



Agriculture, Fisheries and Forestry Legislation Amendment (Export Control and Quarantine) Act 2006

No. 94, 2006

**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 ComLaw (<http://www.comlaw.gov.au/>)

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No. 94, 2006

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

[Assented to 5 September 2006]

The Parliament of Australia enacts:

1 Short title

*This Act may be cited as the Agriculture, Fisheries and Forestry
Legislation Amendment (Export Control and Quarantine) Act
2006.*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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.	5 September 2006
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	3 October 2006
3. Schedule 2	The day after this Act receives the Royal Assent.	6 September 2006

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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Export Control Act 1982

1 Section 3

Insert:

fish means aquatic vertebrates and aquatic invertebrates but excludes mammals and birds.

2 Section 3 (paragraph (b) of the definition of *premises*)

After “or not”, insert “and whether on land, or in or on water, or not”.

3 Section 3 (after paragraph (a) of the definition of *preparation*)

Insert:

(aa) the capturing or taking of fish (whether from the wild or from stocks maintained using aquaculture) that are prescribed goods or from which prescribed goods are obtained;

4 Section 3

Insert:

registered establishment means an establishment that is registered under the regulations.

Note: As the term *establishment* includes premises, what is registered under the regulations may be premises.

5 Section 3 (definition of *registered premises*)

Repeal the definition.

6 After section 8

Insert:

8A Preparation of prescribed goods for export—offence

Export to any place

(1) A person commits an offence if:

- (a) the person, either alone or in conjunction with another person, is the occupier of an establishment; and
- (b) goods are prepared at the establishment; and
- (c) the goods are prescribed goods; and
- (d) the goods are exported after preparation (with or without further preparation); and
- (e) regulations made for the purposes of subsection 7(1) prohibit the export of the goods unless specified conditions or restrictions are complied with; and
- (f) one of those conditions or restrictions applies in relation to the occupier, the establishment or the preparation of the goods at the establishment; and
- (g) the condition or restriction is not complied with.

Penalty: Imprisonment for 5 years.

Export to a particular place

- (2) A person commits an offence if:
- (a) the person, either alone or in conjunction with another person, is the occupier of an establishment; and
 - (b) goods are prepared at the establishment; and
 - (c) the goods are prescribed goods; and
 - (d) the goods are exported to a particular place after preparation (with or without further preparation); and
 - (e) regulations made for the purposes of subsection 7(1) prohibit the export of the goods to that place unless specified conditions or restrictions are complied with; and
 - (f) one of those conditions or restrictions applies in relation to the occupier, the establishment or the preparation of the goods at the establishment; and
 - (g) the condition or restriction is not complied with.

Penalty: Imprisonment for 5 years.

Note: See section 9.4 of the *Criminal Code* in relation to paragraphs (1)(c), (e) and (f) and (2)(c), (e) and (f).

- (3) In this section:

occupier means:

- (a) in relation to a registered establishment—an individual, corporation or other legal entity (or any combination of these) in whose name the registered establishment is registered; and
- (b) in relation to an unregistered establishment—the individual, corporation or other legal entity (or any combination of these) who:
 - (i) is the operator of a business preparing prescribed goods at the establishment; or
 - (ii) if that person cannot be ascertained—is the person in charge of the operations for the preparation of prescribed goods at the establishment.

8B Preparation of prescribed goods for export—strict liability offence

Export to any place

- (1) A person commits an offence if:
 - (a) the person, either alone or in conjunction with another person, is the occupier of an establishment; and
 - (b) goods are prepared at the establishment; and
 - (c) the goods are prescribed goods; and
 - (d) the goods are exported after preparation (with or without further preparation); and
 - (e) regulations made for the purposes of subsection 7(1) prohibit the export of the goods unless specified conditions or restrictions are complied with; and
 - (f) one of those conditions or restrictions applies in relation to the occupier, the establishment or the preparation of the goods at the establishment; and
 - (g) the condition or restriction is not complied with.

Penalty: 60 penalty units.

Export to a particular place

- (2) A person commits an offence if:
 - (a) the person, either alone or in conjunction with another person, is the occupier of an establishment; and
 - (b) goods are prepared at the establishment; and

- (c) the goods are prescribed goods; and
- (d) the goods are exported to a particular place after preparation (with or without further preparation); and
- (e) regulations made for the purposes of subsection 7(1) prohibit the export of the goods to that place unless specified conditions or restrictions are complied with; and
- (f) one of those conditions or restrictions applies in relation to the occupier, the establishment or the preparation of the goods at the establishment; and
- (g) the condition or restriction is not complied with.

Penalty: 60 penalty units.

Note: See section 9.4 of the *Criminal Code* in relation to paragraphs (1)(c), (e) and (f) and (2)(c), (e) and (f).

(3) Strict liability applies:

- (a) in paragraphs (1)(a) and 2(a) to the physical element of the circumstance that the person, either alone or in conjunction with another person, is the occupier of an establishment; and
- (b) in paragraphs (1)(b) and 2(b) to the physical element of the conduct of preparing prescribed goods at the establishment; and
- (c) in paragraphs (1)(g) and (2)(g) to the physical element of the circumstance that the condition or restriction is not complied with.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) In this section:

occupier means:

- (a) in relation to a registered establishment—an individual, corporation or other legal entity (or any combination of these) in whose name the registered establishment is registered; and
- (b) in relation to an unregistered establishment—the individual, corporation or other legal entity (or any combination of these) who:
 - (i) is the operator of a business preparing prescribed goods at the establishment; or

- (ii) if that person cannot be ascertained—is the person in charge of the operations for the preparation of prescribed goods at the establishment.

7 Subparagraph 10A(1)(a)(i)

Repeal the subparagraph, substitute:

- (i) any premises that form part of a registered establishment; or

Note: The heading to section 10A is altered by omitting “**registered premises**” and substituting “**premises that form part of a registered establishment**”.

8 Paragraph 10D(2)(a)

Repeal the paragraph, substitute:

- (a) the premises form part of a registered establishment; or

Note: The heading to section 10D is altered by omitting “**Registered premises**” and substituting “**Premises that form part of a registered establishment**”.

9 Division 6 of Part III (heading)

Repeal the heading, substitute:

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

10 Subsection 11P(1)

Omit “registered premises”, substitute “premises that form part of a registered establishment”.

11 Subsection 24(1)

Repeal the subsection, substitute:

- (1) A person must not supply goods or services to an authorized officer if:
 - (a) the person, either alone or in conjunction with another person, is the occupier of a registered establishment; or
 - (b) the person is an employee or agent of such a person.

Penalty: Imprisonment for 12 months.

12 Subsection 24(1A)

Repeal the subsection, substitute:

(1A) An authorized officer must not receive goods or services supplied to him or her by:

- (a) a person who, either alone or in conjunction with another person, is the occupier of a registered establishment; or
- (b) an employee or agent of such a person.

Penalty: Imprisonment for 12 months.

13 Subsection 24(3)

Insert:

occupier, in relation to a registered establishment, means the individual, corporation or other legal entity (or any combination of these) in whose name the registered establishment is registered.

14 Subsection 24(3) (definition of *registered establishment*)

Repeal the definition.

15 Subsection 24(3) (definition of *registered owner*)

Repeal the definition.

16 Paragraph 25(2)(a)

Omit “premises”, substitute “an establishment”.

17 After paragraph 25(2)(d)

Insert:

- (daaa) the imposition of fees in connection with the performance of a service under this Act by the Secretary or a delegate of the Secretary, and the remission of fees so imposed;

18 At the end of section 25

Add:

- (9) A fee imposed under regulations or an order must not be such as to amount to taxation.

Schedule 2—Amendment of the Quarantine Act 1908

1 After section 86E

Insert:

86EA Commonwealth etc. not liable to pay fees

- (1) The Commonwealth is not liable to pay quarantine fees that are payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay quarantine fees.
- (2) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.
- (4) Directions under subsection (2) are not legislative instruments.
- (5) In this section:

Commonwealth includes:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); and
- (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);

that cannot be made liable to taxation by a Commonwealth law.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

quarantine fees means the fees specified in determinations made under subsection 86E(1B).

2 Application

Schedule 2 Amendment of the Quarantine Act 1908

The amendment made by item 1 of this Schedule applies to quarantine fees that are incurred on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 15 June 2006
Senate on 14 August 2006]*

(80/06)
