



**Agriculture, Fisheries and Forestry
Legislation Amendment Act (No. 1) 1999**

No. 4, 1999



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**An Act to amend various Acts administered by the
Department of Agriculture, Fisheries and Forestry,
and for related purposes**

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**An Act to amend various Acts administered by the
Department of Agriculture, Fisheries and Forestry,
and for related purposes**

[Assented to 31 March 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agriculture, Fisheries and Forestry
Legislation Amendment Act (No. 1) 1999*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Agricultural and Veterinary Chemicals (Administration) Act 1992

1 After Part 7A

Insert:

Part 7B—Modification of the Agvet Codes for the purpose of giving effect to paragraph 3 of Article 39 of the TRIPS Agreement

69EV Definitions

- (1) In this Part:

current application has the meaning given by section 69EX.

information includes, but is not limited to, information obtained from trials or laboratory experiments.

previous application has the meaning given by section 69EX.

relevant information has the meaning given by section 69EX.

- (2) Expressions used in this Part that are defined or otherwise used in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* have the same meanings as in that Code.

69EW Modification of Agvet Codes

- (1) This Part modifies the Agvet Codes for the purpose of giving effect to Australia's obligations under paragraph 3 of Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The English text of the Marrakesh Agreement establishing the World Trade Organization is set out in Australian Treaty Series 1995 No. 8.

(2) The Agvet Codes have effect subject to this Part.

69EX Application of Part

This Part applies to an application (the *current application*) made to the NRA after the commencement of this Part for approval of an active constituent for a proposed or existing chemical product where:

- (a) the NRA cannot grant the application without using information (the *relevant information*) given to the NRA in connection with a previous application (the *previous application*) made to the NRA (other than a previous application made before the commencement of this Part) for approval of an active constituent for a proposed or existing chemical product; and
- (b) the relevant information has not been made publicly available in Australia; and
- (c) at the time immediately before the previous application was made, no application had been made to the NRA for approval of the active constituent to which that application related.

69EY NRA not to grant current application except in certain circumstances

The NRA must not grant the current application unless:

- (a) the person who made that application:
 - (i) has given to the NRA information that makes it unnecessary for the NRA to use the relevant information in connection with that application; or
 - (ii) has given to the NRA evidence that satisfies the NRA that the person who made the previous application has consented to the NRA using the relevant information in connection with the current application; or

- (b) at least 5 years have elapsed since the previous application was determined by the NRA or was withdrawn, as the case may be.

69EZ Approval given in contravention of section 69EY is not invalid but is to be cancelled

- (1) If:
 - (a) the NRA approves an active constituent for a proposed or existing chemical product; and
 - (b) the NRA was prohibited by section 69EY from giving the approval;the approval is not invalid.
- (2) However, the NRA must cancel the approval when it finds out that the giving of the approval was prohibited by section 69EY.

69EZA Power of NRA to grant multiple approvals to be subject to section 69EY

The power of the NRA under subsection 16(1) of the Agvet Codes to approve the same active constituent for a proposed or existing chemical product on applications made by different persons is subject to section 69EY.

69EZB Power of NRA to use information obtained by it for other purposes not to be affected

Except as provided by section 69EY, the power of the NRA under subsection 58(1) of the Agvet Codes to use information obtained by it from any source for the purpose of performing any of its functions or exercising any of its powers under those Codes is not affected.

Schedule 2—Amendment of the Dairy Produce Act 1986

1 Paragraph 106(c)

Omit “section 108E”, substitute “sections 108E and 108EA”.

2 Paragraph 106(d)

Omit “section 108F”, substitute “sections 108EB and 108F”.

3 After section 108E

Insert:

108EA Levy rebates: Victorian gas supply failure

- (1) A manufacturer is entitled to be paid by the Corporation a manufacturing milk levy rebate in respect of a month if:
 - (a) the manufacturer paid manufacturing milk levy on manufacturing milk delivered to the manufacturer during that month; and
 - (b) the manufacturer destroyed some or all of the milk at the manufacturer’s factory during the period that started on 26 September 1998 and ended at the end of 5 October 1998 as a result of the gas supply failure in Victoria.
- (2) The amount of the rebate payable to a manufacturer under this section is an amount equal to the difference between:
 - (a) the amount of manufacturing milk levy paid by the manufacturer in respect of the relevant month; and
 - (b) the amount of manufacturing milk levy that would have been imposed on the manufacturer in respect of that month if the quantity of milk destroyed had not been delivered to the manufacturer during that month.
- (3) A manufacturing milk levy rebate is not payable under this section unless a written application in accordance with a form approved by

the Corporation is submitted to the Corporation within 28 days after the commencement of this section.

- (4) The Corporation may include in the approved application form a requirement that the whole or a part of the information contained in an application be verified by statutory declaration.
- (5) As soon as practicable after it receives an application under this section, the Corporation must:
 - (a) if it decides that the applicant is entitled to a rebate—notify the applicant in writing of its decision and of the amount of the rebate to which the applicant is entitled; or
 - (b) if it decides that the applicant is not entitled to a rebate—notify the applicant in writing of its decision.
- (6) A notice under paragraph (5)(a) must set out the basis on which the Corporation has determined the amount of the rebate to which the applicant is entitled.
- (7) A notice under paragraph (5)(b) must set out the reasons for the Corporation's decision.
- (8) If the Corporation gives an applicant a notice under paragraph (5)(a), it must, at the same time, pay the applicant the amount of rebate specified in the notice.

108EB Payment to milk producers: Victorian gas supply failure

- (1) A producer is entitled to be paid by the Corporation an amount worked out under subsection (2) if:
 - (a) before 6 October 1998, the producer produced a quantity of milk for the purpose of delivering it to a manufacturer as manufacturing milk; and
 - (b) as a result of the gas failure in Victoria, the producer did not deliver the quantity of milk to a manufacturer, but destroyed it during the period that started on 26 September 1998 and ended at the end of 5 October 1998.

- (2) The amount payable to a producer under this section is an amount equal to the amount of domestic market support payment that would have been payable by the Corporation to the producer if the producer had delivered the prescribed quantity of milk to a manufacturer.
- (3) For the purposes of subsection (2), the *prescribed quantity of milk* is the quantity of milk destroyed less any of that milk in relation to which the producer has received, or is entitled to receive, a payment relating to liquid milk for human consumption in Australia.
- (4) An amount is not payable under this section unless a written application in accordance with a form approved by the Corporation is submitted to the Corporation within 3 months after commencement of this section.
- (5) An application may be made:
 - (a) by a producer; or
 - (b) by 2 or more producers jointly; or
 - (c) by a person on behalf of 1 or more producers.
- (6) The Corporation may include in the approved application form a requirement that the whole or a part of the information contained in an application be verified by statutory declaration.
- (7) As soon as practicable after it receives an application under this section, the Corporation must:
 - (a) if it decides that the producer, or any producer, to whom the application relates is entitled to a payment—notify the applicant in writing of its decision and of the amount of the payment; or
 - (b) if it decides that the producer, or any producer, to whom the application relates is not entitled to a payment—notify the applicant in writing of its decision.
- (8) A notice under paragraph (7)(a) must set out the basis on which the Corporation has determined the amount specified in the notice.

- (9) A notice under paragraph (7)(b) must set out the reasons for the Corporation's decision.
- (10) If the Corporation gives an applicant a notice under paragraph (7)(a), it must, at the same time, pay the amount specified in the notice.

4 Subsection 118(1) (definition of *relevant payment decision*)

After "108E", insert " , 108EA, 108EB".

Schedule 3—Amendment of the Export Control Act 1982

1 Section 3

Insert:

enter, in relation to an aircraft, vehicle or ship, includes go on board.

2 Section 3 (definition of *establishment*)

Repeal the definition, substitute:

establishment includes premises.

3 Section 3

Insert:

evidential material means any of the following things, including such a thing in electronic form:

- (a) a thing with respect to which an offence against this Act has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of an offence against this Act;
- (c) a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing an offence against this Act.

4 Section 3

Insert:

executing officer, for a warrant, means the person named in the warrant as being responsible for executing the warrant.

5 Section 3

Insert:

magistrate means a magistrate who is remunerated by salary or otherwise.

6 Section 3

Insert:

occupier of premises means the person apparently in charge of the premises.

7 Section 3 (paragraph (a) of the definition of offence against this Act)

Repeal the paragraph.

8 Section 3 (paragraphs (b) and (c) of the definition of offence against this Act)

Omit “or the regulations”.

9 Section 3

Insert:

officer assisting, in relation to a warrant, means:

- (a) an authorized officer who is assisting in executing the warrant; or
- (b) a person who is not an authorized officer, but who has been authorized by the relevant executing officer to assist in executing the warrant.

10 Section 3 (definition of premises)

Repeal the definition, substitute:

premises includes the following:

- (a) a building, aircraft, vehicle or ship;
- (b) a place (whether enclosed, or built on, or not);
- (c) a part of a thing or place referred to in paragraph (a) or (b).

11 Section 3

Insert:

preparation, in relation to prescribed goods, includes the following:

- (a) the slaughter or killing of animals and the dressing of carcasses from which prescribed goods are obtained;
- (b) the processing, packing or storage of prescribed goods;
- (c) the treatment of prescribed goods;
- (d) the handling or loading of prescribed goods.

12 Section 3

Insert:

this Act includes the regulations.

13 After subsection 7(3)

Insert:

(3A) Without limiting the generality of subsection (2), regulations made for the purposes of subsection (1):

- (a) may provide that the export of prescribed goods, or the export of prescribed goods to a specified place, is prohibited unless the goods have been prepared in accordance with an arrangement that has been approved by the Secretary; and
- (b) may make provision for and in relation to:
 - (i) the approval of an arrangement subject to specified conditions or restrictions; or
 - (ii) the variation, suspension or revocation of an approval of an arrangement; or
 - (iii) the variation, suspension or revocation of any or all of the conditions or restrictions to which an approval of an arrangement is subject, or the imposition of further conditions or restrictions; or
 - (iv) persons (including persons approved by the Secretary under the regulations and authorized officers) who may

exercise powers and perform functions under, or for the purposes of, an approved arrangement.

14 Subsection 7(4)

Omit “subparagraph (3)(b)(ii)”, substitute “subparagraphs (3)(b)(ii) and (3A)(b)(i)”.

15 Part III (heading)

Repeal the heading, substitute:

Part III—Enforcement

16 Sections 10 and 11

Repeal the sections, substitute:

Division 1—General powers

10 General powers of authorized officers in relation to premises

The powers an authorized officer may exercise under paragraphs 10A(1)(b) and 10D(1)(b) in relation to particular premises are as follows:

- (a) to search the premises and any thing on the premises;
- (b) to inspect, examine and take samples of any thing on the premises;
- (c) to take photographs (including video or audio recordings) or to make sketches of the premises or any thing on the premises;
- (d) to take extracts from, or make copies of, any document, book or record on the premises;
- (e) to secure the premises or any thing on the premises.

Division 2—Monitoring powers

10A Monitoring registered premises and other premises entered by consent

- (1) For the purpose of finding out whether any or all of the provisions of this Act are being complied with, an authorized officer, at any time and with any necessary help, may:
 - (a) enter:
 - (i) any registered premises; or
 - (ii) any other premises with the consent of the occupier; and
 - (b) exercise the powers set out in section 10.
- (2) If the relevant premises are an aircraft, vehicle or ship, an authorized officer may stop and detain the aircraft, vehicle or ship for the purpose of exercising a power mentioned in subsection (1).

10B Monitoring warrants

- (1) An authorized 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 a warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorized officer should have access to the premises for the purpose of finding out whether any or all of the provisions of this Act are being complied with.
- (3) The magistrate must not issue a warrant unless the authorized officer or another person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (4) A warrant must:
 - (a) authorize an authorized officer named in the warrant, with such assistance and by such force as is necessary and reasonable, from time to time, while the warrant remains in

force, to enter the premises and exercise powers of the kind set out in section 10 in relation to the premises; and

- (b) state whether an entry under the warrant is authorized 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.

10C Seizures without offence-related warrant in emergency situations

- (1) This section applies when an authorized officer has entered premises under section 10A or under a warrant issued under section 10B.
- (2) If the authorized officer suspects, on reasonable grounds, that:
 - (a) particular evidential material is in or on the premises; and
 - (b) it is necessary to seize the evidential material in order to prevent it from being concealed, lost or destroyed; and
 - (c) it is necessary to do so without the authority of a warrant under section 10E because the circumstances are serious and urgent;the authorized officer may seize the evidential material if he or she finds it there.

Division 3—Offence-related searches and seizures

**10D Registered premises and premises entered by consent—
offence-related searches and seizures**

- (1) Subject to subsection (2), if an authorized officer has reasonable grounds for suspecting that there may be, on any premises, particular evidential material, the officer, at any time and with any necessary help, may:
 - (a) enter the premises; and
 - (b) exercise the powers set out in section 10; and
-

- (c) seize that evidential material, if the officer finds it on the premises.
- (2) An authorized officer is not authorized to enter premises under subsection (1) unless:
 - (a) the premises are registered premises; or
 - (b) the occupier of the premises has consented to the entry.
- (3) If the relevant premises are an aircraft, vehicle or ship, an authorized officer may stop and detain the aircraft, vehicle or ship for the purpose of exercising a power mentioned in subsection (1).

10E Offence-related warrants

- (1) An authorized officer may apply to a magistrate for a warrant under this section in relation to particular premises.
 - (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, any evidential material at the premises.
 - (3) A magistrate must not issue a warrant unless the authorized officer or some other person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the warrant is being sought.
 - (4) The warrant must:
 - (a) state the offence to which the warrant relates; and
 - (b) describe the premises to which the warrant relates; and
 - (c) describe the kinds of evidential material that are to be searched for under the warrant; and
 - (d) state the name of the authorized officer who is to be responsible for executing the warrant; and
 - (e) state the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) state whether the warrant may be executed at any time or only during particular hours.
-

- (5) The warrant must also state that the warrant authorizes the seizure of a thing (other than evidential material of the kind referred to in paragraph (4)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
- (a) evidential material in relation to an offence to which the warrant relates; or
 - (b) evidential material in relation to another offence against this Act;
- if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act.
- (6) Paragraph (4)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (7) If the application for the warrant is made under section 10F, this section applies as if:
- (a) subsection (2) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (4)(e) referred to 48 hours rather than 7 days.

10F The things that are authorized by a search warrant

- (1) A warrant under this Division that is in force in relation to premises authorizes the executing officer or an officer assisting:
- (a) to enter the premises; and
 - (b) to exercise powers of the kind set out in paragraphs 10(b) to (e) (inclusive); and
 - (c) to search the premises and any thing on the premises for the kinds of evidential material specified in the warrant, and to seize things of those kinds found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or

- (ii) evidential material in relation to another offence against this Act;
if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act.
- (2) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (3) If things are seized under a warrant, the warrant authorizes the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

Division 4—Warrants granted by telephone or other electronic means

10G Warrants may be granted by telephone or other electronic means

- (1) An authorized officer may apply to a magistrate for a warrant under section 10B or 10E by telephone, facsimile or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
 - (2) The magistrate may require voice communication to the extent that it is practicable in the circumstances.
 - (3) An application under this section must include all information required to be provided in an ordinary application for a warrant under section 10B or 10E, as the case requires, but the application may, if necessary, be made before the information is sworn or affirmed.
 - (4) If a magistrate to whom an application is made under this section is satisfied:
-

- (a) after having considered the information mentioned in subsection (3); and
 - (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same form of warrant that would be issued under section 10B or 10E, as the case requires.
- (5) If a magistrate signs a warrant under subsection (4):
 - (a) the magistrate must notify the authorized officer, by telephone, facsimile or other electronic means, of the terms of the warrant and the date on which and the time at which it was signed, and write on it the reasons for the granting of the warrant; and
 - (b) the officer must complete a form of warrant in the terms notified to the officer by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.
 - (6) If an authorized officer completes a form of warrant under subsection (5), the officer must, not later than the day after the day on which the warrant ended or was executed, whichever is the earlier, give or transmit to the magistrate who signed the warrant the form of warrant completed by the officer and, if the information mentioned in subsection (3) was not sworn or affirmed, that information duly sworn or affirmed.
 - (7) The magistrate must attach to the documents provided under subsection (6) the warrant signed by the magistrate.
 - (8) A form of warrant duly completed by an authorized officer under subsection (5) 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 power that the warrant so signed authorizes.
 - (9) If:

- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of power was authorized under this section; and
- (b) the warrant signed by the magistrate under this section authorizing the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorized by such a warrant.

Division 5—Stopping and searching aircraft, vehicles or ships

10H Searches without warrant in emergency situations

- (1) This section applies if an authorized officer suspects, on reasonable grounds, that:
 - (a) particular evidential material is in or on an aircraft, vehicle or ship; and
 - (b) it is necessary to exercise a power under subsection (2) in order to prevent the evidential material being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a warrant under section 10E because the circumstances are serious and urgent.
- (2) The authorized officer may:
 - (a) stop and detain the aircraft, vehicle or ship; and
 - (b) search the aircraft, vehicle or ship and any thing in or on the aircraft, vehicle or ship, for the evidential material; and
 - (c) seize the evidential material if he or she finds it there.
- (3) If, in the course of searching for the evidential material, the authorized officer finds other evidential material, the authorized officer may seize that other evidential material if he or she suspects, on reasonable grounds, that:
 - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

- (b) it is necessary to seize it without the authority of a warrant under section 10E because the circumstances are serious and urgent.
- (4) The authorized officer must exercise his or her powers subject to section 10J.

10J How an authorized officer exercises a power under section 10H

When an authorized officer exercises a power under section 10H in relation to an aircraft, vehicle or ship, he or she:

- (a) may use such assistance as is necessary; and
- (b) must search the aircraft, vehicle or ship in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the aircraft, vehicle or ship for longer than is necessary and reasonable to search it and any thing found in or on the aircraft, vehicle or ship; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the aircraft, vehicle or ship or any thing found in or on the aircraft, vehicle or ship by forcing open a part of the aircraft, vehicle or ship or thing unless:
 - (i) the person (if any) apparently in charge of the aircraft, vehicle or ship has been given a reasonable opportunity to open that part or thing; or
 - (ii) it is not possible to give that person such an opportunity.

**Division 6—General rules about registered premises,
premises entered by consent and warrants**

11 Availability of assistance, and use of force, in executing a warrant

In executing a warrant:

- (a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and

- (b) the executing officer, or an authorized officer who is assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and
- (c) a person who is not an authorized officer, but who has been authorized to assist in executing the warrant, may use such force against things as is necessary and reasonable in the circumstances.

11A Announcement before entry under warrants

- (1) The executing officer must, before any person enters premises under a warrant:
 - (a) announce that he or she is authorized by the warrant to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The authorized officer does not have to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including the authorized officer); or
 - (b) that the effective execution of the warrant is not frustrated.

11B Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer or an officer assisting must make a copy of the warrant available to that person.
- (2) The executing officer must identify himself or herself to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

11C Occupier entitled to be present during search under warrants

- (1) If a warrant issued in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

11D Use of equipment to examine or process things

- (1) A person who enters premises under this Part may bring to the premises and use any equipment reasonably necessary for the examination or processing of things found at the premises for the purposes of exercising a power conferred on the person under this Part.
- (2) If:
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out.
- (3) If things containing electronically stored information are moved to another place under subsection (2), the person referred to in subsection (1) must, if it is practicable to do so:
 - (a) tell the occupier the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier, or a representative of the occupier, to be present during the examination or processing.
- (4) A person who enters premises under this Part may operate equipment already at the premises to carry out the examination or

processing of a thing found at the premises for the purposes of exercising a power conferred on the person under this Part, if the person believes on reasonable grounds that:

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

11E Use of electronic equipment at premises

- (1) A person who enters premises under this Part may operate electronic equipment at the premises for the purposes of exercising a power conferred on the person under this Part if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the person, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material 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 material to the storage device and take the storage device from the premises.
- (3) A person may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or

- (b) possession of the equipment by the occupier could constitute an offence.
- (4) If the person believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The person must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert; whichever happens first.
- (7) If the person believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.
- (8) The person must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

11F Compensation for damage to equipment

- (1) If:
 - (a) equipment is damaged because of being operated as mentioned in section 11D or 11E; and
 - (b) the damage was caused by:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or

- (ii) insufficient care being exercised by the person (other than the occupier or a person employed by the occupier) operating the equipment;
compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

11G Copies of seized things to be given

- (1) Subject to subsection (2), if a person who enters premises under this Part seizes:
 - (a) a document, film, computer file or other thing that can readily be copied; or
 - (b) a storage device the information in which can readily be copied;the person must, if asked to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 11E(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

11H Retention of things which are seized

- (1) Subject to any contrary order of a court, if a person seizes a thing under this Part, the person must return it if:
 - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) the period of 60 days after its seizure ends;whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) At the end of the 60 days specified in subsection (1), the person must take reasonable steps to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it) unless:
 - (a) proceedings in which the thing may be used in evidence were begun before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) the officer may retain the thing because of an order under section 11J; or
 - (c) the officer is otherwise authorized or required (by a law, or an order of a court, of the Commonwealth, or of a State or a Territory) to retain, destroy or dispose of the thing.

11J Magistrate may permit a thing to be kept

- (1) If a person seizes a thing under this Part; and:
 - (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously stated in an order of a magistrate under this section;proceedings in which the thing may be used in evidence have not been brought, the officer may apply to a magistrate for an order that he or she may keep the thing for a further period.
 - (2) If the magistrate is satisfied that it is necessary for the authorized officer to continue to keep the thing:
 - (a) for the purposes of an investigation as to whether an offence has been committed; or
-

- (b) to enable evidence of an offence to be secured for the purposes of a prosecution;
the magistrate may order that the officer may keep the thing for a period stated in the order.
- (3) Before making the application, the authorized officer must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the authorized officer believes to have such an interest of the proposed application.
- (4) A function of making an order conferred on a magistrate by this section is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (5) Without limiting the generality of subsection (4), an order made by a magistrate under this section has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (6) A magistrate performing a function of, or connected with, making an order under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (7) The Governor-General may make arrangements with the Governor of a State, the Chief Minister for the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under this section.

11K Release of seized goods

The Secretary may authorize any evidential material seized under this Part to be released to the owner, or to the person from whose possession it was seized, either unconditionally or on any conditions that the Secretary thinks fit.

11L Authorized officer must produce identity card

An authorized officer may not exercise any powers under this Part in relation to premises (other than premises entered under a warrant) if:

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

11M Giving of consent

- (1) Before obtaining the consent of a person for the purposes of entering premises under section 10A or 10D, an authorized officer must tell the person that the person may refuse to give consent.
- (2) An entry by an authorized officer in consequence of the consent of a person is not lawful unless the person voluntarily consented to the entry.

11N Receipts for things seized

- (1) If a thing is seized under this Part, or moved under subsection 11D(2), an authorized officer must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

Division 7—Offences

11P Power of authorized officer to require information or documents

- (1) Subject to subsection (2), an authorized officer who has entered registered premises or any other premises under a warrant may, to the extent that is reasonably necessary for the purpose of finding out whether any or all of the provisions of this Act are being complied with, require a person to give information to the officer and to produce any documents referred to by the officer.

- (2) An authorized officer who has entered any premises with the consent of the occupier may ask the occupier to give information to the officer and to produce any documents referred to by the officer.
- (3) An authorized officer is not entitled to make a requirement of a person under subsection (1) unless the officer produces his or her identity card for inspection by the person.
- (4) A person must not fail to comply with a requirement under subsection (1).

Penalty: 30 penalty units.

11Q Secretary may require information or documents

- (1) The Secretary may, by written notice given to a person, require the person, within a reasonable time stated in the notice, to give the Secretary any information, or produce to the Secretary any documents, referred to in the notice that relate to any prescribed goods that have been, or are proposed to be, exported.
 - (2) Without limiting subsection (1), the information or documents referred to in the notice may relate to:
 - (a) the preparation of any prescribed goods that have been, or are proposed to be, exported; or
 - (b) the material or ingredients of which such goods are or are proposed to be composed, or from which they are or are proposed to be derived; or
 - (c) any animals that are proposed to be used, or have been used, in the preparation of such goods; or
 - (d) the source of:
 - (i) any prescribed goods of the kind mentioned in paragraph (a); or
 - (ii) any material or ingredients of the kind mentioned in paragraph (b); or
 - (iii) any animals of the kind mentioned in paragraph (c).
 - (3) A person must not fail to comply with a notice under subsection (1).
-

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (4) A person is not excused from giving information or producing a document under subsection (1) on the ground that the information or the production of the document, as the case may be, might tend to incriminate the person or make the person liable to a penalty.
- (5) However, if the information is given or the document is produced by an individual, the information or the production of the document, and any information or thing (including any document) obtained as a direct or indirect result of the giving of the information or the production of the document, as the case may be, is not admissible in evidence against the individual in proceedings other than proceedings for an offence against section 16.

17 Section 12

After “powers”, insert “, or in the performance of the authorized officer’s functions,”.

18 Subsection 13(1)

Repeal the subsection (but not the penalty), substitute:

- (1) Subject to subsection (2), the owner or occupier of premises entered by an authorized officer under this Part must, if requested by an authorized officer to do so, provide reasonable assistance to the authorized officer for the purpose of the exercise of the authorized officer’s powers under this Part in relation to the premises.

19 Subsection 19(1)

After “powers”, insert “or functions”.

20 Subsection 19(2)

After “power”, insert “or function”.

21 Subsection 19(3)

After “power”, insert “, or the performance of a function,”.

22 Section 20

Omit all the words from and including “the purpose of” to and including “in the instrument”, substitute:

the purpose of:

- (a) the exercise by that person or those persons of the powers of an authorized officer under this Act or of such of those powers as are specified in the instrument; or
- (b) the performance by that person or those persons of the functions of an authorized officer under this Act or of such of those functions as are specified in the instrument.

23 Subsections 22(1) and (2)

After “authority”, insert “, or in the performance or purported performance of any function,”.

24 Subsections 22(1) and (2)

Omit “or the regulations”.

25 Paragraph 23(1)(b)

Omit “or the regulations”.

26 Subsections 24A(1), (3), (6) and (7)

Omit “or the regulations”.

27 Paragraph 25(2)(a)

Omit “of:”, substitute “of premises;”.

28 Subparagraphs 25(2)(a)(i) and (ii)

Repeal the subparagraphs.

29 Paragraph 25(2)(e)

Omit “or the regulations”.

30 Paragraph 25(2)(f)

Omit “\$1,000”, substitute “50 penalty units”.

31 After paragraph 25(5)(a)

Insert:

- (ab) any matter contained in any instrument or writing that:
 - (i) sets out the requirements for the preparation of prescribed goods in Australia that are to be imported into a country; and
 - (ii) is made by the authority or body in that country responsible for regulating the importation of prescribed goods into that country;
- as in force at a particular time or as in force from time to time; or

32 Persons exercising certain powers and functions

- (1) If, immediately before the commencement of this Schedule, an order conferred, or purported to confer, a power or function on an authorized officer, the order, in so far as it conferred or purported to confer the power or function, is taken to have been validly made for all purposes and continues to have effect according to its terms on and after that commencement.
- (2) If, before the commencement of this Schedule:
 - (a) a person had been approved, or was included in a class of persons that had been approved, under an order to exercise a power or perform a function that was otherwise required under the order to be performed or exercised by an authorized officer; and
 - (b) the approval had not been revoked;the approval is taken to have been validly made for all purposes and continues to have effect according to its terms on and after that commencement.

Schedule 4—Amendment of the Imported Food Control Act 1992

1 Subsection 3(1)

Insert:

imported as a trade sample, in relation to food, has the meaning given by subsection 7(3).

2 At the end of subsection 7(1)

Add:

; or (d) food that is imported as a trade sample.

3 Subsection 7(2)

After “consumption”, insert “if it has not been imported as a trade sample and”.

4 At the end of section 7

Add:

- (3) Food of a particular kind is *imported as a trade sample* if:
- (a) the food is imported for the purposes of scientific or commercial evaluation; and
 - (b) the food is not imported for consumption by any person; and
 - (c) the food is:
 - (i) in liquid form and has a volume of less than 20 litres or such lesser volume (if any) as is prescribed by the regulations in respect of food of that kind; or
 - (ii) not in liquid form and has a weight of 20 kilograms or such lesser weight (if any) as is prescribed by the regulations in respect of food of that kind.

5 After subsection 9(1)

Insert:

- (1A) 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) is food for which an imported food inspection advice has not been issued;
- unless the owner of the food obtains the approval of an authorised officer to deal with the food in that manner.

Penalty: Imprisonment for 10 years.

6 Subsection 9(3)

After “(1)”, insert “, (1A)”.

7 Subsection 9(3)

After “(1)(a) and (b)”, insert “, (1A)(a), (b) and (c)”.

8 Subsection 19(1)

Omit “to:”, substitute “under subsection (1A)”.

9 Paragraphs 19(1)(a) and (b)

Repeal the paragraphs.

10 After subsection 19(1)

Insert:

- (1A) The Secretary may:
- (a) approve a food processing operation mentioned in subsection (1) for the purposes of this Part; or
 - (b) revoke any such approval.

11 Subsection 19(2)

Omit “(1)”, substitute “(1A)”.

12 After subparagraph 35(c)(i)

Insert:

- (ia) has been identified in an imported food inspection advice as failing food; or

13 At the end of section 35

Add:

- (2) Without limiting subsection (1), the Secretary may publish:
 - (a) the name of the importer of the food; or
 - (b) the brand of the food.

14 After subsection 39(1)

Insert:

- (1A) The Secretary may approve the payment of compensation in respect of food if:
 - (a) the Secretary is satisfied, on reasonable grounds, that the food is no longer suitable for the purpose for which it was imported as a result of an inspection, or inspection and analysis, of the food under the Food Inspection Scheme; and
 - (b) 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.

15 Subsection 39(3)

Omit “this section”, substitute “subsection (1)”.

16 After subsection 39(3)

Insert:

- (3A) The compensation payable under subsection (1A) in respect of food is the amount agreed between the Secretary and the owner or owners of the food as being the difference between the market value of the food immediately before it became unsuitable for the purpose for which it was imported and the amount (if any) for which the food is sold by the owner or owners.

17 Subsection 39(4)

Omit “at the time of its destruction”, substitute “at the time referred to in subsection (3) or (3A), as the case requires,”.

18 Subsection 39(6) (definition of *owner*)

Omit “that is permitted to be treated or required to be destroyed or re-exported”.

19 Subsection 42(1) (definition of *reviewable decision*)

Omit “(4)”, substitute “(5)”.

Schedule 5—Amendment of the Plant Breeder's Rights Act 1994

1 Subsection 3(1)

Insert:

plant class, for the purpose of variety denomination, means a class consisting of all plants:

- (a) that belong to a single botanical genus; or
 - (b) that belong to a group of closely related genera;
- that is specified from time to time as a plant class in the Registrar's List of Plant Classes maintained under subsection 61(1A)

2 Subsection 3(1)

Insert:

Union means the Union for the Protection of New Varieties of Plants as defined in Article 1 of the Convention.

3 Paragraph 27(5)(a)

After "another plant variety", insert "of the same plant class".

4 Subparagraphs 53(1)(c)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) any other plant variety of the same plant class; or
- (ii) a plant of any other variety of the same plant class.

5 After subsection 61(1)

Insert:

(1A) The Registrar must maintain, for the purposes of this Act, a list of all plant classes to be known as the Registrar's List of Plant Classes.

(1B) In maintaining that list the Registrar must, for so long as the Union maintains the document presently known as the List of Classes for

Variety Denomination Purposes, have regard to that list and to any variations to that list as so maintained.

- (1C) The list maintained by the Registrar must be kept as a part of the Register.

6 At the end of section 62

Add:

- (3) For the purposes of subsection (2), a reference to an entry in the Register does not include a reference to the Registrar's List of Plant Classes or to any part of that list.

*[Minister's second reading speech made in—
House of Representatives on 3 December 1998
Senate on 8 March 1999]*

(230/98)