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No. 113 2002–03

Agriculture, Fisheries and Forestry Legislation
Amendment Bill (No. 1) 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 113 2002–03

Agriculture, Fisheries and Forestry Legislation Amendment
Bill (No. 1) 2002

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Law and Bills Digest Group
27 February 2003

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Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002

Date Introduced: 29 May 2002

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The day after Royal Assent except for:

- Items 1-143 of Part 1 of Schedule 1 (amendments which extend the application of the *Quarantine Act 1908* to Christmas Island) which are to commence on a single day to be fixed by Proclamation or 6 months and one day after Royal Assent and
- Schedule 3 (amendments to the *Pig Industry Act 2001* and the *Wool Services Privatisation Act 2000*) which is to commence on Royal Assent.

Purpose

This is an omnibus piece of legislation that contains amendments to 4 different Acts, all of which fall within the responsibility of the Department of Agriculture, Fisheries and Forestry – Australia. The substantive amendments are aimed at achieving the following purposes:

- extending the application of the *Quarantine Act 1908* to include the Territory of Christmas Island
- amending the *Quarantine Act 1908* to change arrangements for the payment of fees, and to broaden the range of persons who can be appointed as quarantine officers
- amending the *Imported Food Control Act 1992* to provide legislative support for compliance agreements between food importers and the Australian Quarantine Inspection Service (AQIS), and
- amending the *Pig Industry Act 2001* and the *Wool Services Privatisation Act 2000* to enable the research and development (R&D) bodies for the pork and wool industries – Australian Pork Limited (APL) and Australian Wool Innovation Limited (AWI) – to carry forward claims for R&D expenditure that are eligible for matching Commonwealth contributions from one financial year to the next.

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Background

The Minister for Agriculture, Fisheries and Forestry introduced this Bill in the House of Representatives on 29 May 2002. On 18 September 2002 the Senate referred the Bill to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry.¹ The Committee reported on 12 November 2002.²

The principal reasons for referring the Bill to a Committee were

- to examine the effectiveness of the changed arrangements for labelling and monitoring imported food that are proposed by the Bill, and
- to examine the operation of quarantine arrangements at Australia's borders which has led AQIS to increase its use of contract staff.³

As there is no central theme to the Bill, the background to each major amendment will be explained where relevant in the Main Provisions section of this Digest.

Main Provisions

Proposed Amendments to the *Quarantine Act 1908* (Quarantine Act)

Extension of the Quarantine Act to Christmas Island

The Quarantine Act provides for measures that include the inspection, exclusion, detention, isolation, treatment and regulation of vessels, installations, persons, animals and plants, in order to prevent the introduction or spread of diseases or pests affecting human beings, animals or plants.⁴ The application of the Quarantine Act was extended to the Territory of Cocos (Keeling) Islands in 1981⁵ and to Ashmore and Cartier Islands in 1999.⁶

The quarantine regime currently in force on Christmas Island is the Quarantine and Prevention of Disease Ordinance of the colony of Singapore in its application to the Territory.⁷ Since 1992 it has also been possible to use Regulations made under the Quarantine Act to extend the whole, or a part of the Act to the Territory of Christmas Island.⁸ The changes proposed by this Bill will have the effect of extending the Quarantine Act regime to Christmas Island. This will be done by amending the Act rather than by making Regulations under the Act (**items 16 and 20 of Schedule 1**).

Christmas Island is located about 3000 km northwest of Perth and about 300 km south of the Indonesian archipelago. The 1500 residents of Christmas Island receive much of their fresh food and other supplies by sea or air from Jakarta. While supporting the provisions of the Bill to extend the Quarantine Act to Christmas Island, Opposition and Democrat Senators have noted the concerns raised by the residents of Christmas Island as to the

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impact of the proposed quarantine changes on their cost of living.⁹ The Opposition and the Democrat Senators indicated in their Minority Report on the Bill that they will be seeking undertakings from the Minister for Agriculture, Fisheries and Forestry to ensure that the welfare of the residents of Christmas Island is not adversely affected by the proposed changes.

The main mechanism to establish differentiated quarantine standards on Christmas Island for fruit, vegetables and other supplies will be the Governor-General's power to prohibit or place conditions on imported animals, plants, and other goods under paragraphs 13(1)(d)-(f) of the Quarantine Act. Paragraphs 13(1)(d)-(f) are given force by, amongst other provisions, section 64 of the Quarantine Proclamation 1998, which states:

Importation of fresh fruit and vegetables (Quarantine Act, ss 5(1) and 13(1) (d), (e) and (f))

- (1) for this section, a fruit or vegetable is fresh if it is not deep-frozen, dried, canned or otherwise conserved or preserved.
- (2) the importation into Australia of a fresh fruit or vegetable is prohibited unless a Director of Quarantine has granted the person a permit to import it into Australia.

Note For what a Director of Quarantine must consider when deciding whether to grant such a permit, see Part 8.

Items 27-32 of Schedule 1 amend paragraphs 13(1)(d)-(f) to allow prohibitions and conditions to apply only to Christmas Island, if the need arises. The Parliamentary Library has received advice from AQIS that it, and the Department of Territories and Local Government will be consulting with the residents of Christmas Island before a revised Quarantine Proclamation is issued. We have been told by AQIS that they intend having a revised Quarantine Proclamation and regulations ready to come into force at the same time as the amendments in this Bill are due to commence, that is on proclamation or six months and one day after Royal Assent.¹⁰

Item 33 provides that should the revised Quarantine Proclamation not be ready at the time the amendments proposed by this Bill come into force, then the provisions of the 1998 Quarantine Proclamation will apply to Christmas Island.

Commencement date: A single day to be fixed by Proclamation or 6 months and one day after Royal Assent.

Quarantine Expenses and Fees

The amendments in **Part 2 of Schedule 1** are proposed to formalise the practice of AQIS invoicing customs brokers (as agents) for the clearance of imported goods instead of invoicing the importer directly. This will avoid AQIS having to seek payment from importers. Representatives of AQIS explained to the Senate Committee that AQIS had

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often found the task of seeking payment directly from importers to be time consuming, costly and not always successful.¹¹ Should an agent refuse to pay AQIS on behalf of an importer, **item 150** will impose an obligation on the customs broker to pay fees to the Commonwealth for import clearance services, regardless of whether the agent has received fees from the owner/importer.

Commencement date: The day after Royal Assent.

Performance of Quarantine Officer Duties by other People

The amendments to the Quarantine Act proposed by **Part 3** of **Schedule 1** are designed to broaden the range of people who may be appointed as quarantine officers. The proposed amendments will also empower the Director of Quarantine to enter into contracts and to appoint people covered by those contracts to be quarantine officers.

The amendments proposed by this particular Part are contentious and the different arguments, for and against the proposal, were put to the Senate Committee's inquiry into the Bill. The Committee was told that the Government's increased quarantine initiatives have resulted in changes, both in the size of the AQIS workforce and the nature of the work performed.¹² For example, previously only about 5 per cent of sea cargo containers were inspected. Now this is 100 per cent. There is also a much greater use of x-ray machines, and many more routine duties are performed, such as the checking and cleaning of passengers' shoes at airports.¹³

The increased demand for routine duties, and the variable workloads at ports, has led AQIS and the Department of Agriculture, Fisheries and Forestry to use more staff employed from a contract pool. The Committee was told that AQIS currently employs between 150 and 200 contractors to perform routine tasks.¹⁴ The Department submitted that the amendments proposed by this Bill are intended to ensure protection under the law for contractors performing tasks such as placing items into and out of x-ray machines, and removing contaminated material from the external surfaces of cargo containers and cleaning shoes.¹⁵ They also argued before the Committee that employing staff from a contract pool would result in other benefits to Australia's quarantine services, including fully trained quarantine officers being able to concentrate their efforts on risk management and enforcement tasks, rather than performing routine duties. The Department also argued that the employment of contract staff provided AQIS with greater flexibility, particularly in circumstances of regional emergencies or incursions which require authorities to be able to respond quickly. Under the proposed new arrangements, AQIS would be able to employ local or regional staff in emergencies.

The Department noted that quarantine officers appointed from the contract pool would be trained to perform the specific duties required of them and that the amendment required the Director of Quarantine to be satisfied that any contract person employed is a suitable person to be a quarantine officer. Contract staff will also be required to comply with the Australian Public Service Code of Conduct.¹⁶

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The Senate Committee also heard arguments opposing the proposed amendments. The Community and Public Sector Union (CPSU) argued that the Bill proposes to give range of powers to independent contractors employed to perform quarantine functions that extend far beyond the type of work currently performed by contractors. In particular, the amendments would provide contractors with all existing quarantine powers with only some limited exceptions. The CPSU argued that contractors would have the power to enter and search premises under warrant (section 66AA), seize material without a warrant in emergency situations (section 66AD), and search goods (section 70A).¹⁷ The CPSU also argued that, while the Bill recognises that contractors need to be accountable, the standard adopted (upholding the 'APS Code of Conduct') falls well short of public service legislative standards.¹⁸ The CPSU argued that contract staff would not have the protection of the Public Service Act. This would mean that staff selection, promotion, discipline, conduct and termination of any staff from the contract pool would not be subject to independent review or Directions of the Public Service Commission, Merit Protection Commission, or the Australian Industrial Relations Commission.¹⁹ They also considered that the proposed level of training and skill standards of contract staff was likely to be inferior to that of AQIS quarantine officers.²⁰ Moreover, the current public sector employment arrangements had coped well with the large number of additional staff employed to implement the Government's increased quarantine intervention program over the past year.²¹

Labor and Democrat Senators on the Committee issued a Minority Report²² that drew attention to the existing employment flexibility under the Quarantine Act.²³ The Minority Report argued that options such as the employment of people as quarantine officers on a fixed term or fixed task basis, and the engagement of people to assist quarantine officers in the performance of their duties, are already available under the Quarantine Act.²⁴ Labor and Democrat Senators on the Committee were also not satisfied that the dilution of public service accountability standards for officers performing statutory quarantine functions is in the public interest.²⁵ They supported the provisions that will allow State quarantine officers to perform Commonwealth quarantine functions.²⁶ They concluded that the proposed extension of quarantine powers to private contract staff is unwarranted and poses a direct threat to the integrity of Australia's quarantine regime.²⁷

Item 161 of Schedule 1 inserts **new section 5AA** into the Quarantine Act. This item specifies that a quarantine officer is required to be appointed as a quarantine officer (plants), (animals) and/or (human). **Items 162 and 164** extend the range of persons who may be appointed as quarantine officers for animal, plant and/or human quarantine by including a State officer and a contract pool person. A person from the contract pool is neither a Commonwealth, State nor Territory employee.

Item 168 inserts **new sections 9B and 9C**. **New section 9B** specifies the two pre-conditions that the Director of Quarantine must be satisfied about before appointing a person from a contract pool as a quarantine officer. These pre-conditions are firstly, that the person is suitable to be a quarantine officer, and secondly, that the person has agreed to comply with the APS Code of Conduct in their performance of duties as a quarantine

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officer. **New section 9C** describes the circumstances that will trigger the automatic revocation of the appointment of a contractor and when the revocation will take effect. An appointment is revoked if the relevant contract ceases to be in force.

The purpose of **item 171** is to insert **new sections 11AA** and **11AB**. These sections empower the Director of Human Quarantine and the Director of Animal and Plant Quarantine, on behalf of the Commonwealth, to enter into contracts with individuals to create a pool of contract staff.

Items 172-178 limit the powers that contractors may exercise as quarantine officers. On appointment, persons from a contract pool will have all the powers of a quarantine officer under the Quarantine Act, except the powers under sections 66AC, 66AE and 66AF. Sections 66AC and 66AF empower a quarantine officer to apply for monitoring and offence related warrants. Section 66AE empowers a quarantine officer to enter certain premises if he or she has reasonable grounds for suspecting that there may be particular evidential material on those premises. The effect of **items 172-178** is to exclude people who have been appointed on contract as a quarantine officer from the exercise of these powers.

Commencement date: The day after Royal Assent.

Proposed amendments to the *Imported Food Control Act 1992*

Approximately ten per cent of the food consumed by Australians is produced overseas. Because Australia has no direct control over food production in exporting countries, a system was introduced by the *Imported Food Control Act 1992* (Imported Food Control Act) to ensure that imported food complies with Australian public health and food standards. To achieve that objective the Imported Food Control Act has relied mostly on barrier inspection and end-point testing. At present AQIS officers arrange for the inspection and testing of imported food. This may include taking samples for analysis and delivering them to approved laboratories. Foods imported into Australia are subject to laboratory testing for microbiological and chemical hazards under the Imported Food Program (IFP) which is jointly administered by AQIS and the Australia New Zealand Food Authority (ANZFA).²⁸

There is a rapid growth in world food trade. At the same time Australian food consumption patterns are changing and there is increasing consumer concern about food safety. Much of the food now consumed by Australians is relatively under-prepared or 'fresh', compared with the thoroughly cooked or salted foods of the past.

In 1999 the Government carried out an independent National Competition Policy Review (NCP Review) of the Imported Food Control Act as part of a comprehensive examination of legislation to ensure compliance with the National Competition Policy.²⁹ The principle behind National Competition Policy, as stated in the Hilmer Report,³⁰ is that it 'seeks to facilitate effective competition to promote efficiency and economic growth while

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accommodating situations where competition does not achieve efficiency or conflicts with other social objectives'. The focus of this NCP Review was on those parts of the Imported Food Control Act which restrict competition or which result in costs or benefits for business.³¹

The NCP Review Committee published its report in January 2000. On the basis of its analysis and consultation with a broad cross-section of the food importing and processing industry, government departments and consumer representatives, the NCP Review Committee concluded that the best way of ensuring that imported food complies with Australian public health and safety standards was to develop a partnership (or co-regulatory) approach between industry and government.³² It argued that 'the partnership approach will encourage industry to take greater responsibility for ensuring food safety while, at the same time, retaining government control over the food importing system through regular government-controlled audits.'³³ The Government endorsed the 23 recommendations of the NCP Review.³⁴

This Bill implements some of the recommendations of the NCP Review of the Imported Food Control Act. These are:

- clarifying the purpose of the Act by including a statement of the objective of the Act (**item 1 of Schedule 2**)
- allowing food importers to import the food that is not correctly labelled, but not to sell it on to the public without correcting the label (**items 5 and 6 of Schedule 2**), and
- introducing the idea of a compliance agreement with the food importer (**Item 7-12 of Schedule 2**).

Item 1 of Schedule 2 inserts a new section into the Imported Food Control Act in order to clarify the purpose of the Act. The objective of the Act 'is to provide for the compliance of food imported into Australia with Australian food standards and the requirements of public health and safety'.

Items 2-4 insert new definitions for a 'compliance agreement', a 'label', and a 'package'.

The purpose of **items 5 and 6** is to allow for the importation of food when the labelling does not comply with Australian food standards, but to make it an offence to sell that food. The importer must make good the labelling deficiency before the product is sold. Existing section 8 provides that a person must not import into Australia food that does not meet applicable standards, or poses a risk to human health. This is an offence incurring a maximum penalty of imprisonment for 10 years. **New section 8(1A)** provides that food may be imported if the information on the label does not meet Australian standards. However **new section 8A** requires that the labels must meet applicable standards before the imported food is sold. The maximum penalty for failure to comply with this new section is 10 years imprisonment.

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The NCP Review recommended that the Commonwealth enter into compliance agreements with food importers based on quality assurance-type systems, and that the method of compliance adopted should be one that best suits an importer's operations.³⁵

The Bill allows compliance agreements to be used in two ways. **Item 7** enables a person who has entered into a compliance agreement to deal with imported food in accordance with the procedures set out in the compliance agreement. **New subsection 9(1A)** will permit a person who has entered into a compliance agreement to undertake functions usually carried out by AQIS officers. This will include the inspection and testing of imported food, involving taking samples for analysis and delivering samples to approved laboratories. The person will not be able to sell the food until an authorised officer³⁶ has given permission to do so. To ensure that the integrity of the imported food inspection system is maintained, the amendments provide that a failure to comply with a requirement set out in a compliance agreement that causes a significant risk to public health would be an offence attracting a maximum penalty of 10 years imprisonment.

The amendment proposed by **item 8** will extend the making of regulations to situations where a compliance agreement exists. Certain quality assurance arrangements are already permitted under the Act in respect of food produced overseas. The Act also permits the making of regulations to vary the incidence of inspection, or inspection and analysis in such cases. Under **proposed paragraph 16(2)(i)** the authority to vary the frequency of inspection will extend to where a compliance agreement exists. Where an importer has a quality assurance arrangement in place which demonstrates that food imported by the company meets Australian food standards, and the quality assurance agreement is regulated under a compliance agreement, then the importer will be able to have their product inspected at a reduced rate. AQIS will audit the importers to ensure that the requirements set out in their compliance agreement are being met. If additional food safety standards are required to ensure that public health is not compromised, **proposed subsections 35A(3) and 35A(4)** allow for action to be taken by the Departmental Secretary to supplement or override the compliance agreements.

Under the arrangements proposed by **item 11** of **Schedule 2** a compliance agreement would set out the following matters:

- the particular procedures to be followed in relation to imported food
- the records to be kept in respect of those procedures, and
- the supervision, monitoring and testing of a person's compliance with the procedures.

In all cases, the non-Commonwealth party will be responsible for ensuring compliance with the agreement (**proposed subsection 35A(6) – (9)**). The new arrangements have the support of industry bodies including Food Standards Australia New Zealand, the Food and Beverage Importers Association and the Australian Food and Grocery Council. These three food industry organisations provided submissions to the Senate Committee that investigated this Bill.³⁷ In particular, the Food and Beverage Importers Association submitted that the new compliance arrangements would not lead to less overall control of

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food imports. Instead the changes would make possible a redirection of AQIS' resources from those importers that satisfy AQIS of their capabilities to undertake agreed tasks, to areas where there are higher assessed risks.³⁸

Commencement date: The day after Royal Assent.

Proposed amendments to the *Pig Industry Act 2001* and the *Wool Services Privatisation Act 2000*

The amendments to the *Pig Industry Act 2001* and the *Wool Services Privatisation Act 2000* have to do with expenditure on research and development (R&D). All rural R&D bodies are financed partly by the industry and partly by the taxpayer. Every financial year the Commonwealth provides payments to each rural R&D body to match the amount raised from industry R&D levies, up to a maximum of 0.5 per cent of the amount determined to be the gross value of production of the industry in that financial year. In years when spending on R&D is high, this limitation can have the effect of reducing the amount of Commonwealth contribution. In rural industries other than pork and wool, the legislative framework for R&D bodies allows the bodies to carry forward unmatched eligible research and development expenditure by submitting a claim in the following financial year. In this way, by 'rolling over' their claims, rural R&D bodies can ensure that it is possible for all eligible R&D expenditure to be matched by Commonwealth contributions.

Item 1 of Schedule 3 inserts **new subsections 10(10)-(14)** into section 10 the *Pig Industry Act 2001*. Their purpose is to allow eligible R&D expenditure that is not matched by the Commonwealth in a financial year to be carried forward into later financial years. A definition of the term 'unmatched R&D excess' for a financial year is provided by **new subsection 10(11)**. This definition describes the excess in the form of an equation that allows for the calculation of the amount of eligible expenditure that can be carried forward to the subsequent financial year. Provision is also made for unmatched eligible expenditure incurred by the Pig Research and Development Corporation which was replaced on 1 July 2001 to attract matching Commonwealth contributions (**new subsections 10(12) and (13)**).

Commencement date: Royal Assent.

Item 2 of Schedule 3 amends the *Wool Services Privatisation Act 2000* for a similar purpose. **New subsection 31(8A)** is inserted into section 31 to provide for unmatched eligible R&D expenditure incurred in the 2001/02 financial year to be carried forward to later financial years. A definition of the term 'unmatched R&D excess' for a financial year is provided by **new subsection 31(8B)**. This definition describes the excess in the form of an equation that allows for the calculation of the amount of eligible expenditure that can be carried forward to the subsequent financial year.

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Endnotes

- 1 *Journals of the Senate*, No. 32, 18 September 2002, p. 752.
- 2 Senate, Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, November 2002.
- 3 Senate, Selection of Bills Committee, *Report*, No. 8 of 2002, 18 September 2002, and Senate, Rural and Regional Affairs and Transport Legislation Committee, *op cit.*, p. 1.
- 4 Section 4 of the *Quarantine Act 1908*.
- 5 *Quarantine Amendment Act 1992* s.4.
- 6 *Quarantine Amendment Act 1999*, Schedule 1.
- 7 *Territories Law Reform Act 1992*, Schedule 1.
- 8 *ibid.*, Schedule 4, and Section 6AA of the *Quarantine Act 1908*.
- 9 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, ‘Minority Report’, 12 November 2002, p. 24.
- 10 Personal communication 27 February 2003.
- 11 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, November 2002, p. 5.
- 12 *Evidence*, Senate Rural and Regional Affairs and Transport Legislation Committee, 18 October 2002, p. 1–2.
- 13 *op. cit.*
- 14 *ibid.*, p. 2–3.
- 15 *ibid.*, p. 1–2.
- 16 *Submission 4*, Department of Agriculture, Fisheries and Forestry, p. 4.
- 17 *Submission 2*, Community and Public Sector Union, p. 3.
- 18 *ibid.*, p. 2.
- 19 *ibid.*, p. 3.
- 20 *ibid.*, p. 2.
- 21 *Evidence*, Senate Rural and Regional Affairs and Transport Legislation Committee, 18 October 2002, Community and Public Sector Union, p. 13.
- 22 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, ‘Minority Report’, 12 November 2002.
- 23 *ibid.*, p. 27.

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- 24 *ibid.*, p. 27–28.
- 25 *ibid.*, p. 29.
- 26 *ibid.*, p. 30.
- 27 *op. cit.*
- 28 ‘Australia’s Imported Food Program – a valuable source of information on micro-organisms in food’, by Ann Bull, Scott Crerar and Mary Beers, *Communicable Diseases Intelligence*, vol. 26, no. 1, 2002, p. 28–31.
- 29 Quarantine and Exports Advisory Council, *National Competition Policy Review of the Imported Food Control Act 1992*. <http://www.qeac.gov.au/docs/reports/national.htm>
- 30 Independent Committee of Inquiry into National Competition Policy (Australia), *National Competition Policy: report*, Canberra, AGPS, 1993. Chairman: Frederick G. Hilmer.
- 31 Quarantine and Exports Advisory Council, *National Competition Policy Review of the Imported Food Control Act 1992*, p. 1. <http://www.qeac.gov.au/docs/reports/national.htm>
- 32 *ibid.*, p. 3.
- 33 *op. cit.*
- 34 Hon Warren Truss, ‘New rules covering imported foods will enhance consumer protection’, *Media Release*, 13 July 2000.
- 35 Quarantine and Exports Advisory Council, *National Competition Policy Review of the Imported Food Control Act 1992*, p. 3. <http://www.qeac.gov.au/docs/reports/national.htm>.
- 36 Section 40 of the *Imported Food Control Act 1992* provides that the Secretary may, by signed instrument, appoint an officer of AQIS to be an authorised officer for the purposes of this Act.
- 37 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, p. 19.
- 38 *Submission 5*, Food and Beverage Importers Association, p. 2.

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