

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION
AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy,
Senator the Hon Bob Collins)

**PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT
BILL 1994**

GENERAL OUTLINE

1. The Bill proposes to amend the Quarantine Act 1908 to achieve the following:
 - (a) provide legislative support for quarantine compliance agreements between the Commonwealth and importers
 - (b) provide legislative support for electronic processing of imports for quarantine purposes
 - (c) give effect to Recommendations of the Auditor-General's Report No 35 of 1991-92 on quarantine fees and charges.
2. The Auditor-General's Report No 35 of 1991-92 of the efficiency audit of the Quarantine Division of the Australian Quarantine and Inspection Service (AQIS) made three recommendations on fees and charges which required legislation in order to be implemented. Clause 5 makes the necessary amendments to section 86E to give effect to the recommendations for withholding of services for non-payment of fees, for greater use of monetary penalties and for a booking fee/deposit system for quarantine stations.
3. These changes were recommended in the context of improving the financial management of quarantine service provision as the Australian Quarantine and Inspection Service moved to a commercialised basis of operation. The various fees and the deposit system may be provided for under a Ministerial determination.
4. Clause 7 inserts new provisions which authorise agreements between the Commonwealth and other parties for the performance of particular quarantine procedures. Section 66B is inserted. It recognises that some quarantine procedures can be performed responsibly by industry, enabling the resources of the Australian Quarantine and Inspection Service to be concentrated in higher risk areas. A number of measures have been included towards guaranteeing quarantine security under an agreement. These are provisions for taking of a security, a requirement that a quarantine officer clear goods, and a provision permitting the imposition of procedures additional to those in an agreement where circumstances have changed since the agreement was created. A substantial penalty provision is also included.
5. Clause 9 inserts new sections 16AC, 16AD, 16AE, 16AF and 16AG to provide legislative support for the

electronic entry, processing and clearance of goods imported into Australia. Legislative authority is needed to ensure that the quarantine administration has knowledge of all imports and can utilise modern technology to process and release or otherwise deal with them.

6. The amendments provide for the recognition, for the purposes of these amendments, of Customs' legislative requirements and procedures for the electronic entry and processing of goods. In practice, these provisions allow for the continuation of existing information access and processing arrangements between the Australian Quarantine and Inspection Service, the Australian Customs Service and industry. In addition new developments in technology can be accommodated through the regulations-making power.
7. Section 16AF provides for the electronic transmission of quarantine decisions including the issue of permits for importation of goods prohibited by proclamation under section 13 without a permit. This legislative authority for electronic initiatives is a further step in redirecting the inspection resources of the Australian Quarantine and Inspection Service to high risk quarantine areas, away from routine or low risk activities where alternative procedures are satisfactory.
8. The agricultural and veterinary chemicals amendments extend the sunset provision of the Agricultural and Veterinary Chemicals Act 1988 from 30 June 1994 to 30 June 1996. This is a contingency measure in the event that the States do not pass legislation for the Agricultural and Veterinary Chemicals Code to commence in their jurisdiction on 1 July 1994.
9. The 1988 Act is repealed upon commencement of the Agricultural and Veterinary Chemicals Act 1994 which was passed by Parliament on 1 March 1994 as part of a package of agricultural and veterinary chemicals legislation. Commencement of that Act will follow adoption of the Code by the States. The other two amendments are of a minor drafting nature and have no policy implications.
10. The amendments to the Snowy Mountains Hydro-electric Power Act 1949 provide for the Minister for Primary Industries and Energy to appoint a person to act as the Commissioner, or as an Associate Commissioner, of the Snowy Mountains Hydro-electric Authority, for an indefinite period.
11. The Bill proposes to amend the Rural Adjustment Scheme Act 1992 to

- (a) repeal the application of Division 3 of Part XI of the Audit Act 1901 to the Rural Adjustment Scheme Advisory Council (RASAC)
- (b) to require the Chairperson to prepare a report on the Council's operations during the year ended 30 June
- (c) to submit the report to the Minister for Primary Industries and Energy for tabling in the Parliament

the report must include a report on the operation of the Rural Adjustment Scheme during the financial year to which the Council's report relates.

- 12. The commencement provisions of the Bill includes a provision that current requirements regarding the financial statements for RASAC, are not required for the financial year ending on 30 June 1994.

FINANCIAL IMPACT STATEMENT

- 13. The amendments will have no impact on Government expenditures and will have no staffing implications for the Department of Primary Industries and Energy.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the Bill to be called the Primary Industries Legislation Amendment Act 1994

Clause 2 - Commencement

This clause provides for the Bill to come into effect on the day it receives Royal Assent unless otherwise provided. The amendments set out in the Schedule of the Act commence as follows:

The amendments of the Agricultural and Veterinary Chemicals Act 1988 commence on 30 June 1994;

The amendments of the Agricultural and Veterinary Chemicals (Administration) Act 1992 commence immediately after the commencement of the Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994.

The amendments of the Agricultural and Veterinary Chemicals (Collection of Levy) Act 1994 commence immediately after the commencement of the Agricultural and Veterinary Chemicals (Collection of Levy) Act 1994.

The amendments of the Rural Adjustment Act 1992 commence on 1 July 1993.

PART 2 - AMENDMENTS TO QUARANTINE ACT 1908

DIVISION 1 - PRELIMINARY

Clause 3

This clause provides that where "Principal Act" is referred to it means the Quarantine Act 1908.

DIVISION 2 - FEES AND DEPOSITS

Clause 4 - Object of the Division

This clause describes the object of the Division.

Clause 5 - Fees and deposits

Subclause (1) amends section 86E of the Act by creating the concept of a basic fee and expanding the matters for which a Ministerial fees determination, provided for under this Section, may be made.

This Clause permits determinations to include late payment fees (subsection 86E(2B)), and booking fees and deposits for reservation of space at quarantine facilities (subsections 86E(2E) and (2F)). Each of these gives effect to the Recommendations of the Auditor-General's Report No 35 of 1991-92 of the efficiency audit of the Quarantine Division of the Australian Quarantine and Inspection Service.

These amendments provide for Ministerial determinations to be made concerning forfeiture and return of deposits and for deduction of associated administrative costs (subsection 86E(2F)). The Minister is given the authority to remit late payment fees (subsection 86E(2D)). Other minor amendments are made.

Subclause (2) is a saving of existing fees determinations.

If a person fails to make a payment in accordance with a determination, the Director of Quarantine may direct that no quarantine services or only limited services are to be provided to that person (subsection 86E(2G)).

DIVISION 3 - COMPLIANCE AGREEMENTS

Clause 6 - Object of the Division

This clause describes the object of the Division.

Clause 7 - Insertion of new section.

This clause inserts a new section 66B. It enables the Commonwealth to enter into a formal agreement with a legal person, usually a company, which authorises the person to perform procedures under the Act which quarantine officers would otherwise provide.

This has the effect of freeing the limited inspection resources of the Australian Quarantine and Inspection Service to high risk quarantine areas, away from routine or low risk activities where alternative procedures, with appropriate safeguards, are satisfactory. Under an agreement, all relevant requirements of the Act and supporting legislation still need to be complied with. In operation,

agreements are only effected with persons assessed as able to effectively address the quarantine risks.

The final release of goods from quarantine is undertaken by a quarantine officer appointed under the Act, after advice from the company that the specified procedures have been completed. Proposed subsections 66B(3) and (4) provide for actions to be taken which may supplement or override the agreement should additional quarantine safeguards be required.

Subsection (5) provides a regulation-making power for requiring a security from the non-Commonwealth party to the agreement. This security may be enforced regardless of liability or penalty under other provisions of the Act for breaches of the procedures covered by the agreement.

Subsection (6) is central to compliance agreements. The release of goods subject to quarantine which an agreement may cover may only be done by a quarantine officer. That release may be done on the basis of papers provided by the other party to the agreement but, as reflected in subsections (3) and (4) and by the size of the penalty, quarantine security is the paramount concern and clearance is not necessarily automatic.

The non-Commonwealth party to the agreement remains responsible for ensuring compliance with quarantine procedures under the agreement notwithstanding sub-contracting or similar arrangements.

Subsection (7) provides for a substantial penalty for intentional or reckless failure by the non-Commonwealth party to ensure compliance with an agreement.

DIVISION 4 - NOTICES OF IMPORTATION AND CLEARANCE OF GOODS

Clause 8 - Object of Division

This clause describes the object of the Division.

Clause 9 - Insertion of new sections

This clause inserts new sections 16AC to 16AF. The Act has not required notice of importation; it has prohibited the importation of goods except in accordance with the Act. These provisions will require all imports to be notified and authorise the processing of notices electronically; the former is essential for the latter to operate effectively.

Section 16AC provides for a requirement for notice to be given, in accordance with the regulations, for all

proposed importations and goods which have been imported. The regulations may provide for the giving of notice by electronic means and may also provide for notice to be given to a Customs officer including through a Customs electronic system. Section 16AD provides that additional information about the goods may also be sought. That request and the information provided may also be given electronically.

This clause, through section 16AF, authorises the electronic transmission of any decision by a quarantine officer in respect of the goods. It also places on the person to whom a direction is given, whether electronically or otherwise, the obligation to do that thing. A substantial maximum penalty is provided for, emphasising the seriousness of a breach of quarantine security.

This provision is designed to overcome past difficulties in attributing responsibility for complying with a direction when a third party is in control of the goods. As with compliance agreements, it is the responsibility of the importer or their agent to ensure compliance when third parties are involved in meeting quarantine requirements. Electronic processing of imports enables AQIS to concentrate its resources on areas of higher risk without compromising quarantine security. These provisions ensure that the facilitation of processing does not increase the risk of incursion of pests or diseases.

Section 16AG provides that the regulations may provide for evidentiary matters.

In practice these amendments will not impose any additional requirements on importers. Quarantine and Customs services work closely together on processing imports to meet statutory requirements while meeting industry requirements for prompt processing.

Clause 10 - Regulations

This clause is closely related to the newly inserted sections 16AC to 16AG. It amends section 87 of the Act, which provides regulation-making powers, to authorise the making of regulations for the means for giving a notice or permit, for making a requirement or declaration, or providing information. It ensures that the regulations may recognise electronic means for dealing with importation requirements under the Act.

PART 3 - MINOR AMENDMENTS OF OTHER ACTS

Clause 11 - Amendments of Acts

This clause provides the purpose of the Schedule.

SCHEDULE

AMENDMENTS OF ACTS

AGRICULTURAL AND VETERINARY CHEMICALS ACT 1988

Subsection 48(1)

This extends the sunset provision of section 48 of the Agricultural and Veterinary Chemicals Act 1988 from 30 June 1994 to 30 June 1996.

The purpose of the extension is a contingency in the event that the States do not pass legislation enabling the Agricultural and Veterinary Chemicals Code to commence in each jurisdiction on 1 July 1994.

Upon commencement of the Agricultural and Veterinary Chemicals Act 1994 the Agricultural and Veterinary Chemicals Act 1988 is repealed.

AGRICULTURAL AND VETERINARY CHEMICALS
(ADMINISTRATION) ACT 1992

Subsection 7(1A)(b)

- . This amends paragraph 7(1A)(b) of the Agricultural and Veterinary Chemicals (Administration) Act 1992 by inserting "active" before "constituents".
- . This is a minor amendment to ensure the functions refer to approved "active" constituents for proposed or existing chemical products.
- . This commences immediately after the Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994.

AGRICULTURAL AND VETERINARY CHEMICAL PRODUCTS
(COLLECTION OF LEVY) ACT 1994

Subsection 3(1)

This amends subsection 3(1) of the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994 by inserting a definition of "relevant particulars".

The amendment will ensure the meaning of "relevant particulars" in the Principal Act has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994.

SNOWY MOUNTAINS HYDRO-ELECTRIC POWER ACT 1949

Paragraph 14(1)(b)

1. The purpose of this amendment is to remove gender specific terminology.

Subsection 14(1)

2. This removes the provision which prevents a person from acting in the position of Commissioner or Associate Commissioner for more than twelve months, in the circumstances that a person is appointed either during a vacancy in the office or during a period when the substantive holder of the office is unable to perform the duties of the office.

After subsection 14(1)

- . This inserts a new provision which permits persons appointed to act in the office of Commissioner or Associate Commissioner, during a vacancy in the office, to act for an indefinite period.
- . The intention is also that Section 33A(ba) of the Acts Interpretation Act 1901 will not apply.

Subsection 14(4)

- . This removes reference to the twelve month limit on a person acting during a period when the substantive holder of the office is unable to perform the duties of the office.

The intention is also that Section 33A(c)(iii) of the Acts Interpretation Act 1901 will not apply.

RURAL ADJUSTMENT ACT 1992

Section 20

- . This provides for the repeal of the current provisions applying to the annual reporting arrangements for the Rural Adjustment Advisory Council (RASAC).

Annual Report

This provides that the Chairperson must prepare a report on RASAC's operations during the year ending 30 June and furnish that report to the Minister for Primary Industries and Energy. The report must include a report on the operation of the Rural Adjustment Scheme during the year and the Minister must table the report in each House of the Parliament within 15 sitting days after the Minister has received the report.

•

•

•

•

D

D

●

●

•

•

•

•

D

D

●

●



9 780644 306713