

1997

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY BILL 1997

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy,
the Hon John Anderson, MP)

AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY BILL 1997

GENERAL OUTLINE

1. This Bill gives effect to the Government's decisions announced on 18 March 1997 foreshadowing reform of structures in the red meat industry. It provides for minimum essential regulation, while at the same time winding-up three statutory bodies engaged in the provision of industry policy, planning, marketing and promotion, and research and development services in both domestic and export markets. In future, the majority of these services will be provided by a producer owned service delivery company, established under Corporations Law as a company limited by guarantee, which will be funded by statutory levies contributed by beef, wool, sheepmeat and goat producers. 7.
2. Supplementary funding will be provided from non-statutory contributions made by the processing and live-stock export sectors in respect of collaborative programs and projects agreed as being of benefit to all industry sectors. Sector specific companies established by processors and live-stock exporters as well as the producer company referred to above, will undertake activities of specific relevance to their individual industry sectors utilising in-house resources or on an outsourced basis. All three companies will operate in a commercial manner and in a contestable environment. 8.
3. Part 1 of the Bill provides general authority regarding commencement, application of the Bill and definitions necessary for its operation. 9.
4. Part 2 provides for the continuation of export licensing, export quota management and related enforcement provisions, under the control of the Department of Primary Industries and Energy. There are no material changes to these provisions from those already existing under the *Meat and Live-stock Industry Act 1995*, including the provision to charge a prescribed fee for export licences. This provision, and an amendment to the *Australian Meat and Live-stock (Quotas) Act 1990* by the *Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) Bill 1997*, will allow the Department to recover its administrative costs. 10.
5. It is intended policy relating to licensing and quotas will be commercially driven and transparently set in consultation with industry. Provision is therefore made in the Bill for the Secretary to have regard to policies formulated jointly by prescribed industry bodies when exercising licensing and quota powers.
6. Part 3 provides authority for the Minister to declare specific Corporations Law companies, as relevant bodies under the Bill for

specified purposes. Relevant bodies will either be able to act on behalf of their members in providing in-house or outsourced industry services (industry marketing or research bodies) and will be recipients of specified industry levy components, or they will be eligible to attract Commonwealth matching research and development funds (approved donors) by cooperative contractual participation in programs managed by the research body.

7. Part 3 also permits the Minister to consider a company's documents of incorporation, membership, and any agreements and undertakings it may hold, when considering or reviewing a company's status as a relevant body. It provides for the appropriation and payment of funds collected as statutory levies and limits the application of those monies to specific or prescribed purposes. To ensure that accountability to Parliament requirements are met, provision is made for the flow of funds to be subject to conditions determined by the Minister. This will take the form of deeds negotiated with relevant bodies.
8. Part 4 provides miscellaneous authority necessary for the Bill's operations. Ministerial directions are authorised in certain exceptional and urgent circumstances when it is assessed as being in the national interest for the Minister to intervene in a particular matter. Such intervention is limited to matters concerning trade or commerce, quarantine, resident foreign corporations, external affairs or other matters for which the Parliament has power under the Constitution. The Part also covers appropriate delegations, compensation for the acquisition of property and regulation making authority.
9. The Bill provides generally for appropriate consultation with industry and consideration of broad industry policies formulated jointly by national representative organisations, which may be prescribed. Related Bills provide for some progressive proclamation of key provisions recognising the considerable effort needed (and in progress) by industry to develop the new infrastructure. In this regard, a cautionary provision postponing sunset under previous legislation by six months has been included as a guarantee against unforeseen delays.

FINANCIAL IMPACT STATEMENT

10. Nothing in this Bill will increase the financial commitment of the Commonwealth other than marginally from those arrangements in place under the *Meat and Live-stock Industry Act 1995*, which this Bill replaces. The export licensing and quota management provisions under Part 2 will continue to provide for the recovery of administrative costs from industry. These costs are currently met by levy payers. The levy appropriation provisions of Part 3 provide for redistribution of levies collected on behalf of industry, and

application of monies provisions permit payment to cover levy collection costs. The Commonwealth research and development matching provisions continue present arrangements. Although they will now permit matching of donor body (non-statutory) contributions, they continue to be limited in appropriate ways. The overall limitation on Commonwealth contributions is 0.5% of the industry's gross value of production in any one year. Compensation for acquisition of property, as provided in Part 4, is a Constitutional requirement.

11. The related *Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) Bill 1997* provides for the recovery of Commonwealth outlays directly in support of industry reform transition activity. It also provides for the redistribution of industry assets and liabilities attributable to the current statutory bodies as well as the meeting of any non-attributed liabilities from those industry funds. With regard to staff transitional and saving provisions, it is only in the areas of potential and specific *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) requirements that the Commonwealth will assume a potential liability. This obligation arises in the wind-up of any authority and is offset to some extent by the pre-payment of premiums by authorities under SRC Act provisions. Where appropriate and in consultation with industry, these commitments will be accounted for in the distribution of industry reserves.

REGULATION IMPACT STATEMENT

Problem

12. In July 1995 the legislative and regulatory arrangements for the Australian meat and live-stock industry were restructured, and subsequently managed through three statutory bodies. A major principle behind these reforms was to phase the government out of these statutory arrangements, through a staged approach to the transfer of greater responsibility to industry itself, and eventually leading to a non-statutory environment. The 1995 reforms had a 30 June 1998 sunset provision, and review was intended during 1997.
13. The October 1996 'Australian Meat and Livestock Reform for the Future' report (reform report) confirmed the findings of many earlier studies raising concerns about the comparative international efficiency of key meat industry sectors. It supported the need to inject commercial and competition policy principles into existing statutory and industry commercial operations.
14. The reform report also identified a number of key industry policy and program activities that continue to need cooperative industry attention. These areas include safety and hygiene, research and

development, market access and adjustment, training and education, industry representation and industrial relations.

15. The continuing impacts of the 1996 market downturn have bolstered industry support for reform. International competition is growing markedly, and public health perceptions have at the same time contributed to declines in consumption.
16. Government intervention in the meat and livestock industry can be justified on the basis that there can be market failures faced by this industry. For instance, in respect of research and development, each participant benefits and therefore should contribute to its cost. Otherwise, participants may be reluctant to expend money on research and development, which has spill over benefits to others, and as a result there may be less than an optimal levels of research and development. On safety and hygiene, as well as social demands for quality in this area, if one or a small number of participants fail to follow sound 'safety and hygiene' practices, this will have a deleterious effect on all participants.
17. Until now a prescriptive statutory approach has been followed to correct for the possibility of such market failures. The reform review, however, has found that this approach is likely to be contributing to unnecessarily high costs and a lack of flexibility for industry participants. This in turn is considered to be hindering the efficiency and effectiveness of Australian suppliers to the highly competitive world meat and livestock market.

Objectives

18. This Bill, and the associated Bills, aim to significantly reduce the overall regulatory control of meat and live-stock industry management, and to provide the industry with appropriate authority and support to manage its future development.
19. Industry leadership and management will be based on cooperative relationships between industry sectors developed in a commercial environment. It will continue to be focused on key industry and national development requirements, and be sensitive to areas of industry market failure.
20. By moving from a prescriptive statutory approach to a more 'light-handed' regulatory environment, the aim is to provide the industry with greater flexibility and control creating the conditions which will lead to lower costs and an increase in the overall efficiency and effectiveness of the industry in delivering its products to the Australian and world markets.

Alternatives (Statutory or non-statutory)

21. Based on the principal reform report recommendations, and a detailed consultation process, consideration was given to a number

- of alternative management models. The key legislative alternatives available however must be based on either statutory management, which requires either maintenance of or modification to the existing authorities and arrangements, or non-statutory industry management, using a Corporations Law corporate model. 28.
22. The existing authorities were subject to detailed operations reviews. The results of the reviews were published and discussed with industry leaders and representative organisations. This consultation determined that while the existing arrangements were not without support in industry, with the producer sector strongly supporting generic marketing and most sectors supportive of research and development achievements, there was more support for a move to a corporate model. 29.
23. The statutory approach was assessed as having strengths in the areas of collective action and collective ownership, accountability to Parliament, guaranteed representation and involvement, clear authority and long term stability. Weaknesses identified were authority and responsibility anomalies in policy development, difficulty in streamlining operations, poor coordination, lack of contestability and efficiency review, a perceived lack of ownership and inflexibility. 30.
24. A corporate model was assessed as having strengths with regard to flexibility, commercial operation and focus, transparency, improved ownership and perceptions of ownership; reduced regulation, improved industry self determination and reliance on Corporations Law for basic accountability. Weaknesses relating to perceptions of authority, particularly with regard to overseas representation, and concerns regarding long term participation and the impacts of short term commercial imperatives were identified. 31.
25. Given the important policy, accountability and managerial issues involved in a change to a corporate solution, while at the same time retaining levy funding, an experienced legal and business consultant was commissioned to assess the implications. The consultant confirmed this as a viable alternative.
26. After further consultation and consideration of these two options and the implications of competition policy, current industry commercial imperatives, sectoral opinions and relationships, accountability requirements and the clear need for a cultural shift within industry and industry management, the reform report made a strong recommendation for a corporate model solution. Subsequent comprehensive consultation by Government confirmed broad though not universal cross sectoral support for this approach. 32.
27. The Government decided that a corporate model will be the basis for industry structural reform. This decision has been fully accepted by the industry.

Impacts

Business

28. One significant consequence of the Government's decision on new structural arrangements will be the need for clear sectoral differentiation of levy collections. This impacts most obviously on live-stock producers, covering sheep, lambs and goats, where previous arrangements effectively provided for combined levies payable by either processors or live-stock exporters covering contributions by producers, processors and live-stock exporters.
29. The processing and live export sectors will move from paying levies to a non-statutory collection arrangement. Levy legislation will be retained while these sectors demonstrate this as an effective replacement arrangement. This will result in both cost reduction in these sectors, and increased control, accountability and effectiveness in those continued areas of cooperative activity.
30. Producers will continue to fund industry collective activity through levy collections. In the case of the sheep, lamb and goat producer sectors, there will be an increase in transparency of levies paid, as transaction documentation will now clearly indicate to live-stock producers the quantum of levies they are personally paying for industry collective support. This was not previously the case, and will encourage increased participation, and therefore a more representative and relevant result. Operative rates of live-stock levies will be set after consultation with industry representative organisations, and review of industry planned programs.
31. Where the levy collection mechanisms have not changed care has been taken to ensure that the quantum of levies collectable from the industry has not increased in either the operative rates applicable to each levy, or in the total maximums that are applied to each component of each levy. In the case of sheep, lambs and goats, industry has requested and strongly supported a change in levy imposition from a slaughter to a transaction basis, and this will result in some producers paying levy for the first time. This change has an added benefit of aligning live-stock industry collection mechanisms with those already existing for cattle, thus effectively standardising meat industry levy collections to three broad mechanisms, sectorally based, for producers, exporters and processors (though for the latter two the levy rate will be set to zero).
32. Total levy collections will decrease significantly as a result of these reform initiatives, reducing costs for industry. Increased participation, and significantly increased responsibility and accountability is expected to lead to reduced costs, efficiency improvements, more focused programs and improved leadership, benefiting industry and the business sector generally.

Government

33. There remain several unavoidable imperatives while ever Commonwealth powers are used to collect industry levies. Following detailed consultation and in line with legal opinions, the provisions of this Bill are considered to be the minimum sufficient requirements consistent with accountability to Parliament and Governments' responsibilities to levy payers. The Bill does not reduce the effectiveness of, or reliance on, the Corporations Law for accountability of industry management and leadership.
34. A significant impact will be the effect on current employees of the existing statutory authorities. Some of these may not be employed by the new sector based corporations. There will be a reduction in the total funds directed to industry collective activity. Currently in the order of \$110M per annum, these are now expected to be in the order of \$80M to \$85M, with less emphasis on marketing.
35. Levies collection has been closely considered. Bills forming part of this reform package provide for the rates of those levies collected from the 'processing' and 'live export' sectors of the industry to be set to zero. Following strong representations and equally strong undertakings from those sectors the Government agreed to provide them with the opportunity to commence the move to a non-statutory sectoral collection arrangement, which has the potential to eventually remove the need for some industry levies.
36. This opportunity is not one that is currently available to the producer sector. With literally tens of thousands of levy payers this sector strongly supports retention of current levy arrangements. Producer levies also fund other essential programs, relating to animal health and disease eradication benefiting both the industry and the general community. Producer levies will continue.
37. Contribution by the Commonwealth of research and development matching funding (\$21M in 1996/97) continues to require legislative authority, but also provides stability of funds essential for industry programs. There are no known additional outlays required from Government.

Consumers and the community

38. While there are no clearly identifiable impacts for consumers resulting from these structural changes, expected efficiencies and clearer focus of industry marketing and research programs are likely to beneficially flow to consumers in the form of lower prices and/or higher quality produce more in tune with consumer preferences.
39. The processing sector in particular has foreshadowed a significant reduction in collective activity and funding in the area of generic promotion, to be replaced by targeted brand based promotion to achieve more relevant and direct benefit to processors. Reduced

costs under non-statutory collection mechanisms are expected to improve industry profitability, increase industry competitiveness particularly in export activities benefiting the nation and rural Australia.

40. There is to be increased emphasis on food safety and health, also research and development, all of which will benefit the community generally.

Implementation and Review

41. While it is timely and appropriate to recognise meat industry sectoral imperatives, necessary change must be implemented in a considered manner ensuring that the sectoral cooperative mechanisms are provided and operating, that industry leadership can confidently meet the coming challenges, and that continued areas of market failure can be addressed.
42. Based on a non-statutory corporate solution, Government has advised industry that initial structural reform settings require three separate companies limited by guarantee and owned by the producer, processor and live exporter sectors. The producer company will be levy funded, and also be the service delivery company for the industry. It will develop cooperative programs with the other non-levy funded sector companies on a negotiated contractual basis. Industry peak councils have been invited to form a policy and advisory body, to act as the custodian of both collective resources and the industry strategic plan. All these bodies will together with Government jointly develop an industry Memorandum of Understanding (MoU). They will all take broad policy direction from the MoU.
43. Following the Government's decision, industry has formed a reform transition team, consisting of representatives of the six industry peak councils. Government has assisted by providing interim funding in support of transition activities, legal consultation, and development of the necessary corporate infrastructure that must be in place before proclamation of this reform package of Bills.
44. Significant progress has been made in a number of areas, including the development of an industry MoU, communication of these developments to constituents, progress in establishing of companies and board selection, and negotiation of joint functions and levels of funding.
45. This Bill and associated reform Bills provide the basis for implementation of these arrangements.
46. These arrangements will be monitored on an ongoing basis by the Department of Primary Industries and Energy, through the new industry structures and ongoing participation by Government in the industry MoU. This will ensure the effectiveness of introduced

arrangements. The minimalist legislative approach provides scope for industry to review and recommend changes, and with the exception of levies related matters such changes are not expected to require legislative amendment. This should result in a more flexible approach to, and speedier resolution of any industry change proposals. Though no sunset provision has been included in the Bills, it is intended that these arrangements be reviewed in detail and adjusted if necessary within five years of implementation.

CONSULTATION STATEMENT

47. Following the release of the "Australian Meat and Livestock Reform for the Future" report in October 1996, an Australia wide consultation exercise was undertaken. Commissioned by the Minister for Primary Industries and Energy, the Hon John Anderson, MP, the report had wide circulation, and was published on the Department's public access Internet site. The Minister undertook a large number of consultations personally, and a consultation team consisting of Mrs De-Anne Kelly, MP, Ministerial and Departmental staff travelled widely throughout regional Australia and to each capital city.
48. These consultations were to ensure that consistent messages on the content and the implications of principal recommendations of the report were widely understood. Consultations were also undertaken to gauge the levels of support in various regions and sectors for the principal recommendations and options of the report, and to assess any other views and their levels of support.
49. After assessing the results of these consultations, a number of industry sector specific meetings, and combined sector meetings, were held between the Minister and industry leaders. At these meetings the results of consultations, and the opinions of industry leaders were ascertained.
50. The processor and live export sectors in particular indicated strong support for a move from compulsory collectivism and the current statutory arrangements. Significant reduction in generic marketing activities was expected, the sectors clearly preferring branded and targeted approaches. A clearer commercial focus to research and development was also indicated.
51. The producer sectors saw continuation of collective marketing as beneficial. All sectors were generally supportive of a move to a corporate model, and clearly intend to continue vigorous research and development, and food safety programs.
52. These public consultations commenced in late October 1996 and continued through to Christmas 1996. Meetings with industry leaders were held through January to early March 1997. Based on the report, consultations, meetings and further investigations throughout this period, the Government reached a decision on meat industry reform that was announced on 18 March 1997.

53. Because of the nature of the decision, placing considerable emphasis on industry self determination, the Minister directed that consultation on implementation must continue. Industry leaders have been consulted on the expected form and function of the legislation while it was being drafted, but under confidentiality constraints and with the clear understanding that nothing in relation to such consultations could in any way pre-empt the Parliament's ultimate legislative authority and discretion.

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NOTES ON CLAUSES**Part 1 - Preliminary****Clause 1 - Short Title**

54. This clause provides for the Act to be called the *Australian Meat and Live-stock Industry Act 1997*.

Clause 2 - Commencement

55. This clause provides for sections 1 and 2 of this Act to commence on Royal Assent. The remaining provisions of this Act will commence on a day or days to be fixed by Proclamation, or the first day after a period of 9 months from Royal Assent. Associated Acts will also commence when Part 3 of this Act commences.

Clause 3 - Definitions

56. This clause provides definitions essential to the operation of this Act.

Clause 4 - Crown to be bound

57. This Act binds the Crown in each of its capacities. The Act does not make the Crown liable to be prosecuted for an offence.

Clause 5 - Application of this Act

58. This clause provides that the Act applies both within and outside Australia.

Clause 6 - Application of the *Criminal Code*

59. This clause provides for chapter 2 of the *Criminal Code* to apply to all offences against this Act.

Part 2 - Control Of Meat And Live-Stock Exports**Division 1 - Preliminary****Clause 7 - Definitions:**

60. This clause provides definitions of words and expressions used in this Part.

Clause 8 - Meat or live-stock export business

61. This clause defines meat or live-stock export business which is used in this Part.

Clause 9 - Secretary must have regard to industry policies

62. This clause requires that the Secretary take account of industry policies with regard to export licensing and export quota management when exercising the relevant powers provided under this Act.

Division 2 - Export Licences**Clause 10 - Grant of export licence**

63. This clause provides that the Secretary may grant to a person a licence to export meat or live-stock from Australia. The Secretary may place conditions or restrictions on this licence regarding the kind of meat or live-stock export business permitted by such an export licence.

Clause 11 - Application for licence

64. This clause establishes procedures for the application for an export licence, including placing an obligation on applicants to ensure information supplied to the Department is correct. A penalty is imposed for a person who fails to comply with this provision. This clause also provides for the prescribed fee to be paid on application.

Clause 12 - Requirements for grant of licence

65. This clause provides that the Secretary must not grant an export licence in certain circumstances, including if the Secretary is not satisfied with the applicant's integrity, competence or financial standing.

Clause 13 - Notice of refusal to grant licence

66. This clause provides that the Secretary must advise the applicant in writing should the Secretary refuse to grant an export licence.

Clause 14 - Review of refusal to grant licence

67. This clause provides that should an export licence be refused, or if the Secretary has not made a determination within two months after the application has been made, an applicant may seek a review of the decision through the Administrative Appeals Tribunal.

Clause 15 - Licence subject to prescribed conditions

68. This clause provides that an export licence is subject to conditions prescribed by regulation, which may be in addition to those stipulated under the Act.

Clause 16 - Licence subject to condition that holder inform the Secretary of certain events

69. This clause specifies certain events may be prescribed, and that a licensee must inform the Secretary in writing within a prescribed time of that event. These will include:
- bankruptcy;
 - appointment of a liquidator or receiver;
 - winding up.

Clause 17 - Licence also subject to compliance with orders and directions under this section

70. This clause provides for the Secretary to make orders applicable to all export licence holders and issue directions to particular export licence holders. Licensees are subject to any orders or directions issued by the Secretary, which may include such matters as:
- quality, standards and grades;
 - the purchase of meat and live-stock;
 - terms and conditions of sale (including price);
 - carriage, handling, and storage of meat and live-stock;
 - sale and distribution of meat and live-stock after export;
 - the keeping of records; and
 - measures to ensure compliance with orders and directions made under this section, or section 18.
71. Orders and directions may also prohibit the sale for export or export of meat or live-stock beyond certain quantities, below a certain quality, to specific destinations, people or organisations. The Secretary may also direct licensees to consult the Secretary in connection with their export intentions.

Clause 18 - Secretary may make certain orders

72. This clause provides that the Secretary may make orders to prohibit the sale for export or export of meat or live-stock by or to a person who can exercise undue market influence, or to ensure a fair return to licence holders or producers, or in the interests of the industry. Such orders may prohibit or restrict export or sale for export unless there is compliance with certain conditions.

Clause 19 - Orders are disallowable instruments

73. This clause provides that orders made under section 17 or 18 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 20 - Directions by the Secretary

74. This clause provides the methods by which the Secretary may serve a direction on a holder of an export licence. It also provides for appeals on the Secretary's directions under section 17 through the Administrative Appeals Tribunal.

Clause 21 - Duration of licence

75. This clause provides that the minimum period for which a licence is to be issued is one year. An export licence comes into force on the date it is granted, unless another date is stated on the licence, and a licence can be renewed.

Clause 22 - Renewal of licence

76. This clause establishes administrative requirements for the renewal of a licence.

Clause 23 - Notice to licence holder to show cause

77. This clause provides the Secretary with the power to serve on a licensee written notice of the Secretary's intention to suspend a licence if the Secretary has reasonable grounds to believe that the licence holder has ceased to meet the criteria for grant of a licence, contravened a condition of the licence or in other specified circumstances. For example, a licensee may have provided false or misleading information, or the integrity, competency or sound financial standing of that licensee may come into question.
78. This provision enables the Secretary with or without suspension of the licence to require the licensee to show cause why he or she should not be dealt with under section 24. If a licence is suspended but not dealt with under subsection 24(1) within 60 days, the suspension automatically lapses. Right of appeal through the Administrative Appeals Tribunal is provided.

Clause 24 - Powers of the Secretary in relation to licence

79. This clause provides the Secretary with the power to cancel or suspend an export licence in specified circumstances. Such decisions are appealable through the Administrative Appeals Tribunal.

Clause 25 - Cancellation of licence at request of holder

80. This clause provides that the Secretary must cancel an export licence if the licensee requests this in writing.

Division 3 - Export Quotas**Clause 26 - Definitions**

81. This clause provides that expressions used in this Division have the same meaning as those used in subsection 3(1) of the *Australian Meat and Live-stock (Quotas) Act 1990*.

Clause 27 - Orders establishing a system or systems of quotas

82. This clause provides the Secretary may issue orders establishing and administering systems of quotas, including administrative arrangements, method of allocation, transfer and surrender or cancellation.

Clause 28 - Cancellation and variation of quotas

83. This clause provides that the Secretary may at any time, by notice given in writing to the holder of a quota, cancel the quota or part of a quota, or vary the period of validity, quantity or description of goods covered and conditions of the quota. Cancellation or variation can be initiated either by the Secretary, or by the quota holder after payment of the prescribed fee. Decisions are appealable to the Administrative Appeals Tribunal as per section 30.

Clause 29 - Reimbursement for reduction of rights under quota

84. This clause provides that if quota is cancelled or varied so as to reduce the rights granted by the quota, the Secretary must repay to the holder a proportionate amount of any sale price. The provisions require that the Minister determine the amount, if any, which is appropriated accordingly. The provision is principally intended to allow reimbursement when reductions occur for reasons other than because of a request by the holder.

Clause 30 - Review of decisions

85. This clause provides that application may be made to the Administrative Appeals Tribunal for review of the Secretary's decisions relating to quota variation or cancellation.

Clause 31 - Licensees to comply with quota system

86. This clause provides that the holder of an export licence must comply with subsection 5(2) of the *Australian Meat and Live-stock (Quotas) Act 1990*, which states that a licensee notified of a limitation on exports of meat or live-stock to a particular country

may not export those goods to the country referred to in the notice except in accordance with a quota held by the licensee.

Clause 32 - Policies on quotas to be made available on request

87. This clause provides that the Secretary must make available to an exporter, who requests them, the full particulars of relevant policies in relation to quotas.

Clause 33 - Concurrent operation of the Australian Meat and Live-stock (Quotas) Act and this Division and Division 2

88. This clause provides that the *Australian Meat and Live-stock (Quotas) Act 1990* and this Division operate in addition to, and not in substitution for, any provision of Division 2 of this Act. Division 2 sets out the Secretary's powers relating to the control of the export of meat and live-stock from Australia and export licences.

Division 4 - Enforcement

Clause 34 - Searches to monitor compliance with Part

89. This clause specifies the powers of an authorised officer in relation to monitoring export licensees' compliance with this Part. These powers include entering and searching registered meat or live-stock premises or related vehicles, vessels or aircraft and seizing meat, live-stock and/or any thing or related records. An authorised officer may also engage people to assist. However, an authorised officer must tender a receipt for anything seized and may not exercise any of these powers if an identity card is not produced upon request.

Clauses 35 - Offence-related searches and seizures

90. This clause specifies the powers of an authorised officer in relation to offences against this Part. It gives an authorised officer the power to enter and search premises subject to owner's approval or a warrant being issued, and to record or seize and retain meat or live-stock, or any thing that may be evidence of the commission of an offence.

Clause 36 - Release of seized goods

91. This clause permits the Secretary to release seized goods under any conditions the Secretary thinks fit.

Clause 37 - Offence-related warrants

92. This clause provides for the procedures to be followed for obtaining an offence-related warrant, and the details that must be specified in the warrant.

Clause 38 - Announcement before entry

93. This clause provides for announcement of an offence-related warrant authorisation to enter a premises by an authorised officer and/or an authorised officer's assistant prior to entry, and of circumstances which are exempted.

Clause 39 - Details of warrant to be given to occupier

94. This clause provides that a copy of an offence-related warrant to enter a premises will be given to the occupant or his representative on execution of the warrant.

Clause 40 - Use of equipment to examine or process things

95. This clause provides for the use of any necessary and suitable equipment to examine or process meat, live-stock or related records at a premises, and the movement of such items to another site if it is not practicable for the examination to take place on-site.

Clause 41 - Use of electronic equipment at premises

96. This clause provides, in relation to records examined in searches under this Part, that an authorised officer may require an occupant or the occupant's employee to operate equipment in order to examine relevant records. Under specified circumstances provision is given for an authorised officer to seize records and equipment.

Clause 42 - Compensation for damage to electronic equipment

97. This clause provides that the Commonwealth will pay compensation for equipment used under sections 40 or 41 and damaged through insufficient care being exercised in either selecting the operator of the equipment, or by that operator. In determining the amount of compensation regard is to be had of specified circumstances relating to the use of the equipment.

Clause 43 - Copies of seized things to be given

98. This clause provides an authorised officer must, on request, provide a copy of items seized under sections 34 or 35 that can be readily copied (such as a document, film, computer file) to the occupant of the premises or his representative as soon as practicable after the seizure, with specified exceptions.

Clause 44 - Return of things that are seized

99. This clause provides for an item seized under sections 34 or 35 to be held initially for 60 days and then returned. It also provides the conditions for retention, to whom the item must be returned, and dispute resolution. This clause is subject to section 45.

Clause 45 - Court of summary jurisdiction may permit a thing to be kept

100. This clause provides that a court may order an item seized under sections 34 or 35 to be held for a further period or periods.

Clause 46 - Warrants may be granted by telephone in urgent circumstances

101. This clause sets out the conditions to be met before an offence-related warrant may be granted over the telephone by a magistrate and the procedures which are to be followed in relation to such a warrant.

Clause 47 - Power of authorised officer to require information or documents

102. This clause specifies that a person must provide to an authorised officer, information and produce any documents referred to by that officer, if the officer produces his or her identity card on request. This section also imposes a penalty of 30 penalty units on a person who intentionally fails to comply with this requirement.

Clause 48 - Help to authorised officers

103. This clause provides for a penalty of imprisonment of six months on an owner or occupant of a premises entered by an authorised officer under sections 34 or 35 who intentionally or recklessly hinders or obstructs an officer in the performance of his or her duty. However, the person is not obliged to comply with the request unless an identity card is produced upon request.

Clause 49 - Authorised officers

104. This clause gives the Secretary the power to appoint persons as authorised officers for the purposes of this Part of the Act and issue an identity card. It also specifies the details to be included on an authorised officer's identity card and provides a penalty of a fine of not more than one penalty unit for failure to hand in an identity card when an officer ceases to be an authorised officer. This power to appoint authorised officers cannot be delegated under section 70.

Clause 50 - Protection of authorised officers and other people

105. This clause gives an authorised officer or a person assisting an authorised officer immunity from any legal proceeding arising out of the performance of his or her duties performed in good faith.

Clause 51 - Secretary may require information or documents

106. This clause provides the Secretary with the power to serve a written notice requiring a person to provide any specified information or documents relating to:

- the industry;

- the meat or live-stock of that person or of another person;
 - any meat or live-stock to be exported, or intended to be exported, from Australia; or
 - an export licensee.
107. This section also imposes a penalty of imprisonment for 12 months on a person who intentionally or recklessly fails to give the required information or document. Information or a document provided under this section is not admissible as evidence against the person providing the information in proceedings other than for an offence under section 55, which deals with false information.

Clause 52 - Nominees

108. This clause provides the licence holder (as defined) the power to appoint, in writing, a person as his or her nominee and for the nominee to furnish documents and information as requested by the Secretary.

Clause 53 - Evidence of analyst

109. This clause provides the Secretary the power to appoint analysts for the purposes of this Part of the Act and specifies that any certificate provided by an analyst will be admissible as *prima facie* evidence in any proceedings for an offence against this Part of the Act, subject to the person charged having been given a copy of the certificate and prior notice that it is to be used as evidence.
110. A certificate provided by such an analyst will contain information as to the date of receipt of the substance to be analysed, the name of the person from whom it was received and a description of the substance. This ensures the continuity of evidence in support of other continuity witnesses, without necessarily requiring the analyst to attend court to give evidence.

Clause 54 - Export of meat or live-stock without export licence etc.

111. This clause provides that a person who does not hold a meat export licence must not export meat from Australia. Similarly a person who does not hold a live-stock export licence must not export live-stock from Australia. Export licensees must not intentionally or recklessly contravene a licence condition. A penalty of five years imprisonment is imposed for a person failing to meet these requirements.

Clause 55 - False information etc.

112. This clause imposes a penalty of 12 months imprisonment, or 60 penalty units or both, on a person who intentionally makes a declaration, gives information, sends a return or produces a

document to the Secretary that the person knows to be false or misleading. Anyone who recklessly does this faces a lesser penalty of 6 months imprisonment, or 30 penalty units or both.

Clause 56 - Person falsely holding out to be the holder of licence etc.

113. This clause imposes a penalty of 12 months imprisonment on a person who:

- intentionally or recklessly falsely claims to be an export licensee or
- is not a meat export licensee (or the agent of a licensee) and intentionally or recklessly contracts to export meat or
- is not a live-stock export licensee (or the agent of a licensee) and intentionally or recklessly contracts to export live-stock.

Clause 57 - Forfeiture of goods

114. This clause provides that a convicted person under this Part of the Act may also forfeit meat or live-stock related to this offence to the Commonwealth. It also provides that such items may be sold or disposed of as a prescribed person directs.

Part 3 - Industry marketing and research bodies, and approved donors

Division 1 - Preliminary

Clause 58 - Definitions

115. This clause provides definitions of words and expressions used in this Part.

Clause 59 - Minister must have regard to industry policies

116. In exercising his powers under this part the Minister must have regard to broad industry policies formulated jointly by prescribed industry bodies.

Division 2 - Declaration of industry bodies and approved donors

Clause 60 - Declaration of industry marketing and research bodies

117. This clause provides that the Minister may declare a body to be either the industry marketing or industry research body, or both. He must ensure before declaring such bodies that the body being considered is

- a corporation limited by guarantee under the Corporations Law;
- after consideration of the relevant company documents, membership, and any agreements or undertakings the body is capable of representing industry's interests; and
- in agreement with the declaration.

118. Declarations under this section will be disallowable instruments.

Clause 61 - Declaration of approved donors

119. This clause provides that the Minister may declare bodies to be approved donor bodies. Contributions from approved donors to the research body for industry research and development purposes will be accepted for Commonwealth R&D matching purposes under section 66. The Minister must ensure before declaring such bodies that the body being considered is

- a corporation limited by guarantee under the Corporations Law;
- after consideration of the relevant company documents, membership, and any agreements or undertakings the body is capable of representing industry's interests; and
- in agreement with the declaration.

120. Declarations under this section will be disallowable instruments.

Clause 62 - Bodies to inform the Minister about changes to their memoranda and articles of association

121. This clause provides that bodies declared under sections 60 or 61 must advise the Minister any alterations to their association documents to ensure that they continue to be representative and meet other requirements of such bodies.

Division 3 - Payments to industry bodies

Clause 63 - Payments to the marketing body

122. This clause provides that after commencement the Commonwealth is to pay to the marketing body money equal to that collected from the industry for the purposes of marketing and/or promotion in the following Acts:

- *Beef Production Levy Act 1990*
- *Cattle (Exporters) Export Charge Act 1997*
- *Cattle (Producers) Export Charges Act 1997*

- *Cattle Transactions Levy Act 1997*
 - *Live-stock Slaughter (Processors) Levy Act 1997*
 - *Live-stock Transactions Levy Act 1997*
 - *Live-stock (Exporters) Export Charge Act 1997*
 - *Live-stock (Producers) Export Charges Act 1997*
123. Such payments (including penalties covered under section 65) may be subject to conditions agreed between the Minister and the body concerned. This, together with the general provisions under the Corporations Law will provide for appropriate accountability.
124. The section appropriates these amounts accordingly.

Clause 64 - Payments to the research body

125. This clause provides that after commencement the Commonwealth is to pay to the research body money equal to that collected from the industry for the purposes of research and development in the following Acts:
- *Beef Production Levy Act 1990*
 - *Cattle (Exporters) Export Charge Act 1997*
 - *Cattle (Producers) Export Charges Act 1997*
 - *Cattle Transactions Levy Act 1997*
 - *Live-stock Slaughter (Processors) Levy Act 1997*
 - *Live-stock Transactions Levy Act 1997*
 - *Live-stock (Exporters) Export Charge Act 1997*
 - *Live-stock (Producers) Export Charges Act 1997*
126. Such payments (including penalties covered under section 65) may be subject to conditions agreed between the Minister and the body concerned. This, together with the general provisions under the Corporations Law, will provide for appropriate accountability.
127. The section appropriates these amounts accordingly.

Clause 65 - References to amounts of levy and amounts of charge

128. This clause ensures that penalties or other amounts recovered under the *Primary Industries Levies Charges and Collection Act 1991* that relate to the levies Acts mentioned in sections 63 or 64 are payable to marketing or research bodies, as appropriate.

Clause 66 - Commonwealth's matching payments

129. This clause requires the Commonwealth to pay to the research body amounts up to half the expenditure for meat and live-stock research and development activities. Payments cannot exceed the lesser of
- total payments to the research body of industry's levy and charge receipts together with amounts paid to the research body by approved donors for research and development; and
 - 0.5 per cent of the gross value of production for the industry in the financial year, as determined by the Secretary.
130. The regulations may set out how the annual gross value of production for the industry in Australia is to be determined by the Secretary.
131. The section appropriates these amounts accordingly.

Clause 67 - Application of money

132. This clause limits the uses to which marketing or research bodies can apply amounts received through this Part. This ensures that application of funds is consistent with the purposes for which the levies were imposed and collected.
133. The section permits payments to the Commonwealth for costs related to the collection of industry levies and charges and to those relating to industry marketing and promotion, and research and development. Such expenditure would necessarily include normal operational costs.
134. Consistent with the significantly increased level of self determination for industry, there is provision for additional uses to be prescribed. Such a determination by the Minister will be after full consultation with industry, and will be a disallowable instrument.
135. To ensure appropriate accountability, the section also permits conditions to be attached to the flow of any funds. Such conditions will be embodied in a deed executed between the Commonwealth and the relevant body.

Clause 68 - Reimbursement of Commonwealth

136. This clause ensures that refunds payable by the Commonwealth with respect to levies or charges collected will be recovered from any body in receipt of those amounts.

Part 4 - Miscellaneous**Clause 69 - Ministerial directions**

137. This clause provides for Ministerial directions, which are authorised in certain exceptional urgent circumstances when it is in the national interest. Such directions can only be given if they relate to trade or commerce, quarantine, resident foreign corporations, external affairs and on matters over which the Parliament has power under the Constitution.
138. Ministerial directions can only be given to prescribed bodies that are either holders of industry monies, or recipients of levy funds, and only after consultation. Directions cannot cause those bodies to incur expenses greater than the amounts paid to those bodies.
139. If a direction is given, the Minister must table it in each House of the Parliament within 15 sitting days of the direction being given. These processes do not have to be complied with if the Minister makes a written determination that public knowledge of the direction would or would be likely to prejudice the commercial activities of the body or the national interest of Australia.
140. A prescribed body must not fail to comply with a direction given under this section. The Minister may not delegate this authority, and this is provided for in section 70.

Clause 70 - Delegations

141. This clause provides may delegate his powers under this Act to the Secretary, except for powers under section 69 relating to Ministerial Directions.
142. It further provides that the Secretary may delegate his powers under this Act to an SES employee of the Department, except the Secretary's power to appoint authorised officers under section 49 relating to investigation and enforcement provisions of this Act.

Clause 71 - Compensation for acquisition of property

143. This clause provides that the Commonwealth will be liable for compensation if the operation of this Act results in the acquisition of property on unjust terms.

Clause 72 - Minister not to be taken to be a director of a company

144. This clause provides that the Minister is not to be taken to be a director of a company for the purposes of the Corporations Law because of the powers conferred by this Act.

Clause 73 - Operation of certain laws not restricted

- 145. Nothing in this Act or regulations under the Act restricts the operation of the *Customs Act 1901*, the *Commerce (Trade Descriptions) Act 1905* or the *Export Control Act 1982* or any regulations made under any of these Acts.

Clause 74 - Regulations

- 146. This clause provides for the making of regulations that are authorised by the Act or needed to allow the Act to operate. It provides for penalties of up to 10 penalty units to be prescribed in regulations.