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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**AUSTRALIAN POSTAL CORPORATION AMENDMENT (QUARANTINE
INSPECTION AND OTHER MEASURES) BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon. Helen Coonan, Minister for
Communications, Information Technology and the Arts)

**AUSTRALIAN POSTAL CORPORATION AMENDMENT
(QUARANTINE INSPECTION AND OTHER MEASURES) BILL
2007**

OUTLINE

The main purpose of the Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007 (the Bill) is to provide for the inspection and examination of postal articles carried by Australia Post, with the exception of reserved services material, for interstate quarantine purposes.

The Bill will also:

- (a) allow the disclosure of information about articles seized by border control agencies or consumer protection agencies for the purposes of the Universal Postal Convention;
- (b) allow the disclosure of scam mail articles to consumer protection agencies;
- (c) reflect the operation of the GST and the Wine Equalisation Tax (WET), including allowing international articles to be opened where there is a reasonable suspicion that GST on imports or WET is payable; and
- (d) clarify and extend the operation of certain provisions of the *Australian Postal Corporation Act 1989*.

The *Australian Postal Corporation Act 1989* prohibits the opening of postal articles except in specified circumstances. These exceptions include the opening of articles suspected of containing drugs or articles on which customs duty is payable.

The exceptions in the Australian Postal Corporation Act do not include the opening of articles for quarantine purposes, although incoming international mail may be opened in accordance with powers set out in the *Quarantine Act 1908*. The opening of postal articles for interstate quarantine purposes is currently not allowed under the Australian Postal Corporation Act.

The inspection regime proposed in the Bill provides that certain procedures must be followed by State and Territory quarantine inspection authorities that have opted in to the inspection regime and that specified records be kept. The record keeping requirements will be set out in amendments to the *Australian Postal Corporation Regulations 1996*, which will be prepared with a view to commencing on the same day as Schedule 1 to the Bill once enacted.

The Bill has been developed in consultation with State and Territory governments and Australia Post. There is general consensus about the proposal, including that the reserved services be exempted from inspection under the scheme because of the low risk of standard letters carrying quarantine material and to ensure that Australia Post's

ability to meet its regulated performance standards is not adversely affected. At this stage, Western Australia, Tasmania and the Northern Territory have expressed interest in coming under the scheme to be established by the Bill.

The Bill will also address a competitive neutrality issue, as Australia Post's competitors in the interstate parcels and freight sectors are already liable for quarantine inspection in certain jurisdictions. In Western Australia, for example, other operators are subject to interstate quarantine inspection arrangements, set out in the *Plant Diseases Act 1914* (WA), which allows State quarantine officers to open and examine any articles carried into the State by non-Australia Post operators.

Schedule 1 to the Bill also contains amendments to enable Australia Post to request information from border control agencies and consumer protection agencies about seized postal articles to enable Australia Post to provide that information to foreign postal administrations for the purposes of the Universal Postal Convention.

Schedule 1 to the Bill also contains amendments that provide for Australia Post to disclose scam mail to consumer protection agencies. The Australian Postal Corporation Act does not currently permit the disclosure of scam mail unless the disclosure is required under a warrant or is disclosed by a witness in court proceedings. In practice, 'scam mail' involves the use of the mail network to send batches of mail in order to promote schemes that are designed to mislead or deceive consumers, typically involving the solicitation of money.

The amendments in Schedule 1 to the Bill will commence on a date to be fixed by Proclamation. The date of Proclamation will be fixed to allow sufficient time for those quarantine inspection authorities which intend to implement an interstate quarantine inspection scheme, as well as Australia Post and consumer protection agencies, to put in place appropriate administrative arrangements for the purposes of the amendments.

The amendments contained in Schedule 2 to the Bill will commence on Royal Assent.

A service improvement plan is required under the Act when the Auditor-General reports that Australia Post has not met its prescribed performance standards. The Bill includes an amendment which will enable the Minister to exempt Australia Post from the current requirement to prepare a service improvement plan where the Minister considers the preparation of the plan is unnecessary in the circumstances. This would include circumstances where the failure to meet a performance standard was beyond the control of Australia Post or if Australia Post had already implemented measures to address any drop in performance.

A second measure will extend the regulation-making power in the Act such that, should it be considered necessary to do so, regulations may be made to prescribe standards relating to the methods of determining the level of mail delivery service for a particular area. This could include, for example, processes used by Australia Post for polling communities to determine whether delivery services should be provided 'to the property'.

The remaining measures in Schedule 2 reflect the operation of the GST and WET following the repeal of references in the Australian Postal Corporation Act to 'sales tax'

and 'sales tax on imports' by the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*. They will enable an authorised examiner to open an article in the international mail if they have reasonable grounds for believing that the article contains an item on which GST or WET is payable.

FINANCIAL IMPACT STATEMENT

The Bill is not expected to have any financial impact on Commonwealth expenditure or revenue. The costs of interstate quarantine inspection will be borne by State and Territory quarantine inspection authorities that opt in to the inspection regime provided by the Bill. Australia Post may be subject to costs associated with quarantine inspection of Express Post articles, which attract compensation for failure to meet delivery guarantees, but they are not expected to be significant.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

APC Act:	<i>Australian Postal Corporation Act 1989</i>
ASIC:	Australian Securities and Investments Commission
Bill:	Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007
GST	Goods and Services Tax
Minister:	Unless otherwise indicated, Minister means the Minister responsible for the administration of the <i>Australian Postal Corporation Act 1989</i> , currently the Minister for Communications, Information Technology and the Arts
QI Act:	the proposed <i>Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007</i>
regulations	the proposed amendments of the <i>Australian Postal Corporation Regulations 1996</i>
UPU	Universal Postal Union
WET	Wine Equalisation Tax

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007*.

Clause 2 – Commencement

Subclause 2(1) provides that the provisions of the QI Act specified in column 1 of the table in clause 2 commence in accordance with column 2 of the table and that any other statement in column 2 of the table has effect according to its terms. In effect, sections 1 to 3 and Schedule 2 of the QI Act will commence on the date on which the QI Act receives the Royal Assent, while Schedule 1 will commence on the earlier of a date to be fixed by Proclamation or the first day after the end of the 6 month period beginning when the QI Act receives the Royal Assent.

The amendments in Schedule 1 have a delayed commencement to enable processes to be put in place for interstate quarantine inspection following enactment of the Bill.

Subclause 2(2) provides that the additional information in column 3 of the table is not part of the QI Act. Information in that column may be added to or edited in any published version of the QI Act.

Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms. Both Schedule 1 and Schedule 2 to the Bill amend the APC Act.

Schedule 1 – Amendments commencing on Proclamation

Amendment of the *Australian Postal Corporation Act 1989*

Item 1 – Section 90E – Insertion of definition of ‘business day’

Item 1 inserts a definition of ‘business day’ in section 90E of the APC Act for the purposes of the definition of ‘decision period’ in proposed subsection 90UB(6), which will allow a consumer protection agency a decision period of 10 business days to retain scam mail in certain circumstances.

Item 2 – Section 90E – Insertion of definition of ‘compliance agency’

Item 2 inserts a definition of ‘compliance agency’ to specify the agencies from which Australia Post may request information about an article which has been removed from the normal course of carriage for the purpose of being opened and examined by a compliance agency (see proposed section 91 inserted by item 21). This information will be able to be passed to other postal administrations to avoid liability under the

Universal Postal Convention for lost or delayed postal articles. The reference in paragraph (e) of the definition to ‘another prescribed agency’ allows other agencies to be specified in the *Australian Postal Corporation Regulations 1996* as compliance agencies should this prove necessary.

Item 3 – Section 90E – Insertion of definition of ‘consumer protection agency’

Item 3 inserts a definition of ‘consumer protection agency’ to specify the agencies to which information about suspected ‘scam mail’ may be disclosed and to which articles that are suspected of being ‘scam mail’ may be disclosed under proposed subsections 90J(10) and 90UB(2). The reference in paragraph (k) of the definition to ‘another prescribed agency’ allows other agencies to be specified in the *Australian Postal Corporation Regulations 1996* as consumer protection agencies should this prove necessary, for example if an existing agency changes its name.

Item 4 – Section 90E – Insertion of definition of ‘consumer protection law’

Item 4 inserts a definition of ‘consumer protection law’ to mean the *Trade Practices Act 1974*, the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001*, a State Fair Trading Act or a State Sale of Goods Act. Definitions of ‘State Fair Trading Act’ and ‘State Sale of Goods Act’ have been inserted by items 9 and 10 to mean the Fair Trading and Sale of Goods Acts of each of the States and Territories. The term ‘consumer protection law’ is used in the definition of ‘scam mail’ inserted by item 8 of Schedule 1 to the Bill and in item 23 of Schedule 1 to the Bill, which amends the regulation making power in section 102 of the APC Act. The reference in paragraph (f) of the definition of ‘consumer protection law’ to ‘another prescribed Act’ allows other Commonwealth, State or Territory Acts to be specified in regulations for the purposes of the definition should this prove necessary.

Item 5 – Section 90E – Insertion of definition of ‘prescribed State/Territory’

Item 5 inserts a definition of ‘prescribed State/Territory’ in section 90E of the APC Act for the purposes of the definition of ‘quarantine inspection officer’ inserted by item 6, ‘quarantine material’ inserted by item 7 and proposed section 90U (see item 15), which provides a procedure for dealing with articles consisting of, or containing, quarantine material. This will allow the regulations to prescribe those States and Territories that wish to be covered by the quarantine inspection provisions of the Bill. At this stage, Western Australia, Tasmania and the Northern Territory have expressed interest in having regulations made to bring them within the definition of a ‘prescribed State/Territory’.

Item 6 – Section 90E – Insertion of definition of ‘quarantine inspection officer’

Item 6 inserts a definition of ‘quarantine inspection officer’ to specify that only a person who exercises quarantine powers or performs quarantine functions under a law of a prescribed State/Territory (see item 5) is a quarantine inspection officer for the purposes of the interstate quarantine inspection scheme.

Item 7 – Section 90E – Insertion of definition of ‘quarantine material’

Item 7 inserts a definition of ‘quarantine material’ for the purposes of the interstate quarantine inspection scheme as anything in relation to which a quarantine inspection officer of a prescribed State/Territory (see item 5) may exercise the quarantine powers or perform the quarantine functions as may be applicable under their respective State or Territory quarantine laws. This provision ensures that the quarantine material which is the object of the interstate quarantine inspection scheme will be automatically updated in accordance with changes in State and Territory laws.

Item 8 – Section 90E – Insertion of definition of ‘scam mail’

Item 8 inserts a definition of ‘scam mail’ to specify the type of mail which Australia Post may disclose to consumer protection agencies. Under this definition it is proposed that mail will be scam mail if it is reasonable to suspect that it is one of a batch sent in breach of a consumer protection law. The term ‘scam mail’ is used in proposed subsection 90J(10) (see item 13) and proposed sections 90UA, 90UB and 90UC (see item 15). Common examples of scam mail include fake lotteries, advanced fee fraud, money transfer requests and bogus investment schemes.

Items 9 and 10 – Section 90E – Insertion of definitions of ‘State Fair Trading Act’ and ‘State Sale of Goods Act’

Items 9 and 10 set out a list of the relevant Fair Trading Acts and Sale of Goods Acts for each State and Territory and includes other prescribed Acts. The reference in each definition to ‘another prescribed Act’ allows other State or Territory Acts to be specified in the *Australian Postal Corporation Regulations 1996* should this prove necessary.

The terms ‘State Fair Trading Act’ and ‘State Sale of Goods Act’ are used in the definition of ‘consumer protection law’ inserted by item 4. The term ‘consumer protection law’ is referred to in the definition of ‘scam mail’ inserted by item 8 and in item 23 of Schedule 1 to the Bill, which amends the regulation making power in section 102 of the APC Act.

Item 11 – Section 90E – Insertion of definition of ‘Universal Postal Union’

Item 11 inserts a definition of ‘Universal Postal Union’ to describe the agency which prescribes rules for international mail exchanges. The term ‘Universal Postal Union’ is used in item 12.

Item 12 – Section 90E – Insertion of definition of ‘UPU instrument’

Item 12 inserts a definition of ‘UPU instrument’ to describe the documents under which Australia Post is liable for the loss of articles. The term ‘UPU instrument’ is used in proposed subsection 90J(11) (see item 13).

Item 13 – New subsections 90J(10) and (11) – Disclosure of information

Division 2 of Part 7B of the APC Act creates offences for the use and disclosure of postal information and documents by certain persons. Section 90J creates exceptions which allow use and disclosure in certain circumstances.

Proposed subsection 90J(10) allows an employee of Australia Post who is an authorised discloser (i.e. an employee who has a written authorisation under section 90FA of the APC Act) to disclose information acquired or received by the employee in the circumstances set out in subsection 90G(1) to a consumer protection agency if the information is a reasonable suspicion that an article in the course of post consists of, or contains, scam mail, or if the information is any information or document on the basis of which the authorised discloser forms a reasonable suspicion that an article is or contains scam mail. This provision will enable Australia Post to disclose to relevant consumer protection agencies that it has a batch of suspected scam mail in its system.

Proposed subsection 90J(11) allows an employee of Australia Post to disclose information acquired or received by the employee in the circumstances set out in subsection 90G(1), if the disclosure is to a postal administration in a foreign country in circumstances permitted under a UPU instrument and in accordance with that instrument.

Under the Universal Postal Convention, Australia Post is liable for the loss of certain postal items. However, it is not liable for seized items of which it has been notified. Proposed subsection 90J(11) will allow disclosure of information that will enable Australia Post to be relieved of a potential liability for seized articles under UPU arrangements. See the notes in proposed section 91 in item 21 for further information in relation to this matter.

Item 14 – Amendment of paragraph 90N(1)(a)

Paragraph 90N(1)(a) of the APC Act, when read with subsection 90N(2) of that Act, prohibits the opening of an article or the examination of its contents except where this is permitted by any of sections 90P to 90T. As a consequence of the addition of proposed sections 90U and 90UB, which includes new powers to open and examine articles, item 14 makes an amendment to paragraph 90N(1)(a) to refer to those proposed sections. As a result, a person will be prohibited from opening an article or examining its contents except where this is permitted by any of sections 90P to 90U or section 90UB.

Item 15 – Insertion of new sections after section 90T

Proposed section 90U – Articles consisting of, or containing, quarantine material

This item applies similar procedures to those set out in section 90T of the APC Act in relation to the opening and examination by officers of the Australian Customs Service of articles reasonably believed to consist of, or contain, certain drugs or other chemical compounds, and applies them as appropriate to the interstate quarantine inspection scheme.

Proposed subsection 90U(1) specifies that the section applies only to articles in the course of post to a prescribed State/Territory (see item 5) from a place within Australia that is outside the prescribed State/Territory, and only applies where a quarantine inspection officer of the prescribed State/Territory has reasonable grounds for believing that the article consists of, or contains, quarantine material in relation to the prescribed State/Territory.

Proposed subsection 90U(2) exempts reserved services from the interstate quarantine inspection scheme. Reserved services are the activities that Australia Post has, because of section 29 of the APC Act, the exclusive right to engage in. Carriage of letters is exempted as the risk of quarantine material in letters is relatively low in comparison to parcels.

Proposed subsection 90U(3) provides that a quarantine inspection officer, having decided that there are reasonable grounds for believing that the article consists of, or contains, quarantine material in relation to the prescribed State/Territory, may request an authorised examiner to open the article. 'Authorised examiner' has the meaning given by section 90FB of the APC Act.

Proposed subsection 90U(4) provides that the authorised examiner may remove the article from the normal course of carriage and open the article in the presence of the quarantine inspection officer, following any procedures that are prescribed for the purposes of the section. It is intended to prescribe in the regulations record keeping procedures in relation to this provision under proposed subsection 90U(9).

Proposed subsection 90U(5) provides that, after the authorised examiner has opened the article in the presence of the quarantine inspection officer, the quarantine inspection officer may then examine its contents to check whether it consists of, or contains, quarantine material.

Proposed subsection 90U(6) provides that, subject to section 90X of the APC Act, which deals with the handling of dangerous or offensive articles, if the article is found not to consist of, or contain, quarantine material, the article and its contents must be closed up and returned to the normal course of carriage, following any procedures prescribed for the purposes of this section.

This provision mirrors subsection 90T(5) of the APC Act in relation to the actions of a Customs officer. It has not been found necessary to prescribe regulations in this respect and none are proposed at this time in relation to the interstate quarantine inspection scheme.

Section 90X essentially provides that, despite the specific provisions of the Division dealing with the opening and examination of articles by officers of the Australian Customs Service (and by a quarantine inspection officer or compliance agency under the Bill), an Australia Post employee can deal with the article in accordance with the provisions determined under section 32 of the APC Act, if the article is found to be, or suspected on reasonable grounds of being, explosive, dangerous or deleterious, or can destroy the article if it is physically offensive.

Proposed subsection 90U(7) provides that, subject to section 90X of the APC Act, if the article is found to consist of, or contain, quarantine material, the article and its contents must be dealt with in accordance with the relevant law of the prescribed State/Territory (see item 5) or the Commonwealth, as the case requires. It also requires the quarantine inspection officer, as soon as practicable after the examination of the article, to notify the intended recipient and the sender, where the sender's name and address is ascertainable, that the article has been removed from the normal course of carriage, stating what the article contained and advising that the article will be dealt with in accordance with the relevant law of the prescribed State/Territory or the Commonwealth, as the case requires.

Proposed subsection 90U(8) provides for the making of regulations to determine the procedures:

- for removing an article from the normal course of carriage for the purpose of its examination by a quarantine inspection officer; and
- for the return of an article to the normal course of carriage.

This provision mirrors subsection 90T(7) of the APC Act in relation to the actions of a Customs officer. It has not been found necessary to prescribe regulations in this respect and none are proposed at this time in relation to the interstate quarantine inspection scheme.

Proposed subsection 90U(9) requires that prescribed persons or bodies must establish and maintain, in accordance with regulations made for the purposes of the subsection, a record of each article that has been found to consist of, or contain, quarantine material. The record will set out:

- particulars of the article; and
- particulars of the nature of the examination of the article and its contents; and
- whether, following the examination, the article and its contents were dealt with according to the relevant law of the prescribed State/Territory or the Commonwealth, or returned to the normal course of carriage.

Proposed subsection 90U(10) provides that the regulations made for the purposes of subsection 90U(9) must specify:

- the place or places at which the record referred to in that subsection is required to be kept and maintained; and
- the manner in which the record is to be kept; and
- the uses that can be made of information contained in the record.

Proposed section 90UA – Removing scam mail from the normal course of carriage

In practice, scam mail often arrives in Australia in large batches from a single overseas location in substantially similar envelopes. Once one item is identified, the whole batch can be readily removed from the mail stream to protect consumers. Proposed subsection 90UA(1) allows Australia Post to remove a batch of articles from the normal course of carriage if it reasonably suspects that the batch consists of, or contains, scam mail. In addition, Australia Post will also be permitted to remove batches of articles from the normal course of carriage where it has been notified by a consumer protection

agency that the article may consist of or contain scam mail (see proposed subsection 90UA(3) below).

Under proposed subsection 90UA(2), if a batch of articles has been removed in accordance with proposed subsection 90UA(1), Australia Post must, as soon as practicable, notify the ACCC, ASIC and/or the consumer protection agency for the State or Territory in which the removal has occurred of its removal or another agency that is prescribed by the *Australian Postal Corporation Regulations 1996*. Once a consumer protection agency has been notified of the removal of an article, it may then make arrangements with Australia Post under proposed subsection 90UB(2) for access to the batch of articles for the purpose of opening and examining one or more articles within the batch to determine whether it is scam mail.

Proposed subsection 90UA(3) provides that Australia Post may also remove batches of articles of a particular kind from the normal course of carriage if a consumer protection agency has notified it that articles of that kind may be in the course of post and that such articles may be, or may contain, scam mail. The consumer protection agency must also provide Australia Post with a means of identifying the relevant articles. Once the batch of articles has been removed and the consumer protection agency notified of its removal (under proposed subsection 90UA(4)), the consumer protection agency may make arrangements with Australia Post under proposed subsection 90UB(2) for access to the article for the purpose of opening and examining one or more articles within the batch.

Proposed section 90UB – Opening and examining scam mail

Proposed subsection 90UB(1) provides that section 90UB applies if a batch of articles has been removed from the normal course of carriage under section 90UA (i.e. at Australia Post's initiative or at the request of a consumer protection agency) and a consumer protection agency has been notified of the removal.

Proposed subsection 90UB(2) provides that the consumer protection agency may make arrangements with Australia Post for access to the batch of articles and may open and examine one or more articles within the batch for the purpose of determining whether or not it is scam mail.

Proposed subsection 90UB(3) provides that if no consumer protection agency opens and examines an article within the batch within the 'decision period', Australia Post must return the batch to the normal course of carriage, following the procedures (if any) that are prescribed in the *Australian Postal Corporation Regulations 1996* for the purposes of proposed section 90UB. The 'decision period' is defined in proposed subsection 90UB(6) as the period of 10 business days, or such longer period as may be prescribed in the *Australian Postal Corporation Regulations 1996*, starting from when the last consumer protection agency is notified of the removal of the batch of articles from the normal course of carriage.

Proposed subsection 90UB(4) provides that subsection 90UB(3) has effect subject to section 90X. Section 90X essentially provides that, despite the specific provisions of the Division dealing with the opening and examination of articles by officers of the Australian Customs Service (and by a quarantine inspection officer or a compliance agency under the Bill), an Australia Post employee can deal with the article in

accordance with the provisions determined under section 32 of the APC Act, if the article is found to be, or suspected on reasonable grounds of being, explosive, dangerous or deleterious, or can destroy the article if it is physically offensive.

Proposed subsection 90UB(5) provides that in opening and examining articles under proposed subsection 90UB(2), a consumer protection agency must comply with any relevant law that applies to it in relation to the performance of functions or the exercise of powers by the agency when dealing with the articles.

Proposed section 90UC – Dealing with or returning scam mail

Proposed subsection 90UC(1) provides that if, after opening and examining one or more articles within a batch of articles in accordance with proposed section 90UB, a consumer protection agency believes on reasonable grounds that the batch consists of, or contains, scam mail, it must deal with articles within the batch in accordance with applicable Commonwealth, State or Territory laws.

Proposed subsection 90UC(2) provides that if the consumer protection agency believes on reasonable grounds that one or more articles in a batch that have been opened do not consist of, or contain, scam mail, it is required to close up any opened article and return the batch, as soon as is practicable, to Australia Post.

Proposed subsection 90UC(3) provides that if the batch is returned to Australia Post it must return the batch to the normal course of carriage in accordance with prescribed procedures (if any) that may be specified in the *Australian Postal Corporation Regulations 1996*.

Proposed subsection 90UC(4) provides that subsections 90UC(1) and (3) have effect subject to section 90X. Section 90X essentially provides that, despite the specific provisions of the Division dealing with the opening and examination of articles by officers of the Australian Customs Service (and by a quarantine inspection officer or a compliance agency under the Bill), an Australia Post employee can deal with the article in accordance with the provisions determined under section 32 of the APC Act, if the article is found to be, or suspected on reasonable grounds of being, explosive, dangerous or deleterious, or can destroy the article if it is physically offensive.

Item 16 – Amendment of subsection 90V(2)

This item inserts a reference to ‘or a quarantine inspection officer’ in subsection 90V(2). The proposed amendment arises as a consequence of adding the interstate quarantine inspection scheme in the APC Act and clarifies that Australia Post must cause an explanatory notification to be provided on the cover of an article opened for inspection, and subsequently returned to the normal course of carriage, about its opening for the purpose of Customs or interstate quarantine inspection.

Item 17 – Insertion of new subsection 90V(2B)

Proposed subsection 90V(2B) provides that if an article is opened and examined by a consumer protection agency under proposed section 90UB but not retained or otherwise dealt with under proposed subsection 90UC(1), the agency must endorse the cover of

the article or affix a label with a notification explaining the purpose for which the article was opened. The consumer protection agency is required to explain the purposes for which the article was opened by reference to proposed section 90UB or otherwise.

Item 18 – Amendment of subsection 90V(3)

Item 18 makes a consequential amendment to subsection 90V(3) having regard to the amendment made by item 17.

Item 19 – Amendment of subsection 90ZC(1)

Item 19 corrects a drafting anomaly by inserting the words ‘to be done’ in subsection 90ZC(1) so that the phrase ‘in relation to an act done or omitted *to be done*’ is spelt out in full for consistency with other provisions in the APC Act.

Item 20 – Amendment of subsection 90ZC(2)

Subsection 90ZC(2), when read with subsection 90ZC(1), protects a Customs officer from liability for acts done or omitted to be done in good faith in the exercise or performance, or the purported exercise or performance, of:

- (a) a power or duty under section 90T (which sets out a procedure for Customs officers to deal with articles reasonably believed to consist of, or contain, certain drugs or chemical compounds); or
- (b) a duty under subsection 90V(2A) (which requires a Customs officer who has opened an article under section 90T, before returning the article to the normal course of carriage, to include a notification on the article that it has been opened by the Australian Customs Service and an explanation of the purpose for which the article was opened).

Item 20 amends subsection 90ZC(2) so that it will also protect:

- (a) a quarantine officer from liability for acts done or omitted to be done in good faith in the exercise or performance, or the purported exercise or performance, of a power or duty under proposed section 90U (see item 15); or
- (b) a person acting on behalf of a consumer protection agency in the exercise or performance of a power or duty under proposed section 90UB or proposed section 90UC or a duty under proposed subsection 90V(2B) (see items 15 and 17).

Item 21 – Insertion of new section 91 – Giving Australia Post information about articles removed from the normal course of carriage

Proposed section 91 provides for Australia Post to request information from a compliance agency about articles that have been removed from the normal course of carriage in accordance with section 90T or proposed sections 90U and 90UA. The proposed amendment arises as a consequence of the requirements placed on Australia

Post under the Universal Postal Convention to provide information to foreign postal administrations about articles that have been seized by compliance agencies.

Article 21.1 of the Universal Postal Convention provides that subject to certain exceptions in Article 22 postal administrations are liable for ‘the loss of ... ordinary parcels’. Article 22.2.5 provides that postal administrations will not be liable when postal items have been seized under the legislation of the country of destination, as notified by the administration of that country.

Proposed subsection 91(1) specifies the information which Australia Post may request the compliance agency to provide to enable Australia Post to notify other relevant postal administrations in accordance with the Universal Postal Convention.

Proposed subsection 91(2) provides that the compliance agency may, if it has examined the article, comply with the request in full or in part. It may also refuse the request regardless of whether or not it has examined the article. There may be specific reasons, such as to protect ongoing investigations, for a compliance agency to refuse the request.

The proposed amendment will also assist Australia Post in responding from requests from members of the public about missing postal articles.

Item 22 – Amendment of paragraphs 102(c) and (d)

In accordance with current drafting practice, item 22 amends paragraphs 102(c) and (d) to insert the word ‘and’ at the end of paragraphs 102(c) and (d).

Item 23 – Insertion of new paragraphs 102(da), (db), (dc) and (dd) – Regulation making power

Item 23 inserts additional regulation making powers to enable regulations to be made:

- (a) prescribing Acts for the purposes of the reference to ‘another prescribed Act’ in paragraph (f) of the definition of ‘consumer protection law’ and the references to ‘another prescribed Act’ in the definitions of ‘State Fair Trading Act’ and ‘State Sale of Goods Act’ (see items 4, 9 and 10); and
- (b) prescribing agencies for the purposes of the reference to ‘another prescribed agency’ in paragraph (e) of the definition of ‘compliance agency’ and paragraph (k) of the definition of ‘consumer protection agency’ (see items 2 and 3); and
- (c) prescribing States and Territories for the purposes of the definition of ‘prescribed State/Territory’ (see item 5); and
- (d) prescribing a period for the purposes of the definition of ‘decision period’ in proposed subsection 90UB(6) (see item 15).

Item 24 – Amendment of paragraph 102(e)

In accordance with current drafting practice, item 24 amends paragraph 102(e) to insert the word ‘and’ at the end of paragraph 102(e).

Item 25 – Application

This item provides that amendments made by Schedule 1 apply to articles that were in the course of post on the date of commencement of the Schedule, regardless of when the articles commenced being in the course of post.

Schedule 2 – Amendments commencing on Royal Assent

Amendment of the Australian Postal Corporation Act 1989

Item 1 – Insertion of new subsection 28C(3)

New subsection 28C(3) provides that the prescribed performance standards specified in the *Australian Postal Corporation (Performance Standards) Regulations 1998* may relate to methods of determining the level of mail delivery service for a particular area.

The amendment is not intended to limit subsection 28C(1), which provides that regulations may prescribe performance standards to be met by Australia Post. Subsection 28C(2) provides that the prescribed performance standards must relate to the frequency, speed or accuracy of mail delivery or the availability or accessibility of post-boxes, other mail lodgement points, Australia Post offices or other places from which Australia Post products or services may be purchased. This clarifies that subsection (1) provides a broad regulation-making power relating to performance standards to be met by Australia Post, subject to the requirements of subsection 28C(2). Proposed new subsection 28C(3) simply gives one example of what the prescribed performance standards may relate to.

This amendment would enable regulations to be made prescribing standards relating to the processes used by Australia Post for polling communities to determine whether delivery services should be provided ‘to the property’ if considered necessary.

Item 2 – Subsection 28E(1)

Subsection 28E(1) of the APC Act provides that Australia Post must prepare a service improvement plan if the Auditor-General has reported in a performance audit report that Australia Post has not met a prescribed performance standard. The service improvement plan is designed to ensure that Australia Post meets that prescribed performance standard as soon as practicable.

This item proposes to amend subsection 28E(1) to provide that Australia Post is not required to prepare a service improvement plan if the Minister considers it unnecessary in the circumstances and so determines by legislative instrument. In accordance with the *Legislative Instruments Act 2003*, such a determination will be required to be registered on the Federal Register of Legislative Instruments and will be subject to

Parliamentary disallowance. This amendment recognises that Australia Post may address the reasons for a failure to meet a performance standard before its failure to meet the standard is noted in the relevant Auditor-General's report. In such cases the requirement for Australia Post to prepare a service improvement plan would be unnecessary.

Items 3, 4 and 5 – Section 90E – Insertion of definitions of ‘GST’, ‘taxable importation’ and ‘wine tax’

Items 3, 4 and 5 insert definitions in section 90E of the APC Act for the purposes of the amendments in items 6 to 13. These amendments will enable an authorised examiner (as defined in section 90FB of the APC Act) to open an article in the international mail if they have reasonable grounds for believing that the article contains an item on which GST or wine tax is payable. The proposed amendments insert references to the GST and wine tax where the references to ‘sales tax’ or ‘sales tax on imports’ were removed by the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

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

Item 6 amends paragraph 90K(3)(b) to allow the disclosure of information or a document that is not specially protected (see subsection 90G(3)) to a customs officer if there are reasonable grounds for believing that the information or document relates to anything the importation of which into Australia is a taxable importation on which GST is payable or on which wine tax is payable.

Items 7 to 11 – Amendments to section 90S

Subsection 90S(1) sets out the circumstances in which section 90S applies. Section 90S applies if an article that is not reasonably believed to consist of, or contain, certain drugs or other chemical compounds is in the course of post between Australia and a place outside Australia and either or both of the following conditions is, or are, satisfied:

- (a) a Customs officer has requested an authorised examiner to open the article;
- (b) there are reasonable grounds for believing that the article consists of, or contains, anything:
 - (i) on which customs duty is payable; or
 - (ii) that is being carried in contravention of a Commonwealth law relating to the importation into, or exportation from, Australia of that thing.

Item 7 amends paragraph 90S(1)(b) to include a reference to there being reasonable grounds for believing that the article consists of, or contains anything the importation of which into Australia is a taxable importation on which GST is payable or on which wine tax is payable.

Items 8 and 9 are consequential upon the amendment made by item 7.

Subsection 90S(5) provides that, subject to section 90X (which deals with the handling of dangerous or offensive articles) if the article is found to consist of or contain anything on which customs duty is payable or that is being carried in contravention of a Commonwealth law relating to the importation into, or exportation from, Australia of that thing, the article and its contents must be dealt with in accordance with any applicable laws of the Commonwealth relating to customs duty or imports or exports, as the case requires.

Items 10 and 11 amend subsection 90S(5) so that it will also provide that, subject to section 90X, if the article is found to consist of, or contain, anything the importation of which into Australia is a taxable importation on which GST is payable or on which wine tax is payable, the article and its contents must be dealt with in accordance with any applicable laws of the Commonwealth relating to GST or wine tax.

Items 12 and 13 – Amendments to section 90T

Section 90T deals with the handling of certain articles reasonably believed to consist of, or contain, certain drugs or other chemical compounds.

Subsection 90T(5) provides that, subject to section 90X (which deals with the handling of dangerous or offensive articles), if the article is found to consist of, or contain:

- (a) such drugs or other chemical compounds; or
- (b) any other thing:
 - (i) on which Customs duty is payable; or
 - (ii) that is being carried in contravention of a law of the Commonwealth relating to its importation into, or exportation from, Australia;

the Customs officer who opened the article must close up the article, and return it to the normal course of carriage following such procedures (if any) as are prescribed for the purposes of section 90T.

Item 12 amends subsection 90T(5) so that it will also provide that, subject to section 90X, if the article is found to consist of, or contain:

- (a) such drugs or other chemical compounds; or
- (b) any other thing the importation of which into Australia is a taxable importation on which GST is payable or on which wine tax is payable;

the Customs officer who opened the article must close up the article, and return it to the normal course of carriage following such procedures (if any) as are prescribed for the purposes of section 90T.

Subsection 90T(6) provides that, subject to section 90X, if the article is found to consist of, or contain, such drugs or other chemical compounds or such other thing referred to in subsection 90T(5), the article and its contents must be dealt with in

accordance with any applicable laws of the Commonwealth relating to customs duty or imports or exports, as the case requires.

Item 13 amends subsection 90T(6) so that it will also provide that, subject to section 90X, if the article is found to consist or, or contain, such drugs or other chemical compounds or such other thing referred to in subsection 90T(5), the article and its contents must be dealt with in accordance with any applicable laws of the Commonwealth relating to GST or wine tax.