

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

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Council for Trade-Related Aspects
of Intellectual Property Rights

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MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

Australia

Addendum

The present document reproduces the Primary Industries and Energy Legislation Amendment Act (No. 2) 1994 (No. 129 of 1994)¹, as notified by Australia under Article 63.2 of the Agreement (see document IP/N/1/AUS/1/Rev.1).

Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES
A LA PROPRIETE INTELLECTUELLE NOTIFIEES
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

Australie

Addendum

Le présent document contient le texte de la Loi (n° 2) de 1994 portant modification de la législation sur les industries et l'énergie primaires (n° 129 de 1994)¹, notifiée par l'Australie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/AUS/1/Rev.1).

Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio

PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD
INTELLECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2
DEL ARTÍCULO 63 DEL ACUERDO

Australia

Addendum

En el presente documento se reproduce la Ley por la que se modifica la legislación sobre industrias primarias y energía (N° 2) de 1994 (N° 129 de 1994)¹, que Australia ha notificado en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/AUS/1/Rev.1).

¹English only/anglais seulement/inglés solamente.



Primary Industries and Energy Legislation Amendment Act (No. 2) 1994

No. 129 of 1994

**An Act to amend legislation relating to primary industries,
and for related purposes**

[Assented to 21 October 1994]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1994*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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(2) The amendments made by this Act to the *Agricultural and Veterinary Chemicals Code Act 1994* commence, or are taken to have commenced, on the same day as that Act, immediately after the commencement of that Act.

(3) The amendments made by this Act to the *Australian Wine and Brandy Corporation Act 1980* commence on the first day of the second month that begins after the day on which this Act receives the Royal Assent.

(4) The amendment made by this Act to section 52 of the *Farm Household Support Act 1992* commences on 20 September 1994.

(5) The amendment made by this Act to the *Wool Legislation (Repeals and Consequential Provisions) Act 1993* is taken to have commenced on 1 December 1993, immediately after the commencement of that Act.

Amendments

3. The Acts referred to in the Schedule are amended as set out in the Schedule.

Saving

4. Regulations prescribing organisations for the purposes of the definition of "sugar industry organisations" in subsection 4(1) of the *Sugar Cane Levy Act 1987* that were in force immediately before the commencement of the amendment of that Act made by this Act continue in force after that commencement as if made for the purposes of the definition of that expression in subsection 4(1) of that Act as amended by this Act.

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SCHEDULE

Section 3

AMENDMENTS OF ACTS

Agricultural and Veterinary Chemicals Code Act 1994

Paragraph 159(1)(e):

After “application”, insert “, reconsideration or decision”.

Subsection 159(3):

After “subsection (1)”, insert “that was made for the purposes of an application referred to in paragraph (1)(a) or (b),”.

Australian Meat and Live-stock Industry Policy Council Act 1984

Section 3:

Insert the following definition:

“ ‘**ARMCANZ**’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Paragraph 5(1)(c):

Omit “the Australian Agricultural Council”, substitute “**ARMCANZ**”.

Subsection 9(6):

Omit “the Australian Agricultural Council”, substitute “**ARMCANZ**”.

Subsection 11(2):

Omit “the Australian Agricultural Council”, substitute “**ARMCANZ**”.

Australian Wine and Brandy Corporation Act 1980

Subsection 29U(1):

Omit the definitions of “eligible winemaker” and “list of winemakers”, substitute the following definitions:

“ ‘**eligible producer**’, in relation to a year, means a person on the list of producers prepared in that year;

‘**list of producers**’ means a list of persons prepared under section 29V.”.

Section 29V:

Repeal the section, substitute:

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SCHEDULE—continued

List of producers

“29V.(1) As soon as practicable after each 30 September, the Department must prepare and give to the Corporation a list of the persons who the Department, at the time of the preparation of the list, knows became liable to pay levy imposed under the Levy Act in respect of the year that ended on 30 June immediately preceding that 30 September.

“(2) The Corporation must not use a list of persons prepared under this section except for the purposes of this Part.”.

Subsection 29W(1):

Omit “winemakers”, substitute “producers”.

Subsection 29W(2):

Omit “winemaker”, substitute “producer”.

Section 29X:

Omit “winemakers”, substitute “producers”.

Paragraph 29Y(b):

Omit “winemakers”, substitute “producers”.

Subsection 29Z(1):

Omit “winemaker”, substitute “producer”.

Australian Wool Research and Promotion Organisation Act 1993

Section 6:

After subsection (1), insert the following subsection:

“(1A) In performing its functions under paragraph (1)(c), the Organisation must take account of the need to further the sustainable use and sustainable management of natural resources.”.

Section 10:

Add the following subsection:

“(2) In preparing a corporate plan, the Organisation must have regard to its obligations under subsection 6(1A).”.

Subsection 28(2):

At the end of the subsection, add the following paragraph:

“(f) environmental and ecological matters.”.

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SCHEDULE—continued

Subparagraph 54(1)(d)(iii):

Omit the subparagraph, substitute:

“(iii) from dealing with patents or trade marks vested in the Organisation by subsection 37(4) of the *Wool Legislation (Repeals and Consequential Provisions) Act 1993* or acquired by the Organisation with money from the Fund; or”.

Biological Control Act 1984

Subsection 2(1) (definition of “Council”):

Omit the definition, substitute:

“ ‘Council’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Exotic Animal Disease Control Act 1989

Section 3 (definition of “approved veterinary emergency plan”):

Omit “the Australian Agricultural Council”, substitute “ARMCANZ”.

Section 3:

Insert the following definition:

“ ‘ARMCANZ’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Paragraph 11(1)(c):

Omit “the Australian Agricultural Council”, substitute “ARMCANZ”.

Farm Household Support Act 1992

Paragraph 4(2)(a):

Omit the paragraph, substitute:

“(a) if it was issued within 30 days (or within such further period as the Secretary allows) after the day on which the farmer made a claim for farm household support—for a period of 6 months from that day; or”.

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SCHEDULE—continued

Subsection 5(5):

Omit “by the Secretary of the Department of Primary Industries and Energy”.

After section 5:

Insert the following section:

Review of decision in relation to grant periods

“5A.(1) In this section:

‘**decision**’ means a decision under subsection 5(4), whether made by the Secretary himself or herself or by a delegate of the Secretary;

‘**Secretary**’ means the Secretary to the Department of Primary Industries and Energy.

“(2) The Secretary may review a decision if satisfied that there is sufficient reason to do so.

“(3) The Secretary may review a decision on his or her own initiative or on the application of a person affected by the decision.

“(4) A person may apply for review of a decision, and the Secretary may review a decision, even if an application has been made to the Administrative Appeals Tribunal for review of the decision.

“(5) The Secretary may:

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

“(6) If:

- (a) a person applies under subsection (4) for review of a decision; and
- (b) an application for review of the decision is, or has been, made to the Administrative Appeals Tribunal before the Secretary makes a decision on the review;

the Secretary must give the Registrar of the Tribunal written notice of the making of the application under subsection (4).

“(7) If the Secretary makes a decision under subsection (5) on the application of a person, the Secretary must give the person written notice of the decision that includes:

- (a) a statement that:
 - (i) sets out the reasons for the decision; and
 - (ii) sets out the findings by the Secretary on material questions of fact; and

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SCHEDULE—continued

(iii) refers to the evidence or other material on which those findings were based; and

(b) a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.

“(8) A contravention of subsection (7) in relation to a decision does not affect the validity of the decision.

“(9) If:

(a) the Secretary makes a decision under subsection (5); and

(b) before the Secretary made the decision, a person applied to the Administrative Appeals Tribunal for review of the decision that was reviewed by the Secretary;

the Secretary must give the Registrar of the Administrative Appeals Tribunal written notice of the Secretary’s decision under subsection (5).”.

After section 50:

Insert the following section:

Notice of certain matters to be given

“50A.(1) A person who is liable to repay an amount to the Commonwealth under subsection 50(1) or (2) must not, if any of the events referred to in subsection (2) of this section occurs, intentionally or recklessly fail to give in the prescribed manner full and correct written particulars of the event to the Secretary to the Department of Primary Industries and Energy as soon as practicable after the event occurs.

Penalty: Imprisonment for 6 months.

“(2) The events to which subsection (1) applies are the following:

(a) the person changes his or her place of residence;

(b) the person sells his or her farm;

(c) a change takes place in the person’s financial situation that affects his or her ability to repay the amount concerned.

“(3) This section extends to:

(a) events that occur outside Australia; and

(b) all people whether or not Australian citizens or Australian residents.”.

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SCHEDULE—continued

Section 52:

Before subsection (2), insert:

“(1B) If:

- (a) subsection (1A) has applied to a person because the person sold his or her farm; and
- (b) after the sale the person sells another farm, whether the other farm was acquired before or after the sale of the first-mentioned farm;

that subsection does not apply to the person in respect of the sale of the other farm.”.

Section 53:

At the end of the section add the following subsection:

“(2) The Secretary to the Department of Primary Industries and Energy may, by signed writing, delegate to an officer of that Department all or any of his or her powers under this Act.”.

Fisheries Administration Act 1991

Subsection 4(1) (definition of “Australian Fisheries Council”):

Omit the definition.

Subsection 4(1):

Insert the following definition:

“ ‘**Ministerial Council**’ means:

- (a) subject to paragraph (b), Ministerial Council on Forestry, Fisheries and Aquaculture, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”

Paragraph 28(1)(c):

Omit the paragraph, substitute:

“(c) give to the Ministerial Council a written notice requesting the body to nominate to the Minister a person for appointment to the Selection Committee; and”.

Paragraph 29(1)(d):

Omit “Australian Fisheries Council”, substitute “Ministerial Council”.

Subsection 80(1):

Omit the subsection, substitute:

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SCHEDULE—continued

“(1) If a levy amount is received by the Commonwealth after the commencement of this subsection, there is to be paid to the Authority an amount worked out using the formula:

Levy amount less Deductible component.

“(1A) In subsection (1):

‘**Levy amount**’ means any of the following amounts:

- (a) an amount received by the Commonwealth as levy imposed by the *Foreign Fishing Boats Levy Act 1981*;
- (b) an amount received by the Commonwealth as levy imposed by the *Fisheries Levy Act 1984*;
- (c) an amount received by the Commonwealth as levy imposed by the *Fishing Levy Act 1991*;
- (d) an amount received by the Commonwealth as levy imposed by the *Foreign Fishing Licences Levy Act 1991*;
- (e) an amount received by the Commonwealth as charge imposed by the *Statutory Fishing Rights Charge Act 1991*;
- (f) an amount received by the Commonwealth as mentioned in the *Fisheries Agreements (Payments) Act 1991*;
- (g) an amount received by the Commonwealth in repayment of a loan made under a fisheries adjustment program or a fisheries restructuring program;
- (h) an amount received by the Commonwealth as a penalty under section 112 of the *Fisheries Management Act 1991*;
- (i) an amount received by the Commonwealth as a fee under regulations made under paragraph 168(2)(e) of the *Fisheries Management Act 1991*;
- (j) an amount received by the Commonwealth as a fee under regulations made for the purposes of subsection 9(8) of the *Fisheries Act 1952*;

other than an amount that is declared by the regulations not to be a levy amount for the purposes of this section;

‘**Deductible component**’, in relation to a levy amount, means:

- (a) if, as a result of the receipt by the Commonwealth of the levy amount, an amount is required to be paid under subparagraph 30A(1)(a)(i) or (ii) of the *Primary Industries and Energy Research and Development Act 1989* to an R & D Corporation (within the meaning of that Act) established in respect of the fishing industry—an amount equal to the amount so required to be paid; or

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SCHEDULE—continued

- (b) if the levy amount is an amount referred to in paragraph (f) of the definition of ‘Levy amount’—an amount equal to so much (if any) of the levy amount as is determined by the Minister to be an amount paid to the Commonwealth for the right to engage in fishing in the Australian fishing zone; or
- (c) if a part of the levy amount is prescribed for the purposes of this paragraph—an amount equal to the part so prescribed.”.

Paragraph 81(c):

At the end of (and as part of) paragraph (c), insert “, including, to remove any doubt, any amounts payable to, or received by, the Authority for or in respect of publications issued by it”.

Fisheries Management Act 1991

Subsection 32(1):

Omit the subsection, substitute:

“(1) AFMA may, upon application made in the approved form, grant to a person a fishing permit authorising, subject to subsections (1A), (1B) and (1C), the use by that person, or by a person acting on that person’s behalf, of an Australian boat for fishing in a specified area of the AFZ or a specified fishery.

“(1A) Subject to subsection (1C), if an Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of:

- (a) subject to paragraph (b)—that boat; or
- (b) if the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit another Australian boat in lieu of that boat—the boat so nominated.

“(1B) Subject to subsection (1C), if no Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of such Australian boat (if any) as the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit.

“(1C) The permit does not authorise the use of an Australian boat unless the boat complies with any conditions to which the permit is subject.”.

Paragraph 43(1)(a):

Omit the paragraph, substitute:

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SCHEDULE—continued

“(a) to deal with:

- (i) emergencies; or
- (ii) other circumstances where urgent action is required for purposes related to the management of a fishery; or”.

Paragraph 84(1)(f):

After the paragraph, insert:

“(fa) if a fishing concession provides for the use of equipment of a particular type—require the holder of the concession to give the officer such help as the officer reasonably requires for the purpose of measuring the equipment; and”.

Paragraph 84(1)(g):

Before “seize”, insert “subject to subsection (1A),”.

Paragraph 84(1)(k):

Omit the paragraph, substitute:

“(k) if the officer has reasonable grounds to believe that a boat has been used, is being used or is intended to be used in contravention of this Act, require the master of the boat:

- (i) if the boat is at a place in Australia or a Territory—to remain in control of the boat at that place; or
- (ii) if the boat is not at a place in Australia or a Territory—to bring the boat to such a place, or to a place at sea, specified by the officer and to remain in control of the boat at that place; until an officer permits the master to depart from that place; and”.

Subsection 84(1):

After the subsection, insert:

“(1A) If an officer takes any action under subparagraph (1)(g)(i) or (ii), the officer must, within 7 days after the action is taken, give written notice of the grounds for the taking of the action to the person believed by the officer:

- (a) if the action is taken in relation to any fish—to have taken, processed, carried or landed the fish, as the case may be; or
- (b) if the action is taken in relation to any boat—to be the owner of the boat; or
- (c) if the action is taken in relation to any net, trap or other equipment—to have used, to be using or to be intending to use the net, trap or other equipment, as the case may be.”.

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SCHEDULE—continued

Subsection 91(1):

Omit “managed” (wherever occurring).

Paragraph 91(4)(a):

Omit the paragraph, substitute:

“(a) if the permit relates to a managed fishery—the permit will cease to have effect if the plan of management for the fishery is revoked under subsection 20(3);”.

Subsection 106(1):

After “forfeiture of”, insert “all or any of the following”.

Paragraph 106(1)(a):

Omit “or” (last occurring).

Paragraph 106(1)(b):

Omit “or”.

Paragraph 168(2)(e):

After subparagraph (iii), insert:

“(iiia) the giving of a notice to AFMA nominating an Australian boat under paragraph 32(1A)(b) or subsection 32(1B); and”.

Horticultural Policy Council Act 1987

Section 3:

Insert the following definition:

“ ‘**ARMCANZ**’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Paragraph 9(1)(e):

Omit “the Australian Agricultural Council”, substitute “**ARMCANZ**”.

National Residue Survey Administration Act 1992

Section 7:

After paragraph (d) insert:

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SCHEDULE—continued

“(da) any amount paid to the Commonwealth for the purposes of the Account; and”.

Paragraph 7(e):

After “Survey”, add “or the Account”.

Paragraph 8(1)(a):

Omit the paragraph, substitute:

“(a) making payments, in accordance with an expenditure program approved by the Minister, for purposes related to:

- (i) the monitoring and reporting of the level of contaminants in food products, animal feed, or fibre products, produced in Australia or produced from animals or plants produced in Australia; and
- (ii) if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—the testing, either on a random basis or in specific cases, of such food products, animal feed or fibre products for the purpose of tracing the sources, and identifying the causes, of contaminants; and
- (iii) if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—the prevention of contamination in such food products, animal feed or fibre products; and”.

Subparagraph 8(1)(b)(iii):

Omit the subparagraph, substitute:

“(iii) the carrying out of any activities of the kinds referred to in subparagraphs (a)(i), (ii) and (iii); and”.

After paragraph 8(1)(b):

Add the following word and paragraphs:

- “; and (c) if an amount that was paid into the Account was given by a person or body to the Commonwealth for a particular purpose but has not been fully spent for that purpose—repaying the unspent amount to the person or body; and
- (d) if an amount that was paid into the Account was appropriated by the Parliament for the purposes of the Account on condition that the amount be repaid—repaying the amount.”.

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SCHEDULE—continued

Primary Industries and Energy Research and Development Act 1989

Paragraph 30A(2)(c):

- (a) After “to the Corporation” insert “or to the Commonwealth”.
- (b) Before “to the Commonwealth” insert “to the Corporation or”.

Primary Industry Councils Act 1991

Section 4:

Insert the following definition:

“ ‘**ARMCANZ**’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Schedule:

Omit from paragraph 4(1) of Part 1 “the Australian Agricultural Council”, substitute “ARMCANZ”.

Rural Industries Research Act 1985

Subsection 4(1):

Insert the following definition:

“ ‘**ARMCANZ**’ means:

- (a) subject to paragraph (b), Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body;”.

Paragraph 43(1)(c):

Omit “the Australian Agricultural Council”, substitute “ARMCANZ”.

Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985

Schedule 1:

Omit from column 3 of Part IV “the Australian Agricultural Council”, substitute “ARMCANZ”.

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SCHEDULE—continued

Sugar Cane Levy Act 1987

Subsection 4(1) (definition of “sugar industry organisations”):

Omit the definition, substitute:

“ ‘sugar industry organisations’ means the organisations prescribed for the purposes of this definition;”.

Wheat Marketing Act 1989

Subsection 3(1) (definition of “grain”):

Omit all the words from and including “pulses,”, substitute:

“and pulses, and:

- (a) where the expression ‘grain’ is used in relation to the promotion, funding or undertaking of research into matters relating to the marketing of grain—includes pasture seeds, horticultural seeds and tree seeds and any other seeds declared by the regulations to be seeds to which this paragraph applies; and
- (b) where the expression ‘grain’ is used in relation to value adding activities, and the activities concerned relate to seed testing and seed certification—includes pasture seeds, horticultural seeds and tree seeds and any other seeds declared by the regulations to be seeds to which this paragraph applies; and
- (c) includes products of the soil declared by the regulations to be grain for the purposes of this Act;”.

Subsections 15(6) and (7):

Omit the subsections.

Subsection 94(3):

Add at the end the following word and paragraph:

“; and (i) prescribing penalties, not exceeding a fine of 10 penalty units, for offences against the regulations.”.

Wool Legislation (Repeals and Consequential Provisions) Act 1993

Paragraph 36(3)(c):

Omit “*Australian Wool Realisation Commission Act 1993*”, substitute “*Australian Wool Realisation Commission Act 1991*”.

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SCHEDULE—continued

Wool Tax Act (No. 3) 1964

Title:

Omit “Registered”.

Paragraph 4(1)(b):

Omit “registered”.

Subsections 5(1) and (2):

Omit “registered”.

[*Minister’s second reading speech made in—
House of Representatives on 21 September 1994
Senate on 10 October 1994*]