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Export Control Amendment Bill 2003

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No. 158 2002-03

Export Control Amendment Bill 2003

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Export Control Amendment Bill 2003

Date Introduced: 27 March 2003

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The clause referring to the offences of providing false or misleading information or documents will commence immediately after the commencement of Schedule 2 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*, and the changes to the description of goods that originate from Christmas Island or the Cocos (Keeling) Islands on certificates issued in relation to goods for export will commence on Proclamation, or if not proclaimed within 6 months of Royal Assent, on the first day after the end of that period.

Purpose

To amend the *Export Control Act 1982* for two purposes:

- to redraft the section referring to the offences of providing false or misleading information or documents, and
- to allow certificates issued in relation to goods for export to specify when goods originate from Christmas Island or the Cocos (Keeling) Islands.

Background

Export Control Act 1982

The *Export Control Act 1982* (the Act) sets up a regime for the export inspection of prescribed goods. These goods include meat, fish, fresh fruit and vegetables, dairy produce and grains. Inspection is conducted by authorised officers of the Australian Quarantine and Inspection Service (AQIS). The purpose of the inspection is to ensure that the goods which are to be exported meet the strict requirements set out in the orders made pursuant to the regulations under the Act. These requirements are aimed at ensuring fitness for human consumption, quality and accurate trade description of the goods.

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Successive Governments have taken a serious view of malpractice in the export food industry.¹ They have argued that any malpractice that may endanger the reputation of Australia's export industries and jeopardise overseas markets for Australian goods must be strongly deterred.² The Act includes penalties for false declarations and trade descriptions, and grants extensive regulation making power to the Governor-General including penalties for offences against the regulations. This Bill redrafts the references in the section on offences, replacing it with references in the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*.

Quarantine access conditions to international markets

The World Trade Organisation's (WTO) quarantine agreement (the Sanitary and Phytosanitary Agreement or SPS Agreement) allows all current 141 WTO members, including Australia, to set their own level of quarantine protection. Under this agreement, quarantine measures must be based on scientific principles and must not include unfair restrictions designed to prevent or restrict trade. Australia has been able to negotiate favourable quarantine access conditions to international markets for agricultural exports because of our relative freedom from pests and diseases that exist elsewhere in the world. According to the Department of Agriculture, Fisheries and Forestry, Australia has been successful in gaining access to many new markets for animal, plant and food products during the past five years.³ The National Food Industry Strategy (NFIS) Ltd. reported in March 2003 that the food industry accounted for 22 per cent of sales of Australian products overseas and that food exports, both processed and unprocessed, were valued at more than \$26 billion in the 2001-2002 financial year.⁴

Christmas Island and Cocos (Keeling) Islands

This Bill concerns the description of prescribed goods, including meat, fish, fresh fruit and vegetables, that originate on Christmas Island or the Cocos (Keeling) Islands and are being exported. Little food is produced in either territory. On Christmas Island food supplies are imported both from Asia and from mainland Australia.⁵ In 1999 it was reported that, on the Cocos (Keeling) Islands, a small farm produced some fruit and vegetables commercially, and that there was some private production for home consumption.⁶ However, practically all food consumed on the Cocos (Keeling) Islands came from mainland Australia.⁷

The Christmas Island economy currently centres on phosphate mining, government services and tourism.⁸ Since the closure of the Christmas Island Resort and Casino in 1998 after four and a half years of operation, tourism has been almost entirely driven by the unique flora and fauna within the National Park and surrounding seas.⁹ The Asia Pacific Space Corporation (APSC) still has plans to build a satellite launching facility on Christmas Island. It has contracts with Russian suppliers for rocket launchers.¹⁰ Nothing has been built so far.¹¹ In March 2002 the Government announced that it planned to build

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a permanent immigration reception and processing centre to accommodate up to 1200 detained asylum seekers.¹² The size of this facility was scaled down to 800 places in February 2003.¹³ A project manager has recently been selected for the construction¹⁴ but no date has been given for completion of the centre.

Copra provided the initial base for the Cocos (Keeling) Islands economy but commercial production ceased in the 1980s as a result of low international prices and high production costs.¹⁵ In a report published in 1999, the Commonwealth Grants Commission said that economic activity on the Cocos (Keeling) Islands was extremely limited.¹⁶ The major areas of economic activity were the provision of government and commercial services, the main outlet for the latter being through the Cocos Co-Operative Society Ltd. According to the Grants Commission report, a small horticultural enterprise had operated on Cocos since the late 1980s. It had received 'substantial levels of Commonwealth assistance at least in the developmental stages'.¹⁷ Several aquaculture and fisheries projects have also been trialled on the Cocos (Keeling) Islands. These include a pilot project to grow giant clams for export, a research project on black lipped pearl farming, and the creation of a joint venture between the Cocos Islands Co-Operative Society Ltd. and a tuna fishing company from the mainland.¹⁸ The current status of all these projects is not known.

The Minister said in his second reading speech on this Bill that the external territories of Christmas Island and Cocos (Keeling) Islands do not enjoy the same relative freedom from agricultural pests and diseases as do other parts of Australia.¹⁹ The purpose of this Bill is to ensure that any prescribed goods for export, including fish, fruit and vegetables that originate on Christmas Island or the Cocos (Keeling) Islands, are not described as coming 'from Australia'. Instead, they will be described on the export certificates as coming from the 'Australian Territory of Christmas Island' or from the 'Australian Territory of Cocos (Keeling) Islands'.

Main Provisions

Item 1 of Schedule 1 amends subsection 11Q(5) of the *Export Control Act 1982*. This subsection deals with the offences of making false or misleading statements in information or documents concerning goods prescribed under the Act that have been, or are to be, exported. The purpose of the amendment proposed by **item 1** is to remove the reference to 'section 16' in subsection 11Q(5) of the Act and to replace it with references to the relevant offences provided by subsection 137.1 'False or misleading information' and subsection 137.2 'False or misleading documents' in the Criminal Code. These offences were added to the Criminal Code by the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* and came into effect during 2001.

Item 2 excises Christmas Island and Cocos (Keeling) Islands from the definition of 'Australia' in the Act. **Item 3** provides for separate certification arrangements to be made for goods to be exported from Christmas Island or Cocos (Keeling) Islands. It also

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specifies who may issue the certificates in respect of goods originating in Christmas Island or Cocos (Keeling) Islands. **Item 3** provides that a certificate may state that the goods are from the ‘Australian Territory of Christmas Island’ or the ‘Australian Territory of Cocos (Keeling) Islands’. According to the Explanatory Memorandum, the purpose of this provision is to clearly establish a link to Australia without compromising Australia’s pest or disease status in overseas markets.²⁰

Concluding Comments

There may be some connection between this Bill and an earlier piece of proposed legislation, the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002 (the AFFA Bill), that is still before the Parliament.²¹ One purpose of the AFFA Bill is to amend the *Quarantine Act 1908* (Quarantine Act) in order extend the Australian quarantine regime to Christmas Island. When he introduced the AFFA Bill on 29 May 2002, the Minister said in his second reading speech that:

This bill will extend the Quarantine Act 1908 to Christmas Island in accordance with the government’s policy to align conditions and standards in the Indian Ocean territories with those of comparable communities in the rest of Australia. The Quarantine Act already extends to the Cocos (Keeling) Islands. These amendments will extend the Quarantine Act to Christmas Island in the same way as the act has been extended to the Cocos (Keeling) Islands.

.....

In recognition of the differences in the pest and disease status between the mainland of Australia and Christmas Island, the bill will ensure that appropriate quarantine barriers continue to exist between Christmas Island and mainland Australia. At the same time, this approach will give Christmas Islanders the flexibility to determine a level of protection that best suits them, having regard to their own trading needs and the island’s unique pest and disease status.²²

Both the present Bill and the AFFA Bill may be seen in the context of the commitment of successive Governments to:

- align conditions and standards in the Indian Ocean Territories with those of comparable communities in the rest of Australia, and
- provide the residents of the Indian Ocean Territories, over time, with rights, opportunities and responsibilities equal to those of their fellow Australians.

The range of measures to achieve these goals were first set out in agreements signed on behalf of the Commonwealth by the then Prime Minister, Hon Bob Hawke, with the leaders of the Christmas Islands and Cocos (Keeling) Islands communities in 1991.

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Endnotes

- 1 The current Act arose out of events in the early 1980s. In August 1981 discoveries were made in the United States of horse meat having been substituted for beef by an Australian meat export establishment. The reputation of the Australian meat industry was severely tarnished. (See Royal Commission into the Australian Meat Industry, *Report*, 1982). In response to the ‘meat substitution scandal’ the *Customs (Unlawful Exportation of Food) Act 1982* and the *Meat Export (Penalties) Act 1982* were enacted. These Acts were replaced by the *Export Control Act 1982* which commenced operation on 1 January 1983.
- 2 See for example debates on previous amendments to the *Export Control Act 1982* including the Second Reading Speeches on the Export Control Amendment Bill 1991, Senate, *Hansard*, 30 May 1991, p. 3896 and 5339.
- 3 www.affa.gov.au
- 4 ‘Food exports up and down’, National Food Industry Strategy Ltd., *Media Release*, 11 March 2003 at www.nfis.com.au >>News & Events >> Media releases. See also *Composition of Trade, Australia 2002*, Market Information and Analysis Section, Department of Foreign Affairs and Trade, May 2003, Table 3: ‘Australia’s merchandise trade by broad category’, p. 23.
- 5 Commonwealth Grants Commission, *Report on Indian Ocean Territories*, Canberra 1999, p. 17.
- 6 *ibid.*, p. 13.
- 7 *ibid.*, p. 17.
- 8 The following sources provide information on economic activity on Christmas Island:
 Bureau of Transport Economics (Australia), *Christmas Island regional analysis: Report prepared for the Indian Ocean Territories Review*, December 1998
 Commonwealth Grants Commission, *Report on Indian Ocean Territories*, Canberra 1999
Indian Ocean Territories Review, [conducted jointly by the Department of Transport and Regional Services and the Department of Finance and Administration], January 1999.
- 9 Commonwealth Grants Commission, *Report on Indian Ocean Territories*, op. cit., p. 14.
- 10 Laura Tingle, ‘Cash flood puts island at risk’, *Australian Financial Review*, 1 July 2002, and Hon Ian Macfarlane, Minister for Industry, Tourism and Resources, ‘Moscow space talks bring lift-off a step closer’, *Media Release*, 14 July 2002.
- 11 Senator Trish Crossin, Senator for the Northern Territory, ‘Island not so rosy’, Letter to the Editor, *Northern Territory News*, 5 April 2003, p. 11.
- 12 Hon Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, ‘Permanent immigration facility for Christmas Island’, *Media Release*, 12 March 2002.
- 13 Hon Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, ‘Re-Tender for Christmas Island Immigration Centre’, *Joint Media Release* with Minister for Finance and Administration, Senator Nick Minchin, MPS 9/2003, 19 February 2003.

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- 14 Senator Nick Minchin, Minister for Finance and Administration, 'Project Manager appointed for construction of Christmas Island Immigration Reception and Processing Centre', *Media Release*, 9 May 2003.
- 15 Bureau of Transport Economics (Australia), *Cocos (Keeling) Islands regional analysis: Report prepared for the Indian Ocean Territories Review*, December 1998, p. 17.
- 16 Commonwealth Grants Commission, *Report on Indian Ocean Territories*, op. cit., p. 12.
- 17 *ibid.*, p. 13.
- 18 *ibid.*, p. 14 and Bureau of Transport Economics (Australia), *Cocos (Keeling) Islands regional analysis: Report prepared for the Indian Ocean Territories Review*, op. cit., p. 21.
- 19 Hon Warren Truss, Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech', *Export Control Amendment Bill 2003*, House of Representatives, *Debates*, 27 March 2003, p. 13426.
- 20 *Explanatory Memorandum*, *Export Control Amendment Bill 2003*, p. 3.
- 21 The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002 was introduced into the House of Representatives on 29 May 2002 and the second reading adjourned on the same day. On 18 September 2002 the Senate Scrutiny of Bills Committee recommendation was adopted and the provisions of the Bill were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee. The Committee reported on 12 November 2002. On 11 February 2003 the House of Representatives referred the Bill to the Main Committee.
- 22 Hon Warren Truss, Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech', *Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002*, House of Representatives, *Debates*, 29 May 2002, p. 2559.

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