



Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007

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Law and Bills Digest Section

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Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007

Date introduced: 20 June 2007

House: Senate

Portfolio: Communications, Information Technology and the Arts

Commencement: Sections 1-3 and Schedule 2 commence on Royal Assent. Schedule 1 commences on Proclamation but not later than six months after Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Australian Postal Corporation Act 1989* (the APC Act) to provide for the inspection and examination of postal articles carried by Australia Post for interstate quarantine purposes, with the exception of standard letters.

The Bill also makes other amendments to provide Australia Post with the power to disclose scam mail articles to consumer protection agencies.

Background

At present incoming international mail may be opened in accordance with the powers set out in the *Quarantine Act 1908*.

However, the APC Act prohibits the opening of interstate postal articles except in specified circumstances.¹ These purposes relate to a suspicion that the article contains drugs² or that customs duty is payable.³

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1. Section 90N APC Act
 2. Section 90T APC Act
 3. Section 90S APC Act

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As the APC Act only applies to Australia Post, all articles that are moved interstate by carriers other than Australia Post are not subject to the same prohibitions against opening. Consequently those articles which are carried by independent carriers can be opened for inspection by the relevant authorities.

The Bill removes the anomaly that Australia Post is not subject to the same inspection regimes as other interstate carriers.

Basis of policy commitment

In 2002 the Senate Environment, Communications, Information Technology and the Arts Committee published its report entitled 'Turning back the tide – the invasive species challenge' ([the Invasive Species Report](#)). That report recommended, amongst other things, that

the Commonwealth Government strengthen its leadership role in the national effort to combat invasive species by developing a robust national framework, in consultation with State, Territory and local governments, to regulate, control and manage invasive species.⁴

The House of Representatives Standing Committee on Agriculture, Fisheries and Forestry conducted an inquiry into the impact on agriculture of pest animals. Its report was published in November 2005 ([the Pest Animals Report](#)).⁵ As the Senate Committee and the Standing Committee addressed some matters which were common to both, a number of the recommendations in the Pest Animals Report echo the earlier recommendations made in the Invasive Animals Report, despite the differences in their terms of reference.⁶

The Standing Committee 'received overwhelming evidence supporting the need for more involvement' in dealing with the problem of pest animals, 'at the federal level'.⁷ Upon

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4. Environment, Communications, Information Technology and the Arts References Committee, *Turning back the tide – the invasive species challenge, Report on the regulation, control and management of invasive species and the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002*, Canberra, December 2004, p. v.
 5. House of Representatives Standing Committee on Agriculture, Fisheries and Forestry, *Taking control: a national approach to pest animals, Inquiry into the impact on agriculture of pest animals*, House of Representatives Standing Committee on Agriculture, Fisheries and Forestry, Canberra, 2005.
 6. The Senate report considered primarily the threats posed to the environment by invasive species whilst the Standing Committee report related specifically to threats to Australia's agricultural industries.
 7. House of Representatives Standing Committee on Agriculture, Fisheries and Forestry, op. cit., p. 49.

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considering all of the submissions the Standing Committee recommended a raft of actions. Recommendation 13 was that:

‘...the Australian Government amend the *Australian Postal Corporation Act 1989* to allow state and territory governments to inspect interstate mail for quarantine purposes.’⁸

The Australasian Consumer Taskforce (ACTF), established in March 2005, is comprised of 18 Government regulatory agencies and departments who have a remit for consumer protection in relation to frauds and scams.⁹

The purpose of the ACTF is to work together to enhance the Australian and New Zealand Governments’ enforcement activity against frauds and scams, to create a yearly co-ordinated information campaign for consumers, to share information and to generate a greater interest in research about scams.

Although no specific comment is made in the Explanatory Memorandum, those parts of the Bill which relate to scam mail will, of its nature, complement the operations of the ACTF.

Position of significant interest groups/press commentary

The Bill has been developed in consultation with State and Territory governments and Australia Post. The Explanatory Memorandum states that there is general consensus about

8 *ibid.*, p. xxii.

9 For example, in a media release dated 6 May 2004, the Fair Trading Minister, Margaret Keech warned of a scam involving people receiving notification of mail and when they arrive at the post office they have to pay more than \$50 to collect the item. When opened the envelope contains a blank CD and some scrunched up paper.
<http://www.fairtrading.qld.gov.au/oft/oftweb.nsf/Web+Pages/5FCEDEC5D9ACB9A34A256E9300055264?OpenDocument&L1=News>

Another example is provided in the speech of Ms Reba Meagher, Member of the NSW Legislative Assembly on 25 June 2003 in response to Questions Without Notice: the NSW Office of Fair Trading identified a scam in 2003 known as the El Gordo Sweepstake Lotteria. The letters generally advised consumers that they had won a substantial amount of money and that to avoid any mix-up the sender of the letter needs to confirm the consumer’s identity. Consumers were asked to fill in a so-called ‘payment authority’ form and return it to the scam promoters. Similar to the infamous Nigerian letter scam, the form asks for personal and bank details which are used in an attempt to empty the consumer’s bank account.
<http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/V3Key/LA20030625022>

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the proposal including that the reserved services¹⁰ be exempted from inspection under the scheme because of the low risk of standard letters carrying quarantine material.¹¹

The Western Australian Government used to scan interstate mail for quarantine risk material. This practice was stopped, however, due to an inconsistency between Western Australia's *Plant Diseases Act 1914* and the Commonwealth APC Act.¹²

At this stage, the Western Australian Government has expressed interest in coming under the scheme, as have the Northern Territory and Tasmania.¹³

The other jurisdictions have taken the view that they consider the biosecurity risks associated with the interstate mail system to be relatively low.¹⁴

Financial implications

The Explanatory Memorandum states that the Bill is not expected to have any financial impact on Commonwealth expenditure or revenue. The costs of interstate quarantine inspection will be borne by State and Territory inspection authorities that opt in to the inspection regime provided by the Bill. Australia Post may be subject to costs associated with quarantine inspection guarantees, but they are not expected to be significant.¹⁵

10. Section 29 of the APC Act reserves to Australia Post the exclusive right to carry letters within Australia.

11 *Explanatory Memorandum, Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007*, p. 1.

12 *ibid.*, p. 89.

13 *Explanatory Memorandum*, p. 2

14 Senator Eric Abetz, Minister for Fisheries, Forestry and Conservation, 'Second reading speech: Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007', Senate, Hansard 20 June 2007, p.1

15 *Explanatory Memorandum*, p. 3

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Main provisions

Postal articles containing quarantine material

The Bill provides that:

- certain posted articles may be removed from the normal course of carriage for inspection purposes
- specified procedures must be followed by State or Territory quarantine inspection authorities, and
- specified records must be kept.

Items 1 -12 of Schedule 1 amend section 90E to provide relevant definitions including:

- ‘compliance agency’ – which includes the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC) and state and territory consumer protection agencies
- ‘consumer protection law’ being:
 - the *Trade Practices Act 1974*
 - the *Australian Securities and Investments Commission Act 2001*
 - the *Corporations Act 2001*
 - a State Fair Trading Act
 - a State Sale of Goods Act or
 - another prescribed Act
- ‘prescribed State or Territory’ – being a State, the Australian Capital Territory and the Northern Territory¹⁶
- ‘scam mail’ – being mail in breach of a ‘consumer protection law’
- ‘Universal Postal Union’ being the specialised agency of the United Nations established in accordance with Articles 57 and 63 of the United Nations Charter
- ‘UPU instrument’ – being a Universal Postal Union instrument.

16. According to the Explanatory Memorandum, only Western Australia, Tasmania and the Northern Territory have opted into the scheme at this time. That being the case, it is expected that they will be specified in the relevant Regulations.

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Postal articles containing quarantine material

Proposed section 90U adds an additional circumstance in which the opening of interstate postal articles is permitted, that is, where a quarantine officer of a prescribed State or Territory has reasonable grounds for believing that an article consists of, or contains, quarantine material.

Under **proposed subsection 90U(2)** the carriage of letters is exempted from the interstate quarantine inspection scheme. This is because it is perceived that the risk of quarantine material in letters is low and the exemption is necessary to ensure that Australia Post's ability to meet its regulated performance standards is not adversely affected.¹⁷

Where a quarantine inspection officer has decided that there are reasonable grounds for believing that the article consists of, or contains quarantine material, they can ask an 'authorised examiner' to open the article (**proposed subsection 90U(3)**). The 'authorised examiner' must open the article in the presence of the quarantine inspection officer who will examine the contents to check whether it does, in fact, contain quarantine material (**proposed subsections 90U(4) and (5)**).

If the article does not consist of, or contain, quarantine material, the article is to be returned to the normal course of carriage (**proposed subsection 90U(6)**).

If the article does consist of, or contain quarantine material, it must be dealt with in accordance with the relevant law of the State or Territory or the Commonwealth. In addition, the quarantine inspection officer must notify the intended recipient and the sender (where able to be identified):

- that the article has been removed from the normal course of carriage
- what the article contained
- the relevant law of the State or Territory or the Commonwealth which has been contravened.

Under **proposed subsection 90U(9)** prescribed persons must establish and maintain records (according to regulation) setting out:

- particulars of each article which has been removed from the normal course of carriage
- particulars of the nature of the examination of the article and its contents
- whether the article and its contents were returned to the normal course of carriage or were dealt with according to the relevant law of a State, Territory or the Commonwealth.

17 *Explanatory Memorandum*, p. 2

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Postal articles containing scam mail

The Explanatory Memorandum notes that scam mail often arrives in Australia in large batches from a single overseas location in substantially similar envelopes. Once one item is identified, the whole batch can be readily removed from the mail stream.¹⁸

Item 8 inserts a definition of ‘scam mail’ into section 90E. Mail is scam mail if it is reasonable to suspect that it is one of a batch of mail sent in breach of a consumer protection law.¹⁹

Proposed section 90UA provides that Australia Post may remove batches of articles from the normal course of carriage where it reasonably suspects that the batch contains scam mail. Once a batch of articles has been removed, Australia Post must notify the ACCC, Australian Securities Investment Commission and/or the consumer protection agency for the State or Territory in which the removal has occurred. **Proposed subsection 90J(10)** empowers Australia Post to make that disclosure.

In the alternative, **proposed subsection 90UA(3) provides that** a consumer protection agency may notify Australia Post that articles of a certain kind may be in the course of carriage and that they may contain scam mail. In that circumstance, Australia Post may remove batches of those articles from the course of carriage as long as the consumer protection agency has provided the means of identifying the relevant articles.

Proposed section 90UB is about articles that have been removed from the course of carriage. Under **proposed subsection 90UB(2)**, the consumer protection agency may make arrangements with Australia Post to access the articles, open them and determine whether they are, in fact, scam mail. If the consumer protection agency has not done so within ten business days (or a longer period as may be prescribed in the *Australian Postal Corporation Regulations 1996*) from the date when the consumer protection agency was notified of the removal of the articles from the normal course of carriage, Australia Post must return the articles to the normal course of carriage.

Proposed section 90UC relates to the actions that must be taken after articles have been opened and examined. Where a consumer protection agency believes that a batch consists of scam mail it must deal with the articles in accordance with the relevant Commonwealth, State or Territory laws. Where one or more articles in a batch have been opened and do not consist of scam mail, the consumer protection agency must close up any opened article

18 *Explanatory Memorandum*, p. 10

19. A consumer protection law means the *Trade Practices Act 1974*, the *Australian Securities and Investment Commission Act 2001*, the *Corporations Act 2001* and a State Fair Trading Act or State Sale of Goods Act (**item 4, section 90E**).

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and return the batch to Australia Post. Australia Post must then return the batch to the normal course of carriage.

Where an article is returned to the normal course of carriage, the consumer protection agency must, under **proposed subsection 90V(2A)**, endorse the cover of the article or affix a label with a notification explaining that the article was opened and for what purpose.

Other amendments

Notwithstanding the proposed new provisions existing section 90X of the APC Act allows that an Australia Post employee can deal with an article which has been removed from the normal course of carriage under section 32 of the APC Act, if the article is found to be, or suspected on reasonable grounds of being, explosive, dangerous or deleterious, or can destroy the article if it is physically offensive.

Australia is a signatory to the Universal Postal Convention (UPC). Article 21.1 of the UPC states that postal administrations are liable for the loss of ordinary parcels. However, article 22.2.5 provides an exception where postal items have been seized under the legislation of the country of destination, as notified by the administration of that country.

Proposed section 91 of the APC Act provides that Australia Post can request information from a compliance agency about articles that have been removed from the normal course of carriage, in order to notify other relevant postal administrations in accordance with the UPC. According to the Explanatory Memorandum, it will also assist Australia Post to respond to requests from members of the public about missing postal articles.²⁰

Proposed section 90ZC provides protections for customs officers etc. for actions which are done in good faith in the exercise of their powers under the APC Act.

Conclusion

The Bill appears to be uncontroversial, although the following observations may be of interest during parliamentary debate.

Record keeping

The quarantine inspection regime proposed in the Bill also proposes a record keeping regime. Record keeping in relation to those articles which are removed from the normal course of carriage and the uses which can be made of the information contained in the record, is to be prescribed in regulation, according to **proposed subsections 90U(9) and**

²⁰ *Explanatory Memorandum*, p. 14.

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(10). The subsections contain only broad descriptors of the records to be kept and no detail about the manner in which they are to be formatted and kept. When the detail is known, it may (or may not) act as a disincentive for the other states and territories to opt into the scheme.

Performance standards to be met by Australia Post

The existing section 28C of the APC relates to performance standards to be met by Australia Post. At present section 28C(2) sets out the matters which **must** be the subject of performance standards. Item 1 in Schedule 2 of the Bill proposes to add a **new section 28(3)** which will allow regulations to be made setting out some additional matters which **may** be the subject of performance standards. The example given in the Explanatory Memorandum relates to the processes which Australia Post uses to poll communities to gauge community responses to a change in service delivery or access to services.²¹ Should Australian Post seek to downgrade its services in any way, this proposed section would allow for the manner in which affected communities are to be consulted to be specified in regulations.

21 *Explanatory Memorandum*, p. 2.

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