



Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007

No. 156, 2007

An Act to amend the *Australian Postal Corporation Act 1989*, 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. 156, 2007

An Act to amend the *Australian Postal Corporation Act 1989*, and for related purposes

[Assented to 24 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007*.

*Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act
2007 No. 156, 2007 1*

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.	24 September 2007
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	24 March 2008
3. Schedule 2	The day on which this Act receives the Royal Assent.	24 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments commencing on Proclamation

Australian Postal Corporation Act 1989

1 Section 90E

Insert:

business day means a day that is not a Saturday, Sunday or a public holiday in the place concerned.

2 Section 90E

Insert:

compliance agency means any of the following:

- (a) the Australian Customs Service;
- (b) the Australian Quarantine and Inspection Service;
- (c) an entity for which a quarantine inspection officer of a prescribed State/Territory exercises quarantine powers or performs quarantine functions;
- (d) a consumer protection agency;
- (e) another prescribed agency.

3 Section 90E

Insert:

consumer protection agency means any of the following:

- (a) the ACCC;
- (b) the Australian Securities and Investments Commission;
- (c) the Office of Fair Trading of New South Wales;
- (d) the Office of Fair Trading and Business Affairs of Victoria;
- (e) the Department of Fair Trading of Queensland;
- (f) the Department of Consumer and Employment Protection of Western Australia;
- (g) the Office of Consumer and Business Affairs of South Australia;

- (h) the Office of Consumer Affairs and Fair Trading of Tasmania;
- (i) the Office of Fair Trading of the Australian Capital Territory;
- (j) the Office of Consumer and Business Affairs of the Northern Territory;
- (k) another prescribed agency.

4 Section 90E

Insert:

consumer protection law means:

- (a) the *Trade Practices Act 1974*; or
- (b) the *Australian Securities and Investments Commission Act 2001*; or
- (c) the *Corporations Act 2001*; or
- (d) a State Fair Trading Act; or
- (e) a State Sale of Goods Act; or
- (f) another prescribed Act.

5 Section 90E

Insert:

prescribed State/Territory means any of the following that is prescribed by regulations:

- (a) a State;
- (b) the Australian Capital Territory;
- (c) the Northern Territory.

6 Section 90E

Insert:

quarantine inspection officer of a prescribed State/Territory means a person who exercises quarantine powers or performs quarantine functions under a law of the prescribed State/Territory.

7 Section 90E

Insert:

quarantine material means anything in relation to which a quarantine inspection officer of a prescribed State/Territory may

exercise quarantine powers or perform quarantine functions under a law of the prescribed State/Territory.

8 Section 90E

Insert:

scam mail means an article that it is reasonable to suspect is one of a batch sent in breach of a consumer protection law.

9 Section 90E

Insert:

State Fair Trading Act means the following Acts for each State and Territory or another prescribed Act:

Item	State or Territory	Act
1	New South Wales	<i>Fair Trading Act 1987</i>
2	Victoria	<i>Fair Trading Act 1999</i>
3	Queensland	<i>Fair Trading Act 1989</i>
4	South Australia	<i>Fair Trading Act 1987</i>
5	Western Australia	<i>Fair Trading Act 1987</i>
6	Tasmania	<i>Fair Trading Act 1990</i>
7	Northern Territory	<i>Consumer Affairs and Fair Trading Act 1990</i>
8	Australian Capital Territory	<i>Fair Trading Act 1992</i>

10 Section 90E

Insert:

State Sale of Goods Act means the following Acts for each State and Territory or another prescribed Act:

Item	State or Territory	Act
1	New South Wales	<i>Sale of Goods Act 1923</i>
2	Victoria	<i>Goods Act 1958</i>
3	Queensland	<i>Sale of Goods Act 1896</i>
4	South Australia	<i>Sale of Goods Act 1895</i>
5	Western Australia	<i>Sale of Goods Act 1895</i>

Schedule 1 Amendments commencing on Proclamation

Item	State or Territory	Act
6	Tasmania	<i>Sale of Goods Act 1896</i>
7	Northern Territory	<i>Sale of Goods Act 1972</i>
8	Australian Capital Territory	<i>Sale of Goods Act 1954</i>

11 Section 90E

Insert:

Universal Postal Union means the specialised agency of the United Nations established in accordance with Articles 57 and 63 of the United Nations Charter.

12 Section 90E

Insert:

UPU instrument means any Act, Additional Protocol, regulation, agreement, resolution, decision, recommendation, formal opinion or other instrument made under the authority of the Congress of the Universal Postal Union.

13 At the end of section 90J

Add:

Disclosure of suspicions to consumer protection agencies

- (10) The person may disclose the information to one or more consumer protection agencies if:
- (a) the person is an authorised discloser; and
 - (b) the information is either:
 - (i) a reasonable suspicion that an article in the course of post consists of, or contains, scam mail; or
 - (ii) any information or document on the basis of which the person forms a reasonable suspicion that an article in the course of post consists of, or contains, scam mail.

Disclosure in circumstances permitted by UPU instrument

- (11) The person may disclose the information if the disclosure is:
- (a) to a postal administration of a foreign country; and

- (b) in circumstances permitted under a UPU instrument and in accordance with that instrument.

14 Paragraph 90N(1)(a)

Omit “90T”, substitute “90U or section 90UB”.

15 After section 90T

Insert:

90U Articles consisting of, or containing, quarantine material

- (1) This section applies if:
 - (a) the article is in the course of post to a prescribed State/Territory from a place within Australia but outside the prescribed State/Territory; and
 - (b) a quarantine inspection officer of the prescribed State/Territory has reasonable grounds for believing that the article consists of, or contains, quarantine material in relation to the prescribed State/Territory.
- (2) However, this section does not apply if the carriage of the article mentioned in paragraph (1)(a) is undertaken by Australia Post engaging in the reserved services.
- (3) The quarantine inspection officer may request an authorised examiner to open the article.
- (4) If such a request is made, the authorised examiner may remove the article from the normal course of carriage and open the article in the presence of the quarantine inspection officer, following the procedures (if any) that are prescribed for the purposes of this section.
- (5) The quarantine inspection officer may then examine the article to check whether it consists of, or contains, quarantine material.
- (6) Subject to section 90X, if the article is found not to consist of, or contain, quarantine material, the authorised examiner must close up the article and return it to the normal course of carriage, following the procedures (if any) that are prescribed for the purposes of this section.

- (7) Subject to section 90X, if the article is found to consist of, or contain, quarantine material:
- (a) the article and its contents must be dealt with in accordance with the relevant law of the prescribed State/Territory or the Commonwealth, as the case requires; and
 - (b) the quarantine inspection officer must, as soon as is practicable after examination of the article, cause written notice to be given to the intended recipient and the sender (if the sender's name and address is ascertainable):
 - (i) advising that the article has been removed from the normal course of carriage; and
 - (ii) advising that the article will be dealt with in accordance with the relevant law of the prescribed State/Territory or the Commonwealth, as the case requires; and
 - (iii) stating what the article contained.
- (8) Regulations may be made for the purposes of this subsection that determine the procedure:
- (a) for removing an article from the normal course of carriage for the purpose of its examination by a quarantine inspection officer; and
 - (b) for the return of an article to the normal course of carriage.
- (9) A prescribed person or body must establish and maintain, in accordance with regulations made for the purposes of this subsection, a record setting out, in respect of each article that has been found to consist of, or contain, quarantine material:
- (a) particulars of the article; and
 - (b) particulars of the nature of the examination of the article and its contents; and
 - (c) whether the article and its contents were, following the examination, dealt with according to the relevant law of the prescribed State/Territory or the Commonwealth, or returned to the normal course of carriage.
- (10) Regulations made for the purposes of subsection (9) must specify:
- (a) the place or places at which the record referred to in that subsection is required to be established and maintained; and
 - (b) the manner in which the record is to be kept; and
 - (c) the uses that can be made of information contained in the record.
-

90UA Removing scam mail from the normal course of carriage

Removing scam mail on Australia Post's initiative

- (1) Australia Post may remove a batch of articles from the normal course of carriage if it is reasonable to suspect that the batch consists of, or contains, scam mail.
- (2) If a batch of articles is removed from the normal course of carriage under subsection (1), Australia Post must notify one or more of the following agencies of its removal, as soon as is practicable after its removal:
 - (a) the ACCC;
 - (b) the Australian Securities and Investments Commission;
 - (c) the consumer protection agency for the State or Territory in which the batch of articles has been removed from the normal course of carriage;
 - (d) another agency that is prescribed by regulations made for the purposes of the definition of *consumer protection agency* in section 90E.

Removing scam mail on request of consumer protection agencies

- (3) Australia Post may remove batches of articles of a particular kind from the normal course of carriage if:
 - (a) a consumer protection agency gives written notice to Australia Post that:
 - (i) articles of that kind may be in the course of post; and
 - (ii) the articles may consist of, or contain, scam mail; and
 - (b) the consumer protection agency provides Australia Post with a means of identifying the articles.
- (4) If a batch of articles is removed from the normal course of carriage on the request of a consumer protection agency under subsection (3), Australia Post must notify the consumer protection agency of its removal as soon as is practicable after its removal.

90UB Opening and examining scam mail

- (1) This section applies if:
 - (a) a batch of articles has been removed from the normal course of carriage under section 90UA; and
-

- (b) a consumer protection agency has been notified of the removal.
- (2) The consumer protection agency may:
 - (a) make arrangements with Australia Post for access to the batch of articles; and
 - (b) open and examine one or more articles within the batch.
- (3) If no consumer protection agency opens and examines an article within a batch of articles within the decision period, Australia Post must return the batch to the normal course of carriage, following the procedures (if any) that are prescribed for the purposes of this section.
- (4) Subsection (3) has effect subject to section 90X.
- (5) In opening and examining articles under subsection (2), a consumer protection agency must comply with any law of the Commonwealth or of the State or Territory that applies to the consumer protection agency and that relates to the performance of functions or the exercise of powers by the consumer protection agency when dealing with the articles.
- (6) In this section:

decision period means the period of 10 business days, or such longer period as is prescribed, starting on the last day on which a consumer protection agency is notified under section 90UA of the removal of the batch of articles from the normal course of carriage.

90UC Dealing with or returning scam mail

- (1) If, after opening and examining one or more articles within a batch of articles under section 90UB, a consumer protection agency believes on reasonable grounds that the batch consists of, or contains, scam mail, the agency must deal with the articles within the batch in accordance with the laws of the Commonwealth or of the State or Territory applicable to the articles.
- (2) If the consumer protection agency believes on reasonable grounds that the article or articles that have been opened by the consumer protection agency do not consist of, or contain, scam mail, the consumer protection agency must:

- (a) close up any article within the batch that has been opened by the consumer protection agency; and
 - (b) return the batch, as soon as is practicable, to Australia Post.
- (3) If the batch is returned to Australia Post, Australia Post must return the batch to the normal course of carriage, following the procedures (if any) that are prescribed for the purposes of this section.
- (4) Subsections (1) and (3) have effect subject to section 90X.

16 Subsection 90V(2)

After “Customs officer”, insert “or a quarantine inspection officer”.

17 After subsection 90V(2A)

Insert:

- (2B) If the article is opened and examined by a consumer protection agency under section 90UB, but not dealt with under subsection 90UC(1), then, before the article is returned to Australia Post, the consumer protection agency must cause to be endorsed on the cover of the article, or on a label affixed to its cover, a notification that the article has been opened and examined by the consumer protection agency and that explains briefly (by reference to section 90UB or otherwise) the purposes for which the article was opened and examined.

18 Subsection 90V(3)

Omit “or (2A)”, substitute “, (2A) or (2B)”.

19 Subsection 90ZC(1)

After “omitted”, insert “to be done”.

20 Subsection 90ZC(2)

Omit all the words after “in good faith” (second occurring), substitute:

by:

- (a) a Customs officer in the exercise or performance, or the purported exercise or performance, of a power or duty under section 90T or of a duty under subsection 90V(2A); or

- (b) a quarantine inspection officer in the exercise or performance, or the purported exercise or performance, of a power or duty under section 90U; or
- (c) a person acting on behalf of a consumer protection agency in the exercise or performance, or purported exercise or performance, of a power or duty under section 90UB or section 90UC or of a duty under subsection 90V(2B).

21 At the end of Division 5 of Part 7B

Add:

91 Giving Australia Post information about articles removed from the normal course of carriage

- (1) Australia Post may request a compliance agency to give Australia Post some or all of the following information, in relation to an article:
 - (a) the name and address of the sender of the article;
 - (b) the name and address of the intended recipient of the article;
 - (c) a description of the contents of the article;
 - (d) whether the article was dealt with by the compliance agency and, if so, the reason for dealing with it;
 - (e) any unique identifier on the article;
 - (f) any other information in relation to the article that is prescribed in regulations made for the purposes of this paragraph.
- (2) The compliance agency may:
 - (a) if the compliance agency has examined the article—comply with the request in full or in part despite any other law; or
 - (b) refuse the request (whether or not the compliance agency has examined the article).

22 At the end of paragraphs 102(c) and (d)

Add “and”.

23 After paragraph 102(d)

Insert:

- (da) prescribing Acts for the purposes of the following definitions in section 90E:
-

- (i) *consumer protection law*;
- (ii) *State Fair Trading Act*;
- (iii) *State Sale of Goods Act*; and
- (db) prescribing agencies for the purposes of the following definitions in section 90E:
 - (i) *compliance agency*;
 - (ii) *consumer protection agency*; and
- (dc) prescribing States and Territories for the purposes of the definition of *prescribed State/Territory* in section 90E; and
- (dd) prescribing a period for the purposes of the definition of *decision period* in subsection 90UB(6); and

24 At the end of paragraph 102(e)

Add “and”.

25 Application

The amendments made by this Schedule apply to articles in the course of post on the date of commencement of this Schedule, regardless of when the articles commenced being in the course of post.

Schedule 2—Amendments commencing on Royal Assent

Australian Postal Corporation Act 1989

1 At the end of section 28C

Add:

- (3) Without limiting subsection (1), the prescribed performance standards may relate to methods of determining the level of mail delivery service for a particular area.

2 Subsection 28E(1)

After “Australia Post must”, insert “, unless the Minister determines, by legislative instrument, that it is unnecessary in the circumstances,”.

3 Section 90E

Insert:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

4 Section 90E

Insert:

taxable importation has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

5 Section 90E

Insert:

wine tax has the same meaning as in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

6 After subparagraph 90K(3)(b)(i)

Insert:

- (ii) the importation of which into Australia is a taxable importation on which GST is payable; or
 - (iia) on which wine tax is payable; or
-

7 After sub-subparagraph 90S(1)(b)(ii)(A)

Insert:

- (B) the importation of which into Australia is a taxable importation on which GST is payable; or
- or
- (BA) on which wine tax is payable; or

8 Subsection 90S(3)

After “(B)”, insert “, (BA)”.

9 Subsection 90S(4)

After “(B)”, insert “, (BA)”.

10 Subsection 90S(5)

After “(1)(b)(ii)(A)”, insert “, (B), (BA)”.

11 Subsection 90S(5)

After “customs duty”, insert “, GST, wine tax”.

12 After subparagraph 90T(5)(b)(i)

Insert:

- (ii) the importation of which into Australia is a taxable importation on which GST is payable; or
- (iia) on which wine tax is payable; or

13 Subsection 90T(6)

After “customs duty”, insert “, GST, wine tax”.

*[Minister's second reading speech made in—
Senate on 20 June 2007
House of Representatives on 13 September 2007]*

(126/07)

*16 Australian Postal Corporation Amendment (Quarantine Inspection and Other
Measures) Act 2007 No. 156, 2007*