

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

IMPORTED FOOD CONTROL BILL 1992

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented and read a first time, 25 November 1992)

(MINISTER FOR INDUSTRIAL RELATIONS, SENATOR COOK)

A BILL

FOR

**An Act to provide for the inspection and control of food
imported into Australia, and for related purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Imported Food Control Act 1992*.

5 **Commencement**

2.(1) Subject to subsection (2), the provisions of this Act commence on a day or days to be fixed by Proclamation.

10 (2) If a provision of this Act does not commence within 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Interpretation

3.(1) In this Act, unless the contrary intention appears:

“**applicable standard**”, in relation to particular food, or a particular matter affecting food, at a particular time, means the national standard in force in relation to that food or matter at that time; 5

“**AQIS**” means the operating group within the Department having responsibility in relation to the administration of this Act and of the *Quarantine Act 1908*;

“**authorised officer**”, in relation to a provision of this Act, means the Secretary or an officer of AQIS who is appointed by the Secretary under section 40 to be an authorised officer for the purposes of this provision; 10

“**Customs**” means the Australian Customs Service;

“**Customs Act**” means the *Customs Act 1901*;

“**Customs control**”, in relation to food, means Customs control within the meaning of section 30 of the Customs Act; 15

“**deal with**”, in relation to food, includes:

- (a) moving, altering or interfering with in any physical manner whatsoever; and
- (b) entering into a transaction whereby the ownership of the food, or of any beneficial interest in the food, passes from one person to another; 20

“**examinable food**” means:

- (a) food of a kind that is the subject of an order under paragraph 16(2)(a); or 25
- (b) food of a kind that is the subject of a holding order; or
- (c) particular food that, despite the fact that it is not food of a kind that is the subject of an order under paragraph 16(2)(a) or of a holding order, is nevertheless required to be inspected, or inspected and analysed, under the Food Inspection Scheme; 30
 - or
 - (d) particular food, other than food of a kind referred to in paragraph (a) or (b) or food referred to in paragraph (c):
 - (i) that an authorised officer has reasonable grounds to believe may be failing food; and 35
 - (ii) in respect of which the officer has notified that belief to an owner;

“**failing food**” means examinable food, that:

- (a) as a result of an inspection, or inspection and analysis, under the Food Inspection Scheme, is found to be: 40
 - (i) food that does not meet the applicable standards for that food; or
 - (ii) food that poses a risk to human health; or
- (b) is taken, under the provisions of the Scheme, to be such food;

“food” includes:

(a) any substance or thing of a kind used or capable of being used as food or drink by human beings; or

5 (b) any substance or thing of a kind used or capable of being used as an ingredient or additive in, or substance used in the preparation of, a substance or thing referred to in paragraph (a); or

(c) any other substance or thing that is prescribed;

10 whether or not it is in a condition fit for human consumption, but does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*;

“food control certificate” means a certificate issued under section 12;

“Food Inspection Scheme” means the inspection scheme established by regulations made under section 16;

15 “Food Standards Code” means the code known by that name published in the *Gazette* on 27 August 1987 together with any amendments of the standards contained in that code:

20 (a) that were approved by the National Food Standards Council before the *National Food Authority Act 1991* commenced and that are or were published in the *Gazette* as forming part of that code; or

(b) that are made under that Act;

25 “forging”, in relation to a certificate of the kind referred to in subsection 18(1) or 19(2), has the same meaning as in section 63 of the *Crimes Act 1914*;

“holding order” means an order made by the Secretary under section 15;

“imported food inspection advice” means an advice issued under section 14;

30 “inspection” includes the taking of samples;

“national standard”, in relation to a particular food or a particular matter affecting food, means a standard relating to that food or matter:

(a) that is in force as a standard adopted by the National Food Standards Council; or

35 (b) that is included in the Food Standards Code;

40 “owner”, in relation to food, includes any person (other than an officer of Customs or an authorised officer) being or holding himself or herself out to be the owner, importer, consignee, agent or person having control of, a beneficial interest in, or the power of disposition over, the food;

“prohibited food” means food the importation of which is prohibited under the Customs Act;

“recognised foreign government certificate” means a certificate covered by a determination in force under subsection 18(1);

“**recognised quality assurance certificate**” means a certificate covered by a determination in force under subsection 19(2);

“**Secretary**” means the Secretary to the Department;

“**State**” includes the Australian Capital Territory and the Northern Territory;

“**this Act**” includes regulations and orders made under this Act;

“**treatment**”, in relation to food, includes repackaging or relabelling;

“**uttering**”, in relation to a certificate referred to in subsection 18(1) or 19(2), has the same meaning as in section 64 of the *Crimes Act 1914*.

(2) For the purposes of this Act, food poses a risk to human health if:

(a) it contains:

- (i) pathogenic micro-organisms or their toxins; or
- (ii) micro-organisms indicating poor handling; or
- (iii) non-approved chemicals or chemical residues; or
- (iv) approved chemicals, or chemical residues, at greater levels than permitted; or
- (v) non-approved additives; or
- (vi) approved additives at greater levels than permitted; or
- (vii) any other contaminant or constituent that may be dangerous to human health; or

(b) it has been manufactured or transported under conditions which render it dangerous or unfit for human consumption.

(3) In subsection (2):

(a) a reference to approved chemicals, approved chemical residues or approved additives is a reference to chemicals, chemical residues or additives approved in a standard:

- (i) adopted by the National Food Standards Council under the *National Food Authority Act 1991*; or
- (ii) included in the Food Standards Code within the meaning of that Act; and

(b) a reference to permitted levels in relation to such approved standards, approved chemical residues, or approved additives is a reference to levels of those chemicals, chemical residues or additives permitted in such a standard; and

(c) a reference to non-approved chemicals, non-approved chemical residues or non-approved additives is a reference to chemicals, chemical residues or additives that are not approved in such a standard.

Application of Act to certain external Territories

4.(1) This Act does not extend to the Territory of Christmas Island unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.

(2) This Act does not extend to the Territory of Cocos (Keeling) Islands unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.

Crown to be bound

5 5.(1) This Act binds the Crown in all its capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted.

Saving of other laws

6. This Act is to be construed as being in addition to, and not in derogation of or in substitution for:

- 10 (a) the *Quarantine Act 1908*; or
- (b) any other law of the Commonwealth, or any law of a State, whether passed or made before or after the commencement of this Act, that can operate concurrently with this Act; or
- 15 (c) any law of an external Territory to which this Act extends because of regulations made for the purpose of section 4, whether passed or made before or after the making of those regulations, that can operate concurrently with this Act.

Food to which Act applies

20 7.(1) This Act applies to all food imported into Australia other than:

- (a) prohibited food; or
- (b) food that is imported for private consumption; or
- (c) food that is ship's stores or aircraft's stores, within the meaning of section 130C of the Customs Act.

25 (2) Food of a particular kind is taken to have been imported for private consumption:

- (a) as to food that is in liquid form—if it has a volume of less than 10 litres or such lesser volume (if any) as is prescribed in the regulations in respect of food of that kind; or
- 30 (b) as to food that is not in liquid form—if it has a weight of less than 10 kilograms or such lesser weight (if any) as is prescribed in the regulations in respect of food of that kind.

PART 2—CONTROL

Division 1—Controls on the importation and movement of food

35 **Importation offence**

8.(1) A person must not import into Australia food to which this Act applies that the person knows:

- (a) does not meet applicable standards; or
- (b) poses a risk to human health.

40 Penalty: Imprisonment for 10 years.

(2) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

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the person ought reasonably to have known that the food did not meet applicable standards or posed a risk to human health, the person is taken to have known that the food did not meet those standards or posed that risk.

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Dealing offences

9.(1) A person (other than an officer of Customs, or an authorised officer, acting in the course of his or her duties) must not deal in any manner with examinable food that the person knows:

- (a) has been imported into Australia; and
- (b) is food in respect of which a food control certificate has not been issued;

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unless the person is authorised by an authorised officer to deal with the food in that manner.

Penalty: Imprisonment for 10 years.

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(2) A person (other than an officer of Customs, or an authorised officer, acting in the course of his or her duties) must not deal in any manner with examinable food that the person knows:

- (a) has been imported into Australia; and
- (b) is food in respect of which a food control certificate has been issued; and
- (c) has been identified in an imported food inspection advice as failing food;

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unless the owner of the food:

- (d) obtains the approval of an authorised officer to deal with the food in that manner; or
- (e) is permitted or required, in accordance with the advice, to deal with the food in that manner.

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Penalty: Imprisonment for 10 years.

(3) For the purposes of establishing a contravention of subsection (1) or (2), if, having regard to:

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- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

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the person ought reasonably to have known of the matters referred to in paragraphs (1)(a) and (b) or (2)(a), (b) and (c), as the case requires, the person is taken to have known of those matters.

Certain provisions of the Customs Act may be expressed to be subject to this Act

10.(1) If:

(a) a person applies under section 69 of the Customs Act for permission to deliver like customable goods within the meaning of that section into home consumption without entering them for home consumption; and

(b) an officer of Customs reasonably believes that the like customable goods are, or include, food;

a permission granted under that section in respect of that food may be expressed, under subsection (4) of that section, to be subject to the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(2) If:

(a) a person applies under section 70 of the Customs Act for permission to deliver special clearance goods within the meaning of that section into home consumption without entering them for home consumption; and

(b) an officer of Customs reasonably believes that the special clearance goods are, or include, food;

a permission granted under that section in respect of the goods may be expressed, under subsection (5) of that section, to be subject to the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(3) If:

(a) a person enters goods for home consumption or warehousing under section 71A of the Customs Act; and

(b) an officer of Customs reasonably believes, on the basis of information supplied by authorised officers in respect of the Food Inspection Scheme and information supplied by the owner in respect of those particular goods, that the goods may be, or may include, examinable food;

an authority to deal with the food under section 71B of that Act by delivering it into home consumption, or into the warehouse specified in the entry, as the case requires, may be expressed, under subsection (6) of that section, to be subject to the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(4) The granting under the Customs Act of a permission referred to in subsection (1) or (2), or the issue under that Act of an authority

referred to in subsection (3), is not to be taken to affect any person's obligations under this Act in any way.

Application for food control certificate

11.(1) An application for a food control certificate must:

- (a) be made in a manner prescribed by the regulations; and 5
- (b) be made by an owner of the food to which the application relates; and
- (c) be given or communicated to an authorised officer; and
- (d) contain such information as the regulations provide.

(2) The regulations may provide that an entry of goods under section 71A of the Customs Act for home consumption or warehousing that is communicated to Customs by computer is to be taken, to the extent that that entry relates to examinable food, to be an application for a food control certificate for the purposes of subsection (1). 10

(3) If the regulations make provision in accordance with subsection (2) in relation to a computer entry under the Customs Act, the application so made is taken to have been communicated to an authorised officer at the time when it is taken to have been communicated to Customs under the Customs Act. 15

Issue of food control certificate

12. Subject to subsections 20(13) and 36(8), if an application for a food control certificate is made under section 11, an authorised officer must, as soon as practicable after deciding whether or not the examinable food to which the application relates is required to be inspected, or inspected and analysed, under the Food Inspection Scheme, give the applicant a food control certificate for presentation to the person having possession of the food. 20 25

Form of food control certificate

13.(1) A food control certificate must be in a form approved, in writing, by the Secretary for the purposes of this section. 30

(2) The Secretary may approve more than one form of food control certificate.

(3) Without limiting subsection (1), a food control certificate must:

- (a) if the examinable food to which the certificate relates is not required to be inspected, or inspected and analysed, under the Food Inspection Scheme—state that the food is not required to be inspected, or inspected and analysed, under the Scheme; 35
- or
- (b) if the food is required to be inspected, or inspected and analysed, under that Scheme:

- (i) state that the food is required to be so inspected or so inspected and analysed; and 40

- (ii) require the food to be dealt with in a specified manner, or as directed by an authorised officer, pending that inspection, or inspection and analysis.

(4) If:

- 5 (a) a food control certificate is issued in respect of food; and
- (b) the food to which the certificate relates will not, on presentation to the person having possession of the food, cease to be under Customs control;

then:

- 10 (c) an authorised officer must give a copy of the certificate to an officer of Customs having responsibility under section 71E of the Customs Act for the movement of goods under Customs control; and
- 15 (d) the officer of Customs must authorise the food to be dealt with as if an application had been made under that section by the owner of the food in the terms of the requirement contained in the certificate.

- 20 (5) The fact that particular food is described in a food control certificate as not required to be inspected, or inspected and analysed, under the Food Inspection Scheme does not imply that an authorised officer who has reasonable grounds to believe that the food may be failing food may not inspect, or inspect and analyse, that food under the Scheme.

Note: "Customs control" is defined in subsection 3(1).

Imported food inspection advice

- 25 14.(1) After food that is required to be inspected, or inspected and analysed, has been so inspected, or inspected and analysed, an authorised officer must issue a written advice:

- (a) to the owner of the food; and
- 30 (b) if the food is under Customs control—to the person having possession of the food at the time;

stating:

- (c) whether the whole or a part of the food dealt with in the advice is identified as failing food; and
- 35 (d) in respect of food that is so identified—how the food is to be dealt with.

- (2) Without limiting subsection (1), an advice issued under this section may indicate that food identified as failing food:

- (a) must be destroyed in accordance with the requirements of section 20; or
- 40 (b) must either be destroyed or re-exported from Australia in accordance with the requirements of that section; or

(c) must, if not treated by the owner in accordance with the requirements of that section:

(i) be destroyed; or

(ii) be destroyed or re-exported from Australia;

in accordance with the requirements of that section.

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(3) Despite subsections (1) and (2), the owner of food identified in an advice under subsection (1) as failing food may, in the circumstances specified in the Food Inspection Scheme, apply, in writing, to an authorised officer for the issue of a further imported food inspection advice in respect of a part of that food.

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(4) Neither:

(a) the fact that food identified as failing food under an imported food inspection advice may be the subject of an application for a further such advice; nor

(b) the making of an application for a further such advice in respect of the food;

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causes the food to cease to be failing food on the basis of the original advice but, if the original advice indicates that the food must be treated, destroyed or re-exported, the food is not required to be so treated, destroyed or re-exported unless:

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(c) the circumstances permitting the application for the further advice cease to exist; or

(d) an application is made and rejected.

(5) If the owner of food identified in an advice as failing food makes an application for the issue of a further imported food inspection advice in respect of a part of the food, the person must, if the food to which the application relates is under Customs control, inform the person having possession of the food that he or she had made that application.

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(6) If an application is made under subsection (3), an authorised officer must:

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(a) if he or she is not satisfied that the application is made in accordance with the requirements of the Food Inspection Scheme—reject the application and give notice to the applicant of that rejection and of the reasons for the rejection; and

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(b) in any other case—consider the application and issue to the applicant a further imported food inspection advice in respect of the food the subject of the application.

(7) If, under subsection (6), an authorised officer is required to inform an applicant either of the rejection of an application or to issue to the applicant a further imported food inspection advice in respect of food that is under Customs control, the authorised officer must inform the person having possession of the food of the rejection of the

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application or of the particulars of the further advice, as the case requires.

(8) If a further advice is issued in respect of the food the subject of an application, this Act has effect as if:

- 5 (a) that further advice were substituted for the initial advice issued in respect of that food under subsection (1); and
- (b) subsection (3) were not included.

10 (9) A failure by an authorised officer to comply with the requirements of subsection (7) in relation to an application for a further imported food inspection advice does not invalidate the rejection of that application or the issue of that further advice, as the case requires.

Holding orders for certain food

15.1) If:

- 15 (a) an inspection, or inspection and analysis, of examinable food of a particular kind indicates the food, or a part of the food, to be failing food; or
- (b) the Secretary is satisfied that there are reasonable grounds for believing that food of a particular kind would, on inspection, or inspection and analysis, be so identified;

20 the Secretary may, by writing, make a holding order:

- 25 (c) stating that, until the revocation of the order, food of that kind that is imported into Australia after the making of the order must be held in a place to be approved by an authorised officer, until an inspection, or inspection and analysis, required under the Food Inspection Scheme, has been completed; and
- (d) specifying the circumstances in which the order will be revoked.

(2) If the Secretary is satisfied, in respect of a holding order, that the circumstances specified for its revocation have occurred, the Secretary must, by writing, immediately revoke the holding order.

30 ***Division 2—The Food Inspection Scheme***

Food Inspection Scheme

16.1) The regulations may set out particulars of a food inspection scheme (“Scheme”) applicable to all food to which this Act applies.

35 (2) Without limiting subsection (1), the regulations setting out particulars of the Scheme may:

- (a) empower the Minister, subject to section 17, to make orders identifying food of particular kinds as food of a kind that is required to be inspected, or inspected and analysed, under the Scheme and, from time to time, to vary orders so made; and
- 40 (b) specify the manner and incidence of inspection, or inspection

- and analysis, attaching to various kinds of food identified by the Minister in orders made under paragraph (a); and
- (c) specify the manner and incidence of the inspection, or inspection and analysis, of food of a kind that is subject to a holding order; and 5
- (d) specify the manner and incidence of the inspection, or inspection and analysis, of particular food, other than food of a kind that is identified by the Minister in an order made under paragraph (a) or that is subject to a holding order, that is imported into Australia; and 10
- (e) set out the circumstances in which authorised officers may exercise powers to inspect, or inspect and analyse, particular food that is not:
- (i) food of a kind that is identified by the Minister in an order under paragraph (a) or that is subject to a holding order; or 15
- (ii) food that is required to be inspected in accordance with regulations made for the purposes of paragraph (d); and
- (f) specify powers of authorised officers to inspect, or inspect and analyse, food required or permitted to be inspected, or inspected and analysed, under this Scheme; and 20
- (g) specify circumstances in which food is to be taken to be failing food because of its relationship to food that is found to be failing food; and
- (h) set out the circumstances in which food, other than food that is the subject of a holding order, is to be held pending the outcome of an inspection, or inspection and analysis; and 25
- (i) permit variation in the incidence of inspection, or inspection and analysis, of food if:
- (i) a recognised foreign government certificate or a recognised quality assurance certificate covering the food is given to an authorised officer; and 30
- (ii) the authorised officer has no reason to doubt the authenticity or reliability of the certificate; and
- (j) set out the circumstances in which, and procedures by which, the reliability of certificates referred to in paragraph (i) will be tested. 35
- (3) Without limiting the factors that may affect the incidence of inspection, or inspection and analysis, of food, the regulations may provide for the incidence to differ according to whether the food is supplied by an overseas processing operation that has previously supplied food of that kind and the results of any analysis of food so supplied. 40
- (4) If:

- (a) food is held pending the outcome of an inspection, or inspection and analysis, under the Scheme, whether because the food is subject to a holding order or not; and
 - 5 (b) that food, or a part of that food, is identified in an imported food inspection advice as failing food;
- then, without limiting subsection (1), the regulations may:
- (c) in the circumstances and within the period set out in the regulations, permit the owner of the food to make application for a further imported food inspection advice in respect of part
10 only of the food so identified; and
 - (d) specify the part of the food so identified in respect of which the application may be made.

Making, publication and disallowance of orders

15 17.(1) The Minister must not make or vary an order made under section 16 unless the Minister has first consulted the National Food Authority concerning the proposed order or variation.

20 (2) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders made by the Minister under section 16 as if references to regulations were references to orders and references to an Act were references to regulations.

(3) An order is not a Statutory Rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to an order in the same way as they apply in relation to a Statutory Rule.

25 (4) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (3), the reference in the first-mentioned subsection to the Minister specified in that subsection is to be read as a reference to a Minister administering this Act.

30 **Foreign government certificates**

35 18.(1) The Secretary may determine, in writing, that a certificate issued by an instrumentality of a specified foreign government stating that food of a specified kind meets applicable standards and does not pose a risk to human health is a recognised foreign government certificate.

(2) The Secretary may revoke a determination under subsection (1) if the Secretary has reason to doubt the continued reliability of a statement made in any certificate to which the determination relates.

40 (3) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (1).

Penalty: Imprisonment for 10 years.

Note: "forging" and "uttering" are defined in subsection 3(1).

Quality assurance certificates

19.(1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with the person conducting an overseas food processing operation providing for the periodic inspection and evaluation of that operation, at the expense of the person, to decide whether the Secretary should exercise his or her powers to: 5

(a) approve that food processing operation for the purposes of this Part; or

(b) revoke any such approval.

(2) If an overseas food processing operation is subject to a current approval under subsection (1), the Secretary may determine, in writing, to the effect that, while the determination remains in force, each certificate issued by the person purportedly in charge of that operation stating that particular food processed in that operation meets applicable standards and does not pose a risk to human health is a recognised quality assurance certificate. 10 15

(3) The Secretary may revoke a determination under subsection (2) if:

(a) the Secretary has reason to doubt the reliability of any statement made in any certificate to which the determination relates; or 20

(b) the approval of the overseas food processing operation concerned is revoked.

(4) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (2).

Penalty: Imprisonment for 10 years. 25

Note: "forging" and "uttering" are defined in subsection 3(1).

Division 3—Treatment, destruction or re-exportation of failing food**Treatment, destruction or re-exportation of failing food**

20.(1) This section applies to food that:

(a) has been identified in an imported food inspection advice as failing food; and 30

(b) is required, under that advice, to be treated, destroyed or re-exported from Australia.

(2) If an imported food inspection advice, given in respect of food to which this section applies, permits the treatment of the food so as to bring it into compliance with this Act or to enable its use for a purpose other than human consumption, an authorised officer may, by notice in writing given to the owner of the food: 35

(a) require the owner to treat the food in a specified manner or in a manner to be agreed between the owner and the authorised

officer so as to enable it to be brought into compliance with the Act or to be so used; or

(b) if the owner is unable or unwilling so to treat the food, require either:

5 (i) the destruction of the food in a manner specified in the notice or to be agreed between the owner and the authorised officer; or

10 (ii) the destruction of the food in a manner specified in the notice or agreed between the owner and the authorised officer or the re-exportation of the food.

15 (3) If an imported food inspection advice requires the destruction of food to which this section applies, an authorised officer may, by notice in writing given to the owner of the food, require its destruction in a manner specified in the notice or in a manner to be agreed between the owner and the authorised officer.

(4) If an imported food inspection advice requires the destruction or re-exportation of food to which this section applies, an authorised officer may, by notice in writing given to the owner of the food, require either:

20 (a) its destruction in a manner specified in the notice or a manner to be agreed between the owner and the authorised officer; or

(b) its re-exportation.

25 (5) A permission to treat or a requirement to destroy or re-export failing food in a notice under subsection (2), (3) or (4) must specify a period (having regard to the reasons why the food has been identified as failing food and to any difficulties associated with arranging for its treatment, destruction or re-exportation) within which that treatment, destruction or re-exportation is to be completed.

30 (6) If the owner of food arranges for a treatment, destruction or re-exportation in accordance with a notice under subsection (2), (3) or (4), that treatment, destruction or re-exportation may be supervised by an authorised officer.

35 (7) If the owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported refuses or fails to arrange for the destruction or re-exportation of the food in accordance with the notice, the food to which the notice relates is forfeited to the Commonwealth.

40 (8) The owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported must not, without reasonable excuse, knowingly refuse or fail to comply with the requirement to destroy or re-export that food.

Penalty: \$20,000.

(9) If the food is forfeited to the Commonwealth under subsection (7), an authorised officer may:

- (a) enter the premises at which the food is held; and
- (b) seize the food and arrange for its destruction or other disposal.

(10) If food is forfeited to the Commonwealth under subsection (7) the Commonwealth is not liable to meet any charge associated with the storage of that food between the time of its forfeiture and the time when the food is destroyed or disposed of in accordance with subsection (9). 5

(11) If food is seized and destroyed or otherwise disposed of under subsection (9), the authorised officer who destroys the food must notify the owner of the food, within 21 days after the destruction or disposal takes place, that the food has been so destroyed or disposed of. 10

(12) The owner of food seized and destroyed or disposed of under subsection (9) is liable to reimburse the Commonwealth the costs reasonably incurred in seizing and destroying or disposing of the food. 15

(13) If the owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported fails to comply with the requirement to destroy or re-export the food, the Secretary may direct, in writing, that authorised officers should not issue a food control certificate in respect of any other food imported into Australia by that owner. 20

(14) In this section:

“owner”, in relation to food that is permitted to be treated or required to be destroyed or re-exported, means a person having a beneficial interest in the food other than a person who has such an interest only because he or she has been given a mortgage or charge, or has a lien over the goods. 25

PART 3—ENFORCEMENT

Interpretation 30

21.(1) In this Part, unless the contrary intention appears:

“monitoring powers” means:

- (a) in relation to premises, the following powers:
 - (i) to search the premises;
 - (ii) to take photographs (including a video recording), or make sketches, of the premises or any substance or thing at the premises; 35
 - (iii) to inspect, examine and take samples of, any substance or thing on or in the premises;
 - (iv) to take extracts from, or make copies of, any document, book or record on the premises; 40

(v) to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (i), (ii), (iii) or (iv); and

(b) in relation to certain documents or records on premises, the powers in subsections (2) and (3);

“occupier”, in relation to premises comprising a vessel, vehicle or aircraft, means the person apparently in charge of the vessel, vehicle or aircraft;

“premises” means:

- (a) an area of land or any other place, whether or not it is enclosed or built on; or
- (b) a building, wharf or other structure; or
- (c) a vessel, vehicle or aircraft;

and includes a part of any such premises;

“seize” includes secure against interference;

“vehicle” includes a hovercraft;

“vessel” means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through water, but does not include a hovercraft.

(2) An authorised officer has power to operate equipment at the premises to see whether:

- (a) the equipment; or
- (b) a disk, tape or other storage device that:
 - (i) is at the premises; and

(ii) can be used with or is associated with the equipment; contains information that is relevant to determining whether there has been compliance with the Act.

(3) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises, contains information of that kind, he or she has power:

- (a) to operate the facilities to put the information in documentary form and copy the documents so produced; or
- (b) if the information can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.

Identity cards

22.(1) The Secretary may cause to be issued to each authorised officer an identity card.

(2) An identity card must:

- (a) be in a form approved in writing by the Secretary; and
- (b) incorporate a recent photograph of the person.

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(3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Secretary.

(4) A person who, without reasonable excuse, fails to return his or her identity card, as provided for in subsection (3), is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

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Searches to monitor compliance with Act etc. with occupier's consent

23.(1) Subject to subsections (2) and (3), an authorised officer may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act has been complied with, enter any premises and exercise monitoring powers at any time during the day or night.

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(2) An authorised officer may not, under subsection (1), enter any premises unless the occupier of the premises has consented to the entry.

(3) An authorised officer is not entitled to exercise any powers under subsection (1) in relation to premises if:

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- (a) the occupier of the premises has required the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

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Monitoring warrants

24.(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular premises.

(2) Subject to subsection (3), the magistrate may issue the warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the premises for the purpose of finding out whether this Act is being complied with.

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(3) The magistrate must not issue the warrant unless the authorised officer or someone else has given the magistrate, either orally (on oath or affirmation) or by affidavit, any further information the magistrate may require about the grounds on which the issue of the warrant is being sought.

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(4) The warrant must:

- (a) authorise any authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable,

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from time to time while the warrant remains in force, to enter the premises and exercise monitoring powers; and

- (b) state whether an entry under the warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence powers—entry and search of premises with occupier’s consent

25.(1) If:

- (a) an authorised officer has reasonable grounds for suspecting that there is on or in any premises a particular thing, including information, that may afford evidence of the commission of an offence against this Act; and
- (b) the occupier of the premises consents to the officer entering the premises;

the officer may, after producing his or her identity card for inspection of the occupier:

- (c) enter the premises; and
- (d) search the premises for the thing; and
- (e) if the authorised officer finds the thing on or in the premises do all or any of the following:
 - (i) take samples of the thing;
 - (ii) take photographs (including video recordings) of the premises or of the thing;
 - (iii) seize the thing; and
- (f) if the thing is or includes information in a written or electronic form—do the things set out in subsections (2), (3) and (4) in respect of the thing.

(2) If the thing referred to in subsection (1) is or includes information in a written or electronic form, an authorised officer may operate equipment at the premises to see whether:

- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with or is associated with the equipment;
- contains the information.

(3) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises, contains the information, he or she may:

- (a) seize the equipment or the disk, tape or other storage device;
- or

- (b) if the information can, by using facilities at the premises, be put in documentary form—operate the facilities to put the information in that form and seize the documents so produced; or
- (c) if the information can be transferred to a disk, tape or other storage device that: 5
- (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises; 10
- operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.
- (4) An authorised officer may seize equipment under paragraph (3)(a) only if: 15
- (a) it is not practicable to put the relevant information in documentary form as mentioned in paragraph (3)(b) or to copy the records as mentioned in paragraph (3)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence. 20
- (5) If, in the course of searching for a particular thing, an authorised officer finds a thing that he or she believes, on reasonable grounds:
- (a) to be another thing that will afford evidence as to the commission of an offence against this Act; and
 - (b) he or she believes on reasonable grounds, that it is necessary to seize that thing: 25
 - (i) in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against this Act; and
 - (ii) without the authority of a warrant under section 26 because the circumstances are so serious and urgent; 30
- he or she seize that thing.
- (6) The authorised officer must leave the premises if the occupier asks the authorised officer to do so.

Offence-related warrants

26.(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular premises. 35

(2) Subject to subsection (3), a magistrate may issue the warrant if satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing, including information, that may afford evidence of the commission of an offence against this Act. 40

5 (3) A magistrate must not issue the warrant unless the authorised officer or someone else has given the magistrate, either orally (on oath or affirmation) or by affidavit, any further information the magistrate may require about the grounds on which the issue of the warrant is being sought.

(4) The warrant must:

- (a) authorise any authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable:
 - 10 (i) to enter the premises; and
 - (ii) to search the premises for the thing; and
 - (iii) if the thing is found, to take photographs (including video recordings) of the premises or thing, to take samples of the thing, to seize the thing or to undertake more than one of those activities; and
- 15 (b) if the thing is or includes information in a written or electronic form—do the things set out in subsections (5), (6) and (7) in respect of the thing; and
- (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- 20 and
- (d) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (e) state the purpose for which the warrant is issued.

25 (5) If the thing referred to in subsection (2) is or includes information in a written or electronic form, an authorised officer may operate equipment at premises referred to in the warrant to see whether:

- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - 30 (i) is at the premises; and
 - (ii) can be used with or is associated with the equipment;
- contains the information.

35 (6) If the authorised officer, after operating equipment at the premises, finds that the equipment contains the information or that a disk, tape or other storage device at the premises contains the information, he or she may:

- (a) seize the equipment or the disk, tape or other storage device; or
- 40 (b) if the information can, by using facilities at the premises, be put in documentary form—operate the facilities to put the information in that form and seize the documents so produced; or
- (c) if the information can be transferred to a disk, tape or other storage device that:

- (i) is brought to the premises; or
- (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises. 5

(7) An authorised officer may seize equipment under paragraph (6)(a) only if:

- (a) it is not practicable to put the relevant information in documentary form as mentioned in paragraph (6)(b) or to copy the records as mentioned in paragraph (6)(c); or 10
- (b) possession by the occupier of the equipment could constitute an offence.

(8) If, in the course of searching for a particular thing in relation to a particular offence, an authorised officer finds another thing that the authorised officer believes, on reasonable grounds, to be: 15

- (a) a thing that will afford evidence as to the commission of an offence (although not the thing specified in the warrant); or
- (b) a thing that will afford evidence as to the commission of another offence against this Act; 20

and the authorised officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is to be taken to authorise the authorised officer to seize that thing. 25

Warrants may be granted by telephone etc.

27.(1) If, because of circumstances of urgency, an authorised officer thinks it necessary to do so, the authorised officer may apply for a warrant under section 26 by telephone, telex, facsimile or other electronic means under this section. 30

(2) Before making such an application, an authorised officer must prepare an information of the kind mentioned in subsection 26(2) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn. 35

(3) If a magistrate to whom an application under this section is made is satisfied:

- (a) after having considered the terms of the information prepared under subsection (2); and 40
- (b) after having received any further information that the magistrate may require about the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign a warrant that is the same as the warrant that the magistrate would issue under section 26 if the application had been made under that section.

- 5 (4) If a magistrate signs a warrant under subsection (3):
- (a) the magistrate must inform the authorised officer of the terms of the warrant, the day and time when it was signed, and the day on which it ceases to have effect, and record on the warrant the reasons for issuing it; and
 - 10 (b) the authorised officer must complete a form of warrant in the terms given to the authorised officer by the magistrate and write on it the magistrate's name and the day and time when the warrant was signed.

- 15 (5) If an authorised officer completes a form of warrant, the authorised officer must, not later than the day after:
- (a) the day on which the warrant ceases to have effect; or
 - (b) the day on which the warrant is executed;

20 whichever happens first, send the magistrate who signed the warrant the form of warrant completed by the authorised officer and the information duly sworn in connection with the warrant.

- 25 (6) Upon receipt of the documents mentioned in subsection (5), the magistrate must attach to them the warrant signed by the magistrate and deal with the documents in the same way that the magistrate would have dealt with the information if the application for the warrant had been made under section 26.

- 30 (7) The form of warrant completed by an authorised officer under subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any entry, search, seizure or other exercise of a power that the warrant so signed and authorised.

- 35 (8) If:
- (a) in any proceedings, the court must be satisfied that an entry, search, seizure, or other exercise of power, was authorised under this section; and
 - (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure, or other exercise of power, is not produced in evidence;

the court must assume (unless the contrary is proved) that the entry, search, seizure, or other exercise of power, was not authorised by such a warrant.

40 **Seizures without offence-related warrant in emergency situations**

28.(1) This section applies when an authorised officer is on premises under section 23 or by virtue of a warrant issued under section 24.

- (2) If the authorised officer suspects, on reasonable grounds, that:

- (a) a thing relevant to an offence against this Act is in or on premises; and
- (b) it is necessary to exercise a power under paragraph (d) or (e) in order to prevent the thing from being concealed, lost or destroyed; and
- (c) it is necessary to exercise the power without the authority of a warrant under section 26 because the circumstances are so serious and urgent;

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the authorised officer may:

- (d) search the premises, and any receptacle in or on the premises, for the thing; and
- (e) seize the thing if he or she finds it there.

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Discovery of evidence

29.(1) If:

- (a) an authorised officer who enters premises under section 25 or under a warrant under section 26 finds the thing (“evidence”) which the authorised officer entered the premises to find; and
- (b) the officer seizes the evidence;

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the authorised officer:

- (c) may keep the evidence so seized for 60 days; or
- (d) if proceedings are instituted within 60 days after the seizure and the evidence may be used in the proceedings—may keep the evidence so seized until the proceedings (including any appeal to a court in relation to the proceedings) are terminated; and
- (e) must allow it to be inspected at any reasonable time by anyone who would be entitled to inspect it if it were not in the authorised officer’s possession.

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(2) If, in the course of searching premises entered under section 25 or under a warrant under section 26, the authorised officer:

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- (a) finds a thing that he or she believes, on reasonable grounds, to be:

- (i) a thing (other than the evidence mentioned in subsection (1)) that will afford evidence of the commission of the offence in relation to which the search was undertaken; or

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- (ii) a thing that will afford evidence of the commission of another offence against this Act; and

- (b) the authorised officer believes, on reasonable grounds, that it is necessary to seize the thing to prevent its concealment, loss or destruction;

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subsection (1) applies to the thing as if it were the evidence mentioned in that subsection.

(3) An authorised officer may apply to a magistrate to extend the periods of time referred to in paragraphs (1)(c) and (d).

(4) The magistrate may extend the periods of time for so long, as the magistrate considers necessary.

5 Power to require persons to answer questions etc.

30.(1) If an authorised officer is on or in premises because the occupier of the premises consented to the officer's entry—the officer may ask the occupier to:

- (a) answer any questions put by the authorised officer; and
- 10 (b) produce any books, records or documents requested by the authorised officer.

(2) An authorised officer who is on or in premises that he or she has entered under a warrant may require any person on or in the premises:

- 15 (a) to answer any questions put by the authorised officer; and
- (b) to provide any books, records or documents requested by the authorised officer.

(3) The Secretary may, by written notice, require any person whom he or she believes, on reasonable grounds, to be capable of giving information relevant to the operation of this Act to attend before an authorised officer specified in the notice, at a time and place specified in the notice:

- 20 (a) to answer any questions put by the specified officer; and
- 25 (b) to produce to the specified officer such documents as are referred to in the notice.

(4) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (2) or (3).

Penalty: Imprisonment for 6 months.

30 (5) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a book, record or document on the ground that to do so would tend to incriminate the person.

(6) A person must not, knowingly or recklessly:

- (a) make a statement to an authorised officer, either orally or in writing, that is false or misleading in a material particular; or
- 35 (b) present a document to an authorised officer that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Consent

40 **31.(1)** Before obtaining the consent of a person for the purposes of section 23 or 25, the authorised officer must inform the person that he or she may refuse to give consent.

(2) An entry by an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

Persons to assist authorised officers

32.(1) An authorised officer may request the occupier of any premises entered: 5

(a) by the officer under section 23 or 25; or

(b) under a warrant under section 24 or 26;

to provide reasonable assistance to the officer, at any time while the officer is entitled to remain on the premises, for the purpose of the exercise of the officer's powers under those sections in relation to the premises. 10

(2) A person mentioned in subsection (1) must not, without reasonable excuse, fail to comply with an authorised officer's request.

Penalty: \$3,000. 15

(3) It is a reasonable excuse for a person whose premises are being searched under a warrant issued under section 26 to refuse to assist an authorised officer on the ground that to do so would tend to incriminate the person.

Conduct by directors, servants and agents 20

33.(1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and 25

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct. 30

(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show: 35

(a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and 40

(b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person, other than a body corporate, by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of an offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Evidence of analyst

34.(1) The Secretary may appoint a person to be an analyst for the purposes of this Act.

(2) Subject to subsection (4), in any proceedings for an offence against this Act, a certificate of an analyst in an approved form stating, in respect of food in relation to which the offence is alleged to have been committed, all or any of the following matters:

(a) that the analyst signing the certificate is appointed under subsection (1);

(b) when and from whom the food was received;

(c) what, if any, labels or other means of identifying the food accompanied it when it was received;

(d) what container or containers the food was contained in when it was received;

(e) a description, and the weight, of the food received;

(f) when the food, or a portion of it, was analysed;

(g) a description of the method of analysis;

- (h) the results of the analysis;
- (i) how the food was dealt with after handling by the analyst, including details of:
 - (i) the quantity retained; and
 - (ii) the name of the person, if any, to whom any retained quantity was given; and
 - (iii) measures taken to secure any retained quantity;

is admissible as *prima facie* evidence of the matters in the certificate and of the correctness of the result of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) must, unless the contrary is established, be taken to be such a certificate and to have been duly given. 5

(4) A certificate must not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings. 15 20

(5) Subject to subsection (6), if, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate. 25

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or
- (b) the Court, by order, allows the person to require the analyst to be so called. 30

Publishing of information

35. The Secretary may publish in Australia:

- (a) the name and address of a person conducting an overseas food processing operation; and
- (b) particulars of the food processing operation conducted by that person; and
- (c) particulars of any food originating from that food processing operation that:
 - (i) if imported, may not meet applicable standards or may pose a risk to human health; or
 - (ii) was treated, destroyed or re-exported under section 20; and

- (d) information relating to health risks associated with that food.

PART 4—MISCELLANEOUS

Fees for certain services

- 5 **36.(1)** A person for whom a chargeable service is provided is liable to pay to the Commonwealth such amount (“payable amount”) in respect of the provision of that service as is prescribed.
- 10 **(2)** The payable amount in respect of a particular service must not exceed the direct and indirect costs that are properly attributed to the provision of that service, calculated in accordance with ordinary commercial principles.
- 15 **(3)** The payable amount in respect of the provision of a service is payable either:
 - (a) before the service is rendered; or
 - (b) at the time the service is rendered.
- 20 **(4)** If an authorised officer:
 - (a) arranges for the analysis of food to be carried out by another person; and
 - (b) pays the person who performs that analysis an amount not exceeding the cost of that analysis;
- 25 the person for whom that chargeable service is arranged must pay to the Commonwealth, within a prescribed period, by way of reimbursement for the amount so paid, an amount equal to the amount so paid.
- 30 **(5)** The regulations may prescribe circumstances in which the Secretary may, in his or her discretion, on behalf of the Commonwealth, waive fees that would otherwise be payable under this section.
- 35 **(6)** If:
 - (a) a person for whom a service is provided pays for the service before or at the time it is rendered; and
 - (b) the service is not so rendered;
- 40 the Secretary may, on behalf of the Commonwealth, refund the amount paid in respect of the provision of the service.
- (7)** Under subsection (1), if the inspection of food leads to its analysis (whether by the person who inspected it or another person), the inspection is not taken to have been provided until the results of the analysis are notified to the person for whom the analysis is arranged.
- (8)** If a person for whom a chargeable service is provided in respect of food does not pay the fee payable to the Commonwealth in respect of that service within 28 days after the last day on which that payment was due, the Secretary may direct, in writing:

- (a) if the relevant documentation has not already been issued in respect of the food—that authorised officers should not issue such documentation in respect of the food; or
- (b) if the relevant documentation has been issued in respect of the food—that authorised officers should not issue such documentation in respect of any other food imported by that person into Australia; 5

until:

- (c) the person has paid the outstanding fees; or
- (d) the person has entered into an agreement with the Commonwealth in accordance with subsection (9). 10

(9) Without limiting the matters that may be entered into under an agreement referred to in paragraph (8)(d), such an agreement may require a person who has failed to pay a fee to do either or both of the following: 15

- (a) pay interest at a rate not exceeding 20% per year, calculated on a daily basis, on the amount of the fees from time to time owing to the Commonwealth in respect of the food;
- (b) give security for the payment of the fees and interest (if any) owing to the Commonwealth in respect of the food. 20

(10) An authorised officer must not deal with the food in contravention of a direction under subsection (8).

(11) In this section:

“chargeable service”, in relation to food to which this Act applies, means: 25

- (a) an inspection, or inspection and analysis of the food; or
- (b) the arrangement by an authorised officer of an analysis of the food to be carried out by another person; or
- (c) the issue of relevant documentation in respect of the food; or
- (d) the supervision of the treatment, destruction or re-exportation of the food; or 30
- (e) the provision of any other service that is prescribed for the purpose of this definition;

“relevant documentation” means:

- (a) if the food is examinable food—a food control certificate; and 35
- (b) if the food is required to be inspected, or inspected and analysed—an imported food inspection advice.

Certain moneys are a debt due to the Commonwealth

37. Any expenses or charges payable to the Commonwealth under this Part may be recovered by action in a court of competent jurisdiction as a debt due to the Commonwealth. 40

Exemption from suit

38.(1) If:

- (a) an act or thing is done, or not done (whether or not the act or thing is done or omitted to be done negligently), in good faith by a person exercising or purportedly exercising any power or authority conferred by or under this Act; and
- (b) a person sustains a loss or injury (including loss or injury by way of damage to the person's business reputation or the goodwill associated with his or her business) because of the act or thing done or not done;

an action does not lie against the Commonwealth or against a person referred to in paragraph (1)(a) for the loss or injury.

(2) If an action is instituted against a person responsible for the manufacture, importation, distribution or sale of food to which this Act applies in relation to a loss or injury directly or indirectly sustained because of the purchase or consumption of food of that kind, it is not a defence to that action that the Commonwealth or any other person has, or has not, exercised any powers under this Act in respect of food of that kind.

20 Compensation for destroyed food

39.(1) If food is destroyed in accordance with section 20, the Secretary may approve the payment of compensation in respect of the food if:

- (a) a claim for compensation is made by or on behalf of the owner in an approved form accompanied by such documents as are required by the form to accompany the claim; and
- (b) the Secretary is satisfied, on reasonable grounds, that the food was destroyed as a result of a mistake of fact or of law.

(2) Compensation approved under this section must:

- (a) if there is only one owner of the food at the time of its destruction—be paid to that owner; or
- (b) if there are two or more owners of the food at that time—be divided among those owners in accordance with their interests.

(3) The compensation payable under this section in respect of food is the amount agreed between the Secretary and the owner or owners of the food as being the market value of the food immediately before its destruction.

(4) If the Secretary and the owner or owners of the food at the time of its destruction do not agree on the market value of the food at that time, the market value must be determined by a person agreed on by the Secretary and the owner or owners.

(5) If the Secretary approved the payment of compensation under this section in respect of food, the compensation payable in respect of

that food is payable by the Commonwealth to the owner or owners and may be recovered by action against the Commonwealth in a court of competent jurisdiction.

(6) In this section:

“owner”, in relation to food that is permitted to be treated or required to be destroyed or re-exported, means a person having a beneficial interest in the food other than a person who has such an interest only because he or she has been given a mortgage or charge, or has a lien over the goods. 5

Authorised officers 10

40. The Secretary may, by signed instrument, appoint an officer of AQIS to be an authorised officer for the purpose of exercising:

- (a) the powers of an authorised officer under this Act; or
- (b) such of those powers as are specified in the instrument.

Delegation by Secretary 15

41. The Secretary may, by signed instrument, delegate to an officer of AQIS all or any of the powers conferred on the Secretary under this Act.

Review of decisions

42.(1) In this section: 20

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“initial decision” has the meaning given in subsection (2);

“reviewable decision” means a decision of the Secretary under subsection (4). 25

(2) Subject to subsection (3), “initial decision” means:

- (a) a decision under section 12 to issue a food control certificate that states that the food to which the certificate relates is required to be inspected, or inspected and analysed; or
- (b) a decision under subsection 14(1) to issue an imported food inspection advice identifying food (other than food that is or may be the subject of an application for a further imported food advice) as failing food and specifying the manner of dealing with that food; or 30
- (c) a decision under subsection 14(6) refusing an application for a further imported food inspection advice; or 35
- (d) a decision under subsection 14(6) to issue a further imported food inspection advice identifying food as failing food and specifying the manner of dealing with that food; or
- (e) a decision made by the Secretary to revoke a determination under subsection 19(3); or 40
- (f) a decision by the Secretary under subsection 20(13) to direct

that food control certificates should not be issued to a person who has failed to comply with a notice under subsection 20(2), (3) or (4); or

(g) a decision by the Secretary under subsection 36(8) to direct that documentation not be issued in respect of food imported by a person who has failed to pay fees to the Commonwealth; or

(h) a decision of the Secretary under subsection 39(1).

(3) If food to which an initial decision relates has been subjected to analysis to determine if it either:

(a) meets applicable standards; or

(b) poses a risk to human health;

the results of such analysis are not reviewable by the Administrative Appeals Tribunal.

(4) A person affected by an initial decision may give written notice to the Secretary, within 28 days after notification of that decision, requesting the Secretary to reconsider the decision.

(5) As soon as practicable after receiving a request under subsection (4), the Secretary must reconsider the initial decision to which the request related and, as a result of that reconsideration:

(a) confirm the initial decision; or

(b) revoke the initial decision; or

(c) vary the initial decision by revoking it and making a decision in substitution of the initial decision.

(6) If the Secretary does not confirm, revoke or vary a decision within 28 days after the Secretary received a request, the Secretary is taken to have confirmed the initial decision.

(7) If, under subsection (4), a request is made for the reconsideration of a decision, the operation of that decision is stayed pending the outcome of the reconsideration.

(8) If written notice of the making of an initial decision with respect to that food is given, the notice is to include a statement to the effect that a person affected by the decision may:

(a) seek a reconsideration of the initial decision under this section; and

(b) subject to the *Administrative Appeals Tribunal Act 1975*, if such a person is dissatisfied with the decision on reconsideration, make an application to the Administrative Appeals Tribunal for review of that decision.

(9) After reconsideration of an initial decision, the Secretary must give the applicant for reconsideration written notice:

(a) stating the result for the reconsideration; and

(b) informing the applicant that:

- (i) except where subsection 24(4) of the *Administrative Appeals Tribunal Act 1975* applies, the applicant may apply for a statement setting out the reasons for the decision on reconsideration; and
- (ii) the applicant may, subject to that Act, make an application to the Administrative Appeals Tribunal for review of that decision.

(10) Any failure to comply with the requirements of subsection (8) or (9) in relation to a decision does not affect the validity of the decision. 5

(11) An application may be made to the Administrative Appeals Tribunal for review of a reviewable decision. 10

Regulations

43.(1) The Governor-General may make regulations prescribing matters: 15

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may: 20

- (a) make provision in relation to:
 - (i) the establishment of committees to advise the Secretary on matters relating to the control of imported foods; and
 - (ii) the functions and powers of those committees; and
- (b) prescribe requirements for the storage and transport of imported food that is required to be treated, destroyed or re-exported; and 25
- (c) prescribe penalties, not exceeding \$1,000 for offences against the regulations.

PART 5—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS 30

Division 1—Amendments of the Customs Act 1901

Principal Act

44. In this Division, “Principal Act” means the *Customs Act 1901*.

Customs control of goods

45. Section 30 of the Principal Act is amended: 35

- (a) by omitting subparagraph (a)(ii) and substituting the following subparagraphs:

“(ii) if the goods are not examinable food that is entered under section 71A of this Act—until either they are

delivered into home consumption in accordance with an authority to deal under section 71B or with a permission under section 69, 70 or 162A or they are exported to a place outside Australia, whichever happens first; and

(iii) if the goods are examinable food entered under section 71A for home consumption—until a food control certificate is delivered to the person having possession of the food; and

(iv) if the goods are examinable food entered under section 71A other than for home consumption—until there is delivered to the person having possession of the food an imported food inspection advice requiring its treatment, destruction or re-exportation or, if no such advice is delivered until the goods are entered into home consumption or exported to a place outside Australia, whichever happens first;”;

(b) by adding at the end the following subsection:

“(2) In this section:

‘**examinable food**’ has the same meaning as in the *Imported Food Control Act 1992*;

‘**imported food inspection advice**’ has the same meaning as in the *Imported Food Control Act 1992*.”.

Division 2—Amendments of the Customs Administration Act 1985

Principal Act

46. In this Division, “**Principal Act**” means the *Customs Administration Act 1985*².

Breaches of confidence

47.(1) Section 16 of the Principal Act is amended:

(a) by omitting subsection (4) and substituting the following subsection:

“(4) Nothing in subsection (2) prohibits:

(a) the disclosure of cargo reports under section 64AB of the *Customs Act 1901* to AQIS for the purpose of determining whether or not:

(i) there has been a breach of the *Quarantine Act 1908*; or

(ii) there is a requirement to exercise powers under that Act; or

(b) the disclosure of cargo reports under that section to a port authority for the purpose of enabling the authority

- to gather statistics or compute liability for wharfage charges; or
- (c) the disclosure to authorised officers of AQIS of information contained in entries made under section 71A of the *Customs Act 1901* to the extent that the entries relate to the importation of food, for the purpose of enabling those authorised officers to exercise their powers under the *Imported Food Control Act 1992*.”; 5
- (b) by omitting subsection (6) and substituting the following subsections: 10
- “(6) The reference in subsection (4) to disclosure of information includes:
- (a) so far as it relates to paragraphs (4)(a) and (b)—disclosure by way of the provision of computer access to the Sea Cargo Automation System or the Air Cargo Automation System referred to in section 67A of the *Customs Act 1901*; and 15
- (b) so far as it relates to paragraph (4)(c)—disclosure by way of the provision of computer access to that information.
- “(7) In this section: 20
- ‘AQIS’ means the operating group within the Department of Primary Industries and Energy having responsibility in relation to the administration of the *Imported Food Control Act 1992* and of the *Quarantine Act 1908*;
- ‘authorised officer of AQIS’ means the Secretary to the Department of Primary Industries and Energy or an officer of AQIS appointed by the Secretary under the *Imported Food Control Act 1992* to be an authorised officer for the purpose of any provision of that Act; 25
- ‘food’ has the same meaning as in the *Imported Food Control Act 1992*.”. 30

NOTES

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 132, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; No. 51,

NOTES—continued

76, 81, 104 and 141, 1987; Nos. 63, 66 and 76, 1988; Nos. 23, 24, 78, 108 and 174, 1989; Nos. 5, 6, 11, 37, 70, 79 and 111, 1990; Nos. 28, 82, 120 and 123, 1991; and Nos. 34, 89 and 104, 1992.

2. No. 38, 1985, as amended. For previous amendments, see Nos. 78 and 107, 1989; No. 5, 1990; and No. 122, 1991.



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