

**1992**

**THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA**

**THE SENATE**

**IMPORTED FOOD CONTROL BILL 1992**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Resources,  
the Honourable Alan Griffiths, MP)



## IMPORTED FOOD CONTROL BILL 1992

### OUTLINE

The Bill makes all imported food intended for domestic sale in Australia liable to inspection on importation. It embraces existing imported food controls introduced in 1990 under general powers of the Quarantine Act, under which foods assessed as presenting a high or medium risk from a food safety perspective are subject to point of entry inspection, and makes these foods along with other imported foods subject to monitoring both for their safety from a consumer health perspective and for compliance within the broader provisions of the Australian Food Standards Code.

#### The Bill

- . applies to all imported foods with limited exceptions
- . makes it an offence to import unsafe food or food not meeting applicable standards and food safety requirements
- . provides for inspection and analysis of imported food, for its classification into risk categories, for holding of foods pending results of such inspection and analysis, and for appropriate treatment or disposal to be ordered where food fails inspection or analysis
- . allows for recognition of certificates issued by overseas government authorities attesting to compliance with Australia requirements and for conditions related thereto
- . provides for cost recovery from importers on a fee for service basis.

### FINANCIAL IMPACT STATEMENT

The new arrangements will involve, for the most part, the use of existing multi-skilled food inspection staff of the Australian Quarantine and Inspection Service. The expanded system will add an estimated \$4.5 million to the current \$2 million imported food inspection costs. These costs will still amount to only around a third of a cent for each dollars' worth of food imported, so the impact on consumer prices will be minimal. Offsetting this may be savings on costs States would otherwise face in mounting effective point of sale monitoring in respect of imported foods should they decide to cut back such existing activities as currently take place in this area - inspection at point of entry is simply much easier and more efficient - savings through better control of defective product, savings through feedback from importers to their overseas suppliers focussed on ensuring product shipped is up to standard, and a potential reduction in health-related problems caused by consumption of unsafe foods.

## NOTES ON CLAUSES

### Clause 1 - Short title

Formal.

### Clause 2 - Commencement

This clause provides for the Act to commence on a day or days to be fixed by Proclamation or, at the latest, six months after Royal Assent.

### Clause 3 - Interpretation

This clause covers definitions and interpretational issues. The more important are the definitions of "examinable food", "food" and "national standard", and the interpretation, under sub-clause 3(2), of which food poses a risk to human health.

"Examinable food" is all food selected for specific examination. It includes foods classified as of high and medium risk status in food safety terms, food randomly selected for examination by computer scanning or during inspection operations, and sorting of Customs imported food entries, and food selected for examination from other import entry information referred by Customs, for example perishable foods entering at times when it may not be possible or practicable to immediately enter the information into the computer data bank. It also includes food for which holding orders have been issued because of concerns about its compliance status with Australian standards or safety requirements and other foods which may warrant examination from time to time, for example on the basis of particular information received or something an authorised officer may observe while carrying out other functions.

The definition of "food" parallels that in the *National Food Authority Act 1991*.

The definition of "national standard", together with the interpretation under sub-clause 3(2) of food posing a risk to human health set out the compliance requirements for imported food. These are the requirements of the Australian Food Standards Code (including earlier but still current standards approved by the National Food Standards Council) as well as general food safety requirements.

### Clause 4 - Application of Act to certain external Territories

This clause provides that the Bill does not apply to Christmas Island or the Cocos (Keeling) Islands unless applied by regulations.

### Clause 5 - Crown to be bound

This clause provides for the Crown to be bound but exempts the Crown from prosecution.

#### Clause 6 - Saving of other laws

This clause aims at ensuring that the provisions of other legislation also relevant to imported goods will continue to apply to imported food.

#### Clause 7 - Food to which Act applies

This clause effectively ensures that all imported food shipments of significance are subject to the provisions of the Bill. The only foods to which the Bill does not apply are prohibited food, small quantities entering for private consumption, for example, in passengers' baggage, and ship's or aircraft's stores which are for the use of passengers or crew or for the service of the ship or aircraft.

#### Clause 8 - Importation offence

This clause makes it an offence to knowingly import food which does not meet the set standards and food safety requirements.

#### Clause 9 - Dealing offences

This clause makes it an offence for a person to deal with examinable food in a manner other than authorised.

#### Clause 10 - Certain provisions of the Customs Act may be expressed to be subject to this Act

The purpose of this clause is to ensure that the imported food inspection program can access adequately the various categories under which commercial quantities of foods enter for Customs purposes.

All imported goods are required to be entered for Customs purposes under section 68 of the *Customs Act 1901*. While clause 10(3) of the Imported Food Control Bill covers the majority of imported foods which are entered into the Customs computer system, there are some exemptions from those entry requirements and those are covered in sections 69 and 70 of the Customs Act. The provisions in clauses 10(1), 10(2) and 10(3) are collectively to ensure that all of the foods entering under the referenced provisions in the *Customs Act 1901* are subject to the imported food control system.

#### Clause 11 - Application for food control certificate

This clause sets out the manner in which an application for a food control certificate must be made, and includes a power for enabling the regulations to provide that a computer entry for home consumption or warehousing made under the Customs Act can be taken as such an application.

### Clause 13 - Form of food control certificate

This clause provides that food control certificates must be in an approved form or forms and stipulates the information the certificates must include.

It contains specific provisions for dealing with food still under Customs control.

### Clause 14 - Imported food inspection advice

This clause provides for issuance of written advice on the outcome of inspection or inspection and analysis. The advice must stipulate whether the whole or a part of the food is failing food and how failing food is to be dealt with.

Under paragraph (1)(b) the advice must be provided, in the case of food under Customs control, to the person having possession of the food at the time, as well as to the owner. (This can take the form of a tag or notice attached to the food in question).

Sub-clauses (3) to (9) provide for applications to be made for re-assessment of failing food, in the circumstances specified in the Food Inspection Scheme (see Division 2). Such requirements would be specified in the regulations. (The most common envisaged circumstances under which an application of this nature would be considered is where the imported food advice indicates that the food can be treated in a way (for example by sorting, reprocessing or relabelling) that brings it into compliance with the Bill, and the owner can show evidence that this process has taken place).

### Clause 15 - Holding orders for certain food

This clause provides for issuance by the Secretary of holding orders in relation to failing foods or where information to hand indicates there are reasonable grounds for believing a particular kind of food is likely to be identified as failing foods. The effect of a holding order is to ensure that such food cannot be delivered into home consumption until cleared by inspection or inspection and analysis. The holding order may specify the circumstances under which it can be revoked, and in such a case it must be revoked if these circumstances occur.

### Clause 16 - Food Inspection Scheme

This clause provides for regulations setting out the particulars of the food inspection scheme. Matters which may be covered include:

- Ministerial orders to identify particular kinds of food required to be inspected or inspected and analysed
- the incidence of inspection, or inspection and analysis, attaching to various categories of foods, and foods from individual overseas suppliers ((2)(b) and (3))
- how food is to be held pending results of such inspection or inspection and analysis

- variation of the incidence of inspection, or inspection and analysis, where the food is accompanied by accepted foreign government certification (see clause 18)
- the circumstances under which, and the period within which, applications for a further imported food inspection advice can be made.

#### Clause 17 - Making, publication and disallowance of orders

Sub-clause (1) establishes the role of the National Food Authority which has national responsibility for domestic food standards coordination and development, in the decision making process.

Sub-clauses (2), (3) and (4) provide for application of the *Acts Interpretation Act 1901*, and the *Statutory Rules Publication Act 1903*.

#### Clause 18 - Foreign government health certificates

This clause provides for recognition of foreign government health certificates attesting that food meets applicable standards and does not pose a risk to human health. Such recognition is subject to disallowance if there are reasons to doubt the continued reliability of the statement.

Sub-clause (3) makes it an offence for a person to forge or utter a foreign government health certificate.

#### Clause 19 - Quality assurance certificates

This clause allows the development of quality assurance arrangements with overseas food processors. Under such arrangements the operator has to demonstrate the adequacy and effectiveness of factory controls in meeting Australia's food standards and safety requirements. Such arrangements would incorporate provision for periodic inspection and evaluation of the operation.

It is envisaged that this would include low level random point of entry inspection monitoring. Sub-clause (4) is an offence provision for forging and uttering. The clause also provides for recognition of quality assurance certificates from the establishment in question, and for revocation of such recognition and also the arrangement itself.

#### Clause 20 - Treatment, destruction or re-exportation of failing food

This clause provides for a number of matters consequential on an imported food inspection advice identifying failing food, and requiring it to be treated, destroyed or re-exported. Generally, the owner, if given the option of treating the food and choosing not to exercise that option, would be required to either destroy it or re-export it. Of particular note are the following:

- sub-clause (4) allows for authorised officers to direct in writing that failing food is to be destroyed in a particular manner or re-exported

- sub-clause (6) provides that an authorised officer may oversight the carrying out of any direction issued for treatment, destruction of or re-export option of failing food
- sub-clause(7) provides for forfeiture of the failing food to the Commonwealth as a last resort
- sub-clause (8) makes it an offence for the owner of the food to fail to carry out a direction to destroy or re-export food without reasonable excuse
- sub-clause (10) provides that where food is forfeited to the Commonwealth, the Commonwealth is not liable for any storage or other costs involved in holding the food between that time and the time it is destroyed or otherwise disposed of
- sub-clause (12) provides for reimbursement of costs incurred by the Commonwealth in seizing, destroying, or otherwise disposing of the food
- sub-clause (13) allows withholding of future food control certificates from owners of food who fail to comply with a requirement to destroy or re-export food.

#### Clause 21 - Interpretation

This clause provides definitions of terms used in enforcement provisions and powers to access and copy information.

#### Clause 22 - Identity cards

This clause provides for issuance to authorised officers of identity cards.

#### Clause 23 - Searches to monitor compliance with Act etc without occupier's consent

This clause provides general search and entry powers in respect of premises involved in storage, handling or distribution of imported foods or records relating thereto, for the purpose of monitoring compliance with the Bill. A provision for identity cards to be shown on request is included (sub-clause (3)).

#### Clause 24 - Monitoring warrants

This clause provides for entry warrants into particular premises for the purpose of monitoring compliance with the Bill. It is aimed at the situation where the occupier has refused consent to entry for monitoring purposes.

#### Clause 25 - Offence powers - entry and search of premises with occupier's consent

This clause deals with entry, by consent, into premises which on reasonable grounds, may have something which may constitute evidence of a commission of an offence against the Bill, and provides powers to seize such things. Power is also provided to seize things (other than this providing the reason for the initial entry) which may afford evidence of an offence.

#### Clause 26 - Offence related warrants

This clause parallels clause 25 but provides for warrants where the occupier's consent is not forthcoming.

#### Clause 27 - Warrants may be granted by telephone etc

This clause covers the situation where a warrant is applied for under clause 26 allowing, in cases of emergency, the warrant to be applied for by telephone, telex, facsimile or other electronic means. It also sets out circumstances and conditions relating to issuance.

#### Clause 28 - Searches without offence related warrant in emergency situations

This clause provides powers of entry, search and seizure in cases where an authorised officer is on premises for monitoring purposes (clauses 23 and 24), an offence is suspected and urgent action is needed, and the seriousness and urgency of the situation precludes obtaining a warrant.

#### Clause 29 - Discovery of evidence

This clause sets out the conditions under which seized evidence may be kept pending proceedings. It also provides for seizure of things (other than those specified in the warrant) which an authorised officer on reasonable grounds considers provides supporting evidence or evidence of commission of another offence against the Bill.

#### Clause 30 - Power to require persons to answer questions etc

This clause provides powers to request information from persons who own, or are present in premises entered for the purposes of the Bill or who on reasonable grounds are believed to be capable of giving information relevant to the operation of the Bill. It provides a defence for refusal to give information on the grounds of self-incrimination. It provides a penalty for false or misleading statements.

#### Clause 31 - Consent

This clause requires an authorised officer, in seeking consent to enter premises, to inform the person in question that such consent may be refused. Entry is not lawful unless the person voluntarily consents.



Clause 32 - Persons to assist authorised officers

This clause requires the occupier of entered premises to provide reasonable assistance to an authorised officer in carrying out monitoring or search related duties. Refusal to provide assistance is defensible if to do so would tend to incriminate the person.

Clause 33 - Conduct by directors, servants and agents

This clause contains provisions for the purposes of establishing the conduct of a body corporate under the Bill.

Clause 34 - Evidence of analysts

This clause provides for the appointment of analysts and covers provisions under which certificates of analysts are to be dealt with in court proceedings for offences against the Bill.

Clause 35 - Publishing of information

This clause allows for publication, in Australia, of the results of inspection carried out under the scheme.

Clause 36 - Fees for certain services

This clause sets out fee for service provisions to effect cost recovery for services provided under the scheme.

Clause 37 - Certain moneys are a debt due to the Commonwealth

This clause provides for court action to recover outstanding fee for service debts to the Commonwealth.

Clause 38 - Exemption from suit

Sub-clause (1) protects the Commonwealth and authorised officers against an action for loss or injury sustained as a result of action, or lack thereof, taken in good faith in exercising or purportedly exercising, powers under the Bill.

Sub-clause (2) prevents the exercise or non-exercise of powers under this Bill, being used as a defence in an action.

Clause 39 - Compensation for destroyed food.

This clause provides for compensation for losses incurred if the Secretary is satisfied, on reasonable grounds, that food has been destroyed as a result of a mistake of fact or law.

Clause 40 - Authorised officers

This clause provides for appointment of authorised officers by the Secretary.

Clause 41 - Delegation by Secretary

This clause provides a power of delegation by the Secretary.

Clause 42 - Review of decisions

This clause sets out provisions for review of decisions by the Secretary and by the Administrative Appeals Tribunal.

The results of analysis are not reviewable by the Administrative Appeals Tribunal (sub-clause (3)).

Clause 43 - Regulations

This clause provides for the making of regulations by the Governor-General under the Bill.

Clause 44 - Principal Act

This clause heads a division detailing consequential amendments to the *Customs Act 1901*.

Clause 45 - Customs Control of goods

This clause parallels, by way of amendment to the Customs Act, the provisions in clause 10 relating to operating relationships with the Australian Customs Service.

Clause 46 - Principal Act

This clause heads a division detailing consequential amendments to the *Customs Administration Act 1985*.

Clause 47 - Breaches of confidence

This clause allows for provision by the Australian Customs Service, by way of amendment to the *Customs Administration Act 1985*, of import entry information to the Australian Quarantine and Inspection Service relevant to administration of both quarantine and imported food control systems. In respect of the latter it ties in with the amendments detailed in clause 42.











