

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

EXPORT CONTROL BILL 1982

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 22 April 1982

(*Minister for Primary Industry*)

A BILL

FOR

An Act to provide for the control of the export of certain goods and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Export Control Act* 1982.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

- 10 3. In this Act, unless the contrary intention appears—
“aircraft” means any machine or craft that can derive support in the atmosphere from the reactions of the air or from buoyancy;

“animal” means any member, alive or dead, of the animal kingdom, other than man;

“apply”, in relation to a trade description or an official mark, includes write, print, stencil, mark, emboss, impress or attach;

“authorized officer” means—

(a) an officer of the Department; or

(b) a person appointed under section 20 to be an authorized officer;

“covering” includes any stopper, glass, bottle, vessel, box, container, capsule, case, frame or wrapper;

“document” includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing;

“Department” means the Department of Primary Industry;

“enter for export” has the same meaning as in the *Customs Act* 1901;

“examine” includes count, measure, weigh, grade or gauge;

“false trade description” means a trade description that, by reason of anything contained in or omitted from the description, is false or likely to mislead in a material respect as regards the goods to which it relates, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, which makes the description false or likely to mislead;

“food” includes—

(a) any substance or thing of a kind used or capable of being used as food or drink by human beings; and

(b) any substance or thing of a kind used or capable of being used as an ingredient in a substance or thing referred to in paragraph (a),

whether or not it is in a condition fit for human consumption;

“goods” means—

(a) an animal or a plant, or part of an animal or a plant;

(b) an article or a substance (including reproductive material) derived from an animal or a plant, whether or not in combination with any other article or substance; or

(c) food,

but does not include narcotic goods within the meaning of the *Customs Act* 1901;

“label” includes any tag, band, ticket, brand or pictorial or other descriptive matter;

“offence against this Act” includes—

(a) an offence against the regulations;

(b) an offence against section 6, 7 or 7A of the *Crimes Act* 1914 in relation to an offence against this Act or the regulations; and

(c) an offence against sub-section 86 (1) of the *Crimes Act* 1914 by virtue of paragraph (a) of that sub-section, being an offence in relation to an offence against this Act or the regulations;

5 “official mark” means any stamp, seal, label or mark that is declared by the regulations to be an official mark;

10 “official marking device” means a device that is capable of being used to apply an official mark and is declared by the regulations to be an official marking device;

“order” means an order made by the Minister under the regulations;

“plant” means any member, alive or dead, of the plant kingdom;

“premises” includes land;

15 “prescribed goods” means goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of this Act;

“registered premises” means premises that are registered, or are part of an establishment that is registered, under the regulations;

“regulations” includes orders;

20 “Secretary” means the Secretary to the Department;

“ship” means any vessel used in navigation, other than air navigation, and includes a barge, a lighter or any other floating vessel;

25 “trade description”, in relation to prescribed goods, means any description or statement (whether in English or any other language), or pictorial representation, indication or suggestion, direct or indirect—

(a) as to the nature, number, quantity, quality, purity, class, grade, breed, measure, gauge, size, mass, colour, strength, sex, species or age of the goods;

30 (b) as to the country or place in or at which the goods were made or produced;

(c) as to the exporter, manufacturer or producer of the goods or the person by whom they were selected, packed or in any way prepared for the market;

35 (d) as to the mode, time or place of manufacturing, producing, selecting, packing or otherwise preparing or treating the goods;

(e) as to the time before which, or period within which, the goods are to be used;

(f) as to the batch, lot or other grouping in which the goods are included;

40 (g) as to the material or ingredients of which the goods are composed or from which they are derived; or

(h) as to the goods being the subject of an existing patent or privilege,

and includes any label or mark that, according to the custom of the trade or common repute, is commonly taken to be an indication of any of the above matters.

Crown to be bound

4. This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory. 5

Saving of other laws

5. This Act is not intended to exclude the operation of any other law of the Commonwealth or any law of a State or Territory insofar as that law is capable of operating concurrently with this Act. 10

PART II—EXPORT OF PRESCRIBED GOODS

Notice of intention to export prescribed goods

6. (1) A person who intends to export prescribed goods shall, if required to do so by the regulations, give notice to the Secretary or an authorized officer, in accordance with the regulations, of his intention to export the goods and of the place where the goods may be inspected. 15

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) Without limiting the generality of sub-section (1), regulations made for the purposes of that sub-section may—

(a) make provision with respect to the time of giving of the notice referred to in that sub-section; and 20

(b) make different provision with respect to goods of different kinds.

(3) An offence against this section is punishable on summary conviction.

Prohibition on export of prescribed goods

7. (1) The regulations may prohibit the export of prescribed goods from Australia. 25

(2) Regulations made for the purposes of sub-section (1) may—

(a) prohibit the export of prescribed goods absolutely;

(b) prohibit the export of prescribed goods to a specified place;

(c) prohibit the export of prescribed goods unless specified conditions or restrictions are complied with; or 30

(d) prohibit the export of prescribed goods to a specified place unless specified conditions or restrictions are complied with.

(3) Without limiting the generality of sub-section (2), regulations made for the purposes of sub-section (1)— 35

(a) may provide that the export of prescribed goods, or the export of prescribed goods to a specified place, is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods

in which the goods are included has been granted as prescribed by the regulations; and

(b) may make provision for and in relation to—

5 (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;

10 (ii) the granting of a licence or permission to export prescribed goods subject to compliance with conditions or restrictions, either before or after the export of the goods, by the person to whom the licence or permission is granted or any person to whom the licence or permission is assigned;

15 (iii) the surrender of a licence or permission to export prescribed goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export prescribed goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export prescribed goods; and

20 (iv) the revocation or suspension of a licence or permission that is granted subject to a condition or restriction to be complied with by a person for failure by the person to comply with the condition or restriction, whether or not the person is charged with an offence against section 9 in respect of the failure.

25 (4) Without limiting the generality of paragraphs (2) (c) and (d) and sub-paragraph (3) (b) (ii), conditions or restrictions imposed under those provisions may be required to be complied with in respect of matters or things not related to the prescribed goods to which they apply.

Export of prescribed goods

30 8. (1) Where under the regulations the export of prescribed goods is prohibited absolutely, a person who—

(a) exports the prescribed goods; or

(b) conveys or has in his possession the prescribed goods with intent to export the goods or knowing that they are intended to be exported,

is guilty of an offence.

35 (2) Where under the regulations the export of prescribed goods to a specified place is prohibited, a person who—

(a) exports the prescribed goods to that place; or

(b) conveys or has in his possession the prescribed goods with intent to export the goods to that place or knowing that they are intended to be exported to that place,

40 is guilty of an offence.

(3) Where under the regulations the export of prescribed goods is prohibited unless specified conditions or restrictions are complied with—

- (a) a person who exports the prescribed goods in contravention of the conditions or restrictions is guilty of an offence; and
- (b) a person who conveys or has in his possession the prescribed goods is guilty of an offence if—
 - (i) the person intends to export the goods in circumstances that would constitute a contravention of the conditions or restrictions; or
 - (ii) the goods are intended to be exported in circumstances that would constitute a contravention of the conditions or restrictions.

(4) Where under the regulations the export of prescribed goods to a specified place is prohibited unless specified conditions or restrictions are complied with—

- (a) a person who exports the prescribed goods to that place in contravention of the conditions or restrictions is guilty of an offence; and
- (b) a person who conveys or has in his possession the prescribed goods is guilty of an offence if—
 - (i) the person intends to export the goods to that place in circumstances that would constitute a contravention of the conditions or restrictions; or
 - (ii) the goods are intended to be exported to that place in circumstances that would constitute a contravention of the conditions or restrictions.

(5) An offence against this section is punishable on conviction by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years, or both.

(6) In a prosecution of a person for an offence against sub-section (3) or (4) in respect of the conveyance or possession of prescribed goods intended to be exported, or intended to be exported to a particular place, in circumstances that would constitute a contravention of conditions or restrictions specified in the regulations, it is a defence if the person proves that he did not know, and had no reasonable grounds for knowing or suspecting, that the goods were intended to be exported, or intended to be exported to that place, in circumstances that would constitute a contravention of the conditions or restrictions.

Contravention of licence conditions, &c.

9. Where a licence or permission granted under the regulations is subject to a condition or restriction to be complied with by a person, the person shall comply with the condition or restriction and, if he fails to do so, he is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

PART III—INSPECTION AND SEIZURE

Inspection

5 **10. (1)** The function of an authorized officer under this section is to ascertain whether the provisions of this Act and the regulations, and conditions or restrictions applicable to the export of prescribed goods or to licences or permissions to export prescribed goods, have been complied with.

(2) A reference in sub-section (1) to ascertaining whether the provisions of this Act have been complied with includes a reference to ascertaining whether an offence against this Act has been committed.

10 **(3)** For the purposes of performing the function of an authorized officer under this section or exercising a power of an authorized officer under section 11, an authorized officer may, with such assistance as he thinks necessary—

- (a) enter registered premises;
- 15 (b) with the consent of the occupier or in pursuance of a warrant granted under sub-section (6), enter any other premises;
- (c) board or enter any vehicle, ship or aircraft;
- (d) stop and detain any vehicle, ship or aircraft;
- (e) search any premises, vehicle, ship or aircraft;
- 20 (f) break open any hold or compartment or any container or other receptacle (including any place that could be used as a receptacle);
- (g) inspect and examine any premises, vehicle, ship, aircraft, matter or thing;
- (h) secure any premises, vehicle, ship, aircraft, matter or thing;
- (j) take samples of any matter or thing (including parts of premises, vehicles, ships or aircraft); or
- 25 (k) take extracts from, and make copies of, any document.

(4) Samples of any matter or thing taken in accordance with sub-section (3) shall be dealt with as prescribed.

30 **(5)** An authorized officer may make application to a Justice of the Peace for a warrant authorizing the authorized officer to enter premises other than registered premises.

35 **(6)** If, on an application under sub-section (5), the Justice of the Peace is satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorized officer should, for the purpose of exercising the powers of an authorized officer under this section or section 11, have access to the premises to which the application relates, the Justice of the Peace may grant a warrant authorizing the authorized officer, with such assistance as he thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the powers of an authorized officer under
40 this section or section 11.

(7) A warrant under sub-section (6) shall specify a date after which the warrant ceases to have effect.

(8) Where an authorized officer proposes to search or detain a vehicle, ship or aircraft, he shall, if there is a person in charge of the vehicle, ship or aircraft, produce his identity card for inspection by that person and, if he fails to do so, he is not authorized to search or detain that vehicle, ship or aircraft. 5

Seizure

11. (1) An authorized officer may seize—

(a) any prescribed goods that he believes on reasonable grounds are prescribed goods in respect of which an offence against this Act has been committed; and 10

(b) any matter or thing that he believes on reasonable grounds will afford evidence of the commission of an offence against this Act,

and may retain the prescribed goods or the matter or thing until the expiration of a period of 60 days after the seizure or, if proceedings for such an offence in respect of those goods or in respect of which the matter or thing may afford evidence are instituted within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are terminated. 15

(2) The power under sub-section (1) to seize prescribed goods includes a power to seize any coverings in which the prescribed goods are contained. 20

(3) The Secretary may authorize any prescribed goods, or any matter or thing, seized under sub-section (1) to be released to the owner, or to the person from whose possession the prescribed goods were, or the matter or thing was, seized, either unconditionally or on such conditions as the Secretary thinks fit, including, in the case of prescribed goods, conditions as to the giving of security for payment of their value if they are forfeited under section 18. 25

Obstructing authorized officers

12. A person shall not, without reasonable excuse, obstruct or hinder an authorized officer in the exercise of his powers under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both. 30

Persons to assist authorized officers

13. (1) Subject to sub-section (2), the owner, or person in charge, of any vehicle, ship or aircraft boarded or entered by an authorized officer, and the owner or occupier of any premises entered by an authorized officer, under section 10 shall, if requested by an authorized officer to do so, provide reasonable assistance to the authorized officer for the purpose of the exercise of his powers under that section or section 11 in relation to that vehicle, ship or aircraft or those premises. 35

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) Where an authorized officer makes a request of a person under this section, the authorized officer shall produce his identity card for inspection by 40

that person and, if the authorized officer fails to do so, that person is not obliged to comply with the request.

PART IV—OFFICIAL MARKS AND TRADE DESCRIPTIONS

Contravention of regulations relating to official marks

5 **14.** A person shall not, in contravention of the regulations—

- (a) manufacture, have in his possession, apply, alter or interfere with an official mark;
- (b) manufacture, have in his possession or apply a mark resembling, or apparently intended to resemble or pass for, an official mark; or
- 10 (c) manufacture or have in his possession an official marking device.

Penalty: \$100,000 or imprisonment for 5 years, or both.

False trade descriptions

15. (1) A person shall not—

(a) apply a false trade description to—

- 15 (i) any prescribed goods intended or entered for export; or
- (ii) any prescribed goods put on any ship or aircraft for export or brought to any wharf, airport or other place for the purpose of export; or

(b) export, enter for export or put on any ship or aircraft for export any prescribed goods to which a false trade description is applied.

20 Penalty: \$100,000 or imprisonment for 5 years, or both.

(2) For the purposes of this section, a false trade description shall be deemed to be applied to goods if—

- 25 (a) it is applied to the goods;
- (b) it is applied to any covering, label, reel or thing used in connection with the goods; or
- (c) it is applied to any document relating to the goods or used in any other manner likely to lead to the belief that it describes or designates the goods.

PART V—MISCELLANEOUS

False declarations

16. (1) A person shall not make a false or misleading statement in a declaration furnished for the purposes of the regulations.

Penalty: \$2,000 or imprisonment for 12 months, or both.

35 (2) For the purposes of sub-section (1), a declaration furnished for the purpose of compliance with a condition or restriction applicable to the export of prescribed goods or to a licence or permission to export prescribed goods shall be taken to be a declaration furnished for the purposes of the regulations.

(3) An offence against this section is punishable on summary conviction.

Indictable offences

17. (1) An offence against section 8, 9, 14 or 15 is an indictable offence.

(2) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent. 5

(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in sub-section (1), the penalty that the court may impose is—

- (a) in the case of an offence against section 8, 14 or 15—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both; and 10
- (b) in the case of an offence against section 9—a fine not exceeding \$5,000.

Forfeiture of prescribed goods

18. (1) Where a court convicts a person of an offence against this Act in respect of any prescribed goods, the court may order the forfeiture to the Commonwealth of those prescribed goods. 15

(2) The forfeiture of any prescribed goods under sub-section (1) extends to the forfeiture of any coverings in which the prescribed goods are contained.

(3) Any prescribed goods forfeited under this section may be sold or otherwise disposed of as the Secretary thinks fit. 20

Delegation

19. (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an authorized officer all or any of his powers under this Act, other than this power of delegation. 25

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Secretary.

(3) A delegation under this section does not prevent the exercise of a power by the Secretary. 30

Authorized officers

20. The Secretary may, by instrument signed by him, appoint a person, or persons included in a class of persons, to be an authorized officer or authorized officers, as the case may be, for the purpose of the exercise by that person or those persons of the powers of an authorized officer under this Act or of such of those powers as are specified in the instrument. 35

Identity cards

21. (1) The Secretary may cause to be issued to an authorized officer an identity card in a form approved by the Secretary.

5 (2) Where a person in possession of an identity card issued to him under sub-section (1) ceases to be an authorized officer, he shall forthwith return the identity card to the Secretary or a person nominated by the Secretary and, if he fails to do so, he is guilty of an offence punishable on conviction by a fine not exceeding \$100.

Protection of authorized officers and other persons

10 22. (1) An authorized officer is not liable to any action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred on him by this Act or the regulations.

15 (2) A person who is requested by an authorized officer, whether under section 13 or otherwise, to provide assistance to that officer in the exercise or purported exercise of any power or authority conferred on him by this Act or the regulations is not liable to any action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in the provision, or purported provision, of that assistance.

Certificate with respect to goods

20 23. Where the Secretary is satisfied that the government, or an authority of the government, of a country other than Australia requires a certification as to any matter relating to goods before the import of goods of that kind from Australia to that other country will be permitted, the Secretary may, if he is satisfied as to that matter, issue such a certificate to a person who wishes to export goods of that kind to that country.

Supply of goods to authorized officers

25 24. (1) Except as approved by the Secretary, by writing signed by him, the registered owner of a registered establishment shall not supply or cause to be supplied to a person whom he knows is an authorized officer any goods that have been manufactured, produced, packed or otherwise prepared or treated at the registered establishment.

30 Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) An offence against this section is punishable on summary conviction.

(3) In this section—

“registered establishment” means an establishment that is registered under the regulations;

35 “registered owner”, in relation to a registered establishment, means the person to whom the certificate of registration in respect of the registered establishment was issued.

Regulations

40 25. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without limiting the generality of sub-section (1), the regulations may make provision for or in relation to—

- (a) the imposition of fees in respect of the registration of— 5
 - (i) premises or other places; or
 - (ii) vehicles, ships or aircraft;
- (b) the quarantine of prescribed goods that are intended or inspected for export (including the destruction or denaturing of such prescribed goods for quarantine purposes); 10
- (c) the analysis of samples of prescribed goods, including the extent to which a certificate of analysis is to be *prima facie* evidence of the facts stated in that certificate in proceedings in respect of an offence against this Act;
- (d) the imposition of fees in connection with the performance of services by authorized officers; 15
- (e) requiring persons to keep records relating to matters relevant to the operation of this Act or the regulations;
- (f) prescribing penalties not exceeding \$1,000 for offences against the regulations; or 20
- (g) subject to sub-section (3), empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations. ..

(3) An order shall not be made prescribing any penalty.

(4) Sections 48, 49 and 50 of the *Acts Interpretation Act* 1901 apply to orders as if in those sections references to regulations were references to orders and references to an Act included references to regulations. 25

(5) An order may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification—

- (a) any of the provisions of an Act, of any regulations or rules under an Act, or of any other order under this Act, as in force at a particular time or as in force from time to time; or 30
- (b) any matter contained in any other instrument or writing as in force or existing at the time when the order takes effect,

but an order shall not, except as provided by this sub-section, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. 35

(6) An order shall not be deemed to be a statutory rule within the meaning of the *Statutory Rules Publication Act* 1903, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule. 40

5 (7) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act* 1903 in accordance with sub-section (6), the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister of State for Primary Industry.

(8) An order shall be deemed to be an enactment for the purposes of the *Administrative Appeals Tribunal Act* 1975.

