

2002

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2)
2002**

EXPLANATORY MEMORANDUM

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

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GENERAL OUTLINE

Australian Wine and Brandy Corporation Act 1980

The proposed amendments to the *Australian Wine and Brandy Corporation Act 1980* (the AWBC Act) deal with: the alteration of the Register of Protected Names, the provision of a head of power to fulfil Australian obligations under prescribed wine-trading agreements; lengthening the time in which a prosecution may be brought for breach of export provisions.

Export Control Act 1982

The proposed amendments to the *Export Control Act 1982* (the Act) deal with: allowing orders made under the Act to apply, adopt or incorporate with or without modification and as in force at a particular time or as in force from time to time any matter contained in the Australia New Zealand Food Standards Code (within the meaning of the *Food Standards Australia New Zealand Act 1991*) or the Codex Alimentarius (published by the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization). Currently, where orders apply these standards, the references to the standards in the orders must be interpreted as references to the standards in force at the time the orders were made. If the standards change after the orders are made, the orders must be remade to incorporate the changed standards. This amendment ensures that such references can be read as references to the current versions of the standards and avoids the necessity of amending the orders whenever the standards change.

National Residue Survey Administration Act 1992

The proposed amendments to the *National Residue Survey Administration Act 1992* (the Act) deal with: the clarification of the activities carried out under the Act for which payments can be made from the National Residue Survey Reserve; brings the Act into line with other Commonwealth legislation on the protection of personal information.

Quarantine Act 1908

The proposed amendments to the *Quarantine Act 1908* (the Act) deal with bringing the Act into compliance with the *Criminal Code 1995* (the Code).

Dairy Industry Legislation Amendment Act 2002

The proposed amendment to the *Dairy Industry Legislation Amendment Act 2002* is to correct a misdescribed amendment.

FINANCIAL IMPACT STATEMENT

There will be no financial impact on the Commonwealth.

Notes on clauses

Clause 1: Short Title

Clause 1 provides that the Act may be cited as the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002.

Clause 2: Commencement

Clause 2 sets out the commencement information in a table and specifies that each provision of the Act specified in column 1 of the table commences or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Clause 3: Schedules

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

SCHEDULE 1 *Australian Wine and Brandy Corporation Act 1980*

Item 1 Subsection 8(2)(aaa)

This item proposes to increase the Corporations powers to allow it to do anything for the purpose of giving effect to a prescribed wine-trade agreement.

Item 2 Subsection 40ZD(3) and (4)

This item proposes to allow amendments to the Register of Protected Names. If an entry is incorrectly entered through a clerical error the amendment proposes to allow the Corporation to direct the Registrar to omit the entry, move the entry to the relevant part or correct the terms of the entry.

Item 3 Section 44AA

The item proposes to lengthen the time available to commence a prosecution in relation to breaches of export provisions, to seven years. Currently the action must commence within one year of the breach occurring as per the provisions of the *Crimes Act 1914* (section 15B).

Item 4 Subsection 46(1)(a)

This item proposes to add an and to the end of the paragraph. This is to align the subsection with current drafting convention.

Item 5 Subsection 46(1)(b)

This item proposes to add a subsection to give the power to make regulations to give effect to a prescribed wine-trading agreement. This is in line with the addition of a corresponding power in subsection 8(2)(aaa), referred to at Item 1.

Item 6 Subsections 46(1)(c), (d), (e) and (f)

This item proposes to add and to the end of each paragraph. As for Item 4.

SCHEDULE 2 *Export Control Act 1982***Item 1 After paragraph 25(5)(ab)**

This item inserts a provision to enable orders to be made under the Act that apply, adopt or incorporate, with or without modification, the Codex Alimentarius or the Food Standards Code as in force at a particular time or as in force from time to time. The effect of this item is to provide a contrary intention for the purposes of section 49A of the *Acts Interpretation Act 1901* so that where the orders apply these standards it will not be necessary to amend the orders each time the standards change to ensure their currency.

Schedule 3 - *National Residue Survey Administration Act 1992***Item 1 Section 4**

This item inserts a definition of applicable products for the purposes of monitoring and reporting on the level of contaminants under paragraph 8(1)(a) *National Residue Survey Administration Act 1992*.

Item 2 Section 4

This item inserts a definition of a process for the purposes of the definitions under Section 4 of the *National Residue Survey Administration Act 1992*.

Item 3 Section 4

This item inserts a definition of products of a primary industry for the purposes of Section 4 definition of applicable products under the *National Residue Survey Administration Act 1992*.

Item 4 Section 4

This item inserts a definition of Secretary for the purpose of who can authorize the release residue survey data under Section 11 (Release of Information) of the *National Residue Survey Administration Act 1992*.

Item 5 Paragraph 8(1)(a)

This item repeals the existing paragraph and inserts a new paragraph that better reflects the National Residue Surveys current operational environment so that all inputs to raw food production (e.g. water, soil and imported feeds) can be adequately tested under random monitoring programs.

Item 6 Subparagraph 8(1)(b)(iii)

This item repeals the existing subparagraph and inserts a subparagraph that now refers to all the activities under the new paragraph 8(1)(a).

Item 7 Section 11

This item repeals the original Section 11 of the *National Residue Survey Administration Act 1992* and inserts a new Section 11 that better reflects current requirements under Commonwealth legislation on the release of personal data, who can release this data, and the penal provision applicable on the misuse of the data other than for its specified purpose.

SCHEDULE 4 *Quarantine Act 1908*

Item 1 Subsection 5(1)

This item inserts a definition for the act to engage in conduct that has the same meaning as in the *Criminal Code 1995* (the Code).

Item 2 Subsection 5(1) (paragraph (b) of the definition of *offence against this Act*)

This item omits references to repealed *Crimes Act 1914* provisions and substitutes the equivalent sections of the Code.

Item 3 Subsection 20(1)

This item substitutes a new subsection that clarifies that the phrase made with the permission of the Minister given under section 20AA is an exception/defence to the offence.

Item 4 Section 20A

This item substitutes a new section that clarifies that the phrase made with the permission of the Minister given under section 20AA is an exception/defence to the offence.

Item 5 Subsection 20B(2)

This item divides the offence into two separate offences with one relating to the commander of an aircraft and the other relating to the operator. In addition, the item clarifies that both offences are fault based.

Item 6 Subsections 24(1) and (2)

This item redrafts the offence to clarify that the phrase except as the master or a member of the crew of a tug carrying out operations as a tug is an exceptions/defence. .

Item 7 Subsections 25A(1) and (2)

This item removes the phrase for the purpose of and replaces it with the phrase to achieve the result of. The effect of this amendment is to remove the potential for confusion as to the applicable fault element.

Items 8 and 9 Subsection 26(1)

These items redraft the offence to clarify that the bringing into port to comply with section 26A is an exception/defence.

Items 10 and 11 Subsection 29(1)

These items redraft the offence to clarify that the leaving of the vessel or installation with the permission of a quarantine officer is an exception/defence.

Items 12 to 15 Subsection 29A(4)

These items redraft the offence to clarify that removal of an animal that has died or has been killed from an overseas vessel or installation is an exception/defence.

Items 16 and 17 Subsection 30(1)

These items redraft the offence to clarify that the leaving of a vessel or quarantine area with the authorisation of a quarantine officer is an exception/defence.

Items 18 and 19 Paragraphs 35A(7)(b), (8)(b) and (10)(b)

These items redraft the offences to clarify that the leaving of a vessel or installation with the permission of a quarantine officer (human quarantine) is an exception/defence.

Items 20 and 21 Subsection 40(1)

These items redraft the offence to clarify that the moving of a vessel or installation with the permission of a quarantine officer is an exception/defence.

Item 22 Subsection 44(2)

This item amends the subsection to delete the word knowingly as under the Code it is no longer possible to apply a fault element of knowledge to a physical element consisting of conduct. The Code automatically applies intentionally to the conduct covered in this offence provision.

Items 23 to 25 Subsections 44A(2) and (3)

These items redraft the offences to clarify that certain phrases are exceptions/defences and not elements of the offences.

Item 26 Section 49

This item redrafts the offence to remove any doubts about the fault element to be applied to the offence by clarifying that it is an offence for an officer to unlawfully engage in conduct that results in destruction or damage to any goods under his or her charge in the performance of quarantine. The item also creates an exception/defence for this offence of engaging in an act permitted under law.

Items 27 and 28 Subsections 72(3) and (4)

These items redraft the offence to clarify that it is an exception/defence to the offence if a person is prevented from attending by illness or some other cause.

Item 29 Subsection 74(2)

This item redrafts the offence to comply with the approach adopted during the harmonisation process in dealing with offences of this kind. In particular, to remove difficulties in interpreting the offence, the item clarifies that the removal or defacement of a notice is the result of the accused persons conduct and is therefore a physical element of result rather than a physical element of conduct.

Item 30 Subsection 75A(6)

This item redrafts the offence to clarify that it is an exception/defence to the offence if a person moves a vessel with written permission.

Item 31 Section 78B

This item redrafts the offence to clarify the circumstances that give rise to an exception/defence to the offence.

Items 32 and 33 Paragraph 78C(2)(b)

These items redraft the offence to clarify that it is an exception/defence to the offence if a person has the permission of a quarantine officer.

SCHEDULE 5 Contingent amendments relating to Christmas Island

Items 1 to 7

The items in this Schedule (Schedule 5) are intended to deal with the possibility that the Agriculture Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002 (the Bill) may commence before the Agriculture Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002 (AFFLAB No. 1). The timing of the commencement of the Bill and AFFLAB No. 1 is relevant because some provisions are amended by both AFFLAB No.1 and the Bill, and it is not possible at this stage to predict which of the two Bills will commence first.

The provisions that are the subject of the overlap are being amended by AFFLAB No. 1 as part of the extension of the *Quarantine Act 1908* to Christmas Island. In the event that AFFLAB No. 1 does not commence first, Schedule 5 provides an alternative set of amendments to the *Quarantine Act 1908* that do not include references to Christmas Island. The commencement provisions of the Bill ensure that the references to Christmas Island will be inserted when AFFLAB No. 1 commences.

Schedule 5 has no effect if AFFLAB No. 1 commences first.

SCHEDULE 6 Dairy Industry Legislation Amendment Act 2002

Item 1 of Schedule 6 corrects a misdescribed amendment.