



Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2003

No. 38, 2003

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Australian Wine and Brandy Corporation Act 1980		4
Schedule 2—Export Control Act 1982		6
Schedule 3—National Residue Survey Administration Act 1992		7
Schedule 4—Quarantine Act 1908		10
Schedule 5—Contingent amendments relating to Christmas Island		18
	<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003</i>	18
	<i>Quarantine Act 1908</i>	18
Schedule 6—Dairy Industry Legislation Amendment Act 2002		21



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No. 38, 2003

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

[Assented to 2 May 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agriculture, Fisheries and Forestry
Legislation Amendment Act (No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 May 2003
2. Schedules 1, 2 and 3	The day after this Act receives the Royal Assent	3 May 2003
3. Schedule 4, items 1 and 2	The 28th day after the day on which this Act receives the Royal Assent	30 May 2003
4. Schedule 4, items 3 to 5	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003</i>	27 October 2004 (paragraph (b) applies)
5. Schedule 4, items 6 to 22	The 28th day after the day on which this Act receives the Royal Assent	30 May 2003
6. Schedule 4, item 23	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003</i>	27 October 2004 (paragraph (b) applies)
7. Schedule 4, items 24 to 33	The 28th day after the day on which this Act receives the Royal Assent	30 May 2003

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 5, items 1 to 3	Immediately before the commencement of item 1 of Schedule 1 to the <i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003</i> , subject to subsection (3)	27 October 2004
9. Schedule 5, items 4 to 7	The 28th day after the day on which this Act receives the Royal Assent, subject to subsection (3)	30 May 2003
10. Schedule 6	Immediately after the time specified in the <i>Dairy Industry Legislation Amendment Act 2002</i> for the commencement of item 4 of Schedule 1 to that Act	10 October 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If item 1 of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2004* commences before the commencement of item 1 of Schedule 4 to this Act, Schedule 5 does not commence at all.

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—Australian Wine and Brandy Corporation Act 1980

1 Before paragraph 8(2)(aa)

Insert:

- (aaa) to do anything for the purpose of giving effect to a prescribed wine-trading agreement; and

2 At the end of section 40ZD

Add:

(3) If:

(a) it appears to the Corporation that:

(i) an entry in the Register is not, or has ceased to be, necessary; or

(ii) an entry in the Register is included in the wrong part of the Register;

and the inclusion of the entry in the Register, or in that part of the Register, did not result from a determination made by the Committee under Division 4; or

(b) it appears to the Corporation that an entry should not have been included in the Register, or an entry in the Register is incorrect, because of a clerical or similar error;

the Corporation may direct the Registrar to omit the entry from the Register, to omit the entry from that part of the Register and insert it in the correct part, or to correct the entry, as the case requires.

(4) In subsection (3):

entry includes a part of an entry.

(5) The Registrar must comply with a direction given under subsection (3).

3 After section 44

Insert:

44AA Time for bringing prosecutions

Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence against section 44 of this Act that is committed after the commencement of this section may be brought at any time within 7 years after the commission of the offence.

4 At the end of paragraph 46(1)(a)

Add “and”.

5 After paragraph 46(1)(a)

Insert:

- (b) requiring the doing of acts or things necessary to be done for the purpose of giving effect to a prescribed wine-trading agreement; and

6 At the end of paragraphs 46(1)(c), (d), (e) and (f)

Add “and”.

Schedule 2—Export Control Act 1982

1 After paragraph 25(5)(ab)

Insert:

; or (ac) for the purposes of setting out requirements for the preparation of prescribed goods in Australia that are to be imported into a country that has not made an instrument or writing setting out such requirements—any matter contained in:

- (i) the Australia New Zealand Food Standards Code (within the meaning of the *Food Standards Australia New Zealand Act 1991*); or
- (ii) the Codex Alimentarius issued by the body known as the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization;

as in force at a particular time or as in force from time to time;

Schedule 3—National Residue Survey Administration Act 1992

1 Section 4

Insert:

applicable products means:

- (a) food products; or
 - (b) products of a primary industry; or
 - (c) any other products that are of a kind used as inputs to the production of products referred to in paragraph (a) or (b);
- whether or not the products have been subjected to any process.

2 Section 4

Insert:

process, in relation to a product, means the performance of any operation in relation to the product, and includes, but is not limited to, the harvesting, chilling, freezing, drying, bottling, packing, canning or preserving of the product.

3 Section 4

Insert:

products of a primary industry means products that result from any of the following:

- (a) agriculture or the cultivation of land;
- (b) the maintenance of animals for commercial purposes;
- (c) fishing or aquaculture;
- (d) hunting or trapping;
- (e) horticulture;
- (f) any other primary industry activity.

4 Section 4

Insert:

Secretary means Secretary of the Department.

5 Paragraph 8(1)(a)

Repeal the paragraph, substitute:

- (a) making payments, in accordance with an expenditure program approved by the Minister, for purposes related to:
 - (i) the monitoring and reporting of the level of contaminants in applicable products; and
 - (ii) if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—the testing, either on a random basis or in specific cases, of applicable products or the environment for the purpose of tracing the sources of contaminants and determining the causes of contamination; and
 - (iii) if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—the testing and reporting of the level of contaminants in applicable products or the environment, and any associated activities, for the purpose of investigating the potential sources, and determining the potential causes, of such contaminants; and
 - (iv) if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—the prevention of contamination in, and the management of risks associated with, contamination of applicable products; and

6 Subparagraph 8(1)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) the carrying out of any activities of kinds referred to in paragraph (a) or any related activities; and

7 Section 11

Repeal the section, substitute:

11 Release of information

- (1) Subject to subsection (2), information collected under the activities referred to in section 8 using funds paid or reimbursed out of the Reserve that identifies a particular person may not be released to any other person.
 - (2) Information of a kind mentioned in subsection (1) may be released:
 - (a) to authorities of the Commonwealth, of a State or of a Territory that are responsible for the monitoring or regulation of agricultural or veterinary chemical residues and contaminants in applicable products or the environment for the purpose of such monitoring or regulation or the management of associated risks; and
 - (b) to a person whom the Secretary has approved in writing to be an appropriate person to be granted access to the information.
 - (3) The Secretary may approve a person to be an appropriate person for the purposes of paragraph (2)(b) only if the Secretary is satisfied that the person requires the relevant information to enable the person to monitor, regulate or manage agricultural or veterinary chemical residues or contaminants in applicable products or the environment.
 - (4) An approval is to specify:
 - (a) each person who may be granted access to the relevant information under paragraph (2)(b); and
 - (b) the purpose or purposes for which the information can be used.
 - (5) A person to whom information is released under paragraph (2)(b) commits an offence if the information is used otherwise than for a purpose specified in the approval.

Penalty: Imprisonment for 12 months.
 - (6) This section does not affect the operation of section 27 of the *Primary Industries Levies and Charges Collection Act 1991*.
 - (7) The Secretary may, in writing, delegate to an APS employee in the Department the power to give approvals under paragraph (2)(b).
 - (8) A delegate is, in the exercise of a delegated power, subject to the directions of the Secretary.
-

Schedule 4—Quarantine Act 1908

1 Subsection 5(1)

Insert:

engage in conduct has the same meaning as in the *Criminal Code*.

2 Subsection 5(1) (paragraph (b) of the definition of *offence against this Act*)

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code*”.

3 Subsection 20(1)

Repeal the subsection, substitute:

- (1) The master of an overseas vessel arriving in Australia, the Cocos Islands or Christmas Island is guilty of an offence if the master permits the vessel to enter a place in Australia, the Cocos Islands or Christmas Island other than a port declared to be a first port of entry, a first Cocos Islands port of entry or a first Christmas Island port of entry, as the case may be.

Maximum penalty: Imprisonment for 5 years.

- (1A) Subsection (1) does not apply if the entry is made with the permission of the Minister given under section 20AA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

4 Section 20A

Repeal the section, substitute:

20A Overseas aircraft to land only at landing places unless permission given

- (1) The commander of an overseas aircraft is guilty of an offence if the commander permits the aircraft to land in Australia, the Cocos Islands or Christmas Island at a place other than a landing place.

Maximum penalty: Imprisonment for 5 years.

Note: The commander will not be guilty of an offence if the landing was due to sudden or extraordinary emergency (see section 10.3 of the *Criminal Code*).

- (2) Subsection (1) does not apply if the landing is made with the permission of the Minister given under section 20AA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

5 Subsection 20B(2)

Repeal the subsection, substitute:

Offence by commander of aircraft

- (2) The commander of any aircraft entering Australia, the Cocos Islands or Christmas Island is guilty of an offence if the commander permits the aircraft to enter from or through a place declared under subsection (1) to be a place in relation to which this section applies in respect of Australia, the Cocos Islands or Christmas Island, as the case may be.

Maximum penalty: Imprisonment for 10 years.

Offence by operator of aircraft

- (2A) The operator of any aircraft entering Australia, the Cocos Islands or Christmas Island is guilty of an offence if the operator permits the aircraft to enter from or through a place declared under subsection (1) to be a place in relation to which this section applies in respect of Australia, the Cocos Islands or Christmas Island, as the case may be.

Maximum penalty: Imprisonment for 10 years.

6 Subsections 24(1) and (2)

Repeal the subsections, substitute:

- (1) An unauthorised person must not:
- (a) go on board or alongside any vessel subject to quarantine or on which the quarantine signal is displayed; or
 - (b) approach within 30 metres of any prescribed signal on a landing place.

Maximum penalty: 50 penalty units.

- (1A) Subsection (1) does not apply if the person does the things mentioned in that subsection as the master or a member of the crew of a tug that is carrying out operations as a tug.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) An unauthorised person must not go on board or alongside any installation subject to quarantine or on which the quarantine signal is displayed.

Maximum penalty: 50 penalty units.

- (2A) Subsection (2) does not apply if the person goes on board or alongside the installation as the master or a member of the crew of a tug that is carrying out operations as a tug.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

7 Subsections 25A(1) and (2)

Omit “for the purpose of”, substitute “to achieve the result of”.

8 Subsection 26(1)

Omit “except for the purpose of complying with section 26A”.

9 After subsection 26(1)

Insert:

- (1A) Subsection (1) does not apply if the master’s intention in allowing the vessel to be brought into the port is to comply with section 26A.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

10 Subsection 29(1)

Omit “without the written permission of a quarantine officer”.

11 After subsection 29(1)

Insert:

Exception

(1A) Subsection (1) does not apply if the master leaves the vessel or installation with the written permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

12 Paragraph 29A(4)(a)

Omit “without the permission in writing of a quarantine officer”.

13 Paragraph 29A(4)(b)

Omit “where a permission in writing”, substitute “if a permission mentioned in subsection (4A) has been”.

14 Paragraph 29A(4)(b)

After “installation”, insert “and the permission”.

15 After subsection 29A(4)

Insert:

Exception

(4A) Paragraph (4)(a) does not apply if the removal is made with the written permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the *Criminal Code*).

16 Subsection 30(1)

Omit “shall not (unless authorized by a quarantine officer to do so)”, substitute “must not”.

17 After subsection 30(1)

Insert:

(1A) Subsection (1) does not apply if the person leaves the vessel or quarantine area with the authorisation of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

18 Paragraphs 35A(7)(b), (8)(b), (9)(b) and (10)(b)

Omit “without the permission of a quarantine officer (human quarantine)”.

19 After subsection 35A(10)

Insert:

Exception

(10A) Subsections (7), (8), (9) and (10) do not apply if the person leaves the vessel or installation with the permission of a quarantine officer (human quarantine).

Note: A defendant bears an evidential burden in relation to the matter in subsection (10A) (see subsection 13.3(3) of the *Criminal Code*).

20 Subsection 40(1)

Omit “without the written permission of a quarantine officer”.

21 After subsection 40(1)

Insert:

(1A) Subsection (1) does not apply if the vessel or installation is moved with the written permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

22 Subsection 44(2)

Omit “No person shall knowingly”, substitute “A person must not”.

23 Subsections 44A(2) and (3)

Repeal the subsections, substitute:

(2) A person must not remove from a prescribed vessel any goods on the vessel that are subject to quarantine.

Maximum penalty: Imprisonment for 10 years.

(3) The master of a prescribed vessel must not permit to be removed from the vessel any goods on the vessel that are subject to quarantine.

Maximum penalty: Imprisonment for 10 years.

(3A) Subsections (2) and (3) do not apply if the goods:

- (a) form part of the cargo of the vessel that is to be landed in the country, being Australia, the Cocos Islands or Christmas Island, where the vessel is; or
- (b) are removed with the permission of a quarantine officer or in compliance with this Act or the Regulations.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

24 Subsection 44A(5)

Omit “Except with the permission of a quarantine officer, where”, substitute “If”.

25 At the end of section 44A

Add:

- (6) Subsection (5) does not apply if the person lands the goods at a place with the permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

26 Section 49

Repeal the section, substitute:

49 Unlawful damage by officers

- (1) An officer must not do an act that results in the destruction of, or damage to, any goods under his or her charge in the performance of quarantine.

Maximum penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the officer is permitted by this Act or any other law to do the act in respect of the goods.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

27 Subsections 72(3) and (4)

Omit “shall, unless prevented by illness or some other cause,”, substitute “must”.

28 After subsection 72(4)

Insert:

- (4A) Subsections (3) and (4) do not apply if the person is prevented from attending by illness or some other cause.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the *Criminal Code*).

29 Subsection 74(2)

Repeal the subsection, substitute:

- (2) An unauthorised person must not engage in conduct that results in the interference with, removal or defacement of, any notice affixed under this section.

Maximum penalty: 50 penalty units.

30 Subsection 75A(6)

Repeal the subsection, substitute:

- (6) A person (other than an approved person or a person assisting an approved person under subsection (5)) who moves a vessel from the place at which it is detained under subsection (4) is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (6A) Subsection (6) does not apply if the person moves the vessel with the written permission of an approved person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6A) (see subsection 13.3(3) of the *Criminal Code*).

31 Section 78B

Repeal the section, substitute:

78B Mooring of insanitary vessels

- (1) If, in the opinion of a quarantine officer, a vessel in a port is in an insanitary condition favourable to the spread of communicable disease, the officer may, instead of exercising his or her powers under subsection 78A(2) or 78AA(1), direct the master of the

vessel to moor the vessel at a place in the port specified by the officer.

- (2) If a direction is given under subsection (1), the master of the vessel:
- (a) must cause the vessel to be taken to, and moored at, the place in the port specified by the officer; and
 - (b) if the vessel is moored in compliance with paragraph (a), must not move the vessel, or allow the vessel to be moved, from that place.

Maximum penalty: Imprisonment for 2 years.

- (3) Paragraph (2)(a) does not apply if the vessel immediately leaves the port.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Paragraph (2)(b) does not apply if the master moves the vessel:
- (a) with the intention of taking the vessel out of the port; or
 - (b) by reason of stress of weather or for other reasonable cause; or
 - (c) with the permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

32 Paragraph 78C(2)(b)

Omit “, without the permission of a quarantine officer”.

33 After subsection 78C(2)

Insert:

- (2A) Subsection (2) does not apply if the person does the things mentioned in paragraph (2)(b) with the permission of a quarantine officer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

Schedule 5—Contingent amendments relating to Christmas Island

Note: If item 1 of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003* commences before the commencement of item 1 of Schedule 4 to this Act, this Schedule does not come into operation. See subsection 2(3).

Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 2003

1 Items 62, 63 and 67 of Schedule 1

Repeal the items.

2 Item 71 of Schedule 1 (heading)

Omit “20B(2), (3)”, substitute “20B(3)”.

3 Item 99 of Schedule 1 (heading)

Omit “Subsections 44A(2), (3) and (4)”, substitute “Subsection 44A(4)”.

Quarantine Act 1908

4 Subsection 20(1)

Repeal the subsection, substitute:

- (1) The master of an overseas vessel arriving in Australia or the Cocos Islands is guilty of an offence if the master permits the vessel to enter a place in Australia or the Cocos Islands other than a port declared to be a first port of entry or a first Cocos Islands port of entry, as the case may be.

Maximum penalty: Imprisonment for 5 years.

- (1A) Subsection (1) does not apply if the entry is made with the permission of the Minister given under section 20AA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

5 Section 20A

Repeal the section, substitute:

20A Overseas aircraft to land only at landing places unless permission given

- (1) The commander of an overseas aircraft is guilty of an offence if the commander permits the aircraft to land in Australia or the Cocos Islands at a place other than a landing place.

Maximum penalty: Imprisonment for 5 years.

Note: The commander is not guilty of an offence if the landing is due to sudden or extraordinary emergency (see section 10.3 of the *Criminal Code*).

- (2) Subsection (1) does not apply if the landing is made with the permission of the Minister given under section 20AA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

6 Subsection 20B(2)

Repeal the subsection, substitute:

Offence by commander of aircraft

- (2) The commander of any aircraft entering Australia or the Cocos Islands is guilty of an offence if the commander permits the aircraft to enter from or through a place declared under subsection (1) to be a place in relation to which this section applies in respect of Australia or the Cocos Islands, as the case may be.

Maximum penalty: Imprisonment for 10 years.

Offence by operator of aircraft

- (2A) The operator of any aircraft entering Australia or the Cocos Islands is guilty of an offence if the operator permits the aircraft to enter from or through a place declared under subsection (1) to be a place in relation to which this section applies in respect of Australia or the Cocos Islands, as the case may be.

Maximum penalty: Imprisonment for 10 years.

7 Subsections 44A(2) and (3)

Repeal the subsections, substitute:

- (2) A person must not remove from a prescribed vessel any goods on the vessel that are subject to quarantine.

Maximum penalty: Imprisonment for 10 years.

- (3) The master of a prescribed vessel must not permit to be removed from the vessel any goods on the vessel that are subject to quarantine.

Maximum penalty: Imprisonment for 10 years.

- (3A) Subsections (2) and (3) do not apply if the goods:

- (a) form part of the cargo of the vessel that is to be landed in the country, being Australia or the Cocos Islands, where the vessel is; or
- (b) are removed with the permission of a quarantine officer or in compliance with this Act or the regulations.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

Schedule 6—Dairy Industry Legislation Amendment Act 2002

1 Item 4 of Schedule 1 (heading)

Omit “**subclause 119(2B) of Schedule 1**”, substitute “**subsection 119(2B)**”.

*[Minister’s second reading speech made in—
House of Representatives on 12 December 2002
Senate on 3 March 2003]*

(257/02)
