



**Agriculture, Fisheries and Forestry  
Legislation Amendment Act (No. 2) 1999**

**No. 170, 1999**



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**An Act to amend the law relating to agriculture,  
fisheries and forestry, and for related purposes**

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## **An Act to amend the law relating to agriculture, fisheries and forestry, and for related purposes**

*[Assented to 10 December 1999]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Agriculture, Fisheries and Forestry  
Legislation Amendment Act (No. 2) 1999*.

### **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 commences on the later of the following days:
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- (a) 1 July 1999;
  - (b) the first day of the first month that begins after the day on which this Act receives the Royal Assent.
- (3) Items 2 and 3 of Schedule 3 are taken to have commenced on 28 June 1996.
- (4) Schedule 6 is taken to have commenced on 1 April 1999.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Plant Breeder's Rights Act 1994**

### **1 Subsection 21(1)**

Omit “7”, substitute “30”.

### **2 Subsection 21(3)**

Omit “7”, substitute “30”.

### **3 After subsection 35(2)**

Insert:

- (2A) An objection is of no effect unless it is accompanied by the prescribed fee.

### **4 Paragraph 37(5)(c)**

Repeal the paragraph, substitute:

- (c) if it is conducted to deal with a request for revocation of PBR:
- (i) by the person making the request, where the test growing shows that there are no valid reasons for the revocation; or
  - (ii) by the grantee where the test growing shows that there are valid reasons for the revocation.

### **5 After subsection 37(5)**

Insert:

- (6) If a contracting party, or a national or an organisation of a contracting party, requests the Secretary to conduct in Australia a test growing of a plant variety, the Secretary may decide to conduct the test growing as so requested.
- (7) If the Secretary decides to conduct a test growing under subsection (6), subsections (1), (2), (3), (4) and (5) apply to such test growing as if:
- (a) the person or organisation requesting the test growing under subsection (6) was an applicant for PBR; and
  - (b) the test growing had been decided on in relation to that application.

## 6 Subsection 43(6)

After "breeder", insert ", either".

## 7 Transitional provision

(1) If:

- (a) a person first sold a plant variety in the territory of a contracting party other than Australia after 9 November 1988 and before 10 November 1990; and
- (b) the person lodged an application for PBR under the *Plant Breeder's Rights Act 1994* more than 4 years but less than 6 years after the date of that first sale; and
- (c) the application was rejected only because of the operation of subsection 43(6) of that Act;

then, despite the terms of that subsection and subject to subitem (2), the Registrar may further consider that application as if the sales of that plant variety occurring after 9 November 1988 but more than 4 years before the application had not taken place.

(2) Subitem (1) does not apply in relation to an application referred to in that subitem unless the applicant in relation to that application, or any successor in title to that applicant, notifies the Registrar, in writing, to take action under this item in relation to that application within 6 months after the commencement of this item.

## 8 Subsection 50(5)

Omit "a plant variety (the *initial variety*) is essentially derived from another plant variety", substitute "a plant variety is essentially derived from another plant variety (the *initial variety*)".

## 9 After subsection 50(9)

Insert:

- (9A) An application under subsection (8) or (9) is of no effect unless it is accompanied by the prescribed fee.

## 10 Subsection 61(2)

Repeal the subsection, substitute:

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- (2) In order to foster public access to the information contained in the Register, the Registrar may disseminate that information on the Internet or in such other manner as the Registrar considers most likely to enhance its accessibility.

**11 Subparagraph 80(2)(a)(iv)**

Omit "and".

**12 At the end of paragraph 80(2)(a)**

Add:

and, if the matter is not dealt with by another provision of this Act, specifying the time at which, or the circumstances in which, such fees are to be paid and the manner of payment of such fees; and

## Schedule 2—Primary Industries Levies and Charges Collection Act 1991

### 1 Subsection 4(1) (definition of *buying agent*)

After “business”, insert “(including the business of a settlement agent or a solicitor)”.

### 2 Subsection 4(1) (paragraphs (b) and (c) of the definition of *examinable documents*)

Repeal the paragraphs, substitute:

- (b) the handling, storing, transporting, processing, marketing, purchasing or selling of collection products; or
- (c) the purchasing or selling of prescribed goods or services in relation to collection products of any kind;

### 3 Subsection 4(1) (definition of *leviable weight*)

Repeal the definition.

### 4 Subsection 4(1) (at the end of paragraphs (da), (fa), (fb), (fc) and (ga) of the definition of *producer*)

Add “or”.

### 5 Subsection 4(1) (subparagraph (h)(ii) of the definition of *producer*)

Repeal the subparagraph.

### 6 Subsection 4(1) (subparagraph (h)(iii) of the definition of *producer*)

Omit “where neither subparagraph (i) nor (ii) apply”, substitute “in any other case”.

### 7 Subsection 4(1) (at the end of paragraphs (hb) and (ha) of the definition of *producer*)

Add “or”.

### 8 Subsection 4(1) (definition of *proprietor*)

Repeal the definition, substitute:

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*proprietor* means:

- (a) in relation to an abattoir:
  - (i) if a licence is required under any law of the Commonwealth or of a State or Territory to carry on abattoir activities—the person who holds the licence; or
  - (ii) if no licence is required under any such law—the person carrying on the business of operating the abattoir; and
- (b) in relation to any other processing establishment—the person carrying on the business of processing collection products in that establishment.

**9 Subsection 4(1) (definition of *selling agent*)**

After “business”, insert “(including the business of a settlement agent or a solicitor)”.

**10 Paragraphs 7(1)(d), (2)(c), (3)(a) and (3A)(a)**

Omit “that remains unpaid by the producer”.

**11 After subsection 7(3A)**

Insert:

- (3B) An agreement between a producer and an intermediary that purports, expressly or implicitly, to require the producer to pay levy or charge as a condition for the provision of services by the intermediary is void to that extent, if the intermediary would otherwise have to pay an amount under this section in relation to that levy or charge.

**12 Subsection 8(1)**

Omit “the unpaid levy or charge on the products”, substitute “the amount in relation to levy or charge for which the intermediary is liable under that subsection”.

**13 Subsection 8(2)**

Repeal the subsection, substitute:

- (2) When an intermediary deducts an amount under subsection (1) in respect of levy or charge:

- (a) the producer is discharged from liability to pay that levy or charge to the extent of the amount deducted; and
- (b) the intermediary must:
  - (i) give the producer, within 7 days after the date of deduction, a receipt or other written statement acknowledging deduction and specifying the date on which it was made; and
  - (ii) in accordance with this Act, pay any amount in relation to the levy or charge that the intermediary is liable to pay on behalf of the producer.

**14 Paragraph 15(3)(a)**

Omit “collection goods”, substitute “prescribed goods”.

Note: The heading to section 15 is altered by omitting “**non-payment**” and substituting “**late payment**”.

**15 Paragraph 15(3)(a)**

Omit “prescribed product”, substitute “collection product”.

**16 Paragraph 15(4)(a)**

Omit “collection goods and”, substitute “prescribed goods or”.

**17 Subsection 16(2)**

Omit “\$2,000”, substitute “\$5,000”.

**18 Subsection 19(1)**

After “occupier”, insert “or person in charge”.

**19 Paragraph 19(2)(b)**

After “inspect,”, insert “examine,”.

**20 After section 19**

Insert:

**19A Offence of obstructing an authorised person acting under a warrant**

A person must not obstruct or hinder an authorised person in the exercise of his or her power under section 19 if the authorised

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person is exercising the power in accordance with a warrant issued under section 20.

Penalty: 30 penalty units

**19B Persons to assist authorised person acting under a warrant**

If an authorised person enters any premises under section 19 in accordance with a warrant issued under section 20, the occupier or the person in charge must, if required to do so by the authorised person, provide reasonable assistance to the authorised person in the exercise of his or her power under that section in relation to such premises.

Penalty: 30 penalty units

**21 Subsection 22(5)**

Omit “occupier of the premises for the occupier’s inspection”, substitute “occupier or the person in charge of the premises for inspection”.

**22 Subsection 24(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 60 penalty units.

**23 At the end of section 24**

Add:

- (4) If a person is convicted of an offence under subsection (1):
  - (a) the court may direct the person to give the return or information that he or she is required to give by or under this Act; and
  - (b) on being so directed, the person must give the return or information to an authorised person within the time specified in the direction.

**24 After paragraph 30(2)(b)**

Insert:

- (ba) requiring persons who produce prescribed goods or provide prescribed services, and any other persons prescribed in
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relation to such goods or services, to make and keep accounts and other records in respect of such goods or services; and

**25 After paragraph 30(2)(c)**

Insert:

- (ca) requiring persons who produce prescribed goods or provide prescribed services, and any other persons prescribed in relation to such goods or services, to give returns or information for the purposes of this Act; and

**26 Paragraph 30(2)(d)**

Repeal the paragraph, substitute:

- (d) establishing offences, punishable on conviction by a fine not exceeding 10 penalty units, for a failure to comply with requirements of the regulations.

**27 Saving provision**

If, under regulations made for the purposes of section 30 of the *Primary Industries Levies and Charges Collection Act 1991* as in force immediately before the commencement of this item, it is an offence to contravene any particular provision of the regulations, then, despite the repeal and substitution of paragraph 30(2)(d) of that Act by item 26:

- (a) that offence continues to have effect, after that time, as if the amendment made by item 26 had been in force at the time the offence was created and the offence had been duly created for the purposes of section 30 of that Act as so amended; and
- (b) if any proceedings have been started but not completed in relation to that offence as at the commencement of this item, those proceedings are unaffected by that amendment of section 30 of that Act.

## **Schedule 3—Technical amendments**

### ***Australian Horticultural Corporation Act 1987***

Note: The heading to section 38 is altered by omitting “**Tribunals**” and substituting “**Tribunal**”.

### ***Farm Household Support Act 1992***

#### **1 Section 29A (note before note 2)**

Repeal the note, substitute:

Note 1: For the person’s rate, see section 24A.

### ***Primary Industries and Energy Legislation Amendment Act (No. 1) 1996***

#### **2 Item 2 of Schedule 7 (heading)**

Repeal the heading, substitute:

#### **2 At the end of Part 10**

Note: This item, together with item 3, corrects a misdescribed amendment of the *Australian Wool Research and Promotion Organisation Act 1993*.

#### **3 Item 2 of Schedule 7**

Omit “Repeal the section, substitute:”, substitute “Add:”.

Note: This item, together with item 2, corrects a misdescribed amendment of the *Australian Wool Research and Promotion Organisation Act 1993*.

## **Schedule 4—Natural Resources Management (Financial Assistance) Act 1992**

### **Part 1—Change of name of Committee**

#### **1 Title**

Omit “a National Landcare Advisory Committee”, substitute “an Australian Landcare Council”.

#### **2 Subsection 4(1) (definition of *Committee*)**

Repeal the definition.

#### **3 Subsection 4(1)**

Insert:

*Council* means the Australian Landcare Council established by section 13.

#### **4 Part 4 (heading)**

Repeal the heading, substitute:

### **Part 4—Australian Landcare Council**

#### **5 Division 1 of Part 4 (heading)**

Repeal the heading, substitute:

#### **Division 1—The Council**

#### **6 Subsection 13(1)**

Omit “a National Landcare Advisory Committee”, substitute “an Australian Landcare Council”.

Note: The heading to section 13 is replaced by the heading “**Australian Landcare Council**”.

#### **7 Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

**Division 2—Meetings of the Council**

**8 Subsection 27(3)**

Repeal the subsection.

## **Part 2—Amendments of references to “Committee”**

### **9 Multiple amendments**

The provisions of the *Natural Resources Management (Financial Assistance) Act 1992* specified in this Part are amended by omitting “Committee” (wherever occurring) and substituting “Council”.

### **10 Subsection 4(1) (definition of *Chairperson*)**

### **11 Subsection 4(1) (definition of *member*)**

### **12 Paragraph 11(5)(b)**

### **13 Subsection 13(2)**

### **14 Subsection 14(1)**

Note: The heading to section 14 is altered by omitting “Committee” and substituting “Council”.

### **15 Subsection 14(7)**

### **16 Subsection 15(1)**

### **17 Subsection 19(1)**

### **18 Paragraph 20(3)(a)**

### **19 Subsection 20(4)**

### **20 Subsection 23(1)**

### **21 Subsection 23(2)**

### **22 Subsection 23(3)**

### **23 Subsection 27(1)**

Note: The heading to section 27 is altered by omitting “Committee” and substituting “Council”.

## **Part 3—Transitional**

### **24 Transitional—continuity of membership etc. not affected by amendments**

The amendments made by this Schedule do not affect:

- (a) the continuity, after this Schedule commences, of the existence of the body that is renamed by those amendments as the Australian Landcare Council; or
- (b) the continuing validity of the appointment of the members, the Chairperson, and any deputy members, of the Council.

## **Schedule 5—Primary Industry Councils Act 1991**

### **1 Part 1 of the Schedule**

Repeal the Part, substitute:

Note: At present, there are no industry councils established by this Act.

## **Schedule 6—Rural Adjustment Act 1992**

### **1 Section 4 (definition of *Council*)**

Repeal the definition, substitute:

*Council* means the National Rural Advisory Council.

### **2 Part 2 (heading)**

Repeal the heading, substitute:

## **Part 2—The National Rural Advisory Council**

### **3 Section 5**

Omit “Rural Adjustment Scheme”, substitute “National Rural”.

### **4 Subsection 6(4)**

Omit “functions”, substitute “function”.

### **5 Section 8**

Repeal the section, substitute:

### **8 Function of the Council**

The function of the Council is to give the Minister such advice and information as the Minister requests about the following matters:

- (a) rural adjustment generally;
- (b) regional issues, and in particular matters relating to agreements with States under section 20E;
- (c) matters relating to declarations of exceptional circumstances;
- (d) training issues, and in particular the Farm Business Improvement Program;
- (e) any other matter that the Minister requests advice or information about.

### **6 Section 9**

Omit “functions”, substitute “function”.

**7 Transitional—continuity of Council not affected by amendments**

The amendments made by this Schedule do not affect the continuity, after this Schedule commences, of the existence and the membership of the body that is renamed by those amendments as the National Rural Advisory Council.

## **Schedule 7—Australian Wine and Brandy Corporation Act 1980**

### **1 Subsection 4(1) (at the end of the definition of *wine*)**

Add “, and includes a grape product declared by the regulations to be wine for the purposes of this Act”.

### **2 Paragraph 5D(a)**

After “wine is made”, insert “from grapes grown”.

### **3 Section 39C (at the end of the definition of *examinable document*)**

Add:

; or (d) any other document that is relevant to monitoring or enforcing compliance with a label law.

### **4 Section 39C (definition of *wine*)**

Repeal the definition.

### **5 Section 39C (definition of *wine premises*)**

Repeal the definition, substitute:

*wine premises* means any premises, place or conveyance where it is reasonable to assume that wine goods or examinable documents are or might be located.

### **6 Paragraph 39G(2)(c)**

After “characteristics”, insert “and other details”.

### **7 Paragraph 39H(2)(c)**

After “characteristics”, insert “and other details”.

### **8 Paragraph 39J(2)(c)**

After “characteristics”, insert “and other details”.

### **9 Paragraph 39K(2)(c)**

After “characteristics”, insert “and other details”.

**10 Paragraph 39M(2)(e)**

After “characteristics”, insert “and other details”.

**11 Paragraph 39N(3)(c)**

After “characteristics”, insert “and other details”.

**12 Paragraph 39P(2)(c)**

After “characteristics”, insert “and other details”.

**13 Paragraph 39Q(2)(c)**

After “characteristics”, insert “and other details”.

**14 Paragraph 39R(3)(e)**

After “characteristics”, insert “and other details”.

**15 At the end of section 39W**

Add:

- (2) Also, the record must show details of every step the wine manufacturer who must make the record took, in manufacturing the wine or extract, that changed or affected:
  - (a) if the section requiring the record applies because of a claim about vintage—the vintage of the wine or extract; or
  - (b) if that section applies because of a claim about variety—the variety of the wine or extract; or
  - (c) if that section applies because of a claim about region of origin—the geographical indication of the wine or extract; or
  - (d) in any case—the tank or other place or thing in which the wine or extract was stored; or
  - (e) in any case—the volume of the wine or extract stored in any such tank, place or thing.
- (3) The details required under subsection (2) in relation to a wine or extract must be in a form that allows an audit trail containing its history of the wine’s manufacture to be readily traced from the record. It must be possible for the details of the steps taken and the results of the steps to be readily checked for discrepancies by following the sequence of the steps recorded.

## **16 Application of amendments**

The amendments made by items 6 to 15 apply to wines and grape extracts that are begun to be manufactured after the commencement of this item.

## **17 At the end of section 39ZAAA**

Add:

- (2) In proceedings for an offence against this section, if the prosecution:
- (a) does not prove whether the wine concerned was a single wine or a blend; but
  - (b) does prove that, in either case, the defendant would have committed an offence against this section;
- the prosecution does not have to prove whether the wine was a single wine or a blend in order to prove the offence.

## **18 Section 39ZK**

Omit “section 39ZH”, substitute “section 39ZJ”.

## **19 Subsection 39ZL(2)**

Omit “subsection (1)”, substitute “subsection (1A)”.

## **20 At the end of Part VIB**

Add:

## **Division 6—Inspection**

### **40ZF Inspection powers**

The provisions of Part VIA relating to inspections, including Division 4 of that Part, apply in relation to this Part in the same way as they apply in relation to Part VIA, with the following modifications:

- (a) references in that Part to *label laws* are treated as references to the requirements of this Part and of regulations made for the purposes of this Part;

- (b) references in that Part to *label offences* are treated as references to offences against this Part and against regulations made for the purposes of this Part.

**21 At the end of section 44**

Add:

- (2) The provisions of Part VIA relating to inspections, including Division 4 of that Part, apply in relation to this section in the same way as they apply in relation to that Part, with the following modifications:
- (a) references in that Part to *label laws* are treated as references to the requirements of the regulations relating to the export of grape products from Australia;
  - (b) references in that Part to *label offences* are treated as references to offences against this section.

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*[Minister's second reading speech made in—  
House of Representatives on 30 June 1999  
Senate on 24 August 1999]*

(151/99)

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