



Imported Food Control Act 1992

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About this compilation

This compilation

This is a compilation of the *Imported Food Control Act 1992* that shows the text of the law as amended and in force on 1 September 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
2A Object of Act	1
3 Interpretation	1
3A Definition of <i>food</i>	6
4 Application of Act to certain external Territories	6
5 Crown to be bound	7
6 Saving of other laws	7
6A Application of the <i>Criminal Code</i>	7
7 Food to which Act applies	7
Part 2—Control	9
Division 1A—Introduction	9
7A Simplified outline of this Part	9
Division 1—Controls on the importation and movement of food	10
8 Importation offences	10
8A Labelling offences	11
9 Offences relating to dealing with examinable food	12
9A Civil penalties relating to importing, labelling and dealing with food	15
10 Certain provisions of the Customs Act may be expressed to be subject to this Act	18
11 Application for food control certificate	19
12 Issue of food control certificate	20
13 Form of food control certificate	20
14 Imported food inspection advice	21
15 Holding orders for certain food	23
Division 2—The Food Inspection Scheme	27
16 Food Inspection Scheme	27
17 Consultation with Food Standards Australia New Zealand	31
18 Foreign government certificates	31
18A Food safety management certificates	32
19 Quality assurance certificates	33
19A Forging and uttering	35

Division 3—Treatment, destruction or re-exportation of failing food	36
20 Treatment, destruction or re-exportation of failing food.....	36
Division 4—Other matters	39
20A Computerised decision-making	39
Part 3—Enforcement	41
Division 1—Introduction	41
21 Simplified outline of this Part.....	41
Division 2—Monitoring	43
22 Monitoring powers	43
Division 3—Investigation	47
23 Investigation powers.....	47
Division 4—Civil penalties	50
24 Civil penalty provisions.....	50
Division 5—Infringement notices	52
25 Infringement notices.....	52
Division 6—Enforceable undertakings	54
26 Enforceable undertakings	54
Part 3A—Record-keeping	55
27 Simplified outline of this Part.....	55
28 Keeping and retaining records	55
29 Production of records	56
30 Secretary may inspect and copy records.....	56
31 Secretary may retain records	57
32 Self-incrimination.....	57
Part 4—Other matters	58
32A Simplified outline of this Part.....	58
33 Conduct by directors, employees and agents	58
34 Evidence of analyst.....	59
34A Power to require information or documents	61
35 Publishing of information about overseas food processing operations	62
35A Compliance agreements.....	63
35B Making of orders or determinations.....	65
36 Fees for certain services	65

37	Certain moneys are a debt due to the Commonwealth.....	68
38	Exemption from suit.....	68
39	Compensation for destroyed food.....	68
40	Authorised officers.....	70
41	Delegation by Secretary.....	70
42	Review of decisions.....	71
42A	Use and disclosure of information.....	73
43	Regulations.....	75

Endnotes	76
Endnote 1—About the endnotes	76
Endnote 2—Abbreviation key	78
Endnote 3—Legislation history	79
Endnote 4—Amendment history	83

An Act to provide for the inspection and control of food imported into Australia, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Imported Food Control Act 1992*.

2 Commencement

- (1) Subject to subsection (2), the provisions of this Act commence on a day or days to be fixed by Proclamation.
- (2) If a provision of this Act does not commence within 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

2A Object of Act

The object of this Act is to provide for the compliance of food imported into Australia with Australian food standards and the requirements of public health and safety.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

applicable standard, in relation to particular food, or a particular matter affecting food, at a particular time, means the national standard in force in relation to that food or matter at that time.

Australia New Zealand Food Standards Code has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

authorised officer means:

Section 3

- (a) the Secretary; or
- (b) an APS employee in the Department appointed by the Secretary under subsection 40(1); or
- (c) a person appointed by the Secretary under subsection 40(2).

civil penalty provision has the same meaning as in the Regulatory Powers Act.

compliance agreement means a compliance agreement entered into under section 35A.

Customs Act means the *Customs Act 1901*.

customs control, in relation to food, means customs control under the Customs Act.

deal with, in relation to food, includes:

- (a) moving, altering or interfering with in any physical manner whatsoever; and
- (b) entering into a transaction whereby the ownership of the food, or of any beneficial interest in the food, passes from one person to another.

examinable food means:

- (a) food of a kind that is the subject of an order made for the purposes of paragraph 16(2)(a); or
- (b) food of a kind that is the subject of a holding order; or
- (c) particular food that, despite the fact that it is not food of a kind that is the subject of an order made for the purposes of paragraph 16(2)(a) or of a holding order, is nevertheless required to be inspected, or inspected and analysed, under the Food Inspection Scheme; or
- (d) particular food, other than food of a kind referred to in paragraph (a) or (b) or food referred to in paragraph (c):
 - (i) that an authorised officer has reasonable grounds to believe may be failing food; and
 - (ii) in respect of which the officer has notified that belief to an owner.

failing food means examinable food, that:

- (a) as a result of an inspection, or inspection and analysis, under the Food Inspection Scheme, is found to be:
 - (i) food that does not meet the applicable standards for that food; or
 - (ii) food that poses a risk to human health; or
- (b) is taken, under the provisions of the Scheme, to be such food.

food has the meaning given by section 3A.

food control certificate means a certificate issued under section 12.

Food Inspection Scheme means the inspection scheme established by regulations made under section 16.

holding order means an order made by the Secretary under section 15.

Immigration and Border Protection Department means the Department administered by the Minister administering Part XII of the Customs Act.

imported as a trade sample, in relation to food, has the meaning given by subsection 7(3).

imported food inspection advice means an advice issued under section 14.

inspection includes the taking of samples.

label means any tag, brand, mark or written statement, any representation or design, or any descriptive matter, attached to, used in connection with, or accompanying, any food or package containing food.

national standard means:

- (a) a standard that is included in the Australia New Zealand Food Standards Code; or
- (b) the *Country of Origin Food Labelling Information Standard 2016*, as in force from time to time.

Section 3

Note: The *Country of Origin Food Labelling Information Standard 2016* is an information standard made under section 134 of the Australian Consumer Law (see Schedule 2 to the *Competition and Consumer Act 2010*).

officer of Customs has the same meaning as in the *Customs Act 1901*.

owner, in relation to food, includes any person (other than an officer of Customs or an authorised officer) being or holding himself or herself out to be the owner, importer, consignee, agent or person having control of, a beneficial interest in, or the power of disposition over, the food.

package includes any container or wrapper in or by which food is wholly or partly encased, covered, enclosed, contained or packaged and, in respect of food that is in more than one package, includes each such package.

prohibited food means food the importation of which is prohibited under the Customs Act.

recognised food safety management certificate means:

- (a) a recognised foreign government certificate; or
- (b) a certificate covered by a determination in force under subsection 18A(1).

recognised foreign government certificate means a certificate covered by a determination in force under subsection 18(1).

recognised quality assurance certificate means a certificate covered by a determination in force under subsection 19(2).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

Secretary means the Secretary of the Department.

State includes the Australian Capital Territory and the Northern Territory.

this Act includes regulations and orders made under this Act.

treatment, in relation to food, includes repackaging or relabelling.

- (2) For the purposes of this Act, food poses a risk to human health if:
- (a) it contains:
 - (i) pathogenic micro-organisms or their toxins; or
 - (ii) micro-organisms indicating poor handling; or
 - (iii) non-approved chemicals or chemical residues; or
 - (iv) approved chemicals, or chemical residues, at greater levels than permitted; or
 - (v) non-approved additives; or
 - (vi) approved additives at greater levels than permitted; or
 - (vii) any other contaminant or constituent that may be dangerous to human health; or
 - (b) it has been produced, processed, manufactured, stored, packed, packaged or transported under conditions which render it dangerous or unfit for human consumption.
- (3) In subsection (2):
- (a) a reference to approved chemicals, approved chemical residues or approved additives is a reference to chemicals, chemical residues or additives approved in a standard:
 - (i) made under the *Food Standards Australia New Zealand Act 1991* after the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or
 - (ia) adopted by the Australia New Zealand Food Standards Council under *Australia New Zealand Food Authority Act 1991* before the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or
 - (ii) included in the Australia New Zealand Food Standards Code; and
 - (b) a reference to permitted levels in relation to such approved standards, approved chemical residues, or approved additives is a reference to levels of those chemicals, chemical residues or additives permitted in such a standard; and

Section 3A

- (c) a reference to non-approved chemicals, non-approved chemical residues or non-approved additives is a reference to chemicals, chemical residues or additives that are not approved in such a standard.

3A Definition of *food*

- (1) ***Food*** includes:
 - (a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); and
 - (b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and
 - (c) any substance used in preparing a substance or thing referred to in paragraph (a); and
 - (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
 - (e) any substance or thing declared to be a food under a declaration in force under section 6 of the *Food Standards Australia New Zealand Act 1991*.

(It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption.)

- (2) However, ***food*** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.
- (3) To avoid doubt, ***food*** may include live animals and plants.

4 Application of Act to certain external Territories

- (1) This Act does not extend to the Territory of Christmas Island unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.
- (2) This Act does not extend to the Territory of Cocos (Keeling) Islands unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.

- (3) This Act does not extend to Norfolk Island unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.

5 Crown to be bound

- (1) This Act binds the Crown in all its capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted.

6 Saving of other laws

This Act is to be construed as being in addition to, and not in derogation of or in substitution for:

- (a) the *Biosecurity Act 2015*; or
- (b) any other law of the Commonwealth, or any law of a State, whether passed or made before or after the commencement of this Act, that can operate concurrently with this Act; or
- (c) any law of an external Territory to which this Act extends because of regulations made for the purpose of section 4, whether passed or made before or after the making of those regulations, that can operate concurrently with this Act.

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Food to which Act applies

- (1) This Act applies to all food imported into Australia other than:
- (aa) food that is imported from New Zealand and is of a kind that is specified by the regulations to be food to which this Act does not apply; or
- (a) prohibited food; or
- (b) food that is imported for private consumption; or
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Section 7

- (c) food that is ship's stores or aircraft's stores, within the meaning of section 130C of the Customs Act; or
 - (d) food that is imported as a trade sample.
- (2) Food of a particular kind is taken to have been imported for private consumption if it has not been imported as a trade sample and:
- (a) as to food that is in liquid form—if it has a volume of less than 10 litres or such lesser volume (if any) as is prescribed in the regulations in respect of food of that kind; or
 - (b) as to food that is not in liquid form—if it has a weight of less than 10 kilograms or such lesser weight (if any) as is prescribed in the regulations in respect of food of that kind.
- (3) Food of a particular kind is *imported as a trade sample* if:
- (a) the food is imported for the purposes of scientific or commercial evaluation; and
 - (b) the food is not imported for consumption by any person (except a person carrying out the scientific or commercial evaluation); and
 - (c) the food is:
 - (i) in liquid form and has a volume of less than 20 litres or such lesser volume (if any) as is prescribed by the regulations in respect of food of that kind; or
 - (ii) not in liquid form and has a weight of 20 kilograms or such lesser weight (if any) as is prescribed by the regulations in respect of food of that kind.

Part 2—Control

Division 1A—Introduction

7A Simplified outline of this Part

- Consistent with the object of this Act, there are importation, labelling and dealing offences and civil penalties in relation to food to which this Act applies.
- Under the regulations, there is a food inspection scheme for food to which this Act applies.
- Food control certificates and imported food inspection advices are able to be issued by authorised officers.
- The Secretary may make orders requiring food to be held at certain places if the Secretary considers that the food does not meet applicable standards or considers that the food poses a serious risk to human health.
- Food identified as failing food may be required to be treated, destroyed or re-exported from Australia.
- Decisions in relation to the issue of food control certificates and imported food inspection advices and the manner for dealing with food that has been identified as failing food may be made by computer programs.

Division 1—Controls on the importation and movement of food

8 Importation offences

Food does not meet applicable standards

- (1) A person commits an offence if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food does not meet applicable standards; and
 - (d) those standards do not relate to information on labels for packages containing food.

Penalty: Imprisonment for 10 years.

- (2) A person commits an offence of strict liability if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food does not meet applicable standards; and
 - (d) those standards do not relate to information on labels for packages containing food.

Penalty: 60 penalty units.

Food poses a risk to human health

- (3) A person commits an offence if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person knows that the food poses a risk to human health.

Penalty: Imprisonment for 10 years.

- (4) A person commits an offence of strict liability if:
- (a) the person imports food into Australia; and

- (b) this Act applies to the food; and
- (c) the food poses a risk to human health.

Penalty: 60 penalty units.

Imputed knowledge

- (5) For the purposes of establishing a contravention of subsection (3), the person is taken to have known that the food posed a risk to human health if the person ought reasonably to have known that the food posed that risk, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged contravention.

8A Labelling offences

Fault-based offence

- (1) A person commits an offence if:
 - (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Penalty: Imprisonment for 10 years.

Strict liability offence

- (2) A person commits an offence of strict liability if:
 - (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Penalty: 60 penalty units.

Section 9

Exception

- (3) Subsection (1) or (2) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

9 Offences relating to dealing with examinable food

Dealing with food where no food control certificate

- (1) A person commits an offence if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (2) A person commits an offence of strict liability if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and

- (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
- (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

Dealing with food where no imported food inspection advice

- (3) A person commits an offence if:
 - (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has been issued in respect of the food; and
 - (e) the person knows that an imported food inspection advice has not been issued in respect of the food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (4) A person commits an offence of strict liability if:
 - (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and
 - (e) an imported food inspection advice has not been issued in respect of the food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 9

- (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
- (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

- (5) Subsection (3) or (4) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Dealing with failing food

- (6) A person commits an offence if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the person knows that the food has been imported into Australia; and
 - (d) the person knows that a food control certificate has been issued in respect of the food; and
 - (e) the person knows that the food has been identified in an imported food inspection advice as failing food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: Imprisonment for 10 years.

- (7) A person commits an offence of strict liability if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and

- (c) the food has been imported into Australia; and
- (d) a food control certificate has been issued in respect of the food; and
- (e) the food has been identified in an imported food inspection advice as failing food; and
- (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
- (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
- (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Penalty: 60 penalty units.

Imputed knowledge

- (8) For the purposes of establishing a contravention of subsection (1), (3) or (6), the person is taken to have known of the matter referred to in paragraph (1)(c) or (d), (3)(c), (d) or (e) or (6)(c), (d) or (e) if the person ought reasonably to have known of the matter, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged contravention.

9A Civil penalties relating to importing, labelling and dealing with food

Importing food

- (1) A person is liable to a civil penalty if:
 - (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food does not meet applicable standards; and
 - (d) those standards do not relate to information on labels for packages containing food.

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 9A

Civil penalty: 120 penalty units.

- (2) A person is liable to a civil penalty if:
- (a) the person imports food into Australia; and
 - (b) this Act applies to the food; and
 - (c) the food poses a risk to human health.

Civil penalty: 120 penalty units.

Labelling of food

- (3) A person is liable to a civil penalty if:
- (a) food is imported into Australia; and
 - (b) this Act applies to the food; and
 - (c) the person deals with the food; and
 - (d) the food does not meet applicable standards relating to information on labels for packages containing food.

Civil penalty: 120 penalty units.

- (4) Subsection (3) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A person bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Dealing with food

- (5) A person is liable to a civil penalty if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has not been issued in respect of the food; and
 - (e) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and

- (f) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
- (g) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

- (6) A person is liable to a civil penalty if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and
 - (e) an imported food inspection advice has not been issued in respect of the food; and
 - (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
 - (g) the person is not dealing with the food in that manner in accordance with a compliance agreement; and
 - (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

- (7) Subsection (6) does not apply to a dealing with food for the purpose of altering or replacing the label on the package containing the food in order to meet applicable standards relating to information on labels for packages containing food.

Note: A person bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

- (8) A person is liable to a civil penalty if:
- (a) the person deals with food in a particular manner; and
 - (b) the food is examinable food; and
 - (c) the food has been imported into Australia; and
 - (d) a food control certificate has been issued in respect of the food; and

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 10

- (e) the food has been identified in an imported food inspection advice as failing food; and
- (f) the person has not obtained the approval of an authorised officer to deal with the food in that manner; and
- (g) the person is neither permitted nor required, in accordance with the imported food inspection advice, to deal with the food in that manner; and
- (h) the person is neither an officer of Customs, nor an authorised officer, acting in the course of his or her duties.

Civil penalty: 120 penalty units.

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

(1) If:

- (a) a person applies under section 69 of the Customs Act for permission to deliver like customable goods within the meaning of that section into home consumption without entering them for home consumption; and
- (b) an officer of Customs reasonably believes that the like customable goods are, or include, food;

a permission granted under that section in respect of that food may be expressed, under subsection (4) of that section, to be subject to the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(2) If:

- (a) a person applies under section 70 of the Customs Act for permission to deliver special clearance goods within the meaning of that section into home consumption without entering them for home consumption; and
- (b) an officer of Customs reasonably believes that the special clearance goods are, or include, food;

a permission granted under that section in respect of the goods may be expressed, under subsection (5) of that section, to be subject to

the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(3) If:

- (a) a person enters goods for home consumption or warehousing under section 71A of the Customs Act; and
- (b) an officer of Customs reasonably believes, on the basis of information supplied by authorised officers in respect of the Food Inspection Scheme and information supplied by the owner in respect of those particular goods, that the goods may be, or may include, examinable food;

an authority to deal with the food under section 71B of that Act by delivering it into home consumption, or into the warehouse specified in the entry, as the case requires, may be expressed, under subsection (6) of that section, to be subject to the condition that a food control certificate in respect of the food is presented to the person having possession of the food.

(4) The granting under the Customs Act of a permission referred to in subsection (1) or (2), or the issue under that Act of an authority referred to in subsection (3), is not to be taken to affect any person's obligations under this Act in any way.

11 Application for food control certificate

(1) An application for a food control certificate must:

- (a) be made in a manner prescribed by the regulations; and
- (b) be made by an owner of the food to which the application relates; and
- (c) be given or communicated to an authorised officer; and
- (d) contain such information as the regulations provide.

(2) The regulations may provide that an entry of goods under section 71A or 71DH of the Customs Act for home consumption or warehousing that is communicated to the Immigration and Border Protection Department by computer is to be taken, to the extent that that entry relates to examinable food, to be an application for a food control certificate for the purposes of subsection (1).

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 12

- (3) If the regulations make provision in accordance with subsection (2) in relation to a computer entry under the Customs Act, the application so made is taken to have been communicated to an authorised officer at the time when it is taken to have been communicated to the Immigration and Border Protection Department under the Customs Act.

12 Issue of food control certificate

Subject to subsections 20(13) and 36(8), if an application for a food control certificate is made under section 11, an authorised officer must, as soon as practicable after deciding whether or not the examinable food to which the application relates is required to be inspected, or inspected and analysed, under the Food Inspection Scheme, give the applicant a food control certificate for presentation to the person having possession of the food.

13 Form of food control certificate

- (1) A food control certificate must be in a form approved, in writing, by the Secretary for the purposes of this section.
- (2) The Secretary may approve more than one form of food control certificate.
- (3) Without limiting subsection (1), a food control certificate must:
- (a) if the examinable food to which the certificate relates is not required to be inspected, or inspected and analysed, under the Food Inspection Scheme—state that the food is not required to be inspected, or inspected and analysed, under the Scheme; or
 - (b) if the food is required to be inspected, or inspected and analysed, under that Scheme:
 - (i) state that the food is required to be so inspected or so inspected and analysed; and
 - (ii) require the food to be dealt with in a specified manner, or as directed by an authorised officer, pending that inspection, or inspection and analysis.

- (4) If:
- (a) a food control certificate is issued in respect of food; and
 - (b) the food to which the certificate relates will not, on presentation to the person having possession of the food, cease to be under customs control;
- then:
- (c) an authorised officer must give a copy of the certificate to an officer of Customs having responsibility under section 71E of the Customs Act for the movement of goods under customs control; and
 - (d) the officer of Customs must authorise the food to be dealt with as if an application had been made under that section by the owner of the food in the terms of the requirement contained in the certificate.
- (5) The fact that particular food is described in a food control certificate as not required to be inspected, or inspected and analysed, under the Food Inspection Scheme does not imply that an authorised officer who has reasonable grounds to believe that the food may be failing food may not inspect, or inspect and analyse, that food under the Scheme.

14 Imported food inspection advice

- (1) After food that is required to be inspected, or inspected and analysed, has been so inspected, or inspected and analysed, an authorised officer must issue a written advice:
- (a) to the owner of the food; and
 - (b) if the food is under customs control—to the person having possession of the food at the time;
- stating:
- (c) whether the whole or a part of the food dealt with in the advice is identified as failing food; and
 - (d) in respect of food that is so identified—how the food is to be dealt with.

Section 14

- (2) Without limiting subsection (1), an advice issued under this section may indicate that food identified as failing food:
- (a) must be destroyed in accordance with the requirements of section 20; or
 - (b) must either be destroyed or re-exported from Australia in accordance with the requirements of that section; or
 - (c) must, if not treated by the owner in accordance with the requirements of that section:
 - (i) be destroyed; or
 - (ii) be destroyed or re-exported from Australia; in accordance with the requirements of that section.
- (3) Despite subsections (1) and (2), the owner of food identified in an advice under subsection (1) as failing food may, in the circumstances specified in the Food Inspection Scheme, apply, in writing, to an authorised officer for the issue of a further imported food inspection advice in respect of a part of that food.
- (4) Neither:
- (a) the fact that food identified as failing food under an imported food inspection advice may be the subject of an application for a further such advice; nor
 - (b) the making of an application for a further such advice in respect of the food;
- causes the food to cease to be failing food on the basis of the original advice but, if the original advice indicates that the food must be treated, destroyed or re-exported, the food is not required to be so treated, destroyed or re-exported unless:
- (c) the circumstances permitting the application for the further advice cease to exist; or
 - (d) an application is made and rejected.
- (5) If the owner of food identified in an advice as failing food makes an application for the issue of a further imported food inspection advice in respect of a part of the food, the person must, if the food to which the application relates is under customs control, inform the person

having possession of the food that he or she had made that application.

- (6) If an application is made under subsection (3), an authorised officer must:
- (a) if he or she is not satisfied that the application is made in accordance with the requirements of the Food Inspection Scheme—reject the application and give notice to the applicant of that rejection and of the reasons for the rejection; and
 - (b) in any other case—consider the application and issue to the applicant a further imported food inspection advice in respect of the food the subject of the application.
- (7) If, under subsection (6), an authorised officer is required to inform an applicant either of the rejection of an application or to issue to the applicant a further imported food inspection advice in respect of food that is under customs control, the authorised officer must inform the person having possession of the food of the rejection of the application or of the particulars of the further advice, as the case requires.
- (8) If a further advice is issued in respect of the food the subject of an application, this Act has effect as if:
- (a) that further advice were substituted for the initial advice issued in respect of that food under subsection (1); and
 - (b) subsection (3) were not included.
- (9) A failure by an authorised officer to comply with the requirements of subsection (7) in relation to an application for a further imported food inspection advice does not invalidate the rejection of that application or the issue of that further advice, as the case requires.

15 Holding orders for certain food

Failing food on inspection or inspection and analysis

- (1) If:

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 15

- (a) an inspection, or inspection and analysis, of examinable food of a particular kind indicates the food, or a part of the food, to be failing food; or
 - (b) the Secretary is satisfied that there are reasonable grounds for believing that food of a particular kind would, on inspection, or inspection and analysis, be so identified;
- the Secretary may, by writing, make a holding order:
- (c) stating that, until the revocation of the order, the following food must be held in a place to be approved by an authorised officer in writing, until an inspection, or inspection and analysis, required under the Food Inspection Scheme has been completed:
 - (i) food of that kind that is imported into Australia after the making of the order;
 - (ii) if the Secretary states that the order is being made in connection with the end of another order under subsection (3)—food of that kind that is being held immediately before the end of the other order; and
 - (d) specifying the circumstances in which the order will be revoked.

Note: See section 35B for how an order may refer to a kind of food.

- (2) If the Secretary is satisfied, in respect of a holding order made under subsection (1), that the circumstances specified for its revocation have occurred, the Secretary must, by writing, immediately revoke the holding order.

Food posing a serious risk to human health

- (3) If:
 - (a) the Secretary is satisfied that there are reasonable grounds for believing that food of a particular kind may pose a risk to human health; and
 - (b) the Secretary is satisfied that the risk is serious;the Secretary may, by writing, make a holding order:
 - (c) stating that, until the order ends, food of that kind that is imported into Australia after the making of the order must be

held in a place to be approved by an authorised officer in writing; and

- (d) stating that the order ends at the earlier of the following times:
 - (i) at the end of the period of 28 days beginning on the day the order is made or, if that period is extended, the end of the extended period;
 - (ii) the time when the order is revoked; and
- (e) specifying the circumstances in which the order will be revoked.

Note: See section 35B for how an order may refer to a kind of food.

- (4) The Secretary may, in writing, extend the 28-day period referred to in subparagraph (3)(d)(i) by a further period of up to 28 days. The Secretary may make more than one extension.
- (5) Before making an extension, the Secretary must review the appropriateness of the order.
- (6) If the Secretary is satisfied, in respect of a holding order made under subsection (3), that the circumstances specified for its revocation have occurred, the Secretary must, by writing, immediately revoke the holding order.

Approvals

- (7) Subsection (1) or (3) does not prevent an authorised officer from giving a person an approval to deal with food of a kind covered by an order under that subsection while the order is in force.

Status of instruments

- (8) The following are not legislative instruments:
 - (a) an order under subsection (1) or (3);
 - (b) an instrument under subsection (2), (4) or (6).

Publication of instruments

- (9) The Secretary must publish the following on the Department's website:

Part 2 Control

Division 1 Controls on the importation and movement of food

Section 15

- (a) an order under subsection (1), except where the order is made in connection with applicable standards relating to information on labels for packages containing food;
- (b) an instrument under subsection (2) that is made in relation to an order covered by paragraph (a) of this subsection;
- (c) an order under subsection (3);
- (d) an instrument under subsection (4) or (6).

Division 2—The Food Inspection Scheme

16 Food Inspection Scheme

- (1) The regulations may set out particulars of a food inspection scheme (*Scheme*) applicable to all food to which this Act applies.
- (2) Without limiting subsection (1), the regulations setting out particulars of the Scheme may:
 - (a) empower the Minister, subject to section 17, to make orders:
 - (i) identifying food of particular kinds as food of a kind that is required to be inspected, or inspected and analysed, under the Scheme; or
 - (ii) identifying food of particular kinds as food that must be covered by a recognised foreign government certificate; or
 - (ia) identifying food of particular kinds as food that must be covered by a recognised food safety management certificate; or
 - (iii) classifying food of particular kinds into particular categories; and
 - (aa) specify the percentage of food classified into a particular category that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and
 - (ab) empower the Secretary to make an order, in respect of food that is classified into a particular category and is of a particular kind, specifying the percentage of food of that kind that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and
 - (ac) empower the Minister to make an order in respect of food classified into a particular category imported from a country specified in the order:
 - (i) specifying the percentage of all such food that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; or

Section 16

- (ii) specifying the percentage of all such food, except food of a particular kind, that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; or
 - (iii) specifying the percentage of food of a particular kind that must be referred by an officer of Customs for inspection, or inspection and analysis, under the Scheme; and
- (b) specify the manner and incidence of inspection, or inspection and analysis, attaching to various kinds of food identified by the Minister in orders made for the purposes of paragraph (a); and
- (ba) empower the Secretary to make an order, in respect of food that is classified into a particular category and is of a particular kind:
 - (i) specifying the incidence of inspection, or inspection and analysis, attaching to food of that kind; and
 - (ii) specifying the rate at which samples must be taken for inspection from food of that kind; and
- (bb) empower the Minister to make an order in respect of food classified into a particular category imported from a country specified in the order:
 - (i) specifying the percentage of all such food that must be inspected, or inspected and analysed, under the Scheme; or
 - (ii) specifying the percentage of all such food, except food of a particular kind, that must be inspected, or inspected and analysed, under the Scheme; or
 - (iii) specifying the percentage of food of a particular kind that must be inspected, or inspected and analysed, under the Scheme; and
- (c) specify the manner and incidence of the inspection, or inspection and analysis, of food of a kind that is subject to a holding order; and
- (d) specify the manner and incidence of the inspection, or inspection and analysis, of particular food, other than food of a kind that is identified by the Minister in an order made under

- paragraph (a) or that is subject to a holding order, that is imported into Australia; and
- (e) set out the circumstances in which authorised officers may exercise powers to inspect, or inspect and analyse, particular food that is not:
 - (i) food of a kind that is identified by the Minister in an order under paragraph (a) or that is subject to a holding order; or
 - (ii) food that is required to be inspected in accordance with regulations made for the purposes of paragraph (d); and
 - (f) specify powers of authorised officers to inspect, or inspect and analyse, food required or permitted to be inspected, or inspected and analysed, under this Scheme; and
 - (fa) specify circumstances in which food is taken to be failing food; and
 - (g) specify circumstances in which food is to be taken to be failing food because of its relationship to food that is found to be failing food; and
 - (h) set out the circumstances in which food, other than food that is the subject of a holding order, is to be held pending the outcome of an inspection, or inspection and analysis; and
 - (i) permit variation in the incidence of inspection, or inspection and analysis, of food if:
 - (i) a recognised foreign government certificate or a recognised quality assurance certificate covering the food is given to an authorised officer and the officer has no reason to doubt the authenticity or reliability of the certificate; or
 - (ii) a compliance agreement applies in respect of the food; and
 - (j) set out the circumstances in which, and procedures by which, the reliability of certificates referred to in paragraph (i) will be tested.
- (2A) A percentage mentioned in paragraph (2)(ac) or (bb) that is specified in an order made by the Minister must be less than 5% (including zero).

Section 16

- (2B) The Minister may make an order for the purposes of paragraph (2)(ac) or (bb) in relation to a particular country only if the Minister is satisfied:
- (a) that there is in force an agreement between Australia and that country; and
 - (b) that the agreement is based on an assessment of the food safety systems of Australia and that country which concluded that:
 - (i) Australia and that country have equivalent food safety systems; and
 - (ii) Australia and that country conduct equivalent monitoring of the food they regulate.
- (3) Without limiting the factors that may affect the incidence of inspection, or inspection and analysis, of food, the regulations may provide for the incidence to differ according to whether the food is supplied by an overseas processing operation that has previously supplied food of that kind and the results of any analysis of food so supplied.
- (4) If:
- (a) food is held pending the outcome of an inspection, or inspection and analysis, under the Scheme, whether because the food is subject to a holding order or not; and
 - (b) that food, or a part of that food, is identified in an imported food inspection advice as failing food;
- then, without limiting subsection (1), the regulations may:
- (c) in the circumstances and within the period set out in the regulations, permit the owner of the food to make application for a further imported food inspection advice in respect of part only of the food so identified; and
 - (d) specify the part of the food so identified in respect of which the application may be made.
- (5) An order made by the Minister for the purposes of paragraph (2)(a), (ac) or (bb) is a legislative instrument.

Note: The order may be varied or revoked by the Minister in the same way as it is made, and subject to the same conditions (see subsection 33(3) of the *Acts Interpretation Act 1901*).

- (6) An order made by the Secretary for the purposes of paragraph (2)(ab) or (ba) is not a legislative instrument.

Note 1: Under the regulations, the order made by the Secretary is of a temporary nature.

Note 2: For revocation of the order, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (7) The Secretary must publish the following on the Department's website:
- (a) an order made by the Secretary for the purposes of paragraph (2)(ab) or (ba);
 - (b) a revocation of the order.

17 Consultation with Food Standards Australia New Zealand

The Minister must not make an order for the purposes of paragraph 16(2)(a) without first consulting Food Standards Australia New Zealand.

Note: The order may be varied or revoked by the Minister in the same way as it is made, and subject to the same conditions (see subsection 33(3) of the *Acts Interpretation Act 1901*).

18 Foreign government certificates

- (1) The Secretary may determine, in writing, that a certificate issued by an instrumentality of a specified foreign government stating that food of a specified kind meets applicable standards and does not pose a risk to human health is a recognised foreign government certificate.

Note: See section 35B for how a determination may refer to a kind of food.

- (2) The Secretary may revoke a determination under subsection (1) if the Secretary has reason to doubt the continued reliability of a statement made in any certificate to which the determination relates.

Section 18A

Offence

- (3) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (1).

Penalty: Imprisonment for 10 years.

Status of instruments

- (4) A determination under subsection (1), or a revocation under subsection (2), is not a legislative instrument.

Definitions

- (5) For the purposes of this section, *forge* and *utter* have the meanings given by section 19A.

18A Food safety management certificates

- (1) The Secretary may determine, in writing, that, for food of a specified kind, a specified certificate issued by a specified person or specified body is a recognised food safety management certificate.

Note 1: The regulations deal with when food of such a kind is taken to be failing food because the food is not covered by a recognised food safety management certificate.

Note 2: See section 35B for how a determination may refer to a kind of food.

Note 3: For variation and revocation of the determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 4: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (2) The Secretary must, in writing, make guidelines that the Secretary must have regard to before making a determination under subsection (1).

Note: For variation and revocation of the guidelines, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Offence

- (3) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (1).

Penalty: Imprisonment for 10 years.

Status of instruments

- (4) The following are not legislative instruments:
(a) a determination under subsection (1);
(b) guidelines under subsection (2).

Publication of instruments

- (5) The Secretary must publish the following on the Department's website:
(a) a determination under subsection (1);
(b) guidelines under subsection (2).

Definitions

- (6) For the purposes of this section, *forge* and *utter* have the meanings given by section 19A.

19 Quality assurance certificates

- (1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with the person conducting an overseas food processing operation providing for the periodic inspection and evaluation of that operation, at the expense of the person, to decide whether the Secretary should exercise his or her powers under subsection (1A).
- (1A) The Secretary may:
(a) approve a food processing operation mentioned in subsection (1) for the purposes of this Part; or
(b) revoke any such approval.

Section 19

- (2) If an overseas food processing operation is subject to a current approval under subsection (1A), the Secretary may determine, in writing, to the effect that, while the determination remains in force, each certificate issued by the person purportedly in charge of that operation stating that particular food processed in that operation meets applicable standards and does not pose a risk to human health is a recognised quality assurance certificate.
- (3) The Secretary may revoke a determination under subsection (2) if:
- (a) the Secretary has reason to doubt the reliability of any statement made in any certificate to which the determination relates; or
 - (b) the approval of the overseas food processing operation concerned is revoked.

Offence

- (4) A person must not forge, or utter, knowing it to be forged, a certificate of the kind referred to in subsection (2).

Penalty: Imprisonment for 10 years.

Status of instruments

- (5) The following are not legislative instruments:
- (a) an arrangement under subsection (1);
 - (b) an approval, or a revocation, under subsection (1A);
 - (c) a determination under subsection (2);
 - (d) a revocation under subsection (3).

Definitions

- (6) For the purposes of this section, **forge** and **utter** have the meanings given by section 19A.

19A Forging and uttering

Forging

- (1) For the purposes of this Division, a person is taken to have **forged** a document if the person:
- (a) makes a document which is false, knowing it to be false; or
 - (b) without authority, alters a genuine document in a material particular;
- with intent that:
- (c) the false or altered document may be used, acted on, or accepted, as genuine, to the prejudice of another person; or
 - (d) another person may, in the belief that it is genuine, be induced to do or refrain from doing an act, whether in Australia or elsewhere.
- (2) For the purposes of this Division, if a person:
- (a) makes a document which is false, knowing it to be false; or
 - (b) without authority, alters a genuine document in a material particular;
- with intent that a computer, a machine or other device should respond to the false or altered document as if it were genuine:
- (c) to the prejudice of another person; or
 - (d) with the result that another person would be induced to do or refrain from doing an act, whether in Australia or elsewhere;
- the first-mentioned person is taken to have **forged** the document.

Uttering

- (3) For the purposes of this Division, a person is taken to **utter** a forged document if the person:
- (a) uses or deals with it; or
 - (b) attempts to use or deal with it; or
 - (c) attempts to induce another person to use, deal with, act upon, or accept it.

Division 3—Treatment, destruction or re-exportation of failing food

20 Treatment, destruction or re-exportation of failing food

- (1) This section applies to food that:
 - (a) has been identified in an imported food inspection advice as failing food; and
 - (b) is required, under that advice, to be treated, destroyed or re-exported from Australia.
- (2) If an imported food inspection advice, given in respect of food to which this section applies, permits the treatment of the food so as to bring it into compliance with this Act or to enable its use for a purpose other than human consumption, an authorised officer may, by notice in writing given to the owner of the food:
 - (a) require the owner to treat the food in a specified manner or in a manner to be agreed between the owner and the authorised officer so as to enable it to be brought into compliance with the Act or to be so used; or
 - (b) if the owner is unable or unwilling so to treat the food, require either:
 - (i) the destruction of the food in a manner specified in the notice or to be agreed between the owner and the authorised officer; or
 - (ii) the destruction of the food in a manner specified in the notice or agreed between the owner and the authorised officer or the re-exportation of the food.
- (3) If an imported food inspection advice requires the destruction of food to which this section applies, an authorised officer may, by notice in writing given to the owner of the food, require its destruction in a manner specified in the notice or in a manner to be agreed between the owner and the authorised officer.
- (4) If an imported food inspection advice requires the destruction or re-exportation of food to which this section applies, an authorised

officer may, by notice in writing given to the owner of the food, require either:

- (a) its destruction in a manner specified in the notice or a manner to be agreed between the owner and the authorised officer; or
 - (b) its re-exportation.
- (5) A permission to treat or a requirement to destroy or re-export failing food in a notice under subsection (2), (3) or (4) must specify a period (having regard to the reasons why the food has been identified as failing food and to any difficulties associated with arranging for its treatment, destruction or re-exportation) within which that treatment, destruction or re-exportation is to be completed.
- (6) If the owner of food arranges for a treatment, destruction or re-exportation in accordance with a notice under subsection (2), (3) or (4), that treatment, destruction or re-exportation may be supervised by an authorised officer.
- (7) If the owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported refuses or fails to arrange for the destruction or re-exportation of the food in accordance with the notice, the food to which the notice relates is forfeited to the Commonwealth.
- (8) The owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported must not intentionally refuse or fail to comply with the requirement to destroy or re-export that food.

Penalty: 200 penalty units.

- (8A) Subsection (8) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8A). See subsection 13.3(3) of the *Criminal Code*.

- (9) If the food is forfeited to the Commonwealth under subsection (7), an authorised officer may:
- (a) enter the premises at which the food is held; and

Part 2 Control

Division 3 Treatment, destruction or re-exportation of failing food

Section 20

- (b) seize the food and arrange for its destruction or other disposal.
- (10) If food is forfeited to the Commonwealth under subsection (7) the Commonwealth is not liable to meet any charge associated with the storage of that food between the time of its forfeiture and the time when the food is destroyed or disposed of in accordance with subsection (9).
- (11) If food is seized and destroyed or otherwise disposed of under subsection (9), the authorised officer who destroys the food must notify the owner of the food, within 21 days after the destruction or disposal takes place, that the food has been so destroyed or disposed of.
- (12) The owner of food seized and destroyed or disposed of under subsection (9) is liable to reimburse the Commonwealth the costs reasonably incurred in seizing and destroying or disposing of the food.
- (13) If the owner of food that is required in a notice under subsection (2), (3) or (4) to be destroyed or re-exported fails to comply with the requirement to destroy or re-export the food, the Secretary may direct, in writing, that authorised officers should not issue a food control certificate in respect of any other food imported into Australia by that owner.
- (14) In this section:
- owner**, in relation to food that is permitted to be treated or required to be destroyed or re-exported, means a person having a beneficial interest in the food other than a person who has such an interest only because he or she has been given a mortgage or charge, or has a lien over the goods.

Division 4—Other matters

20A Computerised decision-making

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which an authorised officer may or must:
 - (a) make a decision under section 12, subsection 14(1) or subsection 20(2), (3) or (4); or
 - (b) exercise any power or comply with any obligation related to making a decision referred to in paragraph (a); or
 - (c) do anything else related to making a decision referred to in paragraph (a), or related to exercising a power or complying with an obligation referred to in paragraph (b).
- (2) The Secretary is taken to have:
 - (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or exercise of a power or compliance with an obligation;that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).
- (3) The Secretary must take reasonable steps to ensure that decisions (*electronic decisions*) made by the operation of a computer program under an arrangement made under subsection (1) are consistent with the object of this Act.
- (4) The Secretary must take reasonable steps to ensure that an electronic decision is based on grounds on the basis of which an authorised officer could have made that decision. However, an electronic decision may be made without any state of mind being formed in relation to a matter to which the decision relates.
- (5) An authorised officer may make a decision in substitution for an electronic decision if an authorised officer is satisfied that:

Section 20A

- (a) the electronic decision is not consistent with the object of this Act; or
 - (b) another decision is more appropriate in the circumstances.
- (6) An electronic decision made in relation to food is of no effect to the extent that it is inconsistent with an earlier decision (other than an electronic decision) made in relation to the food by an authorised officer under this Act.

Part 3—Enforcement

Division 1—Introduction

21 Simplified outline of this Part

- The Regulatory Powers Act is triggered to allow a range of enforcement actions in relation to this Act.
- Authorised officers are permitted to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers under that Act for the purposes of determining:
 - (a) whether this Act or a compliance agreement has been, or is being, complied with; or
 - (b) whether information given in compliance or purported compliance with this Act is correct.
- Authorised officers are permitted to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers under that Act for the purposes of gathering material relating to the contravention of offence and civil penalty provisions in this Act.
- A civil penalty provision of this Act is enforceable under that Act. A relevant court may order a person contravening such a provision to pay to the Commonwealth a pecuniary penalty.
- Infringement notices may be issued for suspected contraventions of strict liability offences and civil penalty provisions under this Act. Such a notice allows a person to pay an amount as an alternative to having court proceedings brought against the person for the contravention.

Part 3 Enforcement
Division 1 Introduction

Section 21

- Undertakings to comply with this Act may be accepted and enforced under that Act. If a person gives an undertaking, the undertaking may be enforced by a court order.

Division 2—Monitoring

22 Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is a provision of this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

- (2) Despite section 8 of the Regulatory Powers Act, a provision of a compliance agreement is also subject to monitoring under Part 2 of that Act.

Information subject to monitoring

- (3) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

- (4) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3), there are no related provisions.

Authorised applicant and authorised person

- (5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).

Section 22

- (6) However, an authorised officer appointed under subsection 40(2) of this Act is not an authorised applicant or an authorised person for the purposes of section 24 or 32 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsections (1) and (2) of this section and the information mentioned in subsection (3) of this section.

Issuing officer

- (7) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).

Relevant chief executive

- (8) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).
- (9) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).
- (10) A person exercising powers or performing functions under a delegation under subsection (9) must comply with any directions of the Secretary.

Relevant court

- (11) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3):
- (a) the Federal Court of Australia;

- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional monitoring powers

- (12) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers mentioned in subsection (13) are also taken to be monitoring powers for the purposes of determining:
 - (a) whether a provision mentioned in subsection (1) or (2) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection (3).
- (13) The additional monitoring powers are the powers to take and keep samples of any thing at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsections (1) and (2) or the information mentioned in subsection (3).

Person assisting

- (14) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3).

Use of force in executing a warrant

- (15) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3):
 - (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting an authorised officer may use such force against things as is necessary and reasonable in the circumstances.

Section 22

Extension to external Territories

- (16) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (2) and the information mentioned in subsection (3), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Division 3—Investigation

23 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
 - (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

- (3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following authorised officers is both an authorised applicant and an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Secretary;
 - (b) an APS employee in the Department appointed by the Secretary under subsection 40(1).

Issuing officer

- (4) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Section 23

Relevant chief executive

- (5) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (6) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the Secretary.

Relevant court

- (8) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional investigation powers

- (9) For the purposes of Part 3 of the Regulatory Powers Act, the additional powers mentioned in subsection (10) are also taken to be investigation powers in relation to evidential material that relates to a provision mentioned in subsection (1).
- (10) The additional investigation powers are the powers to take and keep samples of any thing at any premises entered under section 48 of the Regulatory Powers Act, as that section applies in relation to evidential material that relates to a provision mentioned in subsection (1).

Person assisting

- (11) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised officer may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised officer may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Division 4—Civil penalties

24 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to be subject to civil proceedings for a contravention of a civil penalty provision.

Division 5—Infringement notices

25 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
 - (a) a strict liability offence against this Act;
 - (b) a civil penalty provision of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following authorised officers is an infringement officer in relation to the provisions mentioned in subsection (1):
 - (a) the Secretary;
 - (b) an APS employee in the Department appointed by the Secretary under subsection 40(1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the Secretary.

Extension to external Territories

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Liability of Crown

- (7) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), does not make the Crown liable to be given an infringement notice.

Division 6—Enforceable undertakings

26 Enforceable undertakings

Enforceable provisions

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to any external Territory to which this Act extends because of regulations made for the purpose of section 4.

Part 3A—Record-keeping

27 Simplified outline of this Part

- If food to which this Act applies is imported into Australia, the owner of the food at the time of the importation must keep records of information determined by the Secretary.
- Records must be retained for 5 years and may need to be produced to the Secretary.

28 Keeping and retaining records

Keeping of records

- (1) If food to which this Act applies is imported into Australia, the owner of the food at the time of the importation must keep records containing the information determined in an instrument under subsection (2).
- (2) The Secretary may, by legislative instrument, determine the information that must be contained in records under this section.

Retention of records

- (3) The owner must retain the records for a period of 5 years.

Offence

- (4) A person commits an offence of strict liability if:
 - (a) the person is subject to a requirement under this section; and
 - (b) the person contravenes the requirement.

Penalty for contravention of this subsection: 60 penalty units.

Section 29

29 Production of records

- (1) The Secretary may, by written notice given to a person who is required to keep records under section 28, require the person to produce to the Secretary, within the period and in the manner specified in the notice, such of those records as are specified in the notice.
- (2) The period specified in a notice given under subsection (1) must be at least 14 days after the notice is given.
- (3) However, the Secretary may specify a shorter period if the Secretary considers it necessary to do so because the records relate to food that the Secretary is satisfied may pose a risk to human health and the Secretary is satisfied that the risk is serious.
- (4) A notice under subsection (1) must set out the effect of the following provisions:
 - (a) subsection (5);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);
 - (c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

Offence

- (5) A person commits an offence if:
 - (a) the person is given a notice under subsection (1); and
 - (b) the person fails to comply with the notice.

Penalty for contravention of this subsection: Imprisonment for 6 months.

30 Secretary may inspect and copy records

The Secretary may inspect a record produced under this Part and may make and retain copies of the whole or a part of the record.

31 Secretary may retain records

- (1) The Secretary may take, and retain for as long as is reasonably necessary, possession of a record produced under this Part.
- (2) The person otherwise entitled to possession of the record is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the record, or a person authorised by that person, to inspect and make copies of the record.

32 Self-incrimination

- (1) A person is not excused from producing a record under this Part on the ground that the production of the record might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the record; and
 - (b) producing the record; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record;are not admissible in evidence against the individual in criminal proceedings other than:
 - (d) proceedings for an offence against subsection 28(4) or 29(5);
or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.

Part 4—Other matters

32A Simplified outline of this Part

- This Part deals with various matters, such as evidence of analysts of food, the making of compliance agreements and the use, disclosure and publication of information obtained under this Act.

33 Conduct by directors, employees and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.

- (4) Any conduct engaged in on behalf of a person, other than a body corporate, by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of an offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

34 Evidence of analyst

- (1) The Secretary may appoint a person to be an analyst for the purposes of this Act.
- (2) Subject to subsection (4), in any proceedings for an offence against this Act, a certificate of an analyst in an approved form stating, in

Section 34

respect of food in relation to which the offence is alleged to have been committed, all or any of the following matters:

- (a) that the analyst signing the certificate is appointed under subsection (1);
- (b) when and from whom the food was received;
- (c) what, if any, labels or other means of identifying the food accompanied it when it was received;
- (d) what container or containers the food was contained in when it was received;
- (e) a description, and the weight, of the food received;
- (f) when the food, or a portion of it, was analysed;
- (g) a description of the method of analysis;
- (h) the results of the analysis;
- (i) how the food was dealt with after handling by the analyst, including details of:
 - (i) the quantity retained; and
 - (ii) the name of the person, if any, to whom any retained quantity was given; and
 - (iii) measures taken to secure any retained quantity;

is admissible as *prima facie* evidence of the matters in the certificate and of the correctness of the result of the analysis.

- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) must, unless the contrary is established, be taken to be such a certificate and to have been duly given.
- (4) A certificate must not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
- (5) Subject to subsection (6), if, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the

person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

- (6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:
- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or
 - (b) the Court, by order, allows the person to require the analyst to be so called.

34A Power to require information or documents

- (1) If the Secretary believes on reasonable grounds that a person has information or documents relevant to the operation of this Act, the Secretary may, by written notice, require the person:
- (a) to give an authorised officer specified in the notice the information specified in the notice within the period specified in the notice; or
 - (b) to produce to an authorised officer specified in the notice the documents specified in the notice within the period specified in the notice.
- (2) The period specified in the notice must be at least 14 days after the notice is given under subsection (1).
- (3) However, the Secretary may specify a shorter period if the Secretary considers it necessary to do so because the information or documents relate to food that the Secretary is satisfied may pose a risk to human health and the Secretary is satisfied that the risk is serious.
- (4) A notice under subsection (1) must set out the effect of the following provisions:
- (a) subsection (5);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);

Section 35

(c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

- (5) A person commits an offence of strict liability if:
- (a) the person is given a notice under subsection (1); and
 - (b) the person fails to comply with the notice.

Penalty: 60 penalty units.

Authorised officer may inspect and copy documents

- (6) An authorised officer may:
- (a) inspect a document produced under paragraph (1)(b); and
 - (b) make and retain copies of the whole or a part of the document.

Authorised officer may retain documents

- (7) An authorised officer may take, and retain for as long as is reasonably necessary, possession of a document produced under paragraph (1)(b).

Certified copy of documents

- (8) The person otherwise entitled to possession of a document produced under paragraph (1)(b) is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (9) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (10) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

35 Publishing of information about overseas food processing operations

- (1) The Secretary may publish in Australia:
-

- (a) the name and address of a person conducting an overseas food processing operation; and
 - (b) particulars of the food processing operation conducted by that person; and
 - (c) particulars of any food originating from that food processing operation that:
 - (i) if imported, may not meet applicable standards or may pose a risk to human health; or
 - (ia) has been identified in an imported food inspection advice as failing food; or
 - (ii) was treated, destroyed or re-exported under section 20; and
 - (d) information relating to health risks associated with that food.
- (2) Without limiting subsection (1), the Secretary may publish:
- (a) the name of the importer of the food; or
 - (b) the brand of the food.

35A Compliance agreements

- (1) The Secretary may, on behalf of the Commonwealth, enter into an agreement (a ***compliance agreement***) with a person in connection with:
- (a) the application of particular procedures in respect of food that may be imported into Australia in accordance with the agreement; and
 - (b) the keeping of records by the person in respect of the person's compliance with those procedures; and
 - (c) the supervision, monitoring and testing of the person's compliance with those procedures.
- (2) The terms of a compliance agreement must be in accordance with this section and the regulations.
- (3) A compliance agreement may provide that, in circumstances stated in the agreement, the Secretary may, by written notice given to a party to the agreement other than the Commonwealth, cancel or vary

Section 35A

the agreement or suspend its operation for a period, or until the happening of an event, stated in the notice.

- (4) An authorised officer may notify a party to a compliance agreement other than the Commonwealth in writing of procedures to which the agreement is to extend in addition to those specifically referred to in the agreement and, if such a notification is given, the agreement has effect as if those procedures were referred to in it.
- (5) An authorised officer may allow food to which a compliance agreement applies to be dealt with on the basis of a certificate or assurance, given by a person authorised under the agreement to give such a certificate or assurance, that all the procedures to which the agreement refers have been complied with in respect of the food.
- (6) A party to a compliance agreement other than the Commonwealth commits an offence if:
 - (a) that party fails to ensure that a requirement imposed on that party under the agreement in respect of a matter referred to in paragraph (1)(a) or (c) is complied with; and
 - (b) the failure caused a significant risk to public health.

Penalty: Imprisonment for 10 years.

- (7) A party to a compliance agreement other than the Commonwealth commits an offence if that party fails to ensure that a requirement imposed on that party under the agreement in respect of a matter referred to in paragraph (1)(a) or (c) is complied with.

Penalty: 200 penalty units.

- (8) A party to a compliance agreement other than the Commonwealth commits an offence if that party fails to ensure that a requirement imposed on that party under the agreement in respect of a matter referred to in paragraph (1)(b) is complied with.

Penalty: 60 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.

- (10) In this section:
-

procedures, in respect of food, includes any dealings with food and also includes the inspection and testing (including the incidence of inspection and testing), analysis and treatment of food.

35B Making of orders or determinations

- (1) An order or determination under this Act or the regulations may refer to a kind of food by reference to any one or more of the following:
 - (a) the country of origin of the food;
 - (b) the place of origin of the food;
 - (c) the manner in which the food has been produced, processed, manufactured, stored, packed, packaged, labelled or transported;
 - (d) the producer, processor, manufacturer, storer, packer, packager, supplier or transporter of the food;
 - (e) the importer of the food;
 - (f) the period within which the food is imported into Australia;
 - (g) the physical properties of the food;
 - (h) the constituents of the food;
 - (i) the brand name of the food.
- (2) Subsection (1) does not limit the way in which an order or determination under this Act or the regulations may refer to a kind of food.

36 Fees for certain services

- (1) A person for whom a chargeable service is provided is liable to pay to the Commonwealth such amount (**payable amount**) in respect of the provision of that service as is prescribed.
- (2) The payable amount in respect of a particular service must not exceed the direct and indirect costs that are properly attributed to the provision of that service, calculated in accordance with ordinary commercial principles.

Section 36

- (3) The payable amount in respect of the provision of a service is payable either:
 - (a) before the service is rendered; or
 - (b) at the time the service is rendered.
- (4) If an authorised officer:
 - (a) arranges for the analysis of food to be carried out by another person; and
 - (b) pays the person who performs that analysis an amount not exceeding the cost of that analysis;the person for whom that chargeable service is arranged must pay to the Commonwealth, within a prescribed period, by way of reimbursement for the amount so paid, an amount equal to the amount so paid.
- (5) The regulations may prescribe circumstances in which the Secretary may, in his or her discretion, on behalf of the Commonwealth, waive fees that would otherwise be payable under this section.
- (6) If:
 - (a) a person for whom a service is provided pays for the service before or at the time it is rendered; and
 - (b) the service is not so rendered;the Secretary may, on behalf of the Commonwealth, refund the amount paid in respect of the provision of the service.
- (7) Under subsection (1), if the inspection of food leads to its analysis (whether by the person who inspected it or another person), the inspection is not taken to have been provided until the results of the analysis are notified to the person for whom the analysis is arranged.
- (8) If a person for whom a chargeable service is provided in respect of food does not pay the fee payable to the Commonwealth in respect of that service within 28 days after the last day on which that payment was due, the Secretary may direct, in writing:
 - (a) if the relevant documentation has not already been issued in respect of the food—that authorised officers should not issue such documentation in respect of the food; or

- (b) if the relevant documentation has been issued in respect of the food—that authorised officers should not issue such documentation in respect of any other food imported by that person into Australia;
- until:
- (c) the person has paid the outstanding fees; or
 - (d) the person has entered into an agreement with the Commonwealth in accordance with subsection (9).
- (9) Without limiting the matters that may be entered into under an agreement referred to in paragraph (8)(d), such an agreement may require a person who has failed to pay a fee to do either or both of the following:
- (a) pay interest at a rate not exceeding 20% per year, calculated on a daily basis, on the amount of the fees from time to time owing to the Commonwealth in respect of the food;
 - (b) give security for the payment of the fees and interest (if any) owing to the Commonwealth in respect of the food.
- (10) An authorised officer must not deal with the food in contravention of a direction under subsection (8).
- (11) In this section:
- chargeable service***, in relation to food to which this Act applies, means:
- (a) an inspection, or inspection and analysis of the food; or
 - (b) the arrangement by an authorised officer of an analysis of the food to be carried out by another person; or
 - (c) the issue of relevant documentation in respect of the food; or
 - (d) the supervision of the treatment, destruction or re-exportation of the food; or
 - (da) the entering into a compliance agreement in respect of the food; or
 - (e) the provision of any other service that is prescribed for the purpose of this definition.

relevant documentation means:

Section 37

- (a) if the food is examinable food—a food control certificate; and
- (b) if the food is required to be inspected, or inspected and analysed—an imported food inspection advice.

37 Certain moneys are a debt due to the Commonwealth

Any expenses or charges payable to the Commonwealth under this Part may be recovered by action in a court of competent jurisdiction as a debt due to the Commonwealth.

38 Exemption from suit

- (1) If:
 - (a) an act or thing is done, or not done (whether or not the act or thing is done or omitted to be done negligently), in good faith by a person exercising or purportedly exercising any power or authority conferred by or under this Act; and
 - (b) a person sustains a loss or injury (including loss or injury by way of damage to the person's business reputation or the goodwill associated with his or her business) because of the act or thing done or not done;an action does not lie against the Commonwealth or against a person referred to in paragraph (1)(a) for the loss or injury.
- (2) If an action is instituted against a person responsible for the manufacture, importation, distribution or sale of food to which this Act applies in relation to a loss or injury directly or indirectly sustained because of the purchase or consumption of food of that kind, it is not a defence to that action that the Commonwealth or any other person has, or has not, exercised any powers under this Act in respect of food of that kind.

39 Compensation for destroyed food

- (1) If food is destroyed in accordance with section 20, the Secretary may approve the payment of compensation in respect of the food if:

Section 39

- (a) a claim for compensation is made by or on behalf of the owner in an approved form accompanied by such documents as are required by the form to accompany the claim; and
 - (b) the Secretary is satisfied, on reasonable grounds, that the food was destroyed as a result of a mistake of fact or of law.
- (1A) The Secretary may approve the payment of compensation in respect of food if:
 - (a) the Secretary is satisfied, on reasonable grounds, that the food is no longer suitable for the purpose for which it was imported as a result of an inspection, or inspection and analysis, of the food under the Food Inspection Scheme; and
 - (b) a claim for compensation is made by or on behalf of the owner in an approved form accompanied by such documents as are required by the form to accompany the claim.
- (2) Compensation approved under this section must:
 - (a) if there is only one owner of the food at the time of its destruction—be paid to that owner; or
 - (b) if there are two or more owners of the food at that time—be divided among those owners in accordance with their interests.
- (3) The compensation payable under subsection (1) in respect of food is the amount agreed between the Secretary and the owner or owners of the food as being the market value of the food immediately before its destruction.
- (3A) The compensation payable under subsection (1A) in respect of food is the amount agreed between the Secretary and the owner or owners of the food as being the difference between the market value of the food immediately before it became unsuitable for the purpose for which it was imported and the amount (if any) for which the food is sold by the owner or owners.
- (4) If the Secretary and the owner or owners of the food at the time referred to in subsection (3) or (3A), as the case requires, do not agree on the market value of the food at that time, the market value

Section 40

must be determined by a person agreed on by the Secretary and the owner or owners.

- (5) If the Secretary approved the payment of compensation under this section in respect of food, the compensation payable in respect of that food is payable by the Commonwealth to the owner or owners and may be recovered by action against the Commonwealth in a court of competent jurisdiction.

- (6) In this section:

owner, in relation to food, means a person having a beneficial interest in the food other than a person who has such an interest only because he or she has been given a mortgage or charge, or has a lien over the goods.

40 Authorised officers

- (1) The Secretary may, by signed instrument, appoint an APS employee in the Department to be an authorised officer for the purposes of this Act.
- (2) The Secretary may, by signed instrument, appoint a person to be an authorised officer for the purposes of this Act.

41 Delegation by Secretary

- (1) Subject to subsection (2), the Secretary may, by signed instrument, delegate any or all of the Secretary's powers under this Act (except the power under subsection 42A(5)) to:
- (a) an SES employee, or acting SES employee, in the Department; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position, or an equivalent position, in the Department.
- (2) The Secretary may delegate the Secretary's powers and functions under section 20A only to an SES employee, or an acting SES employee, in the Department.

42 Review of decisions

(1) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

initial decision has the meaning given in subsection (2).

reviewable decision means a decision of the Secretary under subsection (5).

(2) Subject to subsection (3), *initial decision* means:

- (a) a decision under section 12 to issue a food control certificate that states that the food to which the certificate relates is required to be inspected, or inspected and analysed; or
- (b) a decision under subsection 14(1) to issue an imported food inspection advice identifying food as failing food and specifying the manner of dealing with that food; or
- (c) a decision under subsection 14(6) refusing an application for a further imported food inspection advice; or
- (d) a decision under subsection 14(6) to issue a further imported food inspection advice identifying food as failing food and specifying the manner of dealing with that food; or
- (e) a decision made by the Secretary to revoke a determination under subsection 19(3); or
- (f) a decision by the Secretary under subsection 20(13) to direct that food control certificates should not be issued to a person who has failed to comply with a notice under subsection 20(2), (3) or (4); or
- (g) a decision by the Secretary under subsection 36(8) to direct that documentation not be issued in respect of food imported by a person who has failed to pay fees to the Commonwealth; or
- (h) a decision of the Secretary under subsection 39(1).

(3) If food to which an initial decision relates has been subjected to analysis to determine if it either:

Section 42

- (a) meets applicable standards; or
 - (b) poses a risk to human health;
- the results of such analysis are not reviewable by the Administrative Appeals Tribunal.
- (4) A person affected by an initial decision may give written notice to the Secretary, within 28 days after notification of that decision, requesting the Secretary to reconsider the decision.
 - (5) As soon as practicable after receiving a request under subsection (4), the Secretary must reconsider the initial decision to which the request related and, as a result of that reconsideration:
 - (a) confirm the initial decision; or
 - (b) revoke the initial decision; or
 - (c) vary the initial decision by revoking it and making a decision in substitution of the initial decision.
 - (6) If the Secretary does not confirm, revoke or vary a decision within 28 days after the Secretary received a request, the Secretary is taken to have confirmed the initial decision.
 - (7) If, under subsection (4), a request is made for the reconsideration of a decision, the operation of that decision is stayed pending the outcome of the reconsideration.
 - (8) If written notice of the making of an initial decision with respect to that food is given, the notice is to include a statement to the effect that a person affected by the decision may:
 - (a) seek a reconsideration of the initial decision under this section; and
 - (b) subject to the *Administrative Appeals Tribunal Act 1975*, if such a person is dissatisfied with the decision on reconsideration, make an application to the Administrative Appeals Tribunal for review of that decision.
 - (9) After reconsideration of an initial decision, the Secretary must give the applicant for reconsideration written notice:
 - (a) stating the result for the reconsideration; and

- (b) informing the applicant that:
 - (i) except where subsection 28(4) of the *Administrative Appeals Tribunal Act 1975* applies, the applicant may apply for a statement setting out the reasons for the decision on reconsideration; and
 - (ii) the applicant may, subject to that Act, make an application to the Administrative Appeals Tribunal for review of that decision.
- (10) Any failure to comply with the requirements of subsection (8) or (9) in relation to a decision does not affect the validity of the decision.
- (11) An application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

42A Use and disclosure of information

Use of information

- (1) An APS employee in the Department may use information (including personal information) obtained under this Act for any purpose of this Act.

Disclosure of information

- (2) The Secretary may disclose information (including personal information) obtained under this Act to:
 - (a) a department of the Commonwealth, a State or a Territory; or
 - (b) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
 - (c) a local government body;if the Secretary is satisfied that the disclosure of the information to that department, agency, authority, instrumentality or body is necessary for that department, agency, authority, instrumentality or body to perform or exercise any of its functions, duties or powers.
- (3) The Secretary may disclose information (including personal information) obtained under this Act to:

Section 42A

- (a) a department of the government of a foreign country; or
- (b) an agency, authority or instrumentality of the government of a foreign country;

if the Secretary is satisfied that the disclosure of the information to that department, agency, authority or instrumentality is necessary for that department, agency, authority or instrumentality to perform or exercise any of its functions, duties or powers.

- (4) The Secretary must not disclose information under subsection (3) unless the Secretary is satisfied that the disclosure is in connection with food imported into Australia that the Secretary is satisfied may pose a risk to human health.
- (5) The Secretary must, in writing, make guidelines that the Secretary must have regard to before disclosing information under subsection (3).

Note: For variation and revocation of the guidelines, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (6) Before making the guidelines, the Secretary must consult the Information Commissioner.
- (7) The guidelines are not a legislative instrument.
- (8) The Secretary must publish the guidelines on the Department's website.

Interpretation

- (9) For the purposes of this section, if an application is taken to have been communicated to an authorised officer as mentioned in subsection 11(3), information contained in the application is taken to be information obtained under this Act.
- (10) This section does not limit section 35 (about publishing of information about overseas food processing operations).
- (11) This section does not limit the use or disclosure of information (including personal information) obtained under this Act.

(12) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

43 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
 - (a) make provision in relation to:
 - (i) the establishment of committees to advise the Secretary on matters relating to the control of imported foods; and
 - (ii) the functions and powers of those committees; and
 - (b) prescribe requirements for the storage and transport of imported food that is required to be treated, destroyed or re-exported; and
 - (c) prescribe penalties, not exceeding 10 penalty units for offences against the regulations.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be

Endnote 1—About the endnotes

given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Imported Food Control Act 1992	221, 1992	24 Dec 1992	15 June 1993 (s 2(1) and gaz 1993, No GN22)	
National Food Authority Amendment Act 1995	152, 1995	16 Dec 1995	Sch 2 (items 2–9): 1 July 1996 (s 2(2) and gaz 1996, No S230)	—
Primary Industries and Energy Legislation Amendment Act (No. 2) 1996	59, 1996	20 Nov 1996	Sch 6 (items 1, 2): 20 Nov 1996 (s 2(1))	—
Primary Industries and Energy Legislation Amendment Act (No. 2) 1997	94, 1997	30 June 1997	Sch 4: 22 Oct 1997 (s 2(4) and gaz 1997, No S418)	—
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 1999	4, 1999	31 Mar 1999	Sch 4: 31 Mar 1999 (s 2)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 236–241, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Australia New Zealand Food Authority Amendment Act 2001	81, 2001	10 July 2001	s 2(6): 10 July 2001 (s 2(1)) Sch 3 (items 3–5): 1 July 2002 (s 2(2), (5) and gaz 2002, No GN30)	s 2(6)

Imported Food Control Act 1992

79

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	s 4 and Sch 1 (items 223–233): 16 Oct 2001 (s 2)	s 4
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2004	54, 2004	27 Apr 2004	Sch 2: 28 Apr 2004 (s 2(1) item 6)	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (item 37): 23 May 2009 (s 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 73): 19 Apr 2011 (s 2(1) item 18)	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 4 (item 15): 29 June 2013 (s 2(1) item 16)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (item 88): 24 June 2014 (s 2(1) item 9)	—
Export Legislation Amendment Act 2014	37, 2014	25 June 2014	Sch 1 (items 28–31): 25 June 2014 (s 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 93–97): 25 Mar 2015 (s 2(1) item 10)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 233–237, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 81–88) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (item 26) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 1 (item 8): 10 Dec 2015 (s 2(2))	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 187): 10 Mar 2016 (s 2(1) item 6)	—
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (item 66): 1 July 2016 (s 2(1) item 7)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 292–295): 21 Oct 2016 (s 2(1) item 1)	—
Imported Food Control Amendment (Country of Origin) Act 2018	20, 2018	28 Mar 2018	1 July 2018 (s 2(1) item 1)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Imported Food Control Amendment Act 2018	108, 2018	21 Sept 2018	Sch 1 (items 1–5, 37, 38): 21 Sept 2019 (s 2(1) items 2, 5) Sch 1 (items 6–20, 39–54): 22 Sept 2018 (s 2(1) items 3, 6) Sch 1 (items 21–36): 19 Oct 2018 (s 2(1) item 4)	Sch 1 (items 11, 16, 31–36, 38, 41, 44, 54)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 466): 1 Sept 2021 (s 2(1) item 5)	—
Agriculture Legislation Amendment (Streamlining Administration) Act 2021	16, 2021	1 Mar 2021	Sch 1 (items 10–14): 2 Mar 2021 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2A.....	ad No 54, 2004
s 3	am No 152, 1995; No 59, 1996; No 4, 1999; No 137, 2000; No 81, 2001; No 54, 2004; No 33, 2009; No 5, 2011; No 37, 2014; No 10, 2015; No 41, 2015; No 145, 2015; No 20, 2018; No 108, 2018
s 3A.....	ad No 108, 2018
s 4	am No 33, 2016
s 6	am No 62, 2015
s 6A.....	ad No 115, 2001
s 7	am No 94, 1997; No 4, 1999; No 108, 2018
Part 2	
Division 1A	
Division 1A.....	ad No 108, 2018
s 7A.....	ad No 108, 2018 am No 16, 2021
Division 1	
s 8	am No 54, 2004 rs No 108, 2018
s 8A.....	ad No 54, 2004 rs No 108, 2018
s 9	am No 4, 1999; No 54, 2004 rs No 108, 2018
s 9A.....	ad No 108, 2018
s 11	am No 41, 2015
s 13	am No 41, 2015
s 14	am No 41, 2015
s 15	am No 108, 2018
Division 2	
s 16	am No 54, 2004; No 10, 2015; No 108, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 17	am No 152, 1995 rs No 10, 2015
s 18	am No 137, 2000; No 108, 2018
s 18A.....	ad No 108, 2018
s 19	am No 4, 1999; No 137, 2000; No 108, 2018
s 19A.....	ad No 137, 2000
Division 3	
s 20	am No 115, 2001; No 61, 2016
Division 4	
Division 4	ad No 16, 2021
s 20A.....	ad No 16, 2021
Part 3	
Division 1	
Division 1	ad No 108, 2018
s 21	rs No 108, 2018
Division 2	
Division 2	ad No 108, 2018
s 22	am No 115, 2001; No 4, 2016; No 61, 2016 rs No 108, 2018 am No 13, 2021
Division 3	
Division 3	ad No 108, 2018
s 23	am No 54, 2004 rs No 108, 2018 am No 13, 2021
Division 4	
Division 4	ad No 108, 2018
s 24	am No 54, 2004 rs No 108, 2018 am No 13, 2021

Endnote 4—Amendment history

Provision affected	How affected
Division 5	
Division 5	ad No 108, 2018
s 25	rs No 108, 2018
Division 6	
Division 6	ad No 108, 2018
s 26	rs No 108, 2018
	am No 13, 2021
Part 3A	
Part 3A	ad No 108, 2018
s 27	am No 31, 2014
	rep No 108, 2018
	ad No 108, 2018
s 28	rep No 108, 2018
	ad No 108, 2018
s 29	rep No 108, 2018
	ad No 108, 2018
s 30	am No 137, 2000; No 115, 2001
	rep No 108, 2018
	ad No 108, 2018
s 31	rep No 108, 2018
	ad No 108, 2018
s 32	am No 115, 2001; No 61, 2016
	rep No 108, 2018
	ad No 108, 2018
Part 4	
Part 4 heading	ad No 108, 2018
s 32A	ad No 108, 2018
s 33	am No 5, 2015
s 34A	ad No 108, 2018
s 35	am No 4, 1999; No 108, 2018
Part 4 heading	rep No 108, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 35A.....	ad No 54, 2004
s 35B.....	ad No 108, 2018
s 36	am No 54, 2004
s 39	am No 4, 1999
s 40	rs No 59, 1996
	am No 37, 2014; No 108, 2018
s 41	rs No 37, 2014; No 108, 2018
	am No 16, 2021
s 42	am No 4, 1999; No 54, 2004; No 108, 2018
s 42A.....	ad No 108, 2018
s 43	am No 61, 2016
Part 5.....	rep No 103, 2013
s 44	rep No 103, 2013
s 45	rep No 103, 2013
s 46	rep No 103, 2013
s 47	rep No 103, 2013
