

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Export Control Bill 1982

EXPLANTORY MEMORANDUM

(Circulated by authority of the Minister for  
Primary Industry, The Hon. Peter Nixon, MP)



## OUTLINE

### Export Control Bill 1982

The Bill introduces new administrative arrangements for the Department of Primary Industry's export inspection and related control activities. At present administration of these activities is divided between a number of pieces of legislation including the Customs Act 1901 and the Commerce (Trade Descriptions) Act 1905. This has created a number of administrative and legal weaknesses. The purpose of this Bill is to provide a sound legal base for these functions together with a more efficient and effective infra-structure through the use of both regulations and orders.

Stringent controls within Australia are an essential prerequisite to maintaining export markets for primary products. The Bill provides for such controls, with appropriate penalties for contraventions of them. The associated regulations and orders will also enable the ever increasing changes which are necessary to keep abreast of technological and administrative developments to be incorporated more rapidly, thus facilitating international trade.

Provision is made for regulations to prohibit the export of prescribed goods from Australia unless certain prescribed conditions or restrictions are met. The penalty for contravening these regulations is \$100,000 or imprisonment for 5 years or both, and is in accord with the present penalty for a contravention of this kind.

The Bill provides that a person must advise of his intention to export prescribed goods in advance and for the inspection of those goods to ensure compliance. Where entry to premises other than registered premises is necessary the consent of the occupier or a warrant must be obtained. In the event of an offence being detected the authorized officer may seize prescribed goods and associated evidence and retain them for up to 60 days. Upon conviction a court may order the forfeiture of the goods.

Severe penalties, identical to those currently operating, are incorporated for persons found guilty of contravening provisions relating to official marks and false trade descriptions. Provision is made, however, for these penalties and the penalty for prohibited exports to be heard by a court of summary jurisdiction if warranted and a lesser penalty imposed.

Provision is made for the appointment of authorized officers and the issue of identity cards to them. The officers and persons who they may request to assist them in performing their duties are protected against action arising from the carrying out of these duties.

The Secretary is authorized to issue certificates for goods when these are required by the importing country. This is an important aspect of international trade in primary products as without such certificates entry into the importing country is prohibited.

The Bill provides that goods produced at a registered establishment cannot be supplied to an authorized officer without written approval of the Secretary.

Provision is made for the Governor-General to make regulations not inconsistent with the Bill. The Bill also empowers the Minister to make orders not inconsistent with the regulations, but the orders shall not prescribe any penalty. The orders would have to be Gazetted and would be subject to Parliamentary review and disallowance in the same manner as regulations.

## Explanation

### No. of Clause

1. Citation.
2. Date of commencement to be fixed by proclamation.
3. Provides definitions for "aircraft", "animal", "authorized officer", "covering", "Department", "enter for export", "examine", "label", "offence against this Act", "official mark", "official marking device", "order", "plant", "premises", "prescribed goods", "registered premises", "regulations", "Secretary", "ship".

In particular defines:

"apply" as including write, print, stencil, mark, emboss, impress or attach so as to ensure the penalty of \$100,000/5 years or both for applying a false trade description will extend to such things as printed documents relating to prescribed goods;

"document" as including any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing;

"false trade description" as being a trade description that by reason of anything contained in or omitted from the description, is false or likely to mislead in a material respect as regards the goods to which it relates and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, which makes the description false or likely to mislead;

"food" as including -

  - (a) any substance or thing of a kind used or capable of being used as food or drink by human beings; or

- (b) any substance or thing of a kind used or capable of being used as an ingredient in a substance or thing referred to in paragraph (a),

whether or not it is in a condition fit for human consumption;

"goods" as meaning -

- (a) an animal or a plant, or part of an animal or a plant;
- (b) an article or a substance (including reproductive material) derived from an animal or a plant, whether or not in combination with any other article or substance; or
- (c) food,

but does not include narcotic goods within the meaning of the Customs Act 1901;

"trade description", in relation to prescribed goods, as meaning any description or statement (whether in English or any other language) or pictorial representation, indication or suggestion, direct or indirect -

- (a) as to the nature, number, quantity, quality, purity, class, grade, breed, measure, gauge, size, mass, colour, strength, sex, species or age of the goods;
- (b) as to the country or place in or at which the goods were made or produced;
- (c) as to the exporter, manufacturer or producer of the goods or the person by whom they were selected, packed or in any way prepared for the market;
- (d) as to the mode, time or place of manufacturing, producing, selecting, packing or otherwise preparing or treating the goods;
- (e) as to the time before which or period within which the goods are to be used;

- (f) as to the batch, lot or other grouping in which the goods are included,
- (g) as to the material or ingredients of which the goods are composed or from which they are derived; or
- (h) as to the goods being the subject of an existing patent or privilege,

and includes any label or mark that, according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters.

- 4. binds the Crown in the right of the Commonwealth of each of the States and of the Northern Territory.

- 5 is a saving clause for the operation of other laws of the Commonwealth, State or Territory insofar as that law is capable of operating concurrently with this Bill.

- 6. (1) requires a person intending to export goods to give notice to the Secretary or an authorized officer before the goods are exported, of such intention and advise where the goods can be inspected.

failure to comply with this provision is punishable by a fine of \$2000 or imprisonment for 12 months or both.

- (2) makes provision for the regulations to prescribe a time of giving the notice and allows different provisions with respect of goods of different kinds.

- (3) makes offences against the section punishable on summary conviction.

- 7 (1) makes provision for regulations to prohibit the export of prescribed goods.

- (2) provides for regulations to prohibit the export of goods

- absolutely;
- to a specified place;
- unless specified conditions or restrictions are complied with;

- to a specified place unless specified conditions or restrictions are complied with
- (3) (a) provides that the regulations may prohibit the export of prescribed goods to a specified place unless a licence, permission, consent or approval has been granted.
  - (3) (b)
    - (i) provides for the assignment of licences or permissions;
    - (ii) provides for the granting of licences or permissions to export prescribed goods subject to compliance with conditions or restrictions by the person to whom the licence or permission is granted or assigned;
    - (iii) provides for the surrender of a licence or permission to export prescribed goods;
    - (iv) provides for the revocation or suspension of a licence or permission that is granted.
  - (4) provides for conditions or restrictions to be complied with in respect of matters or things not related to the prescribed goods to which they apply.
8. (1) makes provision for a person to be guilty of an offence if he exports, conveys or has in his possession with intent to export, prescribed goods which are prohibited exports under the regulations
- (2) makes provision for a person to be guilty of an offence if he exports, conveys or has in his possession, with intent to export, prescribed goods which are prohibited exports to a specified place under the regulations.
  - (3) makes provision for a person to be guilty of an offence when in contravention of regulations which prohibit the export of prescribed goods unless specified conditions and restrictions are complied with
    - he exports the prescribed goods
    - or conveys or has in his possession prescribed goods which he intends to export or which are intended to be exported



- (4) makes provision for a person to be guilty of an offence when in contravention of regulations which prohibit the export of prescribed goods to a specified place unless specified conditions or restrictions are complied with

- he exports the prescribed goods
- he intends to export the prescribed goods
- the goods are intended to be exported.

- (5) provides for an offence against this section to be punishable on conviction by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years or both.

- (6) provides that in a prosecution under sub-clauses (3) and (4) in respect of conveyance or possession it is a defence if the person proves he did not know and had no reasonable grounds for knowing that the goods were intended to be exported in contravention of the conditions or restrictions.

9. provides that where a person fails to comply with a condition or requirement in a licence or permission is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

- 10 (1) provides for an authorized officer to ascertain whether provisions of the Bill, the regulations, conditions or restrictions applicable to the export of prescribed goods or to licences or permissions to export prescribed goods have been complied with.

- (2) provides for sub-clause (1) to include ascertaining whether an offence against this Bill has been committed.

- (3) sets down what an authorized officer may do, with such assistance as he thinks fit, to perform his functions.

- (4) provides for samples of any matter or thing to be taken and dealt with as prescribed.

- (5) makes provision for an authorized officer to apply to a Justice of the Peace for a warrant authorizing him to enter premises other than registered premises.

- (6) establishes the circumstances in which a Justice of the Peace may issue a warrant to allow an authorized officer to have access to premises, including land.
  - (7) provides for a warrant to specify a date of cessation
  - (8) provides that it be compulsory for an authorized officer to present his identity card to the person in charge of any vehicle, ship or aircraft, before he search or detains it.
11.
  - (1) establishes procedures whereby an authorized officer may seize and retain prescribed goods in respect of which an offence has been committed and matters affording evidence of the offence and retain them for a period of 60 days.
  - (2) extends power under sub-clause (1) to coverings.
  - (3) makes provision for the Secretary to release seized goods - release may be unconditional or conditional.
12. makes provision for a penalty of \$1000 or 6 months imprisonment or both if a person without reasonable excuse obstructs or hinders an authorized officer in the performance of his duties.
13.
  - (1) provides for reasonable assistance to be provided to an authorized officer to enable the authorized officer to carry out his duty. Failure to do so is subject to a penalty of \$1000 or imprisonment for 6 months or both.
  - (2) provides that the authorized officer must produce his identity card when he makes a request of a person, otherwise the person is not obliged to comply.
14. makes provision for a penalty of \$100,000 or imprisonment for 5 years or both if a person contravenes the regulations relating to:
  - manufacture, possession, application, alteration or interference with an official mark;
  - manufacture, possession or application of a mark resembling or apparently intended to resemble or pass for an official mark;
  - manufacture or possession of an official marking device;

15. (1) provides for a penalty of \$100,000 or imprisonment for 5 years or both for breaches relating to the application of a false trade description.
- (2) establishes criteria for the application of a false trade description.
16. (1) provides for a penalty of \$2000 or imprisonment for 12 months or both for a person who makes a false or misleading statement.
- (2) relates sub-clause (1) to declarations furnished for the purposes of complying with conditions or restrictions or to licences and permissions.
- 17 (1) establishes that an offence against sections 8, 9, 14 or 15 is an indictable offence.
- (2) establishes that an offence against the sections referred to in sub-clause (1) could be heard as a summary offence.
- (3) sets the upper limit for the penalty that the court may impose on summary conviction
- as a fine not exceeding \$5000 or imprisonment for 12 months or both for an offence against clauses 8, 14 or 15
  - a fine not exceeding \$5000 for an offence against clause 9
18. (1) makes provision for the court to order the forfeiture of prescribed goods.
- (2) extends sub-clause (1) to the coverings of the goods.
- (3) provides that any forfeited prescribed goods may be sold or otherwise disposed of as the Secretary thinks fit.
- 19 (1) makes provision for the Secretary to delegate to an authorized officer, all or any of his powers under the Bill, other than his power of delegation;

- (2) provides for that power so delegated to be deemed to have been exercised by the Secretary;
  - (3) provides that a delegation under this section does not prevent the exercise of a power by the Secretary.
- 20. makes provision for the Secretary to appoint in writing a person or persons in a class of persons to be an authorized officer or authorized officers as the case may be.
- 21. (1) provides for the Secretary to issue to an authorized officer an identity card in a form approved by the Secretary.
  - (2) provides that a person in possession of an identity card who is no longer an authorized officer must return the identity card to the Secretary or if he fails to do so be subject to a fine upon conviction not exceeding \$100.
- 22. (1) makes provision to protect an authorized officer from any action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in the exercise of any power or authority conferred on him by the Bill.
  - (2) provides similar protection for a person who an authorized officer may ask to assist him in the course of his duties.
- 23. provides for certificates relating to the goods to be issued when they are required by the importing country subject to the Secretary being satisfied as to the matter being certified.
- 24. (1) provides that owners of registered establishments are not to supply goods to authorized officers without written approval of the Secretary. Contravention of this is subject to a penalty of \$2000 or imprisonment for 12 months or both.
  - (2) provides for contravention of sub-clause (1) to be punishable on summary conviction.
- 25. (1) provides for the Governor-General to make regulations not inconsistent with the Bill.

- (2) provides specifically for regulations relating to:
- imposition of establishment registration fees;
  - quarantine of prescribed goods;
  - analysis of samples of prescribed goods;
  - imposition of fees for the services of authorized officers;
  - the keeping of records relevant to the operation of the Bill;
  - prescribing of penalties not exceeding \$1000;
  - empowering the Minister to make orders.
- (3) Ministerial Orders not to prescribe a penalty.
- (4) sections 48, 49 and 50 of the Acts Interpretation Act 1901 to apply to orders, i.e. they shall be subject to parliamentary review and disallowance.
- (5) a Ministerial Order may apply, adopt or incorporate provisions of other Acts, regulations, orders, rules under an Act or any other instrument or writing.
- (6) a Ministerial Order shall be deemed not to be a Statutory Rule within the Statutory Rules Publication Act 1903 but they must be advised in the Gazette and be available for purchase.
- (7) places responsibility for notifying each House of Parliament if copies are not available with the Minister for Primary Industry.
- (8) a Ministerial Order shall be deemed to be an enactment for the purposes of the Administrative Appeals Tribunal Act 1975.





