



Imported Food Control Amendment Act 2018

No. 108, 2018

**An Act to amend the *Imported Food Control Act
1992*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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No. 108, 2018

An Act to amend the *Imported Food Control Act 1992*, and for related purposes

[Assented to 21 September 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Imported Food Control Amendment Act 2018*.

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
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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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 September 2018
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	21 September 2019
3. Schedule 1, Parts 2 to 4	The day after this Act receives the Royal Assent.	22 September 2018
4. Schedule 1, Part 5	The 28th day after this Act receives the Royal Assent.	19 October 2018
5. Schedule 1, Part 6	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	21 September 2019
6. Schedule 1, Parts 7 to 9	The day after this Act receives the Royal Assent.	22 September 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Food safety management certificates

Imported Food Control Act 1992

1 Subsection 3(1)

Insert:

recognised food safety management certificate means:

- (a) a recognised foreign government certificate; or
- (b) a certificate covered by a determination in force under subsection 18A(1).

2 After subparagraph 16(2)(a)(ii)

Insert:

- (ia) identifying food of particular kinds as food that must be covered by a recognised food safety management certificate; or

3 After paragraph 16(2)(f)

Insert:

- (fa) specify circumstances in which food is taken to be failing food; and

4 After section 18

Insert:

18A Food safety management certificates

- (1) The Secretary may determine, in writing, that, for food of a specified kind, a specified certificate issued by a specified person or specified body is a recognised food safety management certificate.

Note 1: The regulations deal with when food of such a kind is taken to be failing food because the food is not covered by a recognised food safety management certificate.

Note 2: See section 35B for how a determination may refer to a kind of food.

Note 3: For variation and revocation of the determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 4: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (2) The Secretary must, in writing, make guidelines that the Secretary must have regard to before making a determination under subsection (1).

Note: For variation and revocation of the guidelines, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Offence

- (3) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (1).

Penalty: Imprisonment for 10 years.

Status of instruments

- (4) The following are not legislative instruments:
(a) a determination under subsection (1);
(b) guidelines under subsection (2).

Publication of instruments

- (5) The Secretary must publish the following on the Department's website:
(a) a determination under subsection (1);
(b) guidelines under subsection (2).

Definitions

- (6) For the purposes of this section, **forge** and **utter** have the meanings given by section 19A.

5 Paragraph 42(2)(b)

Omit "(other than food that is or may be the subject of an application for a further imported food advice)".

Part 2—Holding orders

Imported Food Control Act 1992

6 Before subsection 15(1)

Insert:

Failing food on inspection or inspection and analysis

7 Paragraph 15(1)(c)

Repeal the paragraph, substitute:

(c) stating that, until the revocation of the order, the following food must be held in a place to be approved by an authorised officer in writing, until an inspection, or inspection and analysis, required under the Food Inspection Scheme has been completed:

- (i) food of that kind that is imported into Australia after the making of the order;
- (ii) if the Secretary states that the order is being made in connection with the end of another order under subsection (3)—food of that kind that is being held immediately before the end of the other order; and

8 At the end of subsection 15(1)

Add:

Note: See section 35B for how an order may refer to a kind of food.

9 Subsection 15(2)

After “a holding order”, insert “made under subsection (1)”.

10 At the end of section 15

Add:

Food posing a serious risk to human health

(3) If:

- (a) the Secretary is satisfied that there are reasonable grounds for believing that food of a particular kind may pose a risk to human health; and
 - (b) the Secretary is satisfied that the risk is serious;
- the Secretary may, by writing, make a holding order:
- (c) stating that, until the order ends, food of that kind that is imported into Australia after the making of the order must be held in a place to be approved by an authorised officer in writing; and
 - (d) stating that the order ends at the earlier of the following times:
 - (i) at the end of the period of 28 days beginning on the day the order is made or, if that period is extended, the end of the extended period;
 - (ii) the time when the order is revoked; and
 - (e) specifying the circumstances in which the order will be revoked.

Note: See section 35B for how an order may refer to a kind of food.

- (4) The Secretary may, in writing, extend the 28-day period referred to in subparagraph (3)(d)(i) by a further period of up to 28 days. The Secretary may make more than one extension.
- (5) Before making an extension, the Secretary must review the appropriateness of the order.
- (6) If the Secretary is satisfied, in respect of a holding order made under subsection (3), that the circumstances specified for its revocation have occurred, the Secretary must, by writing, immediately revoke the holding order.

Approvals

- (7) Subsection (1) or (3) does not prevent an authorised officer from giving a person an approval to deal with food of a kind covered by an order under that subsection while the order is in force.

Status of instruments

- (8) The following are not legislative instruments:
 - (a) an order under subsection (1) or (3);

- (b) an instrument under subsection (2), (4) or (6).

Publication of instruments

- (9) The Secretary must publish the following on the Department's website:
 - (a) an order under subsection (1), except where the order is made in connection with applicable standards relating to information on labels for packages containing food;
 - (b) an instrument under subsection (2) that is made in relation to an order covered by paragraph (a) of this subsection;
 - (c) an order under subsection (3);
 - (d) an instrument under subsection (4) or (6).

11 Saving provision

The amendments made by this Part do not affect the validity of a holding order made under section 15 of the *Imported Food Control Act 1992* before the commencement of this item.

Part 3—Classification of food

Imported Food Control Act 1992

12 Subsection 3(1)

Insert:

officer of Customs has the same meaning as in the *Customs Act 1901*.

13 Paragraph 16(2)(a)

Repeal the paragraph, substitute:

- (a) empower the Minister, subject to section 17, to make orders:
 - (i) identifying food of particular kinds as food of a kind that is required to be inspected, or inspected and analysed, under the Scheme; or
 - (ii) identifying food of particular kinds as food that must be covered by a recognised foreign government certificate; or
 - (iii) classifying food of particular kinds into particular categories; and
- (aa) specify the percentage of food classified into a particular category that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and
- (ab) empower the Secretary to make an order, in respect of food that is classified into a particular category and is of a particular kind, specifying the percentage of food of that kind that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and

14 After paragraph 16(2)(b)

Insert:

- (ba) empower the Secretary to make an order, in respect of food that is classified into a particular category and is of a particular kind:
 - (i) specifying the incidence of inspection, or inspection and analysis, attaching to food of that kind; and

- (ii) specifying the rate at which samples must be taken for inspection from food of that kind; and

15 At the end of section 16

Add:

- (6) An order made by the Secretary for the purposes of paragraph (2)(ab) or (ba) is not a legislative instrument.

Note 1: Under the regulations, the order made by the Secretary is of a temporary nature.

Note 2: For revocation of the order, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (7) The Secretary must publish the following on the Department's website:
 - (a) an order made by the Secretary for the purposes of paragraph (2)(ab) or (ba);
 - (b) a revocation of the order.

16 Transitional provision—orders

- (1) An order that was in force under regulation 7 or 8 of the *Imported Food Control Regulations 1993* immediately before the commencement of this item continues to be in force under that regulation as in force on or after that commencement.
- (2) Subitem (1) does not prevent the variation or revocation of the order on or after the commencement of this item.

Part 4—Recognition of foreign country's food safety system

Imported Food Control Act 1992

17 Before paragraph 16(2)(b)

Insert:

- (ac) empower the Minister to make an order in respect of food classified into a particular category imported from a country specified in the order:
 - (i) specifying the percentage of all such food that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; or
 - (ii) specifying the percentage of all such food, except food of a particular kind, that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; or
 - (iii) specifying the percentage of food of a particular kind that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and

18 Before paragraph 16(2)(c)

Insert:

- (bb) empower the Minister to make an order in respect of food classified into a particular category imported from a country specified in the order:
 - (i) specifying the percentage of all such food that must be inspected, or inspected and analysed, under the Scheme; or
 - (ii) specifying the percentage of all such food, except food of a particular kind, that must be inspected, or inspected and analysed, under the Scheme; or
 - (iii) specifying the percentage of food of a particular kind that must be inspected, or inspected and analysed, under the Scheme; and

19 After subsection 16(2)

Insert:

- (2A) A percentage mentioned in paragraph (2)(ac) or (bb) that is specified in an order made by the Minister must be less than 5% (including zero).
- (2B) The Minister may make an order for the purposes of paragraph (2)(ac) or (bb) in relation to a particular country only if the Minister is satisfied:
- (a) that there is in force an agreement between Australia and that country; and
 - (b) that the agreement is based on an assessment of the food safety systems of Australia and that country which concluded that:
 - (i) Australia and that country have equivalent food safety systems; and
 - (ii) Australia and that country conduct equivalent monitoring of the food they regulate.

20 Subsection 16(5)

After “paragraph (2)(a)”, insert “, (ac) or (bb)”.

Part 5—Enforcement

Imported Food Control Act 1992

21 Subsection 3(1) (paragraph (c) of the definition of authorised officer)

Omit “when used in a provision of this Act other than section 24, 25, 26, 27, 28, 29, 30 or 32—”.

22 Subsection 3(1)

Insert:

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

23 Sections 8 to 9

Repeal the sections, substitute:

8 Importation offences

Food does not meet applicable standards

- (1) A person commits an offence if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food does not meet applicable standards; and
 - (d) those standards do not relate to information on labels for packages containing food.

Penalty: Imprisonment for 10 years.

- (2) A person commits an offence of strict liability if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food does not meet applicable standards; and

- (d) those standards do not relate to information on labels for packages containing food.

Penalty: 60 penalty units.

Food poses a risk to human health

- (3) A person commits an offence if:
 - (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person knows that the food poses a risk to human health.

Penalty: Imprisonment for 10 years.

- (4) A person commits an offence of strict liability if:
 - (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food poses a risk to human health.

Penalty: 60 penalty units.

Imputed knowledge

- (5) For the purposes of establishing a contravention of subsection (3), the person is taken to have known that the food posed a risk to human health if the person ought reasonably to have known that the food posed that risk, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged contravention.

8A Labelling offences

Fault-based offence

- (1) A person commits an offence if:
 - (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Penalty: Imprisonment for 10 years.

Strict liability offence

- (2) A person commits an offence of strict liability if:
- (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Penalty: 60 penalty units.

Exception

- (3) Subsection (1) or (2) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

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

9 Offences relating to dealing with examinable food

Dealing with food where no food control certificate

- (1) A person commits an offence if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (2) A person commits an offence of strict liability if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

Dealing with food where no imported food inspection advice

- (3) A person commits an offence if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has been issued in respect of the food; and
 - (e) the person knows that an imported food inspection advice has not been issued in respect of the food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (4) A person commits an offence of strict liability if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and

- (d) a food control certificate has been issued in respect of the food; and
- (e) an imported food inspection advice has not been issued in respect of the food; and
- (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
- (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
- (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

- (5) Subsection (3) or (4) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

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

Dealing with failing food

- (6) A person commits an offence if:
 - (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has been issued in respect of the food; and
 - (e) the person knows that the food has been identified in an imported food inspection advice as failing food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (7) A person commits an offence of strict liability if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and
 - (e) the food has been identified in an imported food inspection advice as failing food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

Imputed knowledge

- (8) For the purposes of establishing a contravention of subsection (1), (3) or (6), the person is taken to have known of the matter referred to in paragraph (1)(c) or (d), (3)(c), (d) or (e) or (6)(c), (d) or (e) if the person ought reasonably to have known of the matter, having regard to:
- (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged contravention.

24 Before section 10

Insert:

9A Civil penalties relating to importing, labelling and dealing with food

Importing food

- (1) A person is liable to a civil penalty if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and

- (c) the food does not meet applicable standards; and
- (d) those standards do not relate to information on labels for packages containing food.

Civil penalty: 120 penalty units.

- (2) A person is liable to a civil penalty if:
 - (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food poses a risk to human health.

Civil penalty: 120 penalty units.

Labelling of food

- (3) A person is liable to a civil penalty if:
 - (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Civil penalty: 120 penalty units.

- (4) Subsection (3) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A person bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Dealing with food

- (5) A person is liable to a civil penalty if:
 - (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and

- (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
- (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

- (6) A person is liable to a civil penalty if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and
 - (e) an imported food inspection advice has not been issued in respect of the food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

- (7) Subsection (6) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A person bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

- (8) A person is liable to a civil penalty if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and
 - (e) the food has been identified in an imported food inspection advice as failing food; and

- (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
- (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
- (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

25 Sections 21 to 32

Repeal the sections, substitute:

Division 1—Introduction

21 Simplified outline of this Part

- The Regulatory Powers Act is triggered to allow a range of enforcement actions in relation to this Act.
- Authorised officers are permitted to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers under that Act for the purposes of determining:
 - (a) whether this Act or a compliance agreement has been, or is being, complied with; or
 - (b) whether information given in compliance or purported compliance with this Act is correct.
- Authorised officers are permitted to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers under that Act for the purposes of gathering material relating to the contravention of offence and civil penalty provisions in this Act.
- A civil penalty provision of this Act is enforceable under that Act. A relevant court may order a person contravening such a provision to pay to the Commonwealth a pecuniary penalty.

- Infringement notices may be issued for suspected contraventions of strict liability offences and civil penalty provisions under this Act. Such a notice allows a person to pay an amount as an alternative to having court proceedings brought against the person for the contravention.
- Undertakings to comply with this Act may be accepted and enforced under that Act. If a person gives an undertaking, the undertaking may be enforced by a court order.

Division 2—Monitoring

22 Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is a provision of this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

- (2) Despite section 8 of the Regulatory Powers Act, a provision of a compliance agreement is also subject to monitoring under Part 2 of that Act.

Information subject to monitoring

- (3) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

- (4) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3), there are no related provisions.

Authorised applicant and authorised person

- (5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).
- (6) However, an authorised officer appointed under subsection 40(2) of this Act is not an authorised applicant or an authorised person for the purposes of section 24 or 32 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsections (1) and (2) of this section and the information mentioned in subsection (3) of this section.

Issuing officer

- (7) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).

Relevant chief executive

- (8) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).
- (9) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).
- (10) A person exercising powers or performing functions under a delegation under subsection (9) must comply with any directions of the Secretary.

Relevant court

- (11) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional monitoring powers

- (12) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers mentioned in subsection (13) are also taken to be monitoring powers for the purposes of determining:
 - (a) whether a provision mentioned in subsection (1) or (2) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection (3).
- (13) The additional monitoring powers are the powers to take and keep samples of any thing at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsections (1) and (2) or the information mentioned in subsection (3).

Person assisting

- (14) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).

Use of force in executing a warrant

- (15) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3):
 - (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting an authorised officer may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

- (16) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Division 3—Investigation

23 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

- (3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following authorised officers is both an authorised applicant and an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Secretary;
 - (b) an APS employee in the Department appointed by the Secretary under subsection 40(1).

Issuing officer

- (4) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant chief executive

- (5) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (6) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the Secretary.

Relevant court

- (8) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional investigation powers

- (9) For the purposes of Part 3 of the Regulatory Powers Act, the additional powers mentioned in subsection (10) are also taken to be investigation powers in relation to evidential material that relates to a provision mentioned in subsection (1).
- (10) The additional investigation powers are the powers to take and keep samples of any thing at any premises entered under section 48 of the Regulatory Powers Act, as that section applies in relation to

evidential material that relates to a provision mentioned in subsection (1).

Person assisting

- (11) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised officer may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Division 4—Civil penalties

24 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to be subject to civil proceedings for a contravention of a civil penalty provision.

Division 5—Infringement notices

25 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) a strict liability offence against this Act;
 - (b) a civil penalty provision of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following authorised officers is an infringement officer in relation to the provisions mentioned in subsection (1):
- (a) the Secretary;
 - (b) an APS employee in the Department appointed by the Secretary under subsection 40(1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the Secretary.

Extension to external Territories

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Liability of Crown

- (7) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), does not make the Crown liable to be given an infringement notice.

Division 6—Enforceable undertakings

26 Enforceable undertakings

Enforceable provisions

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

26 Before section 33

Insert:

Part 4—Other matters

32A Simplified outline of this Part

- This Part deals with various matters, such as evidence of analysts of food, the making of compliance agreements and the use, disclosure and publication of information obtained under this Act.

27 After section 34

Insert:

34A Power to require information or documents

- (1) If the Secretary believes on reasonable grounds that a person has information or documents relevant to the operation of this Act, the Secretary may, by written notice, require the person:
 - (a) to give an authorised officer specified in the notice the information specified in the notice within the period specified in the notice; or
 - (b) to produce to an authorised officer specified in the notice the documents specified in the notice within the period specified in the notice.
- (2) The period specified in the notice must be at least 14 days after the notice is given under subsection (1).
- (3) However, the Secretary may specify a shorter period if the Secretary considers it necessary to do so because the information or documents relate to food that the Secretary is satisfied may pose a risk to human health and the Secretary is satisfied that the risk is serious.
- (4) A notice under subsection (1) must set out the effect of the following provisions:
 - (a) subsection (5);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);

(c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

- (5) A person commits an offence of strict liability if:
- (a) the person is given a notice under subsection (1); and
 - (b) the person fails to comply with the notice.

Penalty: 60 penalty units.

Authorised officer may inspect and copy documents

- (6) An authorised officer may:
- (a) inspect a document produced under paragraph (1)(b); and
 - (b) make and retain copies of the whole or a part of the document.

Authorised officer may retain documents

- (7) An authorised officer may take, and retain for as long as is reasonably necessary, possession of a document produced under paragraph (1)(b).

Certified copy of documents

- (8) The person otherwise entitled to possession of a document produced under paragraph (1)(b) is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (9) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (10) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

28 Section 35 (heading)

Repeal the heading, substitute:

35 Publishing of information about overseas food processing operations

29 Part 4 (heading)

Repeal the heading.

30 Subsection 40(2)

Omit “all the provisions of this Act other than sections 24, 25, 26, 27, 28, 29, 30 and 32”, substitute “this Act”.

31 Application provisions—offences and civil penalties

- (1) The repeal and substitution of sections 8 to 9 of the *Imported Food Control Act 1992* made by this Part applies in relation to food imported into Australia on or after the commencement of this Part.
- (2) Section 9A of the *Imported Food Control Act 1992*, as inserted by this Act, applies in relation to food imported into Australia on or after the commencement of this Part.

32 Saving provision—identity cards

Despite the repeal of section 22 of the *Imported Food Control Act 1992* made by this Part, that section, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to a person who ceased to be an authorised officer before that commencement.

33 Application and saving provisions—monitoring and investigation

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 3 of the *Imported Food Control Act 1992*, applies in relation to:
 - (a) determining whether a provision mentioned in subsection 22(1) or (2) of the *Imported Food Control Act 1992* has been complied with before, on or after the commencement of this Part; or
 - (b) determining whether information mentioned in subsection 22(3) of the *Imported Food Control Act 1992* given before, on or after the commencement of this Part is correct.

- (2) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 3 of the *Imported Food Control Act 1992*, applies in relation to evidential material that relates to a provision mentioned in subsection 23(1) of the *Imported Food Control Act 1992*, if the suspected contravention of the provision occurred before, on or after the commencement of this Part.
- (3) Part 3 of the *Imported Food Control Act 1992*, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to the following:
- (a) an application for a warrant made, but not decided, under that Part before the commencement of this Part;
 - (b) a warrant issued, or completed and signed, under that Part before, on or after the commencement of this Part as a result of an application made before that commencement;
 - (c) powers exercised, rights created and duties imposed, under that Part before, on or after the commencement of this Part in relation to:
 - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a warrant referred to in paragraph (b);
 - (d) things secured or seized under that Part before, on or after the commencement of this Part;
 - (e) a requirement made under section 30 of that Act before, on or after the commencement of this Part;
 - (f) a request made under section 32 of that Act before, on or after the commencement of this Part.

34 Application provision—civil penalties

Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 3 of the *Imported Food Control Act 1992*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Part.

35 Application provision—infringement notices

Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 3 of the *Imported Food Control Act 1992*, applies in relation to alleged contraventions of provisions mentioned in subsection 25(1) of the *Imported Food Control Act 1992* occurring on or after the commencement of this Part.

36 Application provision—enforceable undertakings

Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 6 of Part 3 of the *Imported Food Control Act 1992*, applies in relation to undertakings given on or after the commencement of this Part.

Part 6—Record-keeping

Imported Food Control Act 1992

37 After Part 3

Insert:

Part 3A—Record-keeping

27 Simplified outline of this Part

- If food to which this Act applies is imported into Australia, the owner of the food at the time of the importation must keep records of information determined by the Secretary.
- Records must be retained for 5 years and may need to be produced to the Secretary.

28 Keeping and retaining records

Keeping of records

- (1) If food to which this Act applies is imported into Australia, the owner of the food at the time of the importation must keep records containing the information determined in an instrument under subsection (2).
- (2) The Secretary may, by legislative instrument, determine the information that must be contained in records under this section.

Retention of records

- (3) The owner must retain the records for a period of 5 years.

Offence

- (4) A person commits an offence of strict liability if:
 - (a) the person is subject to a requirement under this section; and

(b) the person contravenes the requirement.

Penalty for contravention of this subsection: 60 penalty units.

29 Production of records

- (1) The Secretary may, by written notice given to a person who is required to keep records under section 28, require the person to produce to the Secretary, within the period and in the manner specified in the notice, such of those records as are specified in the notice.
- (2) The period specified in a notice given under subsection (1) must be at least 14 days after the notice is given.
- (3) However, the Secretary may specify a shorter period if the Secretary considers it necessary to do so because the records relate to food that the Secretary is satisfied may pose a risk to human health and the Secretary is satisfied that the risk is serious.
- (4) A notice under subsection (1) must set out the effect of the following provisions:
 - (a) subsection (5);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);
 - (c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

Offence

- (5) A person commits an offence if:
 - (a) the person is given a notice under subsection (1); and
 - (b) the person fails to comply with the notice.

Penalty for contravention of this subsection: Imprisonment for 6 months.

30 Secretary may inspect and copy records

The Secretary may inspect a record produced under this Part and may make and retain copies of the whole or a part of the record.

31 Secretary may retain records

- (1) The Secretary may take, and retain for as long as is reasonably necessary, possession of a record produced under this Part.
- (2) The person otherwise entitled to possession of the record is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the record, or a person authorised by that person, to inspect and make copies of the record.

32 Self-incrimination

- (1) A person is not excused from producing a record under this Part on the ground that the production of the record might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the record; and
 - (b) producing the record; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record;are not admissible in evidence against the individual in criminal proceedings other than:
 - (d) proceedings for an offence against subsection 28(4) or 29(5);
or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.

38 Application provision

Section 28 of the *Imported Food Control Act 1992*, as inserted by this Part, applies in relation to food imported into Australia on or after the commencement of this item.

Part 7—Making of orders or determinations

Imported Food Control Act 1992

39 At the end of subsection 18(1)

Add:

Note: See section 35B for how a determination may refer to a kind of food.

40 After section 35A

Insert:

35B Making of orders or determinations

- (1) An order or determination under this Act or the regulations may refer to a kind of food by reference to any one or more of the following:
 - (a) the country of origin of the food;
 - (b) the place of origin of the food;
 - (c) the manner in which the food has been produced, processed, manufactured, stored, packed, packaged, labelled or transported;
 - (d) the producer, processor, manufacturer, storer, packer, packager, supplier or transporter of the food;
 - (e) the importer of the food;
 - (f) the period within which the food is imported into Australia;
 - (g) the physical properties of the food;
 - (h) the constituents of the food;
 - (i) the brand name of the food.
- (2) Subsection (1) does not limit the way in which an order or determination under this Act or the regulations may refer to a kind of food.

41 Application provision

Section 35B of the *Imported Food Control Act 1992*, as inserted by this Part, applies in relation to an order or determination made on or after the commencement of this item.

Part 8—Use and disclosure of information

Imported Food Control Act 1992

42 Section 41

After “this Act”, insert “(except the power under subsection 42A(5))”.

43 After section 42

Insert:

42A Use and disclosure of information

Use of information

- (1) An APS employee in the Department may use information (including personal information) obtained under this Act for any purpose of this Act.

Disclosure of information

- (2) The Secretary may disclose information (including personal information) obtained under this Act to:
 - (a) a department of the Commonwealth, a State or a Territory; or
 - (b) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
 - (c) a local government body;if the Secretary is satisfied that the disclosure of the information to that department, agency, authority, instrumentality or body is necessary for that department, agency, authority, instrumentality or body to perform or exercise any of its functions, duties or powers.
- (3) The Secretary may disclose information (including personal information) obtained under this Act to:
 - (a) a department of the government of a foreign country; or
 - (b) an agency, authority or instrumentality of the government of a foreign country;if the Secretary is satisfied that the disclosure of the information to that department, agency, authority or instrumentality is necessary

for that department, agency, authority or instrumentality to perform or exercise any of its functions, duties or powers.

- (4) The Secretary must not disclose information under subsection (3) unless the Secretary is satisfied that the disclosure is in connection with food imported into Australia that the Secretary is satisfied may pose a risk to human health.
- (5) The Secretary must, in writing, make guidelines that the Secretary must have regard to before disclosing information under subsection (3).

Note: For variation and revocation of the guidelines, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (6) Before making the guidelines, the Secretary must consult the Information Commissioner.
- (7) The guidelines are not a legislative instrument.
- (8) The Secretary must publish the guidelines on the Department's website.

Interpretation

- (9) For the purposes of this section, if an application is taken to have been communicated to an authorised officer as mentioned in subsection 11(3), information contained in the application is taken to be information obtained under this Act.
- (10) This section does not limit section 35 (about publishing of information about overseas food processing operations).
- (11) This section does not limit the use or disclosure of information (including personal information) obtained under this Act.
- (12) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

44 Application provision

Section 42A of the *Imported Food Control Act 1992*, as inserted by this Part, applies in relation to information obtained before, on or after the commencement of this item.

Part 9—Other amendments

Imported Food Control Act 1992

45 Subsection 3(1) (definition of *food*)

Repeal the definition, substitute:

food has the meaning given by section 3A.

46 Paragraph 3(2)(b)

Omit “manufactured or transported”, substitute “produced, processed, manufactured, stored, packed, packaged or transported”.

47 After section 3

Insert:

3A Definition of *food*

(1) *Food* includes:

- (a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); and
- (b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and
- (c) any substance used in preparing a substance or thing referred to in paragraph (a); and
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
- (e) any substance or thing declared to be a food under a declaration in force under section 6 of the *Food Standards Australia New Zealand Act 1991*.

(It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption.)

- (2) However, *food* does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.
- (3) To avoid doubt, *food* may include live animals and plants.

48 Paragraph 7(3)(b)

After “person”, insert “(except a person carrying out the scientific or commercial evaluation)”.

49 Before Division 1 of Part 2

Insert:

Division 1A—Introduction

7A Simplified outline of this Part

- Consistent with the object of this Act, there are importation, labelling and dealing offences and civil penalties in relation to food to which this Act applies.
- Under the regulations, there is a food inspection scheme for food to which this Act applies.
- Food control certificates and imported food inspection advices are able to be issued by authorised officers.
- The Secretary may make orders requiring food to be held at certain places if the Secretary considers that the food does not meet applicable standards or considers that the food poses a serious risk to human health.
- Food identified as failing food may be required to be treated, destroyed or re-exported from Australia.

50 Before subsection 18(3)

Insert:

Offence

51 At the end of section 18

Add:

Status of instruments

- (4) A determination under subsection (1), or a revocation under subsection (2), is not a legislative instrument.

Definitions

- (5) For the purposes of this section, *forge* and *utter* have the meanings given by section 19A.

52 Before subsection 19(4)

Insert:

Offence

53 At the end of section 19

Add:

Status of instruments

- (5) The following are not legislative instruments:
- (a) an arrangement under subsection (1);
 - (b) an approval, or a revocation, under subsection (1A);
 - (c) a determination under subsection (2);
 - (d) a revocation under subsection (3).

Definitions

- (6) For the purposes of this section, *forge* and *utter* have the meanings given by section 19A.

54 Application provision

The amendment of paragraph 7(3)(b) of the *Imported Food Control Act 1992* made by this Part applies in relation to food imported into Australia on or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 1 June 2017
Senate on 8 February 2018]*

(112/17)

No. 108, 2018

Imported Food Control Amendment Act 2018

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