



Quarantine Charges (Collection) Act 2014

No. 15, 2014

**An Act to provide for the collection of quarantine
charges, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Quarantine Charges (Collection) Act 2014

No. 15, 2014

**An Act to provide for the collection of quarantine
charges, and for related purposes**

[Assented to 31 March 2014]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Quarantine Charges (Collection) Act 2014*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Simplified outline of this Act

This Act is about collecting quarantine charges.

Regulations deal with when quarantine charges are due and payable, and the liability of agents.

The Finance Minister may provide for the Commonwealth (or parts of the Commonwealth) to pay quarantine charges and late payment fees.

If quarantine charges are unpaid, late payment fees can be applied, permits etc. under the *Quarantine Act 1908* can be suspended or revoked, other activities under that Act can be refused, and the charges and any late payment fees can be recovered as debts due to the Commonwealth.

In addition, statutory charges can be created over goods or vessels subject to quarantine. These goods and vessels can be withheld by quarantine officers and sold, with the proceeds applied against any quarantine charges, late payment fees, or other fees under the *Quarantine Act 1908*, that are due and payable by the owner.

Goods and vessels that are abandoned or otherwise not collected, in circumstances where a person has become liable to pay a

quarantine charge or late payment fee, can be sold, destroyed or otherwise disposed of.

Provision is also made for miscellaneous matters, including remitting or refunding quarantine charges and late payment fees, and the application of certain provisions of the *Quarantine Act 1908*.

4 Act binds the Crown

This Act binds the Crown in each of its capacities.

5 Extension to external Territories

- (1) This Act extends to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.
- (2) A regulation may extend this Act or any provisions of this Act to any other external Territory that is prescribed by regulation.

6 Extraterritorial application

This Act extends to acts, omissions, matters and things outside the Australian territory.

7 Definitions

- (1) In this Act:

Australian territory: see section 8.

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

late payment fee: see subsection 13(1).

quarantine charge means a charge imposed under:

- (a) section 7 of the *Quarantine Charges (Imposition—Customs) Act 2014*; or
- (b) section 6 of the *Quarantine Charges (Imposition—Excise) Act 2014*; or

Section 8

(c) section 7 of the *Quarantine Charges (Imposition—General) Act 2014*.

vessel includes an installation, and **operator** of a vessel has a corresponding meaning.

(2) Other expressions used in this Act that are defined in the *Quarantine Act 1908* have the same meanings as they have in that Act.

8 Meaning of *Australian territory*

A reference in a provision of this Act to ***Australian territory*** is a reference to:

- (a) Australia, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and any external Territory to which that provision extends; and
- (b) the airspace over an area covered by paragraph (a); and
- (c) the coastal sea of Australia, of the Territory of Christmas Island, of the Territory of Cocos (Keeling) Islands and of any other external Territory to which that provision extends.

Note 1: Under subsection 5(2), a regulation may extend this Act, or any provisions of this Act, to external Territories.

Note 2: The definition of ***coastal sea*** of Australia or an external Territory in subsection 15B(4) of the *Acts Interpretation Act 1901* includes the airspace over Australia or the external Territory.

Part 2—Paying quarantine charges

9 Simplified outline of this Part

Regulations deal with when quarantine charges are due and payable, and the liability of agents.

The Finance Minister may provide for the Commonwealth (or parts of the Commonwealth) to pay quarantine charges and late payment fees.

10 Paying quarantine charges

A regulation may do either or both of the following:

- (a) prescribe the time when a specified quarantine charge is due and payable;
- (b) prescribe rules relating to:
 - (i) the liability of a person's agent to pay quarantine charges on behalf of the person; and
 - (ii) the recovery of such charges from the person by the agent.

11 Notional payments by the Commonwealth

- (1) The Finance Minister may give written directions for the purpose of ensuring that quarantine charges and late payment fees are notionally payable by the Commonwealth (or parts of the Commonwealth).

Note: For notional payments and receipts, see section 6 of the *Financial Management and Accountability Act 1997*.

- (2) A direction given under subsection (1) is not a legislative instrument.

Part 3—Unpaid quarantine charges

Division 1—General

12 Simplified outline of this Part

If quarantine charges are unpaid, late payment fees can be applied, permits etc. under the *Quarantine Act 1908* can be suspended or revoked, other activities under that Act can be refused, and the charges and any late payment fees can be recovered as debts due to the Commonwealth.

In addition, statutory charges can be created over goods or vessels subject to quarantine. These goods and vessels can be withheld by quarantine officers and sold, with the proceeds applied against any quarantine charges, late payment fees, or other fees under the *Quarantine Act 1908*, that are due and payable by the owner.

13 Late payment fee

- (1) If a regulation prescribes the time when a quarantine charge is due and payable, a regulation may also prescribe a fee (a *late payment fee*) that is due and payable if the quarantine charge is not paid at or before that time.
- (2) Without limiting subsection (1), a late payment fee may relate to each day or part of a day that the quarantine charge remains unpaid after becoming due and payable.
- (3) A regulation may prescribe one or more persons who are liable to pay a late payment fee in relation to a specified quarantine charge.

14 Suspending or revoking permits etc. because of unpaid quarantine charges or late payment fees

- (1) This section applies in relation to a person who is liable to pay a quarantine charge or late payment fee that is due and payable.

Permit etc. may be suspended or revoked

- (2) A Director of Quarantine may, by written notice to the person, suspend any of the following until the charge or fee has been paid:
- (a) a permit granted under subsection 13(2AA) of the *Quarantine Act 1908* (permit to introduce, import, bring or remove a thing) and held by the person;
 - (b) an approval given under section 46A of that Act (approval for the purpose of goods subject to quarantine) and held by the person;
 - (c) a compliance agreement to which the person is a party;
 - (d) any other permit, authorisation or other permission, held by the person under that Act, that is prescribed by regulation.

- (3) A Director of Quarantine may, by written notice to the person, revoke a permit, approval, compliance agreement, authorisation or permission referred to in subsection (2).

Note: See also subsection 41(5) in relation to suspensions and revocations under this section.

- (4) Subsections (2) and (3) do not limit any other power under the *Quarantine Act 1908* to suspend or revoke a permit, approval, compliance agreement, authorisation or permission referred to in subsection (2).

Director of Quarantine may direct that activities not be carried out

- (5) A Director of Quarantine may direct quarantine officers not to carry out specified activities or kinds of activities in relation to the person under the *Quarantine Act 1908* until the charge or fee has been paid.

15 Recovery of quarantine charges and late payment fees

A quarantine charge or a late payment fee that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Part 3 Unpaid quarantine charges

Division 2 Dealing with goods to recover unpaid quarantine charges or late payment fees

Section 16

Division 2—Dealing with goods to recover unpaid quarantine charges or late payment fees

16 Creation of charge on goods

- (1) This section applies in relation to goods if:
 - (a) the owner of the goods is liable to pay a quarantine charge or a late payment fee (whether or not the charge or fee relates to the goods); and
 - (b) the charge or fee is due and payable; and
 - (c) the goods are subject to quarantine.
- (2) A charge is created on the goods by force of this section to secure the payment of the quarantine charge or late payment fee.

17 Effect of charge on goods

- (1) A charge created on goods under section 16 has priority over any other interest in the goods (including a security interest within the meaning of the *Personal Property Securities Act 2009*).
- (2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge.

Note: The effect of this subsection is that the priority between the Commonwealth's charge and a security interest in the goods to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

- (3) The charge remains in force until:
 - (a) the quarantine charge or late payment fee referred to in subsection 16(2) is paid; or
 - (b) the goods are sold under section 29.
- (4) To avoid doubt, the charge is not affected:
 - (a) by any change in ownership of the goods; or
 - (b) if the goods are released from quarantine; or

- (c) if any treatment required in relation to the goods is not carried out.

18 Quarantine officer may withhold goods that are subject to charge

- (1) A quarantine officer may withhold goods that are subject to a charge created under section 16 because a quarantine charge or a late payment fee has not been paid.
- (2) The quarantine officer must give a written notice to the owner of the goods stating that:
 - (a) the goods are withheld under this section; and
 - (b) the goods may be sold under section 29 if the charge or fee has not been paid by the end of the day specified in the notice, which must be at least 30 days after the day the notice is given.
- (3) A failure to comply with subsection (2) does not affect the withholding of the goods or the exercise of powers under subsection (4) or (5).

Powers for the purpose of withholding goods

- (4) For the purpose of withholding the goods, a quarantine officer may:
 - (a) refuse to release the goods from quarantine; or
 - (b) take possession of the goods.
- (5) For the purpose of withholding the goods, a quarantine officer may give any of the following directions to a person in charge of the goods:
 - (a) a direction to secure the goods in a manner specified by the quarantine officer;
 - (b) a direction not to move, deal with or interfere with the goods;
 - (c) a direction to move the goods to a place specified by the quarantine officer;
 - (d) any other direction relating to the movement of the goods.

Note: See also section 43 (general provisions relating to directions).

Part 3 Unpaid quarantine charges

Division 2 Dealing with goods to recover unpaid quarantine charges or late payment fees

Section 19

- (6) A person who is given a direction under subsection (5) must comply with the direction.

Offence

- (7) A person commits an offence if:
- (a) the person is given a direction under subsection (5); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

19 Moving or interfering with withheld goods

- (1) A person commits an offence if:
- (a) a direction given in relation to goods under subsection 18(5) is in effect; and
 - (b) the person moves, deals with or interferes with the goods; and
 - (c) neither of the following applies:
 - (i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approval under section 46A of the *Quarantine Act 1908* or a compliance agreement;
 - (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act or the *Quarantine Act 1908* by a quarantine official.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or the *Quarantine Act 1908*, or under another Australian law.

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

20 When goods stop being withheld

- (1) A quarantine officer who is withholding goods under section 18 must stop withholding the goods if the goods cease to be subject to any charge created under section 16.

Note: For when goods cease to be subject to a charge created under section 16, see subsection 17(3).

- (2) A quarantine officer who is withholding goods under section 18 may also stop withholding the goods if he or she thinks it is appropriate to do so.
- (3) If goods that have been withheld under section 18 stop being withheld, any direction given under subsection 18(5) in relation to the goods ceases to have effect.
- (4) This section:
- (a) does not affect any other power that has been or may be exercised in relation to goods under a provision of this Act (other than this Division) or the *Quarantine Act 1908*; and
 - (b) does not require goods to be released from quarantine; and
 - (c) does not prevent goods being withheld again under section 18.

Note: Goods that stop being withheld under section 18 may be dealt with under other provisions of this Act or the *Quarantine Act 1908*.

21 Sale of withheld goods

- (1) This section applies in relation to goods that:
- (a) are subject to a charge created under section 16 because a quarantine charge or a late payment fee has not been paid; and
 - (b) are withheld under section 18.

Notice to owner

- (2) The goods may be sold under section 29 if:
- (a) a quarantine officer has given a notice to the owner of the goods under subsection 18(2); and

Part 3 Unpaid quarantine charges

Division 2 Dealing with goods to recover unpaid quarantine charges or late payment fees

Section 21

- (b) at the end of the day specified in the notice under paragraph 18(2)(b), the quarantine charge or late payment fee has not been paid.

Notice cannot be given

- (3) The goods may be sold under section 29 without giving a notice to the owner of the goods under subsection 18(2) if:
 - (a) a quarantine officer:
 - (i) has not been able to give the notice to the owner of the goods, despite making reasonable efforts; and
 - (ii) has certified in writing to that effect; and
 - (b) at the end of 30 days after the quarantine officer first attempted to give the notice, the quarantine charge or late payment fee has not been paid.

Division 3—Dealing with a vessel to recover unpaid quarantine charges or late payment fees

22 Creation of charge on vessel

- (1) This section applies in relation to a vessel if:
 - (a) the owner or operator of the vessel is liable to pay a quarantine charge or a late payment fee (whether or not the charge or fee relates to the vessel); and
 - (b) the charge or fee is due and payable; and
 - (c) the vessel is subject to quarantine.

Note: If the owner or operator of a vessel is liable to pay a quarantine charge or late payment fee, an agent of the owner or operator may also be liable to pay the charge or fee on behalf of the owner or operator (see paragraph 10(b)).

- (2) A charge is created on the vessel by force of this section to secure the payment of the quarantine charge or late payment fee (as the case may be).

23 Effect of charge on vessel

- (1) A charge on a vessel created by section 22 has priority over any other interest in the vessel (including a security interest within the meaning of the *Personal Property Securities Act 2009*).
- (2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge.

Note: The effect of this subsection is that the priority between the Commonwealth's charge and a security interest in the vessel to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

- (3) The charge remains in force until:
 - (a) the quarantine charge or late payment fee referred to in subsection 22(2) is paid; or
 - (b) the vessel is sold under section 29.

Part 3 Unpaid quarantine charges

Division 3 Dealing with a vessel to recover unpaid quarantine charges or late payment fees

Section 24

- (4) To avoid doubt, the charge is not affected by any change in ownership of the vessel.

24 Director of Quarantine may detain vessel that is subject to charge

- (1) A Director of Quarantine may detain a vessel if:
- (a) the vessel is subject to a charge created under section 22 because a quarantine charge or a late payment fee has not been paid by the owner or the operator of the vessel; and
 - (b) the vessel is in the Australian territory.
- (2) The Director of Quarantine must give a written notice to the owner and the operator of the vessel stating:
- (a) that the vessel is detained under this section; and
 - (b) if the owner of the vessel is liable to pay the charge or fee—that the vessel may be sold under section 29 in accordance with section 27 if the charge or fee has not been paid by the end of the day specified in the notice, which must be at least 30 days after the day the notice is given.
- (3) A failure to comply with subsection (2) does not affect the detention of the vessel or the power to give a direction under subsection (4).

Director of Quarantine may give directions

- (4) For the purposes of detaining the vessel, a Director of Quarantine may give the person in charge of the vessel a direction:
- (a) relating to the movement of the vessel (including a direction to cause the vessel to stop); or
 - (b) requiring the vessel to be left at a specified place in a specified manner; or
 - (c) requiring goods on board the vessel to be unloaded at a specified place in a specified manner.

Note: See also section 43 (general provisions relating to directions).

- (5) A person who is given a direction under subsection (4) must comply with the direction.

Offence

- (6) A person commits an offence if:
- (a) the person is given a direction under subsection (4); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

25 Moving or interfering with detained vessel

- (1) A person commits an offence if:
- (a) a direction given in relation to a vessel under subsection 24(4) is in effect; and
 - (b) the person moves, deals with or interferes with the vessel; and
 - (c) neither of the following applies:
 - (i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approval under section 46A of the *Quarantine Act 1908* or a compliance agreement;
 - (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act or the *Quarantine Act 1908* by a quarantine official.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or the *Quarantine Act 1908*, or under another Australian law.

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

26 Release of detained vessel

- (1) A Director of Quarantine must release a vessel from detention under section 24 if the vessel ceases to be subject to any charge created under section 22.

Part 3 Unpaid quarantine charges

Division 3 Dealing with a vessel to recover unpaid quarantine charges or late payment fees

Section 27

Note: For when a vessel ceases to be subject to a charge created under section 22, see subsection 23(3).

- (2) A Director of Quarantine may also release a vessel from detention under section 24 if he or she thinks it appropriate to do so.
- (3) If a vessel is released from detention, any direction given under subsection 24(4) in relation to the vessel ceases to have effect.
- (4) This section:
 - (a) does not affect any power that has been or may be exercised in relation to a vessel under a provision of this Act (other than this Division) or the *Quarantine Act 1908*; and
 - (b) does not require a vessel that is subject to quarantine to be released from quarantine; and
 - (c) does not prevent a vessel being detained again under section 24.

Note: A vessel that is released from detention may be dealt with under other provisions of this Act or the *Quarantine Act 1908*.

27 Sale of detained vessel

- (1) This section applies in relation to a vessel that is detained under section 24 because a quarantine charge or a late payment fee that is due and payable by the owner of the vessel has not been paid.

Note: For owner-operators, see subsection (5).

Notice to owner

- (2) The vessel may be sold under section 29 if:
 - (a) a Director of Quarantine has given a notice to the owner of the vessel under subsection 24(2); and
 - (b) at the end of the day specified in the notice under paragraph 24(2)(b), the quarantine charge or late payment fee has not been paid.

Notice cannot be given

- (3) The vessel may be sold under section 29 without giving a notice to the owner of the vessel under subsection 24(2) if:

- (a) a Director of Quarantine:
 - (i) has not been able to give the notice to the owner of the vessel, despite making reasonable efforts; and
 - (ii) has certified in writing to that effect; and
- (b) at the end of 30 days after the Director of Quarantine first attempted to give the notice, the quarantine charge or late payment fee has not been paid.

Goods on board vessel

- (4) A Director of Quarantine may cause any goods on board the vessel to be unloaded from the vessel before it is sold.

Owner-operators

- (5) To avoid doubt, the reference in subsection (1) to a quarantine charge or a late payment fee that is due and payable by the owner of a vessel includes a reference to a quarantine charge or late payment fee that the owner of a vessel is liable to pay because the owner is also the operator of the vessel.

Part 4—Power to sell goods and vessels

28 Simplified outline of this Part

The Director of Biosecurity may sell goods and vessels that have been withheld under Part 3 or that have been abandoned under Part 5.

The proceeds can be used to pay any quarantine charges, late payment fees, or other fees under the *Quarantine Act 1908*, that are due and payable by the owner.

29 Sale of goods and vessels

- (1) This section applies in relation to a thing that may be sold under any of the following provisions:
 - (a) section 21 (sale of withheld goods);
 - (b) section 27 (sale of detained vessel);
 - (c) subsection 32(3) (abandoned goods);
 - (d) subsection 34(3) (abandoned vessels).
- (2) A Director of Quarantine may:
 - (a) sell the thing; and
 - (b) give full and effective title to the thing free of all other interests, which are extinguished by force of this section at the time title is given.

Note: See section 30 (dealing with the proceeds of sale).

- (3) A Director of Quarantine may make and execute any instruments or documents necessary for the purposes of selling the thing.

30 Dealing with the proceeds of sale

- (1) A Director of Quarantine may apply the proceeds of the sale of a thing under section 29 against:

Section 30

- (a) if the thing was subject to one or more charges under section 16 or 22 because one or more quarantine charges or late payment fees had not been paid—the quarantine charges or fees; and
 - (b) any other quarantine charge or late payment fee, or any other fee under the *Quarantine Act 1908*, that is due and payable to the Commonwealth by the owner of the thing.
- (2) A Director of Quarantine must pay the remainder of the proceeds, if any, to the owner of the thing.
- (3) However, any remainder is forfeited to the Commonwealth at the end of 30 days after the sale if a Director of Quarantine:
- (a) has not been able to locate the owner of the thing, despite making reasonable efforts; and
 - (b) has certified to that effect in writing.
- (4) Nothing in this section affects the right of the Commonwealth to recover quarantine charges or fees by other means.

Part 5—Abandoned and forfeited goods

31 Simplified outline of this Part

Goods and vessels that are abandoned or otherwise not collected, in circumstances where a person has become liable to pay a quarantine charge or late payment fee, can be sold, destroyed or otherwise disposed of.

32 Abandoned goods

- (1) This section applies in relation to goods if:
 - (a) the owner of the goods is liable to pay, or has paid, a quarantine charge or a late payment fee (whether or not the charge or fee relates to the goods); and
 - (b) the goods are, or have been, subject to quarantine; and
 - (c) the goods are in the possession or control of the Commonwealth; and
 - (d) the owner of the goods gives notice (either in writing or orally) to a Director of Quarantine stating that the owner does not wish to take possession of the goods.
- (2) A quarantine officer may, in writing, request the owner of the goods to arrange for the goods to be dealt with, or destroyed, in a manner and within the period specified in the request.
- (3) If:
 - (a) a request is made under subsection (2) in relation to goods; and
 - (b) the goods are not dealt with, or destroyed, in a manner and within the period specified in the request;a Director of Quarantine may, if necessary, take possession of the goods and cause them to be sold under section 29, destroyed or otherwise disposed of.

33 Forfeited goods

- (1) This section applies in relation to goods if:
 - (a) the owner of the goods is liable to pay a quarantine charge or a late payment fee (whether or not the charge or fee relates to the goods); and
 - (b) the charge or fee is due and payable, or has been paid; and
 - (c) the goods are, or have been, subject to quarantine; and
 - (d) the goods are in the possession or control of the Commonwealth.
- (2) The goods are forfeited to the Commonwealth if:
 - (a) both of the following apply:
 - (i) a Director of Quarantine notifies, in writing, the owner of the goods that the goods may be collected;
 - (ii) the goods are not collected within 90 days after the notice is given; or
 - (b) a Director of Quarantine:
 - (i) has not been able, despite making reasonable efforts, to locate the owner of the goods; and
 - (ii) has certified in writing to that effect.
- (3) If goods are forfeited to the Commonwealth under subsection (2), a Director of Quarantine may cause the goods to be sold, destroyed or otherwise disposed of.

34 Abandoned vessels

- (1) This section applies in relation to a vessel if:
 - (a) the owner or operator of the vessel is liable to pay, or has paid, a quarantine charge or a late payment fee (whether or not the charge or fee relates to the vessel); and
 - (b) the vessel is, or has been, subject to quarantine; and
 - (c) the vessel is in the possession or control of the Commonwealth; and
 - (d) either:

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- (i) a Director of Quarantine receives a written notice from the owner of the vessel stating that the owner does not wish to take possession of the vessel; or
 - (ii) a Director of Quarantine has, in writing, requested the owner of the vessel to take possession of the vessel within a specified period and the owner has not taken possession of the vessel within that period.
- (2) A Director of Quarantine may, in writing, request the owner of the vessel to arrange for the vessel to be dealt with, or destroyed, in a manner and within the period specified in the request.
- (3) If:
 - (a) a request is made under subsection (2) in relation to a vessel; and
 - (b) the vessel is not dealt with, or destroyed, in a manner and within the period specified in the request;a Director of Quarantine may, if necessary, take possession of the vessel and cause it to be sold under section 29, destroyed or otherwise disposed of.
- (4) If a vessel is to be destroyed under this section, a Director of Quarantine may cause any goods on board the vessel to be removed from the vessel before it is destroyed.

35 Forfeited vessels

- (1) This section applies in relation to a vessel if:
 - (a) the owner of the vessel is liable to pay a quarantine charge or a late payment fee (whether or not the charge or fee relates to the vessel); and
 - (b) the charge or fee is due and payable, or has been paid; and
 - (c) the vessel is, or has been, subject to quarantine; and
 - (d) the vessel is in the possession or control of the Commonwealth.
- (2) The vessel is forfeited to the Commonwealth if a Director of Quarantine:

- (a) has not been able, despite making reasonable efforts, to locate the owner of the vessel; and
 - (b) has certified in writing to that effect.
- (3) If a vessel is forfeited to the Commonwealth under subsection (2), a Director of Quarantine may cause the vessel to be sold, destroyed or otherwise disposed of.
- (4) If a vessel is to be destroyed under this section, a Director of Quarantine may cause any goods on board the vessel to be removed from the vessel before it is destroyed.

36 This Part does not affect other powers

A provision in this Part does not affect any power that has been or may be exercised in relation to goods or a vessel under a provision of this Act (other than that provision) or the *Quarantine Act 1908*.

Part 6—Miscellaneous

37 Simplified outline of this Part

- This Part deals with miscellaneous matters, including:
- (a) remitting or refunding quarantine charges and late payment fees; and
 - (b) providing sustenance for animals and plants; and
 - (c) hindering compliance with this Act; and
 - (d) the application of certain provisions of the *Quarantine Act 1908* in relation to quarantine charges and certain validated fees under that Act; and
 - (e) general provisions relating to directions; and
 - (f) compensation for acquisition of property; and
 - (g) the power to make regulations.

38 Remitting or refunding quarantine charges and late payment fees

- (1) The Minister may remit or refund the whole or part of a quarantine charge or a late payment fee that is payable or paid to the Commonwealth if the Minister is satisfied that there are exceptional circumstances that justify doing so.
- (2) The Minister may do so on his or her own initiative or on written application by a person.

39 Providing sustenance for animals and plants

- (1) This section provides for the Commonwealth to arrange for or require sustenance to be provided for an animal or plant if:
 - (a) the animal or plant is, or has been, subject to quarantine; and
 - (b) the animal or plant is in the possession or control of the Commonwealth, including because the animal or plant:
 - (i) has been withheld under section 18; or

- (ii) is on board a vessel that has been detained under section 24; and
- (c) the owner of the animal or plant, or the owner or operator of the vessel mentioned in subparagraph (b)(ii), is liable to pay, or has paid, a quarantine charge or late payment fee (whether or not the charge or fee relates to the animal or plant, or the vessel).

Providing sustenance by agreement

- (2) The Commonwealth may enter into an agreement with another person for the person to provide sustenance, on the terms and conditions set out in the agreement, for the animal or plant for all or part of a period during which the animal or plant is in the possession or control of the Commonwealth.
- (3) An agreement may be entered into under subsection (2) in relation to an animal or plant that is to be subject to quarantine before paragraph (1)(a) begins to apply to the animal or plant.

Direction to provide sustenance

- (4) A Director of Quarantine may, by written notice, direct the owner of the animal or plant to provide sustenance for the animal or plant for all or a part of a period during which the animal or plant is in the possession or control of the Commonwealth.

Offence

- (5) A person commits an offence if:
 - (a) the person is given a direction under subsection (4); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 50 penalty units.

40 Hindering compliance with this Act

A person commits an offence if the person:

- (a) does an act; and
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- (b) the act hinders or prevents another person from complying with this Act.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

41 Application of provisions of the *Quarantine Act 1908* in relation to quarantine charges

References in the Quarantine Act 1908 to “this Act”

- (1) The *Quarantine Act 1908* applies (subject to subsection (2)) as if a reference in any of the following provisions to “this Act” included a reference to “the *Quarantine Charges (Collection) Act 2014* or the regulations under that Act”:
 - (a) subsection 5(1) (definition of *unauthorised person*);
 - (b) section 5C (power or requirement to do or cause a thing to be done);
 - (c) section 6B (power to make, vary, suspend or revoke various instruments etc.);
 - (d) section 6C (provisions relating to conditions, restrictions or requirements);
 - (e) section 8A (officers responsible for human quarantine);
 - (f) section 8B (officers responsible for animal and plant quarantine);
 - (g) section 10 (delegation by Minister);
 - (h) section 10B (delegation by Director of Quarantine);
 - (i) Part IIA (proposed decisions affecting the environment);
 - (j) section 14 (exemption of certain vessels and goods);
 - (k) section 14A (exemptions under Torres Strait Treaty);
 - (l) paragraph 44A(3A)(b) (exception to removal of goods offence);
 - (m) section 46A (approvals for the purpose of goods subject to quarantine);
 - (n) subsection 49(2) (exception to unlawful damage offence);
 - (o) subsections 56(9) and (10) (electronic notices);
 - (p) Part VIA (enforcement);

- (q) subsection 74BC(1) (power to require information after entering premises);
- (r) subsection 74DA(1) (direction for master or owner of vessel or installation to provide help to quarantine officer);
- (s) subsection 74E(1) (person in control of imported goods to assist quarantine officers);
- (t) section 82 (protection from civil proceedings);
- (u) section 86B (jurisdiction of courts);
- (v) section 86C (power to administer oaths or take declarations);
- (w) section 86DA (evidence of analyst);
- (x) subsections 87(1C) and (1D) (effect of ordinances of Cocos Islands and Christmas Island).

References in the Quarantine Act 1908 to “offence against this Act”

- (2) The *Quarantine Act 1908* applies as if a reference in a provision covered by subsection (3) to an “offence against this Act” included a reference to:
 - (a) an offence against the *Quarantine Charges (Collection) Act 2014*; and
 - (b) an offence against section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code* in relation to an offence against the *Quarantine Charges (Collection) Act 2014*.
- (3) The following provisions of the *Quarantine Act 1908* are covered by this subsection:
 - (a) subsection 5(1) (definition of *evidential material*);
 - (b) section 46A (approvals for the purpose of goods subject to quarantine);
 - (c) Part VIA (enforcement);
 - (d) section 86DA (evidence of analyst).

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References to “quarantine officer” in this Act

- (4) Section 5AA of the *Quarantine Act 1908* applies in relation to each reference to a “quarantine officer” in this Act in the same way as it applies to references to that term in that Act.

Effect of suspension or revocation under this Act of approval under section 46A of the Quarantine Act 1908

- (5) Subsections 46A(11), (12) and (13) of the *Quarantine Act 1908* apply in relation to a suspension or revocation, under section 14 of this Act, of an approval under section 46A of the *Quarantine Act 1908* as if the suspension or revocation were under that section of that Act.

Effect of directions under this Act for certain purposes

- (6) If a quarantine officer directs a person to do a thing in relation to goods under subsection 18(5) of this Act, the quarantine officer is taken to have given the person permission under subsection 44B(6) of the *Quarantine Act 1908* to do the thing in relation to the goods.

Note: Section 44B of the *Quarantine Act 1908* contains offences for doing certain things in relation to landed cargo without permission.

Part VI of the Quarantine Act 1908 does not apply

- (7) Part VI of the *Quarantine Act 1908* (expenses) does not apply to an expense constituted by a quarantine charge, or a late payment fee under this Act.

Note 1: For liability of agents for quarantine charges, see paragraph 10(b) of this Act.

Note 2: Regulations under the Acts imposing quarantine charges set out who is liable to pay each quarantine charge.

Venue in summary prosecution

- (8) Section 86A of the *Quarantine Act 1908* (venue in summary prosecution) applies in relation to proceedings relating to this Act in the same way as it applies in relation to proceedings relating to that Act.

42 Collection and recovery of charges imposed for purposes of validating fees under the *Quarantine Act 1908*

- (1) The following provisions of the *Quarantine Act 1908* apply in relation to a charge that is taken to have been imposed on a person under a quarantine fee validation provision as if the charge were a fee specified in a determination made under section 86E of that Act:
 - (a) subsections 86E(2B) to (2CB) (late payment fees);
 - (b) subsections 86E(2E) and (2F) (booking fees and deposits);
 - (c) subsection 86E(2G) (withholding services until fees and deposits are paid);
 - (d) subsection 86E(2H) (Minister may remit and refund fees);
 - (e) section 86EA (Commonwealth etc. not liable to pay fees);
 - (f) Part VI (expenses);
 - (g) any other provision of that Act to the extent to which it relates to a provision mentioned in any of the preceding paragraphs.
- (2) For the purposes of subsection (1), each of the following is a ***quarantine fee validation provision***:
 - (a) section 11 of the *Quarantine Charges (Imposition—Customs) Act 2014*;
 - (b) section 10 of the *Quarantine Charges (Imposition—Excise) Act 2014*;
 - (c) section 11 of the *Quarantine Charges (Imposition—General) Act 2014*.

43 General provisions relating to directions

- (1) Unless otherwise provided by this Act, a person who is permitted to give a direction under this Act may give the direction orally or in writing (including by electronic means).
- (2) Unless otherwise provided by this Act, a direction that is given under this Act in writing is not a legislative instrument.
- (3) A later direction overrides an earlier direction to the extent of any inconsistency.

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44 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

45 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the following may be prescribed by regulation:
 - (a) matters relating to the giving of a notice or direction, or the making of any other requirement, under this Act;
 - (b) the manner in which any notice, direction, requirement or other instrument granted, given or made under this Act may be produced to a person or body.

*[Minister's second reading speech made in—
House of Representatives on 6 March 2014
Senate on 20 March 2014]*

(23/14)
