

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT
BILL (NO 2) 1998**

EXPLANATORY MEMORANDUM

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

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (NO 2) 1998

GENERAL OUTLINE

Schedule 1 - Amendment of the Agricultural and Veterinary Chemicals (Administration) Act 1992

The proposed amendments to the *Agricultural and Veterinary Chemicals (Administration) Act 1992* will, if enacted, provide five years protection for undisclosed test and/or other data submitted to the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) for the evaluation of a new active constituent for an agricultural or veterinary chemical product. Such data will not be available for reference by a commercial competitor (for example a generic product manufacturer) without the agreement of the originator of the data. In the vast majority of cases the five year data protection period will lapse before the expiry of the patent term, thereby having no effect on the marketing of generic products. It will, however, remove any doubt about whether Australia is fulfilling its obligations under Article 39(3) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The Government announced on 11 December 1996, that it interpreted Article 39(3) of TRIPS as requiring Australia to provide protection - from unfair commercial use - for undisclosed test and/or other data submitted in an application for approval in respect of a new active constituent (ie new chemical entity).

Schedule 2 – Amendment of the Dairy Produce Act 1986

Schedule 2 of the Bill amends the *Dairy Produce Act 1986* to remedy the unforeseen impacts arising from the operation of the Domestic Market Support (DMS) scheme during the recent Victorian gas crisis. As a result of the gas crisis, many manufacturing plants in Victoria were forced to close for a number of days, resulting in milk being dumped either on-farm or at the factory. In addition to commercial losses incurred by manufacturers and producers over this period, the operation of the DMS scheme imposed further hardship on manufacturers and farmers, and created inequities within the Victorian dairy industry.

The proposed amendments will make provision for two special payments from the Domestic Market Support Fund. The first payment is a rebate to manufacturers who paid manufacturing milk levy on milk which was disposed of at the factory as a result of the gas crisis. The second payment is to be a special payment to the producers of milk which was disposed of on farm as a result of the gas crisis. This payment is to be equivalent to the market support payment which would have been received if the milk had been delivered and used as manufacturing milk. A producer is not entitled to receive this payment for market milk.

Schedule 3 - Amendment of the Export Control Act 1982

Schedule 3 of the Bill amends the *Export Control Act 1982* (the Act) to achieve two important goals. The first is to clarify the power of the Secretary to approve quality assurance arrangements for the production of prescribed goods for export, and to facilitate the administration of these systems to ensure that international market requirements are met. The second is to bring the powers of authorized officers and the enforcement provisions in the Act in line with current Commonwealth legal policy, to ensure appropriate regulation of these arrangements.

These amendments reflect the Commonwealth's commitment to a system of approved quality assurance arrangements to ensure the highest standard of product safety, the appropriate level of company accountability and a cost effective food export industry. An important element of these quality assurance arrangements is the assumption by industry of greater responsibility for meeting food safety outcomes while maintaining appropriate levels of government control.

An amendment will be made to section 7 of the Act to expressly provide that regulations may be made prohibiting the export of prescribed goods unless the goods have been produced in accordance with a quality assurance arrangement that has been approved by the Secretary. This amendment also enables the regulations to provide that the approval of the quality assurance arrangement be subject to specified conditions or restrictions and to provide for persons to exercise powers or perform functions under an approved quality assurance arrangement.

The amendments to Part III of the Act provide for revised enforcement powers. These powers set out in clauses 10 to 11Q provide for entry and search and seizure of premises. There are separate provisions for monitoring and offence-related warrants, and revised provisions for the seizure of evidential material, the obtaining of warrants by telephone or other electronic means, the use of equipment to examine, process things or access information and the removal of things from the premises. These amendments also contain requirements for the production of identity cards and for receipts to be given for goods or records taken, and rules for the giving of consent to entry. New provisions are inserted specifying when the provision of information or the production of documents may be required and the admissibility of information or documents so produced.

The amendment to paragraph 25(2)(f) of the Act to increase the maximum penalty that can be imposed under the subordinate legislation from \$1000 to 50 penalty points reflects the important nature of the regulatory controls contained in the subordinate legislation made under the Act. These regulatory controls are necessary to ensure that prescribed goods prepared for export are fit for human consumption, match their trade description and have been prepared in such a way as to meet the import requirements of Australia's export markets.

The amendment of subsection 25(5) to allow for the application of foreign country requirement as modified from time to time will ensure that there are appropriate controls

to incorporate foreign country requirements which are an essential precondition to access to overseas markets for Australia's exports and which are essential to maintaining the confidence of Australia's overseas trading partners in the quality of Australia's exports. This amendment reflects the fact that there are a great number of foreign country requirements that are amended on a regular basis. The foreign country specifications that apply to prescribed goods exported to a particular country are, and will continue to, be readily accessible in English translation.

Schedule 4 - Amendment of the Imported Food Control Act 1992

The Bill amends the *Imported Food Control Act 1992* by: exempting foods imported as trade samples; making it an offence to deal with food contrary to the requirements of a Food Control Certificate (FCC); specifically permitting the publication of information relating to all food found to be failing food whether retained or released from AQIS's control; permitting the payment of compensation for foods destroyed as a result of sampling under the scheme; and minor drafting amendments.

The amendments are minor or machinery in nature and are required to clarify certain aspects of the Act and correct drafting oversights.

The amendments to the Act will achieve a more effective and efficient service to the importing community by clarifying areas of the Act that have previously been in doubt. The compensation amendment will allow importers to claim recompense from the government for food which, as a result of the inspection, has been rendered unfit for the purpose for which it was imported.

All food imported into Australia must firstly comply with the requirements of the *Quarantine Act 1908* before being inspected against the requirements of the *Imported Food Control Act 1992*. Accordingly the proposed amendments to the *Imported Food Control Act 1992* will have no effect on Australia's quarantine standards.

Schedule 5 - Amendment of the Plant Breeder's Rights Act 1994

The amendment to the *Plant Breeder's Rights Act 1994* is of a very minor technical nature designed to make the selection of names for new varieties easier. It is proposed to allow a duplication of variety names provided varieties with the same name are from a different "plant class" and are unlikely to be confused in the market place e.g. Turnips and Tulips.

FINANCIAL IMPACT STATEMENT

There will be no financial impact on the Commonwealth.

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Act to be called the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No 2) 1998*.

Clause 2 - Commencement

This clause provides for the Act to commence on the day it receives Royal Assent.

Clause 3 - Schedule(s)

This clause provides that the Acts referred to in the Schedules are amended as set out in the Schedules and the other items in the Schedules have effect according to their terms.

SCHEDULE 1 - AMENDMENT OF THE AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992

Item 1: After Part 7A

Part 7B - Modification of the Agvet Codes for the purpose of giving effect to paragraph 3 of Article 39 of the TRIPS Agreement

69EV Definitions

This part defines the terms “current application”; “information”; “previous information”; and “relevant information”. For consistency this part also defines expressions used to have the same meaning as in the Agvet Codes.

69EW Modification of Agvet Codes

It is proposed to modify the legislation to provide provisions that implement Australia’s obligations with respect to Section 39.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

69EX Application of Part

The provisions will apply to a current application for approval of an active constituent where the NRA cannot grant the application without using undisclosed information, from the previous application for approval of an active constituent, when the previous application was the first application for that active constituent.

69EY NRA not to grant current application except in certain circumstances

This part requires that the NRA not grant the current application unless the person making the application: has provided other information making it unnecessary to use the information from the previous application; or has evidence that the applicant for the previous application has consented to the use of the information; or at least 5 years has elapsed, since the NRA made a determination regarding the previous application or the application was withdrawn by the applicant.

69EZ Approval given in contravention of section 69EY is not invalid but is to be cancelled

This part declares that should the NRA approve an active constituent that would be prohibited under section 69EY the approval is valid but that the NRA must cancel the approval.

69EZA Power of NRA to grant multiple approvals to be subject to section 69EY

The provisions of 69EY apply to the powers, as per subsection 16(1) of the Agvet Codes, of the NRA to grant approval of active constituent to another person.

69EZB Power of NRA to use information obtained by it for other purposes not to be affected

The power of the NRA to use any other information is not affected, except as provided by section 69EY.

SCHEDULE 2 – AMENDMENT OF THE DAIRY PRODUCE ACT 1986

Item 1: Paragraph 106(c)

This item extends the provision for the use of monies from the Domestic Market Support Fund to include the payment of a rebate on manufacturing milk levy which was paid by a manufacturer on milk destroyed at the manufacturer's factory, during the period 26 September 1998 to the end of 5 October 1998, as a result of the Victorian gas supply failure.

Item 2: Paragraph 106(d)

This item extends the provision for the use of monies from the Domestic Market Support Fund to include a payment to milk producers for milk which was destroyed on-farm, during the period 26 September 1998 to the end of 5 October 1998, as a result of the Victorian gas supply failure.

Item 3: After section 108E

108EA Levy rebates: Victorian gas supply failure

This item provides for a rebate of manufacturing milk levy which was paid by manufacturers on milk destroyed at the manufacturer's factory, during the period 26 September 1998 to the end of 5 October 1998, as a result of the Victorian gas supply failure. The rebate is only payable upon submission of relevant documentation and subsequent approval, by the Australian Dairy Corporation, of the claim. A written application, in accordance with a form approved by the Corporation, must be submitted within 28 days of the commencement of Section 108EA. The Corporation has the right to require that any documentation relating to the rebate be verified by statutory declaration. Written notice of the outcome of an application will be given as soon as practicable. Successful claims will be paid at the same time as the written notice is forwarded to the applicant.

108 EB payment to milk producers: Victorian gas supply failure

This item provides for a payment to producers of milk which was disposed of on-farm, during the period 26 September 1998 to 5 October 1998, as a result of the Victorian gas supply failure. This payment is to be equivalent to the market support payment which would have been received if the milk had been delivered and used as manufacturing milk. A producer is not entitled to receive this payment on milk which was disposed of during the period but for which the producer received, or is entitled to receive, a payment relating to liquid milk for human consumption.

The payment is only payable upon submission of relevant documentation and subsequent approval, by the Australian Dairy Corporation, of the claim. A written application, in accordance with a form approved by the Corporation, must be submitted within 3 months of the commencement of Section 108EB. An application can be made by a single producer, a group of two or more producers or by a person (including milk manufacturing co-operatives and companies) on behalf of one or more producers.

The Corporation has the right to require that any documentation relating to the rebate be verified by statutory declaration. Written notice of the outcome of an application will be given as soon as practicable. Successful claims will be paid at the same time as the written notice is forwarded to the applicant.

Item 4: Paragraph 118(1) (definition of relevant payment decision)

This item extends the definition of "relevant payment decision" which may be appealed to include the rebate of manufacturing milk levy provided for under Section 108EA and the payment to producers provided for under Section 108EB.

SCHEDULE 3 - AMENDMENT OF THE EXPORT CONTROL ACT 1982

Part 1 - Amendments of the Export Control Act 1982

Item 1: Section 3

This item will insert a definition of *enter* into section 3 of the Act. This will clarify the fact that the provisions relating to entry and search of vessels or aircraft include the ability to go on board a vessel.

Item 2: Section 3 (definition of *establishment*)

This item will insert a definition of *establishment* into section 3 of the Act. This makes it clear that a reference to an establishment includes a reference to premises.

Item 3: Section 3

This item will insert a definition of *evidential material* into section 3 of the Act. Evidential material means:

- a thing with respect to which an offence against this Act has been committed or is suspected on reasonable grounds to have been committed; and
- a thing as to which there are reasonable grounds for suspecting that it will afford evidence of the commission of an offence against the Act; and
- a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purposes of committing an offence against this Act.

The issue of an offence-related warrant to enter and search premises where a magistrate is satisfied that there are reasonable grounds for suspecting that there is or will be within the relevant time *evidential material* at the premises is provided for under subsection 10D(2) and subsection 10E(1). Paragraphs 10(1)(b) and 10E(1)(d) provide for the seizure of *evidential material*.

Item 4: Section 3

This item will insert into section 3 of the Act a definition of *executing officer* in relation to warrants.

Item 5: Section 3

This item will amend section 3 of the Act by inserting a definition of *magistrate*.

Item 6: Section 3

This item will insert a definition of *occupier* into section 3 of the Act.

Item 7: Section 3 (paragraph (a) of the definition of *offence against this Act*)

This item will repeal paragraph (a) of the definition of an *offence against this Act* contained in section 3. This paragraph will no longer be required given that a definition of *this Act* to include the regulations will be inserted into section 3.

Item 8: Section 3 (paragraphs (b) and (c) of the definition of *offence against this Act*)

This item will repeal the references to the regulations contained in paragraphs (b) and (c) of the definition of an *offence against this Act* contained in section 3. The references are no longer required given that a definition of *this Act* to include the regulations will be inserted into section 3.

Item 9: Section 3

This item will insert into section 3 a definition of *officer assisting* in relation to a warrant.

Item 10: Section 3 (definition of *premises*)

This item will replace the current definition of *premises* which has been expanded to include aircraft, vehicles and ships. The amendment will be necessary to accommodate the amendments that will be made to section 10 of the Act.

Item 11: Section 3

This item will insert a definition of *preparation* into section 3. Preparation is defined so as to include the slaughter or killing of animals and the dressing of carcasses, the processing, packaging or storage of prescribed goods, the treatment of prescribed goods and the handling or loading of prescribed goods.

Item 12: Section 3

This item will insert a definition of *this Act* into section 3. It will remove any doubts as to whether a reference to *this Act* includes the regulations.

Item 13: After subsection 7(3)

This item will amend section 7 to expressly provide that the regulations made for the purpose of prohibiting the export of prescribed goods may provide that the export of prescribed goods is prohibited unless the goods have been produced in accordance with

an arrangement to prepare prescribed goods that has been approved by the Secretary. The amendment also expressly enables the regulations to provide for the approval of the arrangement to be subject to specified conditions or restrictions and for the variation, suspension or revocation of an approval. This item also expressly enables the regulations to provide for persons to exercise powers or perform functions under, or for the purposes of, an approved arrangement.

Item 14: Subsection 7(4)

This item will amend subsection 7(4) to reflect the amendment to insert subsection 7(3A).

Item 15: Part III (heading)

This item will amend the heading to Part III so as to reflect the amendments to provide for new powers of enforcement.

PART III—Enforcement

Item 16: Sections 10 and 11

This item repeals the current powers of entry, search and seizure contained in sections 10 and 11 of the Act and replaces them with the following clauses containing powers that more closely reflect current Commonwealth law administration policy.

Division 1—General powers

10 General powers of authorized officers in relation to premises

This clause specifies the general powers of authorized officers in relation to search of premises and anything on the premises. These powers include the power to inspect, take samples, take photographs or make video or audio recordings, make copies of documents and to secure the premises or things on the premises.

Division 2—Monitoring powers

10A Monitoring registered premises and other premises entered by consent

This clause specifies the powers of an authorized officer to enter and search either registered premises, or other premises with the consent of the occupier, in order to find out whether the provisions of the Act are being complied with. This clause also provides for the stopping and detaining of aircraft, ships and vehicles for the purpose of entering these premises and exercising the powers in section 10B.

10B Monitoring warrants

This clause provides for the issuing by a magistrate of a monitoring warrant authorising the entry and search of premises for the purposes of finding out whether the provisions of the Act are being complied with. This clause provides for the details that must be set out in the monitoring warrant.

10C Seizures without offence-related warrant in emergency situations

This clause sets out the power of an authorized officer to seize evidential material found on premises entered into in a monitoring capacity (ie: premises entered into under clause 10A or 10B). The power is limited to emergency situations where there is an urgent and serious need to seize a thing in order to prevent its concealment, loss or destruction.

Division 3—Offence related searches and seizures

10D Registered premises and premises entered into by consent—offence-related searches and seizures

This clause specifies the powers of an authorized officer to enter and search where the officer has reasonable grounds for suspecting that there may be on the premises particular evidential material. The powers under this section are limited to premises registered under the Act or where the occupier of the premises has consented to the entry. This clause also provides for the stopping and detaining of aircraft, ships and vehicles and for a power of seizure of the particular evidential material found at the premises by an authorized officer.

10E Offence-related warrants

This clause sets out the rules for the issuing by a magistrate of offence-related warrants authorising the entry and search of premises if the magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, evidential material at the premises. This clause also provides for the details that must be set out in the offence-related warrant.

10F The things that are authorised by a search warrant

This clause sets out for the powers of the executing officer of an offence-related warrant and of officers assisting in the execution of that warrant. These include specified powers of entry, search and seizure of evidential material found at the premises. They also include the powers referred to in clause 10B to inspect, take samples, take photographs or make video or audio recordings, make copies of documents and to break open receptacles and containers and to secure the premises or things on the premises. Powers are set out for the seizing of other evidential material found.

Division 4—Warrants granted by telephone or other electronic means

10G Warrants may be granted by telephone or other electronic means

This clause sets out the circumstances which must be present before a monitoring warrant or an offence related warrant may be granted over the telephone or by other electronic means. It provides for the granting of the warrant by a magistrate and for the procedures which must be followed in relation to such warrants.

Division 5—Stopping and searching aircraft, vehicles or ships

10H Searches without warrant in emergency situation

This clause allows an authorized officer, in an emergency situation, to stop and detain an aircraft, vehicle, or ship, and to search the aircraft, vehicle or ship for and to seize evidential material. The grounds for exercising this power are equivalent to those for obtaining a warrant by telephone under 10G. In addition, it provides for the ability to seize other evidential material found on the aircraft, vehicle or ship if the circumstances are serious and urgent and it is necessary to seize the material to prevent its concealment, loss or destruction.

10J How an authorized officer exercises a power under section 10H

This clause sets out how an authorized officer may exercise the powers set out in 10H. The provision allows for an authorized officer to use such assistance as necessary in exercising these powers, and to use such force as is necessary and reasonable in the circumstances. However, limitations are placed on the searching of these types of premises (can only be searched in a public place), on the detention period (must be only for as long as is reasonable to search the aircraft, vehicle or ship, or anything found on the aircraft, vehicle or ship) and on the forcing open of a part of the aircraft, vehicle or ship, or a thing found in or on the aircraft, vehicle or ship (can only damage if the person in charge has been given a reasonable opportunity to open, or it is not possible to give that person the opportunity).

Division 6—General rules about registered premises, premises entered by consent and warrants

11 Availability of assistance, and use of force, in executing a warrant

This clause provides for when an executing officer may obtain assistance and when an executing officer or officer assisting may use reasonable force in executing the warrant. A distinction is made between officers assisting that are authorized officers under the Act, who can use reasonable and necessary force against persons or things, and officers assisting that are not authorized officers who can use reasonable and necessary force against things.

11A Announcement before entry under warrants

This clause requires, when executing a warrant, announcement before entry and the giving of a person an opportunity to allow entry to the premises. This clause also specifies the circumstances in which announcement before entry is not required.

11B Details of warrant to be given to occupier etc.

This clause specifies the persons to whom the executing officer or officer assisting must make available a copy of the warrant that is being executed. This clause requires the authorized officer named in the warrant to identify himself or herself to the occupier or person representing the occupier who is at the premises.

11C Occupier entitled to be present during search under warrants

This clause provides for the right of the occupier to observe the search being conducted.

11D Use of equipment to examine or process things

This clause authorises the bringing onto registered premises or premises entered into by consent or under a warrant, of equipment that is reasonably necessary for the examination and processing of things at the premises for the purpose of exercising their powers under the Act. This clause sets out the circumstances in which things may be removed from the premises in order to examine them and also provides for the use of equipment already at the premises in certain circumstances.

11E Use of electronic equipment at premises

This clause provides the circumstances in which a person who enters premises under this Part may operate electronic equipment for the purpose of exercising their powers under the Act. It also provides for seizure of the equipment and any device such as a computer disk or a tape which can be used to access evidential material and provides for the use of facilities and the copying of material to a storage device and the removal of the device from the premises. This clause also provides for the securing of the electronic equipment.

11F Compensation for damage to equipment

This clause makes provision for compensation to be payable by the Commonwealth to the owner of equipment that is damaged by being operated where the damage is caused by insufficient care in selecting the person to operate the equipment or insufficient care by the person operating the equipment. In determining the amount of compensation payable, regard is to be had to the action of the occupier of the premises or of the employees or agents of the occupier.

11G Copies of seized things to be given

This clause requires a person who seizes a document, film, computer file or other thing that can be readily copied or a storage device in which there is information that can be readily copied to give a copy of the thing or information to the occupier on request.

11H Retention of things which are seized

This clause provides for the return of a thing that has been seized, including where the reason for its seizure no longer exists, where it is decided not to use the thing in evidence or at the end of 60 days after the thing is seized. A thing does not have to be returned where an order is obtained from a magistrate under clause 11J, or proceedings have commenced, or an authorized officer is required by a law of the State or the Commonwealth to retain, destroy or otherwise dispose of the thing.

11J Magistrate may permit a thing to be kept

This clause enables a magistrate to order that an officer may keep a thing that has been seized for the period specified in the order. It sets out the procedures for obtaining the order, and the things a magistrate must be satisfied of before making such an order.

11K Release of seized goods

This clause provides for the release by the Secretary of evidentiary material unconditionally or on conditions.

11L Authorized officer must produce identity card

This clause sets out when an authorized officer must produce his or her identity card. An authorized officer entering registered premises, or entering other premises by consent, must produce his or her identity card if requested by the occupier of the premises to do so.

11M Giving of consent

This clause requires that a person is told they may refuse consent. It also provides that consent is not lawful unless the person has voluntarily consented to entry.

11N Receipts for things seized

This clause requires the giving of receipts for things that are seized or moved under subclause 11D(2).

Division 7—Offences

11P Power of authorized officer to require information or documents

This clause specifies when a person must provide information and produce a document to an authorized officer. The person need only provide information or produce a document if the officer produces his or her identity card on request. The clause imposes a maximum penalty of 30 penalty units on a person who fails to comply with the requirement to provide the information or produce the document.

11Q Secretary may require information or documents

This clause provides the Secretary with the power to serve a written notice requiring a person to provide specified information or documents relating to any prescribed goods that have been, or are proposed to be, exported. The clause imposes a maximum penalty of 12 months imprisonment on a person who fails to comply with the requirement to provide the information or produce the document. Information or a document produced under this section is not admissible as evidence against the person who provides the information or produces the document in proceedings other than for an offence against section 16 which deals with the giving of false information.

Item 17: Section 12

This item will amend section 12 to clarify that a person may not obstruct or hinder an authorized officer in the performance of the officer's functions under the Act and the regulations.

Item 18: Subsection 13(1)

This item will amend subsection 13(1) to reflect the amendments to Part III and to the definition of *premises* in section 3.

Item 19: Subsection 19(1)

This item will amend subsection 19(1) to clarify that the Secretary can delegate to an authorized officer any of the Secretary's functions under the Act and the regulations.

Item 20: Subsection 19(2)

This item reflects the amendment that will be made to subsection 19(1) and will clarify that a power or function delegated under subsection 19(1) when exercised by the delegate shall be deemed to have been exercised by the Secretary under subsection 19(2).

Item 21: Subsection 19(3)

This item also reflects the amendment that will be made to subsection 19(1) and will amend subsection 19(3) to clarify that the delegation of a function will not prevent the function being exercised by the Secretary.

Item 22: Section 20

This item will amend section 20 by clarifying that the Secretary can appoint a person or persons included in a class of persons to be an authorized officer or authorized officers for the performance of functions of an authorized officer under the Act.

Item 23: Subsections 22(1) and (2)

This item will amend subsections 22(1) and 22(2) to provide for the protection of authorized officers in the performance or purported performance of a function.

Item 24: Subsections 22(1) and (2)

This item will amend subsections 22(1) and (2) to reflect the insertion in section 3 of a definition of *this Act* which is defined to include the regulations.

Item 25: Paragraph 23(1)(b)

This item will amend paragraph 23(1)(b) to reflect the insertion in section 3 of a definition of *this Act* which is defined to include the regulations.

Item 26: Subsections 24A(1), (3), (6) and (7)

This item will amend subsections 24A(1), (3), (6) and (7) to reflect the insertion in section 3 of a definition of *this Act* which is defined to include the regulations.

Item 27: Paragraph 25(2)(a)

This item will amend paragraph 25(2)(a) to reflect the amendment to the definition of *premises* in section 3.

Item 28: Subparagraphs 25(2)(a)(i) and (ii)

This item repeals subparagraphs 25(2)(a)(i) and 25(2)(a)(ii) to reflect the amendment to the definition of *premises* in section 3.

Item 29: Paragraph 25(2)(e)

This item will amend paragraph 25(2)(e) to reflect the insertion in section 3 of a definition of *this Act* which is defined to include the regulations.

Item 30: Paragraph 25(2)(f)

This item will amend paragraph 25(2)(f) of the Act to increase the maximum penalty that can be imposed under the subordinate legislation from \$1000 to 50 penalty points.

Item 31: After paragraph 25(5)(a)

This item will amend subsection 25(5) by inserting a new paragraph which will allow for regulations to make provision for a matter by applying, adopting or incorporating with or without modification any requirements, prescribed by the national body or authority of a foreign country responsible for regulating imports into that foreign country, relating to the preparation of goods in Australia that are to be exported to that foreign country, as existing from time to time.

Item 32: Persons exercising certain powers and functions

This item provides that where an order previously made confers or purports to confer a power or a function on an authorized officer, the power may be exercised or the function may be performed by a person, or a person in a class of persons, approved by the Secretary for the purposes of that order.

SCHEDULE 4 - AMENDMENT OF THE IMPORTED FOOD CONTROL ACT 1992

Item 1: Subsection 3(1)

A definition of a trade sample is included at this item to allow for an exemption from inspection if trade samples to be made at item 4.

Item 2: At the end of subsection 7(1)

This item is a provision to exempt foods, at the Secretary's discretion, where these are imported as trade samples provided that the samples are not released onto the domestic market. Experience has shown that trade samples generally exceed the volume and weight prescribed in subsection 7(2) for food imported for private consumption.

Item 3: Subsection 7(2)

This amendment excludes trade samples from the deeming provision of food imported for private consumption.

Item 4: At the end of section 7

This item defines food that is imported as a trade sample.

Item 5: After subsection 9(1)

This item amends Section 9 to strengthen offence provisions by making it an offence to deal with food contrary to the requirements of a Food Control Certificate (FCC). The amendment is aimed at preventing persons dealing with food where an FCC stipulates that food must be held pending inspection and to ensure that examinable food is not released between the granting of a FCC and the inspection being performed. The penalty in this section is exactly the same as those applied to other subsections of Section 9.

Item 6: Subsection 9(3)

Includes the amendment at Item 5 into the purposes for establishing contravention of Subsection 9.

Item 7: Subsection 9(3)

Includes the amendment at Item 5 into the matters that a person ought reasonably to know.

Item 8: Subsection 19(1)

Section 19 is amended to clarify the power of the Secretary to actually approve an overseas food processing operation. Before amendment, Section 19(1) allowed for the Secretary to enter into an arrangement to inspect and evaluate the operation but falls short of actually providing for approval (although this is implicit).

Item 9: Paragraphs 19(1)(a) and (b)

These paragraphs of section 19 are repealed to clarify the actions of the amendment at item 10.

Item 10: After subsection 19(1)

This item provides specifically for the Secretary to approve a food processing operation and revoke and such approval.

Item 11: Subsection 19(2)

This item provides the correct reference as a result of the amendment at item 10.

Item 12: After subparagraph 35(c)(i)

This amendment ensures that section 35 specifically permits the publication of information relating to all food found to be failing food whether retained or released from AQIS's control.

Item 13: At the end of section 35

This item specifically permits the Secretary to publish importer and brand name information in relation to failing food.

Item 14: After subsection 39(1)

This item widens the current provisions for compensation for destroyed food by permitting the Secretary to approve the payment of compensation where a quantity of food is destroyed in taking a sample, on initial inspection, through the negligence of an authorized officer. For example, a carton of prawns or a block of cheese may lose its full commercial value as a result of carelessness in taking a small part as a sample. Similarly, an authorized officer may fail to properly reseal a container of concentrated food resulting in loss of the container to the owner. The Commonwealth and officer concerned remain otherwise covered by the exemption from suit provision (section 38).

Item 15: Subsection 39(3)

This item specifically restricts the compensation provisions in this section to the situation described at subsection 39(1) which deals with destruction.

Item 16: After subsection 39(3)

This item specifically provides for the secretary to agree to an amount of compensation with the owner of the food for the amendment at item 14.

Item 17: Subsection 39(4)

This item allows for the inclusion of the amendment at item 14 in the provision dealing with the situation where agreement of value cannot be reached between the Secretary and the owner of the food.

Item 18: Subsection 39(6) (definition of *owner*)

This item amends the definition of owner for section 39 to allow for the amendment at item 14.

Item 19: Subsection 42(1) (definition of a *reviewable decision*)

The definition of a reviewable decision in this section is amended to refer to subsection (5), not subsection (4).

SCHEDULE 5 - AMENDMENT OF THE PLANT BREEDER'S RIGHTS ACT 1994

Item 1: Subsection 3(1)

This item adds the definition of "plant class" for variety denomination (naming) purposes. By not allowing duplication of variety names within a group of closely related genera, the likelihood of confusion in the market place is minimised.

Item 2: Subsection 3(1)

The item adds the definition of "Union" to allow reference to the internationally accepted list of plant classes maintained by the Union for the Protection of New Plant Varieties (UPOV).

Item 3: Paragraph 27(5)(a)

This item amends subclause 27(5)(a) to include a reference to "plant class" so as to remove the limitation of not being able to duplicate the name of any other variety regardless of how dissimilar it may be.

Item 4: Subparagraphs 53(1)(c)(i) and (ii)

This item amends subparagraphs 53(1)(c)(i) and (ii) to clarify that an infringement of a breeder's right occurs when the name of a protected variety is used for plants of any other variety from the same plant class.

Item 5: After subsection 61(1)

This item inserts subparagraphs 61(1A), (1B) and (1C) to cause the Registrar to compile and maintain a list of plant classes. Such a list is to have regard to the internationally accepted list maintained by UPOV. The list of plant classes will be kept as part of the Register.

Item 6: At the end of section 62

This item inserts subsection 62(3) to ensure that copies of the list of plant classes can be copied without attracting the normal \$50 fee specified for copying other entries from the Register.