

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

QUARANTINE AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health,
the Hon. Neal Blewett, M.P.)

OUTLINE

The purpose of this Bill is to make amendments to the Quarantine Act 1908 to increase the penalties for offences under the Act, and to provide for certain minor amendments to overcome deficiencies experienced in the administration of the Act and to make it more responsive to modern situations.

The Bill would increase penalties for offences under the Act to appropriate levels up to a maximum of \$100,000 for individuals and \$200,000 for corporate bodies.

Other amendments would be made to the Quarantine Act 1908 to:

- . provide that the power to determine the level of fees be vested in the Minister in substitution for the regulation making power in the Act that currently provide for fees to be prescribed by regulation;
- . allow entry by a quarantine officer to premises on the Cocos Islands with the consent of the occupier or following the issue of a warrant authorising entry by a Justice of the Peace, in substitution for the provisions at regulations 14 and 19 of the Quarantine (Cocos Islands) Regulations;
- . extend the operation of the Act to cover persons who are believed to have entered Australia or the Cocos Islands unlawfully;
- . allow crew members from vessels that are either subject to quarantine or where a quarantine officer is not satisfied that the vessel is free from infection, to leave the vessel with the permission of a quarantine officer;
- . enable a quarantine officer to grant pratique to a vessel which, by permission of the Minister, or by reason of stress of weather or other reasonable cause, is at, or about to arrive at, a place in Australia or the Cocos Islands, other than a first port of entry;
- . remove the requirement that the Governor-General appoint quarantine officers and provide for the Minister to appoint the Director of Quarantine and Chief Quarantine Officers, and for the Director of Quarantine to appoint quarantine officers and temporary quarantine officers;
- . provide the Minister with the power to determine the divisions of quarantine and make it a requirement for quarantine officers to work under the direction of a Chief Quarantine Officer;

- . delete reference to small-pox from the definition of quarantinable disease;
- . provide the Director of Quarantine with authority to grant an import permit subject to compliance by the holder of the permit with conditions or requirements, either before or after importation, that are set out in the permit;
- . extend the Act to make it an offence for a master of a vessel to moor an oversea vessel within Australia's territorial waters;
- . remove the requirement that the Director of Quarantine must authorise a quarantine officer in writing to allow arriving vessels to be brought to a mooring ground other than a proclaimed mooring ground;
- . provide for the Director of Quarantine to approve the design of forms used for ship clearance procedures;
- . provide that where any goods subject to quarantine are brought on a prescribed vessel to an Australian installation with the permission of the Minister, and are landed on the installation, that part of the installation where the goods are landed must be approved by the Minister;
- . provide that when it is considered that live animals ordered into quarantine cannot be effectively treated or disinfected, and ought not to be released from quarantine, the decision to destroy shall be taken by the relevant Chief Quarantine Officer or a person authorised by him instead of the quarantine officer in charge of the goods;
- . provide that where goods ordered into quarantine cannot be treated or disinfected without damaging the goods, the goods shall be forfeit to the Commonwealth if the owner has not notified the Director of Quarantine within 30 days of the receipt by the owner of a notice in writing by a quarantine officer, of his agreement to the goods being treated or otherwise disposed of in the manner set out in the notice;
- . extend the powers of inspection of a quarantine officer to any vessel that is within 9 nautical miles of the territorial sea of Australia or the Cocos Islands, or such greater distance as the Governor-General declares and which is bound for a port or place in Australia or the Cocos Islands;

- . make it an offence to conceal or attempt to conceal from a quarantine officer the nature of any goods or any other fact or matter relating to the nature of the goods;
- . make it an offence for a ship's agent, in addition to the master or medical officer of a vessel, to mislead a quarantine officer;
- . provide for the Minister to determine the level of fees for the inspection of a place for the granting of approvals under sections 44A and 44B of the Act;
- . extend the operation of the Act by providing for the making of regulations to control the storage, use, movement, and disposal of imported goods, including disease agents and their progeny, which have been imported into Australia or the Cocos Islands following approval by the Minister or the Director of Quarantine;
- . extend the regulation making power for prescribing the measures to be taken by the master of an aircraft for the spraying or fumigation of the vessel, to include those persons authorised by a Chief Quarantine Officer.

Clause 1: Short title, & c

The amending Act is cited as the Quarantine Amendment Act 1984. The clause also identifies the Quarantine Act 1908 as the Principal Act.

Clause 2: Commencement

This clause provides for the commencement of the various provisions of the Bill.

Clause 3: Interpretation

This clause amends sub-section 5(1) of the Principal Act which is an interpretative provision. The clause amends the definition of 'Quarantinable disease' by removing the reference to small-pox. This amendment gives effect to the World Health Organisation's declaration that small-pox has been eradicated.

The clause also makes a minor machinery amendment in sub-paragraph 5(7)(b)(ii).

Clause 4: Director of Quarantine, Chief Quarantine Officers and quarantine officers

This clause amends section 8A of the Principal Act in respect of the appointment of Chief Quarantine Officers for the divisions of quarantine and provides for quarantine officers to work under the direction of a Chief Quarantine Officer.

Paragraph 4(1)(a) amends sub-section 8A(2) to enable the Minister to appoint Chief Quarantine Officers to one or more divisions of quarantine, instead of the Governor-General.

Paragraph 4(1)(b) amends sub-section 8A(3) to require that Chief Quarantine Officers shall perform their powers and functions under the Act or Regulations subject to the directions of the Director of Quarantine.

Paragraph 4(1)(c) makes a minor machinery amendment.

Paragraph 4(1)(d) inserts new sub-section 8A(4) into the Principal Act.

New sub-section 8A(4) provides that quarantine officers shall be subject to the direction of the Chief Quarantine Officer of the Division to which the quarantine officer is appointed.

Sub-clause 4(2) is a saving provision which will ensure that existing appointments made by the Governor-General under sub-section 8A(2) of the Principal Act will not be affected by the amendments made by this Act.

Clause 5: Appointment of officers

This clause repeals and replaces section 9 of the Principal Act to make changes to the provisions governing the appointment of officers.

New sub-section 9(1) provides for the appointment of the Director of Quarantine and Chief Quarantine Officers by the Minister.

New sub-section 9(2) provides that quarantine officers may be appointed by the Director of Quarantine.

New sub-section 9(3) provides that a quarantine officer shall be appointed to one or more divisions of quarantine to work under the direction of the relevant Chief Quarantine Officer.

Sub-clause 5(2) is a saving provision which will ensure that existing appointments of the Director of Quarantine, a Chief Quarantine Officer or a quarantine officer under section 9 of the Principal Act, will not be affected by these amendments.

Clause 6: Temporary quarantine officers

This clause amends section 9A of the Principal Act to provide for the appointment of temporary quarantine officers by the Director of Quarantine instead of by the Minister.

Paragraph 6(1)(a) amends sub-section 9A(1) to enable the Director of Quarantine to appoint temporary quarantine officers.

Paragraph 6(1)(b) amends sub-section 9A(1A) to enable the Director of Quarantine to authorise a person to act as a temporary quarantine officer at a part of the Commonwealth that has been declared by the Governor-General under section 2B of the Principal Act, to be a place that has an epidemic in existence or is in danger of having an epidemic.

Paragraph 6(1)(d) inserts new sub-section 9A(1B) into the Principal Act.

New sub-section 9A(1B) provides that a temporary quarantine officer shall be appointed to one or more divisions of quarantine to work under the direction of the relevant Chief Quarantine Officer.

Paragraphs 6(1)(d) and (e) make minor drafting amendments.

Sub-clause 6(2) is a saving provision which will ensure that existing appointments of temporary quarantine officers made under section 9A of the Principal Act prior to the commencement of this Act will not be affected by these amendments.

Clause 7: Proclamation of ports of entry, & c.

This clause amends section 13 of the Principal Act to put beyond doubt the Governor-General's power to make proclamations to prohibit the importation of goods subject to specified conditions and requirements being met prior to or after importation.

New sub-section 13(2A) provides that a proclamation prohibiting the importation of any thing into Australia or the Cocos Islands may provide that the thing may be imported on the condition that the Director of Quarantine or a person authorised by him has issued a permit granting permission to import that thing.

New sub-section 13(2B) provides that a permit granted under a proclamation made in accordance with sub-section (2A) may require the holder of the permit to meet such conditions or requirements either before or after the thing is imported as are specified in the permit.

Clause 8: Persons and goods subject to quarantine

This clause inserts new paragraph 18(1)(e) into section 18 of the Principal Act.

New paragraph 18(1)(e) provides that every person who enters Australia or the Cocos Islands unlawfully is subject to quarantine.

Clause 9: Vessels to enter certain ports

This clause amends paragraph 20(2)(b) of the Principal Act to make it an offence for a master to moor, anchor or otherwise secure an overseas vessel arriving in Australia or the Cocos Islands, in waters on the landward side of the baseline of the territorial sea of Australia or the Cocos Islands, except by reason of stress of weather or other reasonable cause.

Clause 10: Vessels to be brought to mooring grounds

This clause amends paragraph 26(A)(b) of the Principal Act to remove the requirement that the Director of Quarantine must authorise in writing the quarantine officer who may grant approvals to vessels subject to quarantine, for the vessel to be brought to a place specified in the approval.

The clause also removes the reference to a fee being payable under the regulations which is consequential to the amendments made by clause 23 which would enable the Minister to determine such a fee.

Clause 11: Health Reports

This clause amends section 27 of the Principal Act which requires the master of an arriving overseas vessel or an overseas installation to deliver a health report to a quarantine officer. The amendment removes the requirement that the health report be in the form prescribed in the Regulations, and provides that the Director of Quarantine approve the form of the document.

Clause 12: Pratique

This clause extends the provisions of section 33 of the Principal Act relating to the granting of pratique.

Paragraph 12(a) inserts new sub-section 33(1A) into the Principal Act.

New sub-section 33(1A) provides that where an overseas vessel is at or about to arrive in Australia or the Cocos Islands, at a place other than a first port of entry by permission of the Minister or by reason of stress of weather or other reasonable cause, and a quarantine officer is satisfied that the vessel is free from infection, the quarantine officer shall grant the vessel pratique.

Paragraph 12(b) amends sub-section 33(3) to remove the requirement that the certificate of pratique be prescribed in the regulations and to provide for the Director of Quarantine to approve such a form.

Paragraph 12(c) makes a minor drafting amendment.

Clause 13: Grant of pratique to installation

This clause amends sub-section 33A(2) of the Principal Act to provide the Director of Quarantine with the power to approve the forms used in granting pratique to installations instead of having such forms prescribed by regulation.

Clause 14: Quarantine surveillance

This clause amends sub-section 34(1) of the Principal Act by inserting new paragraph 34(1)(ca).

New paragraph 34(1)(ca) provides that a quarantine officer may permit any crew members and their personal effects to leave a vessel that has arrived from a proclaimed place or is subject to quarantine, where he is satisfied that the crew members are not suffering from a quarantinable disease, but where he is not satisfied that the vessel is free from infection.

Clause 15: Removal from vessels or installations of goods in quarantine

This clause omits paragraph 44A(5)(b) of the Principal Act and inserts a new paragraph 44A(5)(b).

New paragraph 44A(5)(b) provides that where any goods that are subject to quarantine are on a prescribed vessel that has been brought to an Australian installation by permission of the Minister, the goods shall only be landed on that part of the installation approved by the Minister.

Clause 16: Goods ordered into quarantine

This clause amends section 48 of the Principal Act which provides that goods ordered into quarantine may be treated or disinfected, or destroyed where they cannot be effectively treated or disinfected. This clause omits sub-section (2) and inserts new sub-sections (2) (3) (4) (5) and (6).

New sub-section 48(2) provides that where a quarantine officer believes on reasonable grounds that any goods (other than live animals) ordered into quarantine cannot be effectively treated or disinfected and should not be released from quarantine, he may have the goods destroyed, subject to new sub-section 48(4).

New sub-section 48(3) provides that where any live animal ordered into quarantine cannot be effectively treated or disinfected and should not be released from quarantine, a Chief Quarantine Officer or person authorised by him may have the animals destroyed, subject to new sub-section 48(4).

New sub-section 48(4) provides that the Minister shall in writing approve the destruction of any goods referred to in new sub-sections (2) or (3) that are valued at more than \$200.

New sub-section 48(5) provides that where the quarantine officer in charge of any goods which have been ordered into quarantine, believes on reasonable grounds that they cannot be treated or disinfected without damaging the goods, the quarantine officer may by notice in writing request the owner of the goods to agree to their treatment or disinfection.

New sub-section 48(6) provides that goods referred to in a notice under new sub-section (5) shall be forfeited to the Commonwealth and destroyed or otherwise disposed of by a Chief Quarantine Officer, where the owner fails to notify the Director of Quarantine within 30 days of receipt of the notice, that the goods may be treated or disinfected.

Clause 17: Penalty for importing & co.,
contrary to proclamation

The clause amends section 67 of the Principal Act to make it an offence for a person who refuses or fails to comply with the conditions or requirements set out in a permit granted pursuant to a proclamation in accordance with new sub-section 13(2A).

Clause 18: Powers of inspection

This clause amends section 70 of the Principal Act to extend a quarantine officer's powers to inspect a vessel that is beyond the territorial sea and is bound for Australia or the Cocos Islands. This amendment will enable a quarantine officer to board and inspect any vessel that is within 9 nautical miles or such greater distance as is proclaimed by the Governor-General, of the outer limits of the territorial seas of Australia and the Cocos Islands.

Clause 19: Offences in relation to goods

This clause omits paragraph 70C(2)(b) of the Principal Act and substitutes a new paragraph 70C(2)(b).

New paragraph 70C(2)(b) would make it an offence to conceal or attempt to conceal from a quarantine officer the nature of any goods or any other fact or matter relating to the nature of the goods. This amendment will make the concealment of the goods rather than the intent to avoid having the goods inspected an offence under the section.

Clause 20: Power to search premises for documents

This clause will amend sub-section 74B(5) of the Principal Act by extending the definition of 'examinable documents' to include any books, documents or papers relating to domestic animals that are in the Cocos Islands. This amendment will enable a quarantine officer to obtain the necessary warrant under the section so that he may search premises and inspect any documents he considers relevant to any domestic animals in the Cocos Islands.

Clause 21: Powers of search relating to domestic animals in the Cocos Islands

This clause amends the Principal Act by inserting new section 74BA to enable a quarantine officer on the Cocos Islands to enter any land or premises with the consent of the occupier, or by warrant issued by a Justice of the Peace, for the purpose of searching such land or premises for domestic animals and to take certain measures to ensure that the land or premises or animals are clean and free from infection.

New sub-section 74BA(1) provides that where the consent of the occupier is obtained, a quarantine officer may enter land or premises in the Cocos Islands to perform the functions of a quarantine officer.

New sub-section 74BA(2) provides for a quarantine officer to obtain a warrant from a Justice of the Peace to authorise entry onto land or premises in the Cocos Islands for the purposes of carrying out quarantine functions. The warrant is obtainable where the quarantine officer has reasonable grounds for suspecting that at the time or within the following 24 hours, a domestic animal will be present on the land or premises.

New sub-section 74BA(3) provides that before the Justice of the Peace issues the warrant under new sub-section 74BA(2) that he must be satisfied by information on oath or affirmation that the quarantine officer has reasonable grounds for suspecting the presence of the domestic animal, at that time or within the following 24 hours, on the land or premises and that the issue of the warrant is reasonably necessary for the proper execution of quarantine functions.

The warrant authorises the quarantine officer to use reasonable force and to obtain such assistance as is necessary, to carry out his functions.

New sub-section 74BA(4) provides that the warrant shall not be in force for more than one month and shall contain on its face any limitation as to the hours of the day in which it may be executed.

New sub-section 74BA(5) provides that a quarantine officer's function under section 74BA is to search the land and/or premises for domestic animals and if necessary to break open any enclosure within the land and/or premises which may house the domestic animal. Where a domestic animal is found, it is the function of the quarantine officer to take steps to have the domestic animal and the land and/or premises examined for infection. The quarantine officer may take steps to cause the land and/or premises to be disinfected and cleaned and to cause any necessary disinfection, vaccination, testing or other veterinary treatment of the domestic animal to be done. For the purposes of carrying out these functions the quarantine officer may give directions to any person on the land and/or premises which he considers necessary.

New sub-section 74BA(6) provides a penal sanction for failure by a person on the land and/or premises to comply with a direction given to him by a quarantine officer without reasonable excuse.

New sub-section 74BA(7) provides that the occupier of the land and/or premises may remain present during a search.

New sub-section 74BA(8) provides that a resident of the land and/or premises may not be excluded from that dwelling.

New sub-section 74BA(9) provides that this section should not be interpreted as limiting any other powers of a quarantine officer under other provisions of the Act.

Clause 22: Obstruction of officers and
non-compliance with directions

This clause extends the imposition of the penalty under sub-section 74C(1) of the Principal Act to a person who without reasonable excuse, obstructs or hinders a quarantine officer in the performance of his duties under new section 74BA.

Clause 23: Master, medical officer or agent
misleading quarantine officer

This clause amends section 83 of the Principal Act which makes it an offence for a master or medical officer of a vessel or installation to make a false statement in answer to a

question under the Act or to wilfully mislead a quarantine officer in the performance of his duty under the Act. This amendment extends this section to include an agent of a vessel or installation.

Clause 24: Proceedings in respect of offences

This clause amends section 85 of the Principal Act to provide that the distinction between indictable and summary offences under the Act reflects the increase in penalties provided for by clause 27 and is in accordance with current criminal law policy.

Clause 25: Fees

This clause repeals section 86E of the Principal Act and inserts a new section 86E into the Principal Act to enable the Minister to determine fees under the Act. Section 86E provides for a penalty in cases not specially provided for and is now inappropriate because of the amendments provided for by clause 27.

New sub-section 86E(1) authorises the Minister to determine, by notice published in the Gazette, the amount of fees payable in respect of specified examinations or services under the Act, the issue of specified certificates under the Act, the management and maintenance of animals at the Cocos Islands quarantine station, and for the granting of approvals under sub-section 44A(5) and 44B(1) by a Chief Quarantine Officer.

New sub-section 86E(2) provides that the notice may specify the persons required to pay such fees.

New sub-section 86E(3) provides that a determination notifying fees shall be effective from the date of gazettal.

New sub-section 86E(4) applies the provisions of section 48 (except paragraphs (1)(a) & (b) and sub-section (2)) and sections 49 and 50 of the Acts Interpretation Act 1901 to provide that the requirements for laying regulations before both Houses of Parliament, the disallowance of regulations and the effect of the repeal of regulations, shall also apply to determinations made by the Minister in respect of quarantine fees.

Clause 26: Regulations

This clause amends section 87 of the Principal Act to extend the Governor-General's power to make regulations in respect of certain matters and to remove his power to make regulations prescribing fees as this is to be done by the Minister under new section 86E.

Paragraph 26(1)(a) extends the regulation making power under paragraph 87(1)(b) of the Principal Act to provide that the spraying or fumigation of aircraft before or after their arrival in Australia or the Cocos Islands, can be carried out by persons authorised by a Chief Quarantine Officer as well as the master of the vessel.

Paragraph 26(1)(b) omits paragraphs 87(1)(o) and (oa) of the Principal Act which provide the power to make regulations prescribing fees for examinations, services or certificates and for the maintenance of the quarantine station on the Cocos Islands.

Paragraph 26(1)(c) inserts new paragraph 87(1)(qa) into the Principal Act.

New paragraph 87(1)(qa) would enable the making of regulations prescribing methods for controlling the storage, use, movement and disposal of imported goods, including disease agents and their progeny which have been imported into Australia or the Cocos Islands with the approval of the Minister or the Director of Quarantine in accordance with a proclamation under section 13 of the Principal Act.

Paragraph 26(1)(d) omits sub-section 87(1D) which provides for the conditions relating to variations of the fees prescribed for the management of the Cocos Islands quarantine station.

Sub-clause 26(2) is a saving provision which provides for the continuation of fees already prescribed by regulations under paragraphs 87(1)(o) and (oa) of the Principal Act as if they had been determined by the Minister under new section 86E.

Clause 27: Penalties

This clause amends the Principal Act to increase the penalties for offences under the Act as set out in Schedule 1.

Clause 28: Formal amendments

This clause amends the Principal Act to make formal amendments listed in Schedule 2 to take account of new drafting styles.

