the long run that more hens will be kept in battery cages.⁷

2.18 In a submission to the Committee, Animals Australia also indicated their concern by stating:

If these Bills proceed and the 'generic' promotion of eggs does in fact lead to greater consumption of eggs and thus an increased number of hens being kept, then more hens (if the proportion is unchanged) will suffer in barren cages.⁸

2.19 Animals Australia further stated:

..similarly, no guidance or requirement is provided on the egg 'promotion' requirements in regard to already (ARMCANZ – agreed) national egg carton labelling standards (to differentiate at point of sale and educate the

5 Bills Digest No 40 2002-03, p. 14.

6 Submission No 5, Animals Australia; Submission No 6, RSPCA Australia.

7 RRAT Evidence, 17 October 2002, p. 13.

8 Submission No 5, Animals Australia, p.1.

public about the 3 hen housing systems; battery, barn (shed) and free-range).⁹

2.20 The submission by the Department of Agriculture, Fisheries and Forestry (AFFA) argues that the establishment of the Australian Egg Corporation Limited (AECL) will provide the industry with a greater resource base in addressing concerns related to animal welfare. In particular, the Department argues that the transfer of research and development functions to AECL from the RIRDC will not affect arrangements for the industry to meet animal welfare requirements. It is argued that one of the RIRDC's priorities has been a focus on animal welfare and that this focus will also be transferred to AECL.

2.21 The Department argues that AECL will have the capability to conduct research and analysis on issues such as animal welfare standards. The Department also notes that while the new company will not have a direct role in enforcing animal welfare issues as these arrangements being the responsibility of the States, AECL will provide a broader capacity for consultation between government, industry and community organisations. Further, it is expected that AECL would be able to provide direction and leadership in addressing animal welfare concerns and assist in the development and implementation of initiatives.¹⁰

2.22 The Committee notes that a review of layer hen housing systems will be conducted in 2005 by the Animal Welfare Committee of the Primary Industries Standing Committee (PISC). AFFA notes that AECL will be a major stakeholder in that review.¹¹

Industry Support

2.23 The Committee notes that the new arrangements have overwhelming support from industry and received a number of submissions from egg producer organisations indicating this.

2.24 In evidence to the Committee, Mr Mortimer from the Department of Agriculture, Fisheries and Forestry also indicated that 'a clear majority of the industry is in support of the arrangements'.¹²

2.25 In terms of animal welfare, the peak egg industry body, the Australian Egg Industry Association (AEIA) indicated in both their submission and evidence that the Bills do not aim to address animal welfare policies or issues. The AEIA stated that the Bills refer to specific arrangements to meet industry requests to provide generic promotion and research and development services. The AEIA further stated:

9 Ibid

10 Submission No 8, Department of Agriculture, Fisheries and Forestry, p. 2

11 Ibid

12 RRAT Evidence, 17 October 2002, p. 15

At the moment the industry does not have a capability for generic promotion. The establishment of the AECL, together with the creation of a new egg promotion levy in separate legislation will enable the industry to undertake the national promotion of all eggs with a view to increasing consumer information and understanding about the virtues of eggs as a food product and to arrest the decline in the consumption of eggs, which has occurred in recent years. This national promotion will, as indicated, be generic and will not involve animal welfare policies or issues, nor will it distinguish in any way in respect to the production systems from which eggs are produced.¹³

2.26 In addressing Committee concerns regarding the lack of provision contained in the Bills for animal welfare issues, Mr Newton representing the AEIA, argued that animal welfare issues are addressed in other areas and organisations. Issues regarding housing systems are being addressed through an agreement between the industry and States/Commonwealth. Mr Newton indicated that there are new caged housing requirements under an ARMCANZ and SCARM arrangement to come into effect from 2008.¹⁴

2.27 Mr Newton stressed that the promotion levy was about generic matters relating to the nutritional benefits of egg consumption. He argued that these matters are separate and distinct from the origins of eggs and method of production.¹⁵

Accountability under the New Arrangements

2.28 As noted in paragraph 2.8, the Bills will create the Australian Egg Corporation Limited (AECL). AECL will be a private company, limited by guarantee under the *Corporations Act 2001*.

Reporting and the funding contract

2.29 Under, section 6 of the Bill and as a Corporations Act company, AECL is required to comply with the accountability obligations contained in the Act. AECL will be accountable to the Australian Securities and Investments Commission (ASIC) and its members through the company's reporting obligations. Reporting commitments include an annual report, financial, director and auditors reports and corporate plans.¹⁶

2.30 Part 4, clause 9 of the bills also details the company's reporting requirements to the portfolio Minister and Departmental Secretary. The Minister has power of direction over the AECL under these provisions.¹⁷

13 Submission No 1, The Australian Egg Industry Association, p. 2.

14 RRAT Evidence, 17 October 2002, p. 6

15 RRAT Evidence, 17 October 2002, p. 6

16 Submission No 8, Department of Agriculture, Fisheries and Forestry

17 Explanatory Memorandum, Egg Industry Service Provision Bill 2002, pp 9-10

2.31 AECL will also be accountable to the Government, the public and its members by measures contained in the funding contract with the Commonwealth and its constitution. The funding contract will detail arrangements under which AECL will manage and administer the industry levies and Commonwealth matching R&D payments. It is expected that the funding contract will be developed following industry consultation and will be modelled on similar contracts developed for other Corporations Act companies.¹⁸

2.32 In response to Committee concerns regarding the level of parliamentary and public access to company information, Mr Newton from the AEIA argued that under the new arrangements:

....you are guaranteed of a significant increase in accountability and in information and communication. At the moment, because the industry is a pretty small one and does not have a lot of collective resources, there is not much communication.¹⁹

2.33 Mr Newton also argued that as a publicly registered company, AECL members would have regular communications through meetings and meeting papers, annual reports and voting rights.²⁰

2.34 Mr Mortimer from the Department of Agriculture, Fisheries and Forestry also stated that 'there are provisions under both the R&D legislative requirements and Corporations Law for accountability to stakeholders'.²¹

2.35 Another issue raised by the Committee and groups opposing the Bills concerned the potential use of levy funds for agri-political purposes. Mr Newton advised that the compulsory levies would not be utilised for these activities:

The government has been very strong in its negotiations on this that none of the money collected in compulsory levies is to be used for agri-political purposes.....The Australian Egg Industry Association, as it is now, will be revamped. It will be a leaner, smaller, less used function but it will be a separate and distinct entity in place to handle agri-political type matters for the industry, and that will be separately funding by the industry through voluntary levies. It will not draw on these levy payments at all.²²

2.36 Other concerns relating to accountability provisions were raised by RSPCA Australia and Animals Australia. Both these organisations expressed concerns about a lack of community consultation and representation regarding research and development proposals. During evidence, the RSPCA argued that the absence of full details of the funding agreement and constitution raises issues regarding

18 Submission No 8, Department of Agriculture, Fisheries and Forestry, p. 3

19 RRAT Evidence, 17 October 2002, p. 5

20 Ibid

21 RRAT Evidence, 17 October 2002, p. 15

22 RRAT Evidence, 17 October 2002, p. 7

accountability. The RSPCA urged that R&D functions not be transferred to the new company without community representation and consultation on R&D priorities and funding.²³

Structure of AECL

2.37 In evidence to the Committee, Mr Newton from the AEIA outlined the proposed structural framework of AECL. Mr Newton indicated that the company would have a minimum of three directors and maximum of seven, including the managing director and company chair. Directors would be selected by industry delegates with a maximum of four people from industry appointed by an election process and maximum of three appointed due to their expertise.²⁴

23 RRAT Evidence, 17 October 2002, p. 8; Submission No 6, RSPCA Australia, p. 4; Submission No 5, Animals Australia

24 RRAT Evidence, 17 October 2002, p. 2

Chapter Three

Conclusions and Recommendations

Committee conclusions

3.1 The Committee acknowledges the concerns of animal welfare organisations that the Bills do not contain provisions specific to:

- a) the promotion of the distinction between the three current methods of egg production and hen housing; caged, barn and free-range and
- b) the allocation of additional research and development resources for animal welfare issues.

3.2 However, the legislation as presented to the Committee is not concerned with specific animal welfare issues. As stated in Chapters one and two, the legislation is designed to establish the AECL as the provider of generic promotion and R&D functions for the industry. In this regard, the Committee considers that the new company should not distinguish between, nor favour one method of egg production over any other. Further, the Committee is satisfied that issues relating to animal welfare are more appropriately covered through other activities and State legislative arrangements.

3.3 The Committee also notes concerns relating to accountability provisions contained in the legislation. Again, the Committee is satisfied that these provisions are adequate and similar to those for other companies operating under Corporations Law.

3.4 The Committee notes the majority support for the Bills within the industry. Given the difficulties the industry is currently experiencing, the Committee is confident that the formation of AECL will assist the industry in becoming more sustainable and competitive.

Recommendation

3.5 The Committee recommends to the Senate that the Egg Industry Service Provision and the Egg Industry Service Provision (Transitional and Consequential Provisions) Bills 2002 be passed without amendment.

**Senator B Heffernan
Chair**

23 October 2002

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

**DEMOCRATS
MINORITY REPORT**

Senator Andrew Bartlett

Senator John Cherry

Rural and Regional Affairs and Transport Legislation Committee

Minority Report – Australian Democrats, Senator Andrew Bartlett

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

1. Purpose of the Bills

1.1 The purposes of the Bill as stated in the majority report are to:

- a) Establish a company, the Australian Egg Corporation Ltd, and impose a statutory promotional levy;
- b) undertake the generic promotion of eggs;
- c) overcome the negative consumer perceptions regarding eggs and animal welfare concerns, and
- d) increase consumption of eggs¹.

1.2 Of particular concern is government and legislative support for an industry body dedicated to overcoming perceptions rather than the underlying issue of animal welfare. On the one hand the purpose of ‘overcoming negative perceptions’ makes clear that animal welfare issues are central to this bill; on the other, the proposed mechanism for responding to animal welfare concerns being expressed in the community is to undertake a promotional exercise designed to overcome the perception. In other words, the stated purpose is convince consumers that their perceptions are incorrect. There is no intention in the Bill to actually address the veracity of the perception, nor to address the underlying welfare issues.²

¹ At 1.4

² See Submission No 5, Animals Australia, p. 3 for description of some of the public perceptions regarding battery caging of hens

2. Animal Welfare

2.1 Approximately 92% of egg producing hens in Australia are battery hens.³ This is the primary animal welfare issue relating to the egg industry.⁴ In caged production systems there is a current requirement of at least 550 square cm per bird. Cages of less than that must be phased out by 2008.⁵ That is smaller than an A4 sheet of paper. Organisations such as Animals Australia are opposed to any use of the barren battery cage system.⁶ Their concerns regarding the battery cage system include behavioural changes and frustration, weakened bones, foot problems, mutilation of the hens in order to curb aggression and feather and skin problems.⁷

2.2 The animal welfare implications of this Bill cannot simply be dismissed by saying that animal welfare issues are State issues. It is hard to reconcile the claim that animal welfare is a state issue yet overcoming the negative perception of egg consumers in relation to animal welfare is appropriately a Commonwealth concern. Overcoming negative perceptions is not an appropriate legislative function for the Government to conduct on behalf of industry. If the creation of an industry body for promotion is appropriately a Commonwealth function then so is overcoming the institutionalised mistreatment of battery hens.

2.3 The Australian Democrats note that the Australian Egg Industry Association Inc. (AEIA) in its submission is also of the view that the Bill is not about animal welfare⁸. Even in a direct sense that is debateable, as animal welfare concerns and regulations have been directly implicated by the industry in the declining consumption of eggs, and in the tabling of this Bill.

2.4 Indirectly, the Bill will have a number of impacts and implications for the animal welfare of egg producing hens in Australia. For instance, should the generic promotion of egg consumption increase egg consumption by 15% - half the targeted figure – there would be an additional 1.2 million hens in battery cages.⁹

2.5 Submissions from the Free Range Farmers Association (Vic) Inc¹⁰, The Organic Food Chain Pty Ltd¹¹, and the Free Range Poultry Association of Queensland all express support for the generic levy. In the latter two submissions, there is a belief that

³ Explanatory Memorandum, p. 14

⁴ See, e.g., Submission No 5, Animals Australia

⁵ Explanatory Memorandum, p. 7

⁶ Submission No 5, p. 1

⁷ Submission No 5, p. 2

⁸ Submission No 1, The Australian Egg Industry Association, p. 1

⁹ Additional Information, RSPCA, p. 2.

¹⁰ Submission No 2

¹¹ Submission No 3

the generic levy will be used to educate the consuming public regarding “different production systems”¹²

It is not by any means clear that the Bill will undertake or accomplish this kind of education.

2.7 Arguments made by the AEIA that animal welfare matters are being addressed elsewhere is both debateable and arguably irrelevant. The increase in cage size does not provide for the welfare of battery hens. By marginally increasing cage size, the producers have marginally improved an inhumane production system. To claim that this constitutes addressing animal welfare concerns is not supported by any animal welfare organisation.

In any event, even if welfare issues are being addressed elsewhere, this does not prevent animal welfare issues from being considered in this bill. There are sufficient animal welfare issues that a plethora of bills could accommodate them.

2.8 Requirements associated with animal welfare in the egg industry are minimal at best. The comment that even these measures have imposed costs on the industry presupposes that every regulatory decision is simply a weighing of relative costs rather than an obligation that springs from fundamental principles or broad public interest. Cleaning faeces from egg shells prior to sale no doubt imposes a cost on the industry as well, but it is not a cost which we would throw onto the free market scales. Similarly, animal welfare concerns and requirements reflect community attitudes, and express our belief that some acts and some activities are driven by ethical and moral – not economic – considerations.

2.9 It is curious, considering the free market ethos that underpins the reluctance to regulate animal welfare issues, that this report would justify the legislation on the basis that the free market egg industry could not successfully create their own egg advocacy and promotion organisation nor successfully raise a levy from egg producers,¹³ so the Commonwealth should intervene to accomplish what the industry couldn't. The same logic should apply to animal welfare.

3. Generic Promotion

3.1 The generic promotion, marketing and research of egg consumption is neither innocuous nor value free. If the promotion is intended to increase consumption, despite justified negative perceptions, then the appropriateness of Government support for such a scheme must be questioned. While a decline in the profitability of the egg industry as well as a decline in infrastructure investment¹⁴ deserves government

¹² Submission No 3, Free Range Poultry Association of Queensland, p. 1

¹³ Egg Industry Service Provision Bill 2002, Explanatory Memorandum, p.5

¹⁴ See, e.g., RRAT Evidence, 17 October 2002, p 2

attention, it is not Government's role to support a process that will ignore or try to overcome legitimate community concerns.

3.2 There is no evidence that a greater resource base for the industry will result in additional animal welfare initiatives. There are concerns that generic promotion will, in fact, favour the large, battery producers that currently control the industry. It would seem likely that without regulatory direction and incentives, this levy will at best preserve the status quo. At worst, it may create a body structurally biased towards protecting the interests of the battery cage producers. This may be reflected in a variety of ways in research and marketing decisions. The Bill should contain more specific provisions ensuring that small and niche egg producers benefit from the proposed levy.

3.3 The Democrats are somewhat concerned at the purported 'overwhelming' support of the egg industry for the levy.¹⁵ The failure of voluntary levies is an indication that there are segments of the industry unwilling to support generic promotion. The Committee heard no evidence as to why voluntary levies weren't paid, but the failure of that initiative deserves further assessment.

3.4 The broader issue of whether generic promotion will even succeed is raised in the Bill Digest.¹⁶ While representatives of the industry clearly support the levy, there is little evidence that addresses the concerns regarding generic promotion that are raised in the Digest.

4. Accountability

4.1 Accountability issues raised by this Bill include

- general questions of release of and public access to information,
- lack of detail in the proposed constitution and contract between the AECL and the Government;
- oversight of research priorities; and
- oversight of levy expenditure.

4.2 The Australian Egg Industry Association Inc (AEIA) argues that this Bill will "provide for a significant increase in the levels of public accountability and transparency of egg industry activities".¹⁷

¹⁵ See Egg Industry Service Provision Bill 2002, Bill Digest, p. 10, Explanatory Memorandum, p. 7-8

¹⁶ Egg Industry Service Provision Bill 2002, Bill Digest, p. 10

¹⁷ Submission No 1, p. 3

4.3 AEIA has also argued that greater communication will result, *per se* in greater accountability.¹⁸ The Democrats do not support that view.

4.4 As the Bill Digest points out, the Bill represents a shift “from administrative law and public political processes to corporations law and private political processes”.¹⁹ Significant information may not be made publicly available. The Bill leaves many of these issues unanswered.

4.5 That claims of greater accountability are based primarily on the fact that the AECL will be created under and subject to the Corporations Act and that there is capacity in the Act for direct government intervention and oversight of the implementation of the Bill and expenditure of the levy.²⁰

4.6 While it is true that the AECL will be subject to the Corporations Act, it is equally true that a body duly incorporated by the industry itself, without government intervention, would also be subject to the Corporations Act. It is also important to recognise that reporting requirements under the Corporations Act do not constitute accountability *per se*. For instance, decisions regarding a particular promotion, the documents and studies that underpin that promotion, the correspondence or other information that may indicate the purpose or purposes of the promotion are all legitimate materials sought if accountability is to be ensured. None of these materials would be required under the Corporations Act.

4.7 It is not clear from the Bill that the reports made by the AECL to the Minister will be publicly available. Recently, the Government refused or was unable to provide a report prepared by Livecorp – an industry body created by statute – claiming that the report was held by the company. The capacity for the public to gain access to these materials is absolutely critical if accountability is to be maintained.

4.8 The setting of research priorities, particularly with a board dominated by battery egg producers, should be subject to Parliamentary and public scrutiny. A review of recent research associated with the egg producing industry makes clear that it is difficult to have any research project that is value free.²¹

4.9 Conditions on the expenditure of the levy may ensure that the promotion of eggs is generic and not biased towards any particular section of the industry. Such conditions do not ensure accountability unless there is public access to the information.

4.10 The Democrats agree that the levy cannot and should not be used for agri-political purposes. However, there need to be explicit provisions in the Bill that ensure such political activities are prohibited, that ensure that all information relevant to the

¹⁸ RRAT Evidence, 17 October 2002, p 5

¹⁹ Egg Industry Service Provision Bill 2002, Bill Digest, p. 13

²⁰ See e.g. Egg Industry Service Provision Bill 2002, sections 7 and 9

²¹ Egg Industry Service Provision Bill 2002, Tabled Document, Progress report on RIRDC-funded research relating to the March and August 2000 ARMCANZ decisions on layer hen housing R&D

nature of the activities of the AECL is public, and that the public has the right and mechanisms for complaint and recourse regarding the activities of the AECL.

4.11 Lack of details regarding the AECL's constitution is a serious concern of the Australian Democrats. The Constitution will set out the structure of the organisation, the nature, roles and responsibilities of its agents, and determine the breadth of its representativeness. However, as the Bill Digest notes, the Bill "set no standards relating to the constitution of the AECL".²²

4.12 The Democrats are concerned that the structure of the AECL will not ensure representation from smaller producers or from producers of free range or barn laid egg producers. As Mr Newton notes, "there will be no attempt to have a quota system or in any way reflect different production systems"²³ The method of selecting directors as set out by Mr Newton²⁴ would appear to strongly and disproportionately favour larger producers. For instance, the members will nominate delegates. Delegates will be selected on the basis of the number of hens they represent. Only 40 delegates will be chosen. If smaller producers pool their hens they may succeed in assuring a small number of delegates. The delegates, primarily representing the larger producers, will then select appointees to the board and those with specialist expertise.²⁵ Apparently, the board and experts will be selected on a majority basis, and are likely to reflect the wishes and priorities of the larger producers.

4.13 The Minister for Agriculture, Fisheries and Forestry may enter into a contract with an 'eligible body' involving payments for promotion and research development activities.²⁶ While the Minister must be satisfied that each payment is spent on relevant activities, it is still not known whether there will be public access to the contract or any public recourse in relation to payment expenditures.

4.14 The Minister may also intervene and give direction to the industry services body in exceptional and urgent circumstances.²⁷ Those directions are public and must be tabled in Parliament, except in cases where disclosure will be likely to prejudice the national interest or the commercial interests of the body.²⁸ The Democrats are concerned at the commercial interest exemption. The provision appears extremely broad and prejudice to commercial interests is not defined. It is the view of the Democrats that commercially based exemptions from accountability laws are being overused and misused.

²² Egg Industry Service Provision Bill 2002, Bill Digest, p. 14

²³ RRAT Evidence, 17 October 2002, p. 4

²⁴ RRAT Evidence, 17 October 2002, p. 2

²⁵ RRAT Evidence, 17 October 2002, p. 4

²⁶ Egg Industry Service Provision Bill, section 7

²⁷ Egg Industry Service Provision Bill, section 9

²⁸ Egg Industry Service Provision Bill, section 9(3), (4)

5. AFFA Guidelines

5.1 The Government's 12 Levy Principles (Jan. 1997) were provided to the Committee by AFFA only on 21 October 2002.²⁹ Under those guidelines, the initiator of a new levy must be able to demonstrate that it has met the first 11 levy principles. The principal criteria to be satisfied are:

- Market failure
- Net industry benefit, and
- That application of the levy is practical.³⁰

5.2 The Explanatory Memorandum describes the egg industry as having "experienced a difficult period since deregulation"³¹ The EM argued that market failure relates to a market failure in egg promotion³² It is not clear from the guidelines tabled by AFFA whether such a broad reading of 'market failure' satisfies the guidelines.

Little evidence was provided of market failure. Evidence was provided of a decline in the consumption of eggs – although that decline was well short of 10% during the decade of the 90s.³³

5.3 Additionally, the guidelines require a description of how the benefits cannot be captured by individual firms acting alone.³⁴ While the industry has attempted an industry created body to promote egg consumption, no evidence has been received of individual marketing and promotion efforts, particularly brand promotion by individual companies.³⁵

5.5 It is the Democrats view that such a decline is not large enough to constitute market failure or to justify government intervention, particularly considering its philosophical and legal dedication to deregulation and privatisation.

Senator Andrew Bartlett

Australian Democrats, Queensland

²⁹ Revised Levy Guidelines Applying to the Application of the Government's 12 Levy Principles, September 2001

³⁰ id at p. 1

³¹ Egg Industry Service Provision Bill, Explanatory Memorandum, p. 3

³² id at p. 3

³³ id at p. 3

³⁴ Revised Levy Guidelines Applying to the Application of the Government's 12 Levy Principles, September 2001, p. 4

³⁵ Egg Industry Service Provision Bill, Bill Digest, p. 8

Appendix One

Submissions

Submission No	Author
1	Australian Egg Industry Association
2	Free Range Farmers Association (Vic) Inc
3	The Organic Food Chain Pty Ltd
4	Free Range Poultry Association of Queensland
5	Animals Australia
6	RSPCA Australia
7	Free Range Egg and Poultry Association of Victoria
8	Department of Agriculture, Fisheries and Forestry

Appendix Two

Hearing and Witnesses

Canberra, Thursday, 17 October 2002

Australian Egg Industry Association

Mr Alan Newton, Adviser

RSPCA Australia Inc

Mr Brendan Jacomb, Government Liaison Officer
Dr Bidda Jones, Scientific Officer

Department of Agriculture, Fisheries and Forestry

Mr David Mortimer, Executive Manager, Food & Agriculture
Mr Greg Williamson, A/g General Manager, Meat, Wool & Dairy
Mr Matthew White, Manager, Intensive Livestock & Game
Mr Dean Merrilees, General Manager, Animal & Plant Health Policy

