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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION  
AMENDMENT BILL (NO 1) 2000**

**EXPLANATORY MEMORANDUM**

(Circulated by Authority of the Minister for Agriculture, Fisheries and Forestry,  
the Hon Warren Truss MP)

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**GENERAL OUTLINE**

**Schedule 1 - Amendment of the Quarantine Act 1908**

The amendments to the *Quarantine Act 1908* clarify that sections 6C and 14A extend to both the regulations and Proclamation; clarify that a person may be appointed under section 9AA to be both a quarantine officer plants as well as a quarantine officer animals; recognise that quarantinable pests and quarantinable diseases may themselves be matters of quarantine concern and confirm that for the purposes of section 46A of the Act, offences against the laws of a State or Territory (in addition to offences against the laws of the Commonwealth) may be relevant to a person's suitability to manage a place where goods subject to quarantine may be treated or otherwise dealt with. The amendments also allow directions to be given to the person in control of a vehicle under section 48AB of the Act; clarify that arrangements under section 46A and 66B of the Act may extend to vessels and allow seizure notices to be given to consignees under section 68 of the Act. A new Part VA is introduced into the Act by the amendments to cater for the use of an automated electronic system for the quarantine clearance of goods.

**Schedule 2 - Amendment of the Australian Wine and Brandy Corporation Act 1980**

The proposed amendments to the *Australian Wine and Brandy Corporation Act 1980* (the AWBC Act) are to sections dealing with voting arrangements at the Australian Wine and Brandy Corporation's Annual General Meeting.

They ensure consistency in voting arrangements for both payers of the wine grapes levy and payers of the wine export charge.

When the *Wine Export Charge Act 1997* came into force some sections of the AWBC were inadvertently not amended thus creating anomalies between the voting rights of payers of the wine grapes levy and of the wine export charge.

**FINANCIAL IMPACT STATEMENT**

There will be no financial impact on the Commonwealth.

## **NOTES ON CLAUSES**

### **Clause 1: Short title**

This clause provides that the amending Act may be cited as the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No 1) 2000*.

### **Clause 2: Commencement**

Clause 2 specifies when that the Act will commence on a day or days to be fixed by Proclamation, except item 8 of Schedule 2 which is taken to have commenced on the day on which the *Public Employment (Consequential and Transitional) Amendment Act 1999* received Royal Assent. Clause 2 also provides that if a provision of the Act does not commence by Proclamation within a period of 6 months beginning on the day the Act receives the Royal Assent, the provision commences on the first day after the end of that period.

### **Clause 3: - Schedules**

Clause 3 specifies that subject to clause 2, each Act that is specified in a Schedule to the Bill 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.

### **Clause 4:- Application provision – approval of places for treating goods**

Clause 4 provides that the amendments made by items 7 and 8 of Schedule 1 apply to applications for approvals made after the commencement of this section.

### **Clause 5:- Application provision – detaining goods**

Clause 5 provides that the amendment made by item 11 of Schedule 1 applies to goods ordered into quarantine after the commencement of this section.

### **Clause 6:- Saving and validation of appointments**

Clause 6 saves appointments made under section 9AA of the *Quarantine Act 1908* which were made before the commencement of clause. In addition, clause 6 validates the appointments of a person to be both a quarantine officer (animals) and a quarantine officer (plants) which have occurred under section 9AA before the commencement of the clause.

### **Clause 7:- Validation of agreements**

Clause 7 validates agreements made under section 66B of the *Quarantine Act 1908* which have been entered into before the commencement of this clause in respect of vessels.

## **SCHEDULE 1 - QUARANTINE**

### ***Quarantine Act 1908***

#### **Item 1 Section 6C**

This item inserts the phrase “the regulations or a Proclamation under this Act” in section 6C of the Act. The purpose the insertion is to clarify that section 6C of the Act applies not only to a provision of the Act, but also to provisions of the regulations or a Proclamation.

#### **Item 2 Subsection 9AA(3)**

This item substitutes a new subsection 9AA(3). The purpose of this amendment is to put beyond doubt that a quarantine officer can be appointed to be either a quarantine officer (animals) or a quarantine officer (plants), or to be both a quarantine officer (animals) and a quarantine officer (plants).

#### **Item 3 Subsection 9AA(4)**

As a consequence of the amendment to subsection 9AA(3), this item substitutes a new subsection 9AA(4). The new subsection 9AA(4) is rewritten to make it clear that a quarantine officer may be appointed, in a single instrument to divisions of both animal and plant quarantine.

#### **Item 4 Subsection 14A(1)**

This item amends subsection 14A(1). The effect of this amendment is to allow the Minister to grant exemptions from provisions of the Proclamation. Subsection 14A(1) in its present form allows exemptions to be granted only from provisions in the Act and regulations.

#### **Item 5 After paragraph 18(2)(b)**

This item inserts a new paragraph (ba) in subsection 18(2). Subsection 18(2) specifies when goods are subject to quarantine. At present, all goods infected with a quarantinable disease or quarantinable pest are subject to quarantine under subsection 18(2). This amendment removes an inconsistency by making the quarantinable diseases and quarantinable pests themselves ‘goods’; and specifying that they also subject to quarantine. When goods are subject to quarantine they are under quarantine control. This control may include directions about the movement and treatment of the goods. A disease or pest is a quarantinable disease or a quarantinable pest if it has been declared as such by the Governor General, by Proclamation. Generally, pests and diseases are declared as quarantinable diseases and quarantinable pests if they are not established in Australia.

**Item 6 After subsection 35(1)**

This item inserts a new subsection into section 35. New subsection 35(1AAA) extends section 35 to cover the order into quarantine of quarantinable pests or quarantinable diseases. At present, section 35 applies only to goods infected with a quarantinable pest or a quarantine disease. This amendment is consistent with the amendment made to subsection 18(2) of the Act.

**Item 7 Subparagraph 46A(3)(a)(iii)****Item 8 Subparagraph 46A(4)(f)(iii)****Item 9 Subparagraph 46A(9)(f)(iii)**

These items amend section 46A so that information about offences against prescribed State and Territory laws may be sought from an applicant and taken into consideration by the Director of Quarantine when granting an approval or suspending or revoking approvals under the section. At present, section 46A is limited to Commonwealth laws. Section 46A, along with section 66B, provides the framework for industry to participate in quarantine activities. Section 46A (including section 46A as amended) does not affect the operation of Part VII of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**Item 10 At the end of section 46A**

This item amends section 46A by adding a definition of ‘goods’. The definition clarifies that for the purposes of section 46A, ‘goods’ includes a vessel and states that this definition does not affect the meaning of ‘goods’ in other provisions of the Act. This amendment confirms that vessels can be treated or otherwise dealt with at places approved under section 46A. Under the *Quarantine Act 1908*, the term ‘vessel’ includes ships and aircraft.

**Item 11 Paragraph 48(1)(a)**

This item substitutes a new paragraph 48(1)(a). The effect of this amendment is to allow a quarantine officer to direct that goods are to be detained at the premises where they are located at the time the direction is given. In its present form, paragraph 48(1)(a) only allows goods to be detained where they are located at the time if the direction is given when the goods are located on board a vessel or installation.

**Item 12 Subsection 48AB(3)**

This item substitutes a new subsection 48AB(3). The effect of this new subsection is to allow directions to be given to the person in control of the vehicle. In its present form, the subsection only allows directions to be given to the owner of the vehicle. This is impractical as the person in control of the vehicle may not be the owner and searching for the owner could interfere with timely and effective management of the quarantine risk. The notion of giving directions to the person in control of goods, vessels and vehicles is well established in the *Quarantine Act 1908* and this amendment brings section 48AB into line with the rest of the Act.

**Item 13 Before subsection 48AB(4)**

This item inserts a new subsection in section 48AB. The new subsection recognises the quarantine risk arising from the exposure of a vehicle to a quarantinable disease or quarantinable pest and allows a quarantine officer to give a direction to the owner of or person in control of the vehicle to treat it in the manner stated in the direction. A disease or pest is a quarantinable disease or a quarantinable pest if it has been declared as such by the Governor-General, by Proclamation. Generally, pests and diseases are declared as quarantinable diseases and quarantinable pests if they are not established in Australia.

**Item 14 After subsection 48AB(4)**

This item inserts a new subsection in section 48AB. The new subsection recognises the quarantine risk arising from the exposure of premises to a quarantinable disease or a quarantinable pest. At present, a quarantine officer may only direct treatment of premises if the premises have been exposed to an animal or plant when the animal or plant was subject to quarantine.

This amendment will ensure that there is power under the *Quarantine Act 1908* to direct the treatment of premises where, for instance, the premises, as a result of exposure from an animal or plant no longer subject to quarantine, become infested with a quarantinable disease or pest.

**Item 15 After Part V**

This item inserts a new section 56 in a new Part VA. This new Part introduces legislation to support the automation of clearance procedures for goods on arrival in Australia. At present, the *Quarantine Act 1908 (the Act)* contemplates that a person, such as a quarantine officer, will issue notices facilitating the clearance of goods. These amendments will allow such notices to be generated by a suitably programmed computer.

New subsection 56(1) specifies that an electronic notice (as defined in subsection 56(11)) under the section may be given to a person who has imported goods that have not been released from quarantine, or the agent of such a person.

New subsection 56(2) sets out what the notice given under subsection 56(1) may do. This section also recognises that a notice ordering goods into quarantine will not, of itself, progress clearance of the goods. Accordingly, the section requires that a notice ordering goods into quarantine must include the doing of one or more of the things mentioned in paragraphs (c) to (f).

New subsection 56(3) provides that where a notice is given to a person under subsection (1), the Director of Animal and Plant Quarantine is taken to have given the notice.

New subsection 56(4) is intended to ensure the integrity of the computer program underpinning the issuing of the electronic notices for the purpose of ordering goods into quarantine. It provides that the Director of Animal and Plant Quarantine must take all

reasonable steps to ensure that the computer program does not result in electronic notices ordering goods into quarantine unless there are reasonable grounds to believe that there is an unacceptably high level of quarantine risk in respect of the goods. This requirement mirrors the test which a quarantine officer would have to apply in ordering the goods into quarantine under, for example, section 44C of *the Act*. The term “level of quarantine risk” is defined in section 5D of the Act.

New subsections 56(5) and 56(6) create offences for contravening a requirement in a notice given under subsection 56(1).

In relation to both offence provisions, the requirement for the person to be ‘given’ the notice in subsection 56(1) will protect a person from being prosecuted if they haven’t received the notice. ‘Given’ has been interpreted by the courts as essentially requiring service of the notice on the relevant person. If the electronic notice is lost or sent to the wrong person, the intended recipient remains unaware of the notice and therefore has not been ‘given’ the notice.

Subsection 56(7) provides that an electronic notice given under section 56 may vary or revoke an earlier electronic notice given under the section. This subsection recognises that for a range of reasons, a notice may need to be varied or revoked. For example, additional information may be provided by the importer which changes the type of treatment the goods should be required to undergo.

Subsection 56(8) provides that if an electronic notice is inconsistent with an earlier electronic notice, the earlier notice is of no effect to the extent of the inconsistency. This provision will ensure that there is a uniform approach taken to reconciling any inconsistent notices generated by the computer. This provision anticipates an event that is likely to occur infrequently. However, if it does occur, the problem can be handled expeditiously by applying this rule.

Subsection 56(9) provides that section 56 is in addition to any power of a quarantine officer under the Act. This subsection confirms that the arrangement set up under section 56 does not have any effect on the existing powers of quarantine officers under the Act.

Subsection 56(10) provides that where an order or direction given by a quarantine officer under the Act is inconsistent with an electronic notice under section 56, the notice is, to the extent of the inconsistency, of no effect. This provision has been inserted to cover the situation where a quarantine officer on the spot (who may or may not be aware that an electronic notice has been issued, or, if he/she does know that an electronic notice has been issued, may not know what the notice contains) gives a direction which is inconsistent with the electronic notice. This situation might arise where a truck driver is, as the agent of the person who received an electronic notice, carrying imported oranges to a certain fumigation depot in accordance with the notice. A quarantine officer undertaking a spot check on the vehicle might consider that the oranges are not being carried in a secure manner and give a new direction to the truck driver to take the oranges to a different (closer) fumigation depot.

Section 56(11) provides that for the purposes of section 56, the term ‘electronic notice’ means an electronic notice generated as a result of the operation of a computer program under the control of the Director of Animal and Plant Quarantine.

**Item 16 Subsection 66AA(5) (after paragraph (b) of the definition of *infected goods*)**

This item extends the definition of ‘infected goods’ in subsection 66AA(5) to cover the concept, outlined in Item 5, that quarantinable pests and quarantinable diseases may also be ‘goods’ in themselves. The new subparagraphs 66AA(5)(ba) and (bb) mirror the approach taken to ‘goods infected with a quarantinable disease or a quarantinable pest’ in paragraphs 66AA(5)(a) and (b) of the Act.

**Item 17 Subparagraph 66AE(2)(a)(iii)**

This item makes an amendment to subparagraph 66AE(2)(a)(iii). The substituted words make subparagraph 66AE(2)(a)(iii) consistent with subparagraph 66AB(1)(a)(iii). The existing words had the unintended effect of only allowing entry to premises if there is full compliance with the procedures under a compliance agreement. This was an unintended outcome that defeated the purpose of the entry powers.

**Item 18 Subsection 66B(8)**

**Item 19 At the end of section 66B**

These items amend section 66B and mirror the amendments made to section 46A (see item 10). They have the effect of confirming that compliance agreements can be entered into in connection with vessels.

**Item 20 Paragraph 68(4)(a)**

This item extends paragraph 68(4)(a) so that a notice for the purposes of the section may be given to a consignee. Currently the notice may be given only to an importer. In respect of mail, in particular, the person who is the addressee (or consignee) on the mail item may not be the importer in the normal sense of the word, and there may be no other person in Australia who has an interest in the mail item. This amendment will enable the notice requirements of section 68 to be satisfied by giving the notice to the consignee, even if they are not the importer.



## **SCHEDULE 2 - WINE AND BRANDY**

### ***Australian Wine and Brandy Corporation Act 1980***

#### **Item 1 Subsection 29U(2)**

This item proposes to add the words "wine export charge" in order to apply to trusts and partnerships the same rules on payment for both the wine grapes levy and the wine export charge.

#### **Item 2 Subsection 29U(2)**

This item proposes to add the words "or charge" in order to apply to trusts and partnerships the same rules on payment for both the wine grapes levy and the wine export charge.

#### **Item 3 Section 29Z**

It is proposed to repeal this section and incorporate rules for voting at Annual General Meetings (AGMs) into the Australian Wine and Brandy Corporation (Annual General Meeting of the Industry) Regulations 1999. Items 5-7 propose to ensure that there is appropriate power to make regulations on voting at AGMs.

#### **Item 4 Section 29ZA**

This item proposes to reference the existing requirements in the *Primary Industries (Customs) Charges Act 1999* which permit the Australian Wine and Brandy Corporation to make recommendations, under certain conditions, to the Minister on the rate of the wine export charge.

#### **Item 5 At the end of subparagraphs 46 (1)(a)(i), (ii) and (iii)**

This item proposes to add "and" after each subparagraph to ensure that all the listed items are included in regulations.

#### **Item 6 After subparagraph 46(1)(a)(iv)**

This item proposes to add the power to make regulations on the method of determining votes that an eligible producer may cast at AGMs thus allowing 29Z(1) to be replaced by regulation.

#### **Item 7 At the end of paragraph 46(1)(a)**

This item proposes to add the power to make regulations on the confidentiality of voting thus allowing 29Z(2) to be replaced by regulation.

***Public Employment (Consequential and Transitional) Amendment Act 1999***

**Item 8 Item 277 of Schedule 1**

This item proposes to omit "a Department of the Commonwealth" and substitute "an Agency" thus correcting an earlier misdescribed amendment to the *Australian Wine and Brandy Corporation Act 1980*.