QUARANTINE AMENDMENT BILL 1998

OUTLINE

This Bill seeks to amend the Quarantine Act 1908, the central plank of Australia’s quarantine legislation. It will ensure that Australia’s quarantine laws reflect the scope and focus of quarantine into the 21st century.

The major legislative proposals contained in this Bill are detailed below.

The scope of Quarantine
This Bill amends section 4 of the Act, which outlines the scope of quarantine, by including reference to the environment and economic activities. This provides formal recognition to the important role quarantine already has in protecting indigenous flora and fauna from exotic pests and diseases. A new Part will also be inserted to require consultation with the Minister for the Environment in certain circumstances.

Managed Risk
Australia’s quarantine policy is based on the concept of the management of risk to an acceptably low level. The natural and economic movement of people, animals, plants and goods results in an inevitable quarantine risk to Australia. Australia’s approach is to manage the risk in a manner that provides the appropriate protection for Australia, is based on scientific reasoning and is consistent with international rules and standards. This Bill contains some minor adjustments to sections such as sections 44C and 44D of the Act to better reflect this approach. It also introduces a definition in relation to the ‘level of quarantine risk’ which is used in the provisions that relate to the managed risk approach.

Border Measures
This Bill introduces a number of amendments and some new provisions to ensure that the Act is comprehensive yet flexible in its approach in relation to pre border, border and post border measures.

In particular, the pre-arrival reporting obligations (new sections 27A and 27B), are clarified and drafted in a manner that allows for flexibility as to the time the report is made, the material to be contained in it and to provide for reporting by exception (for example, in relation to scheduled international flights). The amendments bring existing provisions in this respect into the Act from the Quarantine (General) Regulations to ensure that appropriate penalty provisions apply.

In addition, section 28 of the Act has been redrafted to provide for greater flexibility in the nature of questions that can be asked of the master or medical officer of a vessel. There is also a requirement that answers be corrected if they are later discovered to be inaccurate.

Section 36(1) of the Act is also amended to provide greater flexibility in relation to where a vessel is to perform quarantine. A vessel is currently compelled to move to a quarantine station in order to be treated.

A new section 48AC is inserted into the Act which is designed to provide appropriate powers in relation to the high risk associated with packaging material.
A new provision, section 70BB ensures appropriate recognition is given in the Act to the role played by animals in assisting quarantine officers in border activities.

The emergency power in section 12A of the Act is also amended to enable an emergency response not only in relation to diseases that have been declared by proclamation to be quarantinable diseases, but also to unproclaimed diseases or pests. This ensures that expedient measures can be taken in respect of newly emerging diseases or pests.

The Bill amends the provisions in the Act relating to seizure. Section 68 of the Act will provide for a system of rectification that enables importers to rectify deficiencies that might otherwise cause their goods to be refused entry into Australia. Where goods have been imported contrary to the Act, a Director of Quarantine may give a notice to a person stating that the goods will be seized, sold, destroyed, exported from Australia or otherwise disposed of in any way that the Director thinks fit unless, within the time stated on the notice, the goods are dealt with in a way set out in the notice or destroyed or exported from Australia.

This provision creates some flexibility to deal with situations where the importation would be in contravention of the Act due to a minor technical deficiency. For example, a permit might require that an animal being imported into Australia is to be accompanied by certain certificates. If the animal arrives in Australia without the certificates, this provision will enable the importer to provide that certificate or export the animal within a time stated on the notice and avoid forfeiture and seizure of the goods. However, compliance with a rectification notice does not mean that the importer cannot be convicted of an offence in relation to the illegal importation under section 68 of the Act.

The Protected Zone and the Special Quarantine Zone
A number of provisions have been amended to ensure that there is a consistent approach in relation to the special risks associated with overseas vessels and aircraft travelling in the Special Quarantine Zone and the Protected Zone. The Special Quarantine Zone and Protected Zone restrictions are primarily concerned with enabling the movement of the traditional inhabitants of those areas. While facilitating such movements is in line with the Torres Strait Treaty, it is also necessary that there be some control to ensure that diseases or pests are not introduced, established or spread.

In particular, the pre-arrival reporting obligations mentioned above will apply. Without the pre-arrival information, it would often be that precautionary measures would be adopted which might result in over regulation.

By requiring pre arrival information, a more streamlined relevant set of procedures can be put in place to ensure appropriate measures are adopted. In addition, section 55A of the Act, which contains a powers to order goods into quarantine will apply and the powers of a quarantine officer to search such vessels and goods on board the vessel is clarified in section 70A.

A new definition of a ‘Special Quarantine Zone’ is inserted into the Act to ensure that there is a flexible approach in dealing with quarantine matters that arise in a particular area, rather than relying on the more intrusive powers in section 13(1)(h) and (i) of the Act.

Industry Participation
A number of provisions are amended to facilitate the increasing role of industry in the performance of some quarantine activities. In particular, section 46A of the Act is amended to provide a comprehensive framework for the issuing, revoking and suspension of approvals for commercial quarantine premises. Section 66B of the Act, which provides for compliance agreements, is also
amended to clarify that the agreements can be entered into in relation to procedures under the Act, regulations, proclamations, conditions on permits or approvals and in connection with activities carried out in the performance of functions related to quarantine.

**Offence and Penalty provisions**

As a result of the new *Criminal Code Act 1995* (the Criminal Code), the offence provisions have been redrafted so that the elements of the offence are distinguished and the rules in relation to mental and fault elements, the burden of proof and evidentiary provisions apply.

The penalty provisions have also been redrafted in a manner that is consistent throughout the Act and in accordance with the Criminal Code.

The Bill introduces a number of new offences, for example, in relation to making false statements (section 69A(12)), or failing to comply with a direction given by a quarantine officer (section 74DA).

In addition, the Bill introduces new Part VIA which updates the entry and search powers to accord with current Commonwealth policy.

Some material currently contained in the Quarantine Regulations is also placed into the Act to ensure appropriate penalties apply, for example, in relation to quarantine stations, (section 76).

**Clarification of Definitions**

A number of antiquated terms are replaced. For example, a definition of an aircraft is inserted and the phrase ‘vessel engaged in navigation by air’ removed. New definitions of ‘police officer’ and ‘officer of Customs’ are inserted so that a consistent definition applies throughout the Act in relation to these terms.

In particular, the definitions of ‘disease affecting animals’ and ‘disease affecting plants’ are repealed. In substitution, the definitions of disease and pest have been revised and apply consistently throughout the Act. This ensures that the Act accommodates the cross transmission of diseases between animals and plants and to humans.

In relation to plants, the term ‘quarantinable pest’ is introduced in substitution for ‘quarantinable disease’. This reflects the standard international approach to refer to pests rather than diseases when discussing plants. The definitions of ‘quarantinable disease’ or ‘quarantinable pest’ are particularly relevant throughout the Act in relation to the exercise of many of the powers provision, for example, ordering goods into quarantine under sections 35 and 55A of the Act.

**Miscellaneous**

There are other miscellaneous amendments. A number of provisions have been amended to provide greater flexibility in the Act so as to enable the repeal of prescriptive regulations. These amendments include powers to order particular treatments in relation to goods, to provide the period for the performance of quarantine for particular goods, or to provide directions in relation to, for example, animals under quarantine surveillance (section 52).

**FINANCIAL IMPACT STATEMENT**
The amendments proposed in this Bill have no direct financial implications.
NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short Title

1. Provides for the Act to be cited as the *Quarantine Amendment Act 1998*.

Clause 2 - Commencement

2. This clause provides for the commencement of the various amendments contained in the Act as set out below.

3. Subclause 2(1) provides that subject to the following the Act will commence on the day on which the Act receives the Royal Assent.

4. Subclause 2(2) provides that Item 86 of Schedule 1 commences on the same day as the *Environment Protection and Biodiversity Conservation Act 1998*.

5. Subclause 2(3) provides that the remaining items of Schedule 1 commence on a day to be fixed by Proclamation.

6. Subclause 2(4) provides that the commencement by Proclamation of the Schedule is subject to the standard provision that if no provision has been made for commencement within 6 months of the Act receiving the Royal Assent, then the amendments will commence automatically on the first day after the end of that 6 month period.

Clause 3 - Schedule(s)

7. This clause provides for the amendment of the *Quarantine Act 1908* as set out in the schedule.
SCHEDULE 1

AMENDMENT OF THE QUARANTINE ACT 1908

Item 1 - Subsection 2B(1)

8. By inserting the words “quarantinable pest” into the existing subsection, the Governor-General is empowered to declare by proclamation the existence in a part of the Commonwealth of an epidemic or the danger of an epidemic of a quarantinable pest. The existing provision only applies in respect of quarantinable diseases.

Item 2 - Subsection 2B(3) and (4)

9. This item repeals the existing subsection and replaces it with an offence that is drafted in a way that clearly enables the Criminal Code to apply. It provides a penalty for failing to comply with a direction given under subsection 2B(2) of the Act.

Item 3 - Section 4

10. Section 4 of the Act is repealed and replaced with a provision that is drafted in a more modern style. The new section 4 also contains a reference to the environment and economic activities as being relevant to the scope of quarantine. This ensures that appropriate recognition is given to the important role quarantine already has in protecting indigenous flora and fauna from exotic pests and diseases.

Item 4 - Subsection 5(1)

11. This item inserts a new definition of aircraft into section 5 of the Act. This reflects the approach adopted in these amendments to update some of the terminology contained in existing provisions. Current provisions of the Act that refer to “vessels engaged in navigation by air” will now refer to “aircraft”.

Item 5 - Subsection 5(1)

12. This item inserts a definition of analyst into section 5 of the Act.

Item 6 - Subsection 5(1)

13. This item clarifies the meaning to be given to animals, plants or goods or animals, plants or other goods.

Item 7 - Subsection 5(1)

14. This item provides for a definition of the area in the vicinity of the Protected Zone. Subsection 5(8) provides the Minister with the power to declare such an area.
15. This item amends the Act to include the **Ashmore and Cartier Islands** as part of Australia and excludes **Christmas Island** as part of Australia. As a result of this definition, vessels coming into Australia from the Christmas Islands are treated as coming from overseas and goods arriving from this destination are dealt with as if they were imported goods.

16. A definition of **ballast water** has been inserted by this item.

17. A definition of **commander** has been inserted to assist in clarifying the application of certain obligations in relation to the landing of vessels and aircraft.

18. This item amends the Act to clarify that when the term Commonwealth is used in a geographical sense, the **Ashmore and Cartier Islands** are part of the Commonwealth and **Christmas Island** is not part of the Commonwealth.

19. This item clarifies that where the Act refers to **compliance**, it has a meaning given by section 5(1A).

20. This item clarifies that where the words **compliance agreement** appear in the Act, they refer to an agreement entered into under section 66B of the Act.

21. This item clarifies that where the word **contravention** appears, it has a meaning given by section 5(1A).

22. This item clarifies the meaning of **discharge** where used in the Act.
Item 16 - Subsection 5(1)

23. This item repeals the definition of ‘disease in relation to animals’. In order to accommodate the cross transmission of disease from animals and plants to humans, the new approach is to repeal the definition of ‘disease in relation to animals’ and rely on the definition of disease as amended by this Bill. This will result in consequential amendments to a number of sections.

Item 17 - Subsection 5(1)

24. This item repeals the definition of ‘disease in relation to plants’. In order to accommodate the cross transmission of disease from animals and plants to humans, the new approach is to repeal the definition of ‘disease in relation to plants’ and rely on the definition of pest as amended by this Bill. This will result in consequential amendments to a number of sections.

Item 18 - Subsection 5(1)

25. This item introduces a new definition of a disease. The item ensures that where the word disease is used in the Act, it includes a micro-organism, a disease agent, an infectious agent and a parasite.

Item 19 - Subsection 5(1)

26. This item inserts a new definition of document into the Act.

Item 20 - Subsection 5(1)

27. This item clarifies that when an aircraft lands at a port, it is regarded as having entered that port for the purposes of the Act. It also clarifies the fact that the provisions relating to entry and search of vessels, vehicle or aircraft include the ability to go on board a vessel, vehicle or aircraft.

Item 21 - Subsection 5(1)

28. This item inserts a definition of environment.

Item 22 - Subsection 5(1)

29. This item will insert a definition of evidential material into subsection 5(1) of the Act. Evidential material means:

- a thing with respect to which an offence against this Act has been committed or is suspected on reasonable grounds to have been committed; and

- a thing as to which there are reasonable grounds for suspecting that it will afford evidence of the commission of an offence against the Act; and
- a thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purposes of committing an offence against this Act.

30. The issue of an offence-related warrant to enter and search premises where a magistrate is satisfied that there are reasonable grounds for suspecting that there is or will be within the relevant time \textit{evidential material} at the premises is provided for under new section 66AF (see item 221). New section 66AD, also provides for the seizure of \textit{evidential material} (see item 221).

\textbf{Item 23 - Subsection 5(1) (at the end of the definition of examine)}

31. The definition of \textit{examine} is amended by adding a new paragraph (d) it provides that to examine in relation to a vessel, installation or premises includes carrying out tests on and taking samples from the vessel, installation or premises.

\textbf{Item 24 - Subsection 5(1)}

32. This item will insert into subsection 5(1) of the Act a definition of \textit{executing officer} in relation to warrants.

\textbf{Item 25 - Subsection 5(1)}

33. This item provides that where the term \textit{exposed} is used in the Act, it has the meaning given to it under section 5B.

\textbf{Item 26 - Subsection 5(1)}

34. This item provides that \textit{give} includes grant.

\textbf{Item 27 - Subsection 5(1) (definition of goods)}

35. This item redrafts the definition of \textit{goods} to ensure that it is broad in its effect and captures such items as mail or ballast water. It would also encompass passenger baggage for the purposes of provisions such as new section 70A.

\textbf{Item 28 - Subsection 5(1)}

36. This item provides that \textit{grant} includes give.

\textbf{Item 29 - Subsection 5(1)}

37. This item provides that where the phrase ‘\textit{in quarantine}’ is used in the Act in relation to a vessel or installation, it refers to the meaning given in section 37 of the Act.
Item 30 - Subsection 5(1) (definition of landing place)

38. This item replaces the phrase ‘vessel engaged in navigation by air’ with the newly defined term ‘aircraft’.

Item 31 - Subsection 5(1)

39. This item provides that where the phrase level of quarantine risk is used throughout the Act, it is to have the meaning given to that phrase in section 5D of the Act. The phrase level of quarantine risk is used in a variety of sections including section 44C, 44D and 78C of the Act.

Item 32 - Subsection 5(1)

40. This item will amend subsection 5(1) by inserting a definition of magistrate.

Item 33 - Subsection 5(1) (paragraph (a) of the definition of master)

41. This item clarifies the definition of master in subsection 5(1) of the Act to take account of the new definition of aircraft.

Item 34 - Subsection 5(1)

42. This item will insert a definition of occupier into subsection 5(1) of the Act which is relevant in relation to new Part VIA of the Act inserted by item 221.

Item 35 - Subsection 5(1)

43. This item will insert a definition for the phrase offences against this Act. It provides that where this phrase is used in the Act, it refers to offences against the Act, regulations, and particular sections of the Crimes Act 1914.

Item 36 - Subsection 5(1)

44. This item will insert into subsection 5(1) a definition of officer assisting in relation to a warrant.

Item 37 - Subsection 5(1)

45. This item inserts a definition into subsection 5(1) of an officer of Customs that draws together in a consistent way current references to an officer of Customs throughout the Act.
Item 38 - Subsection 5(1)

46. This item provides that where the term *on* is used in relation to premises, it includes ‘in’.

Item 39 - Subsection 5(1)

47. This item introduces the term *operator*. This assists in defining the liability and obligations of persons in relation to vessels. See for example, the pre-arrival reporting obligations in new section 27A, item 159.

Item 40 - Subsection 5(1)

48. Consequential to the introduction of the term aircraft, this item introduces a definition of an *overseas aircraft*.

Item 41 - Subsection 5(1) (definition of oversea vessel)

49. The existing provision is repealed.

Item 42 - Subsection 5(1)

50. The definition of oversea vessel is replaced with a similar definition that uses the term ‘*overseas vessel*’ rather than ‘oversea’. This will result in a number of minor consequential amendments throughout the Act.

Item 43 - Transitional provision relating to overseas vessels

51. This item is a transitional provision which ensures that where the word ‘oversea vessel’ has been used in an instrument in force prior to the amendments introduced by this Bill, that it is taken to be a reference to an ‘overseas vessel’, the term introduced in item 42.

Item 44 - Subsection 5(1)

52. Substitutes a new definition of *pest* that includes any animal, or any plant, that is a pest.

Item 45 - Subsection 5(1)

53. This item inserts a new definition of *police officer* to apply throughout the Act. The reference to constable in the Act will be replaced by the term police officer which will bring consistency in definitions to various sections of the Act.
Item 46 - Subsection 5(1) (definition of port)

54. This item inserts a new definition of *port* in order to clarify the position in relation to landing places for aircraft.

Item 47 - Subsection 5(1)

55. This item inserts a definition of *premises* into subsection 5(1) of the Act.

Item 48 - Subsection 5(1)

56. This item provides that a *proclaimed place* has a meaning given by section 12.

Item 49 - Subsection 5(1) (definition of quarantinable disease)

57. The definition of *quarantinable disease* is amended by removing the reference to specific diseases in the Act. All quarantinable diseases will now be defined by proclamation. This is consistent with the approach adopted for quarantinable pests.

Item 50 - Saving of Proclamations

58. This item is a savings provision in respect of a proclamation made under section 5(1) of the Act for the purposes of the definition of a quarantinable disease.

Item 51 - Subsection 5(1)

59. This item inserts a definition of a *quarantinable pest*. This reflects a new approach that is consistent with international norms of referring to pests when talking of plant related maladies.

Item 52 - Subsection 5(1)

60. This item inserts a definition of *Secretary*.

Item 53 - Subsection 5(1)

61. This item provides that a reference in the Act to a *Special Quarantine Zone* is a reference to an area declared by the Minister under section 5A of the Act to be such an area.

Item 54 - Subsection 5(1)

62. This item inserts a definition of *thing*. 

Item 55 - Subsection 5(1)
63. This item provides for a definition of the word *treatment* and provides examples of the variety of activities that are covered by the term.

**Item 56 - Subsection 5(1)**

64. This item clarifies that where the phrase *under* this Act appears, it has a meaning given by subsection 5(1A).

**Item 57 - Subsection 5(1) (definition of vessel)**

65. Consequential to the new definition of aircraft, this item provides a new definition of the word *vessel*.

**Item 58 - Subsection 5(1)**

66. Consequential to the new definition of aircraft, a definition of a *voyage* in relation to an aircraft is introduced by this item.

**Item 59 - Subsection 5(1)**

67. This item inserts new subsection 5(1A), which clarifies the scope of phrases such as ‘under this Act’, ‘contravention of this Act’ and ‘compliance with this Act’.

**Item 60 - After section 5**

68. This item introduces new *section 5A* under which the Minister may declare an area to be a special quarantine zone by publishing a notice in the *Gazette*. This approach is consistent with the way in which an area in the vicinity of the Protected Zone is declared under subsection 5(8) of the Act.

69. This item also introduces new *section 5B*. It sets out when something is considered to have been exposed to something else for the purposes of the Act. The provision encompasses direct and indirect exposure.

70. New *section 5C* is also introduced by this item. It confirms that where the Act empowers a person to do something, that person may cause another person to do the thing. Where the Act requires a person to do the thing, the person can comply with the requirement by causing another person to do it on his or her behalf.

71. New *section 5D* provides an explanation of what is meant by the phrase *level of quarantine risk* where it appears in the Act. The phrase is used in sections such as sections 44C and 44D of the Act and reflects the “managed risk” approach that Australia adopts with respect to quarantine.

72. New *section 5E* puts beyond doubt that where provisions of the Act refer to the more general terms of *vessel* or *master of a vessel*, they also include a reference to an aircraft and the commander of an aircraft.
Item 61 - At the end of section 6

73. This item inserts new subsection 6(2) which clarifies the operation of the Act to the Cocos Islands.

Item 62 - Sections 6AA and 6AB

74. This item substitutes new section 6AA which clarifies that the Act does not extend to the Territory of the Christmas Island.

75. It also substitutes new section 6AB which clarifies that the Act extends to the Territory of Ashmore and Cartier Islands.

Item 63 - After section 6A

76. This item provides for new section 6B. This section provides confirmation as to the power to grant various instruments referred to in the Act and to grant them either unconditionally or subject to conditions or restrictions. It also clarifies that where there is a power to make a Proclamation, order, determination or declaration or give an approval, direction, authorisation or permit, there is a power to suspend, vary or revoke the relevant instrument.

77. New section 6C clarifies that where something can be done subject to a condition, restriction or requirement, then subject to a contrary intention, the condition, restriction or requirement might apply before or after the doing of the act to which the condition, restriction or requirement relates and the condition, restriction or requirement might be required to be complied with before or after the doing of the act. For example, if the act is importation, then a condition may require something to be done before or after the importation.

Item 64 - Subsection 8A(2) and (3)

78. This item redrafts the existing provision to clarify that the appointment of a Chief Quarantine Officer is discretionary.

Item 65 - Saving of determinations

79. This item is a savings provisions in relation to appointments of Chief Quarantine Officers.

Item 66 - Subsection 8A(6)

80. This item is a consequential amendment to new subsection 8A(2).

Item 67 - subsection 8B(2)

81. This item redrafts subsection 8B(2) to clarify that the appointment of a Chief Quarantine Officer (Plants) is discretionary.
Item 68 - Saving of determinations

82. This item is a savings provision in relation to previous appointments of Chief Quarantine Officers (Plants).

Item 69 - Subsection 8B(3)

83. This item is a consequential amendment to new subsection 8B(2).

Item 70 - Subsection 8B(6)

84. This item is a consequential amendment to new subsection 8B(2).

Item 71 - subsection 9(1)

85. This item is a consequential amendment to new subsections 8A(2) and 8B(2).

Item 72 - subsection 9(3)

86. This item redrafts subsection 9(3) in a manner that clarifies that the appointment of quarantine officers (human quarantine), is discretionary.

Item 73 - Saving of appointments

87. This item is a savings provision in relation to any prior appointments of quarantine officers (human quarantine).

Item 74 - Subsection 9AA(2)

88. This item redrafts subsection 9AA(2) to clarify that the appointment of Chief Quarantine Officers (Animals) and (Plants) is discretionary.

Item 75 - Subsection 9AA(4)

89. This item redrafts subsection 9AA(2) to clarify that the appointment of Chief Quarantine Officers (Animals) and (Plants) is discretionary.

Item 76 - Saving of appointments

90. This item is a savings provision in relation to any previous appointments of quarantine officers (animals) or (plants).
Item 77 - Subsection 9A(1)

91. This item clarifies that either Director may appoint temporary quarantine officers.

Item 78 - Subsection 9A(1A)

92. This item is consequential to the preceding amendment.

Item 79 - Subsection 9A(1B)

93. This item redrafts subsection 9A(1B) in a more modern style and to take account of the amendments in items 77 and 78.

Item 80- subsection 9A(4)

94. This item repeals subsection 9A(4), as the matter is clarified by new subsection 6(2).

Item 81 - Saving of appointments and authorities

95. This item is a savings provision in relation to any prior appointments of temporary quarantine officers.

Item 82 - Sections 10, 10A and 10B

96. This item inserts a new section 10 which clarifies that the Minister may delegate to the Secretary, a Director of Quarantine or an officer all or any of his or her powers under the Act.

97. New section 10A clarifies that the Secretary may delegate to a Director of Quarantine or an officer all or any of his or her powers under the Act.

98. New section 10B clarifies that a Director of Quarantine may delegate to an officer, all or any of his or her powers under the Act.

Item 83 - Saving of delegations

99. This item is a saving provision for previous delegations by the Minister and Director of Quarantine.

Item 84 - Section 11

100. This item amends section 11 so that it is drafted in a manner that is consistent with current protocols in respect of Commonwealth and State relations.
Item 85 - Saving of arrangements

101. This item saves an arrangement that was entered into under section 11 prior to amendment.

Item 86 - After Part II

102. This item inserts a new Part 11A which specifies when the Director of Quarantine is required to seek advice from the Minister for the Environment.

Item 87 - Section 12

103. This item extends the scope of section 12 to quarantinable pests.

Item 88 - Section 12A

104. This amendment extends the scope of section 12A to allow an emergency response not only in relation to diseases that have been declared by proclamation to be quarantinable diseases, but also to unproclaimed diseases. This ensures that an immediate or appropriate response can be taken in an emergency in respect of newly emerging diseases. The amendment also enables action to be taken under section 12A to prevent the spread of a pest.

105. Subsection 12A(2) of the existing section as it relates to obstructing an officer, has not been retained as it is now dealt with under the Crimes Act 1914. With respect to compliance, the section has been rewritten in a manner consistent with the Criminal Code.

Item 89 - Paragraphs 13(1)(a) and (aaa)

106. Consequential to the new definition of overseas vessel, this item replaces “oversea” with “overseas”.

Item 90 - Paragraph 13(1)(aa)

107. This item substitutes the new term “aircraft” for “vessels engaged in navigation by air”.

Item 91 - Saving of Proclamations

108. This item is a savings provision that is required due to the introduction of the new term “aircraft”.

Item 92 - Paragraph 13(1)(b)

109. This item amends paragraph 13(1)(b) of the Act, so that particular ports may declared as landing places for goods as well as for animals and plants.
Item 93 - Saving of Proclamations

110. This item is a saving provision for any proclamation made in respect of landing places for animals and plants.

Item 94 - After paragraph 13(1)(c)

111. This item provides for the insertion of the power, which enables the Governor-General to declare a disease or pest to be a quarantinable disease or pest, in a more appropriate location in the Act. This proclamation making power is currently contained in the existing definition of quarantinable disease or pest in section 5(1) of the Act. As that section is a definition section, the power has been placed in the body of the Act for certainty.

Item 95 - Paragraph 13(1)(d)

112. This item amends the existing provision by extending it to importations as well as introductions. It also refines the provision by referring to disease or pest as they are now defined.

Item 96 - Saving of Proclamations

113. This item is a savings provision to capture any proclamation made under the provision prior to amendment.

Item 97 - Paragraph 13(1)(e)

114. This item refines the existing provisions as a consequence of the new definitions of disease or pest.

Item 98 - Saving of Proclamations

115. This item is a savings provision to capture any proclamation made under the provision prior to amendment.

Item 99 - Paragraph 13(1)(fa)

116. This item amends the existing provision by extending the proclamation power in relation to bringing into port, to plants and other goods.

Item 100 - Paragraph 13(1)(g)

117. This item inserts paragraph 13(1)(ga) which provides that the removal power applies between the Cocos Islands and Australia and Australia and the Cocos Islands.
118. The existing provision is amended by this item consequential to the new definitions of disease or pest.

Item 102 - Paragraph 13(1)(i)

119. The existing provision is amended by this item consequential to the new definition of disease or pest and the application of the provision to Australia and the Cocos Islands.

Item 103 - Subsections 13(1A) and (1B)

120. This item replaces the term oversea with overseas.

Item 104 - Subsection 13(2)

121. This item redrafts a portion of subsection 13(2) in a simpler style.

Item 105 - Subsection 13(2A)

122. This item extends the ability to grant a permit for introductions, bringing into port and removals. This item reflects the amendments made to sections 13(1)(d), (e), (fa) and new 13(1)(ga). Section 13(2AA) ensures that a permit may cover a single or multiple importation, bringing in, or removal of a specified thing or class of things.

Item 106 - Subsection 13(2B)

123. This item enables conditions to be attached to permits for introductions and bringing into port as well as to importations and removals.

Item 107 - Paragraph 13(2C)(a)

124. As the amendment in item 105 enables permits for introductions and bringing into port, this item enables permits for introductions and bringing into port to be revoked where the level of quarantine risk (new section 5D, item 60) has altered.

Item 108 - Subsection 13(3)

125. Consistent with the new approach in relation to the definition of a disease or pest, this item replaces the reference to a disease or pest affecting animals or plants and quarantinable disease with ‘disease or pest’.
Item 109 - Subsections 13(4) and (5)

126. This item removes reference to ‘articles’ as the new definition of goods in subsection 5(1), item 27 ensures that articles are covered by the term ‘goods’.

Item 110 - At the end of section 13

127. This item creates new section 13(6) and section 13(7). Subsection 13(4) of the Act enables proclamations to be made to exempt traditional inhabitants in certain circumstances from the operation of proclamations that prohibit importation into Australia of articles, animals and plants. Subsection 13(5) of the Act provides that any such exempting proclamation can be made generally or subject to conditions or restrictions as specified in the Proclamation. There is no similar power to exempt traditional inhabitants in relation to proclamations that prohibit removals. New section 13(6) provides that a proclamation may be made to exempt traditional inhabitants from proclamations that prohibit removals. New section 13(7) provides that such a proclamation may be granted generally or subject to conditions or restrictions as specified in the Proclamation.

Item 111 - At the end of paragraph 14(d)

128. This item clarifies that paragraph 14(1)(d) applies to any class of persons, animals, plants or other goods.

Item 112 - Saving of exemptions

129. This item is a savings provision in relation to any exemption previously granted under section 14(1)(d) of the Act.

Item 113 - Subsection 15

130. This item substitutes a new section 15 which empowers the Director of Quarantine rather than the Minister to give certain directions in relation to the carrying of efficient disinfecting apparatus or appliances and disinfectants as are specified.

131. Empowering the Director of Quarantine to give directions, provides for greater flexibility in the disinfecting apparatus carried.

Item 114 - Orders taken to be directions

132. This item is a savings provision in relation to any order made under subsection 15(1) of the Act.

Item 115 - Section 15A

133. The flexibility provided for in the amendments to subsection 15(1) enables the repeal of this provision.
Item 116 - Subsection 16AC(2)(including the penalty)

134. The existing subsection 16AC(2) requires that where notification of the importation of goods is required and is not given prior to the importation of the goods, that the notice must be provided “as soon as practicable after the importation”.

135. To provide greater certainty as to the obligation to provide the notice, this item amends that section, by providing that where a person is required to give a notice of intention to import, that the notice must be given within 35 days of
- the person or their agent receiving notice of the landing of the goods; or
- if the person or their agent does not receive notice of the landing, the day on which the goods are received.

Item 117 - Subparagraph 16AC(5)(a)(ii)

136. The existing provision is amended consequential to the new definition of an officer of Customs.

Item 118 - Subsection 16AC(6)

137. This item introduces new subsection 16AC(5A) which provides that the regulations may set out what will constitute the giving of notice in satisfaction of the requirements of subsection 16AC(1) or (2).

138. This item also redrafts subsection 16AC(6) in a more modern drafting style.

Item 119 - Saving of regulations

139. This item is a savings provision in relation to regulations made under section 16AC(5A).

Item 120 - Subsection 16AD(4) (including the penalty)

140. This item provides for the redrafting of subsection 16AD(4) in accordance with current Commonwealth policy.

Item 121 - Section 16AE (penalty)

141. This item provides for the redrafting of section 16AE, a penalty provision, in accordance with current Commonwealth policy.

Item 122 - Subsection 16AF(2) (including the penalty)
142. This item repeals existing subsection 16AF(2) which is an offence and penalty provision and substitutes new subsection 16AF(2) and (3) which redrafts the provision in a manner that reflect current Commonwealth criminal law policy.

Item 123 - At the end of Part III

143. This item introduces new section 16AH which provides that where a vessel illegally lands at a place other than a port in contravention of the Act, an officer may perform any function or exercise and powers in relation to the vessel, or its operator, master, crew, passengers or cargo, that he or she could have performed or exercised if the vessel were at a port.

Item 124 - Subsection 17(1)

144. This item makes a minor technical amendment to punctuation.

Item 125 - Paragraphs 17(1)(a) and (b)

145. This item makes a minor technical amendment to punctuation.

Item 126 - Paragraphs 17(1)(b) and (2)(b)

146. This item expands the scope of these provisions to cover quarantinable pests so that a vessel or installation on which a quarantinable pest or a pest believed or suspected to be a quarantinable pest has broken out or been discovered, will be subject to quarantine.

Item 127 - Paragraphs 17(1)(b) and 17(2)(b)

147. This item makes a minor technical amendment to punctuation.

Item 128 - Subsection 18(1)

148. This item makes a minor technical amendment to punctuation.

Item 129 - Paragraphs 18(1)(a) and (2)(a)

149. This item makes a minor technical amendment to punctuation.

Item 130 - Paragraph 18(1)(b)

150. This item expands the provision so that a person infected with a quarantinable pest is subject to quarantine in addition to a person infected with a quarantinable disease. This recognises the potential for pests to affect humans.
Item 131 - Paragraph 18(1)(d)

151. This item provides for a minor technical amendment to punctuation.

Item 132 - At the end of subsection 18(1)

152. This item inserts new paragraph 18(1)(f) which provides that a person who has been ordered into quarantine is also, for the purposes of the Act, subject to quarantine. This amendment is consistent with the current approach in paragraph 17(1)(c) in relation to vessels.

Item 133 - Subsection 18(2)

153. This item provides for a minor technical amendment to punctuation.

Item 134 - paragraph 18(2)(b)

154. This item amends paragraph 18(2)(b) so that all goods infected with a quarantinable pest are subject to quarantine in addition to those goods infected with a quarantinable disease.

Item 135 - paragraph 18(2)(c)

155. This item amends paragraph 18(2)(b) so that all goods infected with a quarantinable pest are subject to quarantine in addition to those goods infected with a quarantinable disease.

Item 136 - paragraph 18(2)(d)

156. This item provides for a minor technical amendment to punctuation.

Item 137 - Paragraph 18(2)

157. This item inserts new paragraph 18(2)(f) which provides that goods that have been ordered into quarantine are also, for the purposes of the Act, subject to quarantine. This amendment is consistent with the current approach in paragraph 17(1)(c) in relation to vessels.

Item 138 - Sections 20 and 20A

158. This item substitutes new sections 20 and 20A which are rewritten to take account of Commonwealth criminal law policy and the new definition of aircraft.

Item 139 - Section 20AA

159. This item is a minor technical amendment to punctuation.
Item 140 - At the end of section 20AA

160. This item introduces new subsection 20AA(2), which is an offence provision in relation to a special permission given under subsection 20AA(1).

Item 141 - Sections 20B and 20C

161. This item repeals existing sections 20B and 20C. New section 20B is drafted in a more modern style, takes account of the new definition of aircraft, commander and operator and sets out the offence and penalty provision in accordance with current Commonwealth policy.

162. New section 20C is drafted in a more modern style, takes account of the new definition of aircraft and provides that a Director of Quarantine may give directions as to how an aircraft, a person, an animal, a plant or other goods that have been landed at a place that is not a landing place, are to be dealt with rather than providing for detailed prescription to be contained in regulations. Subsection 20C(3) specifies who the direction may be given to and subsection 20(5) provides that it is an offence not to comply with a direction. The section does not apply where a person has been granted permission under section 20AA of the Act so long as any condition attached to such a permission has been complied with.

163. This item also inserts new section 20D which reflects existing section 50 of the Act, but extends it to other goods. The provision provides that it is an offence to land imported animals, plants or other goods at a place that is not declared to be a port at which they may be landed unless
- they are landed from an overseas vessel; and
- a Director of Quarantine has given written permission for them to be landed at that place; and
- where the permission is subject to a condition, that condition has been satisfied.

Item 142 - Subsection 21(1) (including the penalty)

164. This item substitutes new section 21(1) and new section 21(1A). The new sections reflect the existing provisions but are drafted in a more modern style and separate the obligations for masters of vessels and commanders of aircraft. It is current practice to refer to a master of a vessel and a commander of an aircraft.

Item 143 - Saving of regulations

165. This item is a savings provision in relation to any regulation prescribing a signal for the purposes of paragraph 21(1)(c) of the Act.

Item 144 - Subsection 21(2) (penalty)

166. This item amends the penalty provision in line with current Commonwealth policy.
Item 145 - At the end of section 21

167. This item inserts new subsection 21(3) which clarifies in accordance with the Criminal Code, that an offence against the section is an offence of strict liability.

Item 146 - At the end of paragraph 22(1)(c)

168. This item extends the scope of the section to accommodate quarantinable pests as well as diseases.

Item 147 - At the end of subsection 22(1)

169. This item amends the penalty provision in line with current Commonwealth policy.

Item 148 - Subsection 22(1A)

170. This item repeals the existing definition of vessel for the purposes of this section. A new definition is inserted by item 150 below.

Item 149 - Subsection 22(2) (penalty)

171. This item repeals the existing penalty for the purposes of this section and substitutes a penalty in line with current Commonwealth policy.

Item 150 - At the end of section 22

172. This item adds new subsection 22(3) which provides that a notice given under subsection (2) is to be given in a form approved by a Director of Quarantine. It also adds new subsection 22(4) which has been drafted in a more modern style to provide for a definition of vessel.

Item 151 - Subsection 24(1) (penalty)

173. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 152 - Subsection 24(2) (penalty)

174. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.
Item 153 - At the end of section 24

175. This item adds new subsection 24(3) which clarifies in accordance with the Criminal Code, that an offence against the section is an offence of strict liability.

Item 154 - Section 25 (penalty)

176. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 155 - Section 25A (penalty)

177. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 156 - Subsection 26(1) (penalty)

178. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 157 - Section 26A

179. This item amends the section to take account of the new definition of aircraft.

Item 158 - Section 26A (penalty)

180. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 159 - Sections 27, 28 and 29

181. This item repeals sections 27, 28 and 29 and inserts new sections 27A, 27B, 28, 29, 29A and 29B.

182. New section 27A deals with pre-arrival reports and pre-departure reports for vessels other than aircraft and installations while new section 27B deals with pre-arrival and pre-departure reports for aircraft.

183. These sections insert requirements most of which are currently contained in the Quarantine (General) Regulations. Placing these provisions in the Act ensures that a more appropriate penalty can be attached to the provisions. The provisions have also been inserted in a way that allows for flexibility as to the time the report is made, the material to be contained in the report and to deal with exception reporting (for example, in relation to scheduled international flights).
184. Reports are also now required from vessels travelling to Australia or the Cocos Islands from the Special Quarantine Zone or the Protected Zone and also from those vessels travelling between Australia and the Cocos Islands.

185. The new sections contain obligations to correct incomplete or incorrect material given to a quarantine officer and identifies who is responsible in terms of operator or the master.

186. New section 28 provides a quarantine officer with the power to require a master or medical officer of a vessel or installation to answer questions. The provision has been redrafted in a more modern style and is extended to apply to the master, commander, medical officer or agent of the operator of a vessel or aircraft. The new section also takes account of the new definition of commander in relation to an aircraft.

187. Reports are also now required from vessels travelling to Australia or the Cocos Islands from the Special Quarantine Zone or the Protected Zone and also from those vessels travelling between Australia and the Cocos Islands.

188. The offence and penalty provisions contained in the section are also now drafted in a manner that is consistent with current Commonwealth policy.

189. New section 29 essentially redrafts the original provision in a more modern style that takes account of current Commonwealth policy in respect of offences and penalty provisions.

190. The new section now provides a power to a quarantine officer to give a permission in respect of a person leaving the vessel or installation or allowing a person to remove goods from the vessel or installation. The permission may be of general application or limited in a way stated in the direction and may also be subject to conditions. The original provision provides for prescriptive regulation in this respect. Providing a power in the Act creates a more flexible approach.

191. New section 29A now places in the Act, some of the requirements currently placed in the Quarantine (Animal) Regulations (Regulations 8, 9 and 87-92) and clarifies that where an animal that has been killed, or has died on a vessel or installation, the animal or any thing that has been exposed to an animal that has been so killed or has so died, cannot be removed from an overseas vessel or an overseas installation that is at a port or other place in Australia or the Cocos Islands unless a quarantine officer has given permission for the removal of the animal or thing. The permission may be given in writing and may be of general or limited application and may be subject to a condition.

192. It is an offence for the master to cause or permit another person to remove any animal or thing without the permission of a quarantine officer. It is also an offence if the master is reckless as to whether or not a condition attached to a permission granted under the section is not complied with. By placing these provisions in the Act, an appropriate penalty can be imposed.

193. New section 29B also brings up provisions from the Quarantine (General) Regulations to provide that a Director of Quarantine may give directions to the master of a vessel or installation described in subsection (2) that is at a port or other place in Australia or the Cocos Islands in relation to
   - the confinement, isolation or control of an animal that is on board the vessel or installation
   - the people who may be granted access to such an animal and the nature and extent of such access
- the disposal of an animal that has been killed, or has died, since it was brought on board
the vessel or installation.

194. A person is guilty of an offence if they fail to comply with such a direction. Placing these
provisions in the Act ensures that an appropriate penalty can be imposed.

Item 160 - Saving of requirements

195. This item is a savings provision in relation to any requirements made by a quarantine officer
under section 28.

Item 161 - Subsection 30(1) (penalty)

196. This item repeals the existing penalty provision and provides for a penalty that is drafted in
accordance with current Commonwealth policy.

Item 162 - Subsections 31(1), (1A), and (2)

197. Further to the new definition of police officer in item 45, this item replaces the term
“constable” with “police officer”.

Item 163 - Subsection 31(2)

198. This item replaces a reference to a “Justice of the Peace” with “magistrate”.

Item 164 - Subsection 31(3)

199. This item repeals subsection 31(3) as it is no longer necessary due to the new definition of
“police officer” in item 45.

Item 165 - Existing section 31 to continue to apply to people apprehended before making of
amendments

200. This item is a savings provision in relation to any person who was apprehended and brought
before a Justice of the Peace before the commencement of the amendments to section 31.

Item 166 - section 32 (penalty)

201. This item repeals the existing penalty provision and provides for a penalty that is drafted in
accordance with current Commonwealth policy.

Item 167 - After section 32
202. Consequential to the repeal of section 15A of the Act, this item inserts new **section 32A** which provides that a Director of Quarantine may direct a master of a vessel that has come from, called or landed at a proclaimed place, not to enter any port, or any specified port in Australia or the Cocos Islands. Subsection 32A(2) provides that it is an offence to fail to comply with such a direction.

**Item 168 - Subsection 33(1) and paragraph 33(1A)(a)**

203. This item is a minor technical amendment consequential to the new definition of overseas vessel.

**Item 169 - Before paragraph 33(4)(a)**

204. This item inserts new paragraph 34(4)(aa) so that pratique may have effect in all places in Australia.

**Item 170 - At the end of paragraphs 33(4)(a), (b), (c), (d), (e) and (f)**

205. This item is a minor technical amendment to drafting style.

**Item 171 - After paragraph 33(4)(d)**

206. This item introduces new paragraph 33(4)(da) so that pratique has effect in all places in the Cocos Islands.

**Item 172 - Subsection 34(3) (penalty)**

207. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

**Item 173 - Subsection 34(4)**

208. This item repeals **subsection 34(4)** and replaces it with a provision that provides that a quarantine officer may direct as to how cargo and passengers’ effects are to be treated. The existing provision relies on treatments being prescribed in regulations. Moving away from this prescriptive approach ensures that there is flexibility in the range of treatments that can be carried out.

209. This item also introduces new **subsection 34(5) and 34(6)** that provide that it is an offence not to comply with a direction given by a quarantine officer under this section. The offence is an offence of strict liability.

**Item 174 - Matters in existing regulations taken to be included in direction**

210. This item is a savings provision in relation to any treatment of cargo or passengers’ effects prescribed for the purposes of subsection 34(4) prior to commencement of the new provision.
Item 175 - Subsection 35(1)

211. This item ensures that there is a power to order into quarantine in respect of quarantinable pests as well as diseases.

Item 176 - Subsection 35(1AA)

212. This item amends the subsection to reflect the new definitions inserted by this Bill and ensure coverage of pests as well as diseases.

Item 177 - Subsection 35(1A)

213. This item is a minor technical amendment consequential to the new definition of overseas vessel.

Item 178 - Paragraph 35(3)(c)

214. This item expands the scope of the provision to cover the importer in addition to the owner.

Item 179 - Sections 35A and 36

215. Section 35A is redrafted to allow for greater flexibility in the treatment measures to be taken. This item also places an offence provision, currently in regulation 40 of the Quarantine (General) Regulations, into the Act to ensure that a more appropriate penalty can be imposed.

216. Section 36 provides that the quarantine officer may direct the master of a vessel to take the vessel, people or goods to a quarantine station or other place for the purposes of performing quarantine. The current provisions require that the vessel must move to a quarantine facility. The amendment is designed to increase the flexibility by providing a discretion, so that the vessel could be treated without being compulsorily required to move to a quarantine station.

Item 180 - Saving of instruments

217. This item ensures that any certificate, order, direction or permission given under section 35A, prior to amendment, continues in force.

Item 181 - Subsection 38(1) (penalty)

218. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.
Item 182 - Subsection 38(1A) (penalty)

219. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 183 - At the end of section 38

220. This item inserts new subsection 38(3) which provides that an offence against the section is an offence of strict liability.

Item 184 - Subsection 40

221. This item redrafts the existing provision, including the penalty component in accordance with current Commonwealth policy.

Item 185 - Section 43

222. This section repeals section 43 of the Act, which is subsumed in the more general provision, section 78AA, item 292.

Item 186 - Subsection 44(1) (penalty)

223. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 187 - Subsection 44(2) (penalty)

234. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 188 - Subsection 44(3)

235. This item rewrites the penalty provision for the section. The very broad reverse onus provision is replaced with a more limited provision, drafted in accordance with the Criminal Code. It places the evidential burden, as opposed to the legal burden, on the defendant in the very limited circumstances set out in subsection 44(3).

Item 189 - Paragraph 44A(5)(a)

236. Reference to the ‘Chief Quarantine Officer’ is repealed in this section and the ‘Director of Quarantine’ is inserted by this item.
Item 190 - At the end of subsections 44A(2), (3) and (4)

237. This item inserts a penalty in accordance with current Commonwealth policy.

Item 191 - Subsection 44A(5) (penalty)

238. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 192 - Section 44B

239. This item redrafts existing section 44B in a more modern style and extends the section to the giving of a permission to a person to move, or deal with goods of a kind described in the permission, so that it is not limited to one-off permissions for identified goods. The redrafting will also enable conditions to be attached to the permission. Such permissions can be revoked or amended in appropriate circumstances (new sections 6B and 6C relate).

240. The new provision retains the existing offence redrafted in a more modern style. In addition, a new offence is created which makes a person guilty of an offence if they have the permission of a Director of Quarantine that is subject to a condition and the condition is contravened and the person is reckless as to whether or not the condition is contravened.

241. Under the existing provisions goods moved to a place approved by the Chief Quarantine Officer did not have to comply with section 44B. Under the new provisions, movements to these places will be dealt with by granting a continuing permission.

Item 193 - Saving of instruments

242. This item is a saving provision for any permissions, consents, approvals or specification of conditions given under section 44B prior to amendment.

Item 194 - Subsections 44C (2), (3) and (4)

243. This item redrafts section 44C to better reflect the managed risk approach to quarantine. It introduces the phrase “level of quarantine risk” as defined in new section 5D.

244. Subsection(4) is not retained; it required that a Customs release must be obtained before release under the Quarantine Act can occur.

Item 195 - Subsection 44D(2)

245. This item redrafts section 44C to better reflect the managed risk approach to quarantine. It introduces the phrase “level of quarantine risk” as defined in new section 5D.

Item 196 - Subsection 45(2) (penalty)
256. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 197 - Subsection 45(3A) (penalty)

247. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 198 - Subsection 45(4) (penalty)

248. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 199 - At the end of section 45

249. This item inserts new subsection 45(5) which clarifies that an offence against the section is a strict liability offence.

Item 200 - Sections 46A, 47 and 48

250. This item repeals existing sections 46A, 47 and 48 and inserts new sections 46A, 48, 48AA, 48AB and 48AC.

251. New section 46A provides a comprehensive legislative framework for the granting of approvals in relation to the use of commercial premises for quarantine activities. New subsection 46A(1) provides that upon application and payment of a prescribed fee, a Director of Quarantine may approve a place where goods of a specified class that are subject to quarantine may be treated or otherwise dealt with and if a place is so approved, may approve goods of that class being moved, dealt or interfered with in a way set out in the approval.

252. The amendments ensure that the approval may be given on a continuing basis and the goods need not be ordered into quarantine prior to arriving at a place approved under this section. By providing that the section applies to goods subject to quarantine as opposed to ordered into quarantine, ensures that goods may be moved quickly from the port to the 46A place without requiring inspection and notice from a quarantine officer ordering the goods into quarantine.

253. New subsection 46A(3) provides that a declaration may be sought from the applicant in relation to amongst other things, previous convictions of relevant offences, previous applications for approval or previous suspension or revocations of approvals granted.

254. New subsection 46A(4) provides a comprehensive list of relevant factors that the Director of Quarantine must take into account in determining whether to grant the approval.

255. New subsection 46A(5) provides that an approval has a maximum life of one year, but may be renewed on one or more occasions.
256. New subsection 46A(6) provides that an application for renewal must be made within 3 months before the approval is to end. An application for renewal can only be made after cessation of the approval if the Director of Quarantine consents.

257. New subsection 46A(7) provides that if a renewal is granted after the cessation of an approval, the renewed period commences from the date that the original approval expired. For example, if the original approval was granted on 1 July 1998, it would expire on 30 June 1999. If a renewal was sought on 3 July 1999 and granted on that day, the renewed approval would expire on 30 June 2000.

258. New subsection 46A(8) provides that it is an offence to recklessly breach a condition of an approval and provides for a penalty.

259. New subsection 46A(9) sets out the grounds on which a Director of Quarantine may suspend or revoke an approval. The power to suspend or revoke is confirmed by new section 6B (item 57).

260. New subsection 46A(10) provides that if the approval is suspended, varied or revoked, written notice stating the grounds for the suspension, variation or revocation will be given to the applicant for the approval.

261. New subsection 46A(11) provides that where an approval expires, is suspended or revoked, that a Director of Quarantine may give notice to the applicant for the approval of action required to be taken in respect of goods.

262. New subsection 46A(12) provides that it is an offence to fail to comply with a notice given under subsection 46A(12).

263. New subsection 46A(13) confirms that the section applies in the same way to an original application and a renewal application.

264. New section 48 sets out the general principles that apply in relation to goods ordered into quarantine and subsumes requirements currently set out in sections 48 and section 56. Subsection 48(1) provides that where goods have been ordered into quarantine, a quarantine officer may order that they are to be
- detained on board a vessel or installation for such period as directed;
- taken to a quarantine station to be detained for such period as directed; or
- exported from Australia.

265. New subsection 48(2) provides that a quarantine officer may cause goods ordered into quarantine to be treated in such manner as he or she determines or may direct another person to cause the goods to be treated in a manner specified in a direction. This provision ensures that there is flexibility in the manner in which goods ordered into quarantine can be treated. In doing so it replaces a number of quarantine regulations that prescribed outmoded treatments.

266. New subsection 48(3) provides that a quarantine officer may give a direction to a person as to how goods that have been ordered into quarantine can be moved, dealt or interfered with. New subsection 48(4) provides that the direction can be given to the importer, owner or a person in control of the goods. New subsection 48(5) provides that it is an offence to fail to comply with such a direction.
267. New subsection 48(6) provides that if at the end of the period the goods were detained under subsection 48(1), a Director of Quarantine is of the opinion that release of the goods would result in an unacceptably high level of quarantine risk, he or she may direct that the goods be detained at the vessel, installation or quarantine station for a further period stated in the direction. The combined effect of section 48(1) and 48(6) is to provide for flexibility as to the period of quarantine and replace the highly prescriptive periods of quarantine found in the regulations.

268. New subsection 48(7) provides a definition of quarantine station for the purposes of the section which provides that where the term quarantine station is used, that it encompasses a place approved under section 46A.

269. New section 48AA brings together the elements of sections 48, 48A and 58 relating to the treatment and destruction of goods. It increases the value of goods for which the Minister’s consent must be obtained from $200 to $1000 or a higher amount prescribed by regulations and clarifies that disposal after seizure includes destruction and removal from Australia.

270. New section 48AB brings a number of provisions currently contained in the Quarantine Regulations up into the Act. For example, Regulations 87-92 of the Quarantine (Animals) Regulations make a provision for the treatment of a range of things which have been in contact with an animal in quarantine. In view of the quarantine risk associated with such things, these provisions will now be redrafted and inserted in the Act to ensure an appropriate penalty applies. For example, new section 48AB imposes a maximum penalty of imprisonment for 2 years, whereas the maximum penalty under regulation 97 of the Quarantine (Animal) Regulations is $1,000.

271. New section 48AC brings the detail of Regulation 21(F) of the Quarantine (Plants) Regulations into the Act and extends it to allow for the destruction of plants grown from plants that have been ordered into quarantine. A maximum penalty of imprisonment for 2 years is imposed compared with the maximum penalty of $2,000 under regulation 35 of the Quarantine (Plants) Regulations.

272. New section 48AD provides direct recognition of the high quarantine risk attached to dunnage and packing material that may be associated with imported goods. New section 48AC enables a Director of Quarantine to give a direction to a person who
- carries on the business of unloading overseas vessels at a wharf or airport; or
- carries on the business of unpacking imported cargo at a place licensed under section 77G of the Customs Act 1901 or approved under section 46A of the Act; or
- is an occupier of these places,
to treat, destroy or otherwise dispose of any package, packing material or other waste material situated at that place.

273. New subsection 48AD(2) provides that it is an offence to fail to comply with a direction given under subsection 48AD(1).

Item 201 - Saving of approvals

274. This item is a savings and validation provision that ensures that any approval given under section 46A prior to amendment retains its validity.

Item 202 - Subsection 48A(1)
275. The title “Chief Quarantine Officer” is replaced with a reference to “Director of Quarantine”.

Item 203 - Subsections 48A(1) and (2)

276. This item clarifies the manner in which abandoned goods may be dealt with.

Item 204 - At the end of section 48A

277. This item provides for the insertion of new subsection 48A(3) that provides that where a quarantine officer has made reasonable enquiries but has been unable to identify or find the whereabouts of the owner of the goods that have been ordered into quarantine, and certifies in writing to that effect, the goods may be sold, destroyed, exported from Australia or otherwise disposed of. The power is now provided in the Act rather than in the regulations.

278. Existing subsections 48(1) and (2) only provide for disposal where the owner of the goods is known. It is necessary to have a power to deal with goods in an appropriate manner where the owner of the goods cannot reasonably be determined.

Item 205 - Section 49 (penalty)

279. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 206 - Sections 50 and 51

280. This item repeals section 50 which is reflected in new section 20D (refer item 141).

Item 207 - Subsection 52(1)

281. This item amends the existing subsection and provides a Director of Quarantine can authorise a person to examine an imported animal that has not been released from quarantine. This is a more flexible arrangement than the current prescriptive approach.

Item 208 - At the end of subsection 52(3)

282. This item clarifies that where a quarantine officer releases an animal under quarantine surveillance, that it is for such period as the Director of Quarantine determines.

Item 209 - Subsection 52(5)

283. This item substitutes new subsection 52(5) which provides that an animal may be released under quarantine surveillance unconditionally or subject to conditions. The conditions may be notified to the importer either at the time of release or at any time while the animal remains under quarantine surveillance.
284. New **subsection 52(5A)** is also inserted by this item. It provides that the Director of Quarantine may give directions as to a range of things in relation to the animal such as where and how the animal is to be kept.

285. New **subsection 52(5B)** provides that a direction given under subsection 52(5A) can be given either at the time the animal is released or at any time while the animal remains under quarantine surveillance.

286. New **subsection 52(5C)** provides that a person is guilty of an offence if that person fails to comply with a direction given under subsection 52(5A).

287. The current requirement that a release under the *Customs Act 1901* must be obtained prior to release from Quarantine is not retained.

**Item 210 - Subsections 52A(1) to (4)**

288. This item repeals existing sections 52A(1) to (4). New subsection 52A(1) provides that a person authorised by a Director of Quarantine may examine any animal or plant that is subject to quarantine and on board an installation.

289. New subsection 52A(2) provides that if a quarantine officer, after examining an animal or plant on board the installation, is of the opinion that an animal or plant poses an unacceptably high level of quarantine risk, the animal or plant must be ordered into quarantine. If the officer does not order the animal or plant into quarantine, the animal or plant is to be released from quarantine. The phrase “level of quarantine risk” is defined in new section 5D.

**Item 211 - Subsections 53(2) to (4)**

290. This item repeals existing subsections 53(2) to (4) and substitutes new subsection 53(2). New subsection 53(2) provides that if after examining an imported plant that has not been released from quarantine, the officer is of the opinion that the plant poses an unacceptably high level of quarantine risk, the animal or plant must be ordered into quarantine. If the officer does not order the plant into quarantine, the plant is to be released from quarantine. The phrase “level of quarantine risk” is defined in new section 5D.

**Item 212 - Subsection 55A(1)**

291. This item repeals existing subsection 55A(1) and substitutes new subsection 55A(1) which reflects the existing provision redrafted in a modern style and modified to take into account the reliance on the term ‘disease or pest’ rather than the phrase ‘disease affecting animals or plants’.

**Item 213 - Paragraph 55A (2)(b)**

292. This item expands the scope of paragraph 55A(2)(b) by providing that the section applies to goods that are on board a vessel or installation as described in the subparagraphs as well as to goods that have been on those vessels or installations.

**Item 214 - After subparagraph 55A(2)(b)(i)**
This item extends the scope of this section to vessels that travel to a place in Australia from or through a place in the Protected Zone or a Special Quarantine Zone.

**Item 215 - At the end of subparagraph 55A(2)(b)(v)**

This item is a minor technical drafting amendment.

**Item 216 - Sections 56 and 58**

This item provides for the repeal of section 56, performance of quarantine which is replaced by new section 48, item 200. This item also repeals section 58, power to destroy diseased plants, which is replaced by new section 48AA, item 200.

**Item 217 - Sections 59A**

This item repeals existing section 59A and substitutes a provision that reflects the detail of the existing provision but clarifies that the master, owner and agent are jointly and severally liable for the specified costs. The provision is redrafted in a more modern style, takes account of the new definition of treatment (refer item 55, section 5(1)) and is extended to cover the cost of piloting or towing of a vessel.

**Item 218 - Section 60**

This item repeals section 60 which is now covered by new section 59A.

**Item 219 - At the end of section 63A**

This item inserts new subsection 63A(2) and (3). These provisions provide that a Director of Quarantine may direct the owner of an animal that has been ordered into quarantine, to provide sustenance for the animal during the period, or a part of the period, that the animal is held. A person is guilty of an offence if they fail to comply with such a direction.

**Item 220 - Subsection 64(1)**

This item repeals existing subsection 64(1) and provides a substitute provision that is redrafted in a more modern drafting style. It also clarifies that the owner and importer are jointly and severally liable for the specified costs and rationalises the circumstances when liability for costs arises.

This item also inserts new subsection 64(1A) which places in the Act requirements currently found in the Quarantine Regulations. The new provision provides the flexibility required to enable owners or importers to provide their own cartage and labour in connection with quarantine activities.
301. This item creates a new Part VIA that replaces sections 74AB - 74BA and contains enforcement powers that reflect current Commonwealth Criminal law policy and ensures that there are effective monitoring powers to check compliance with the Act.

Division 1 - General powers

66AA General powers of authorised officers in relation to premises

302. New section 66AA specifies the general powers of authorised officers in relation to search of premises and anything on the premises. These powers include the power to inspect, take samples, take photographs or make videos or audio recordings, make copies of documents, order infected goods into quarantine and to secure the premises or things on the premises.

Division 2 - Monitoring powers

66AB The monitoring of premises

303. New section 66AB specifies the powers of a quarantine officer to enter and search without a warrant either premises approved under the Act (including under section 44A(5) and 46A), quarantine stations, or premises at which procedures may be carried out under a compliance agreement, or other premises with the consent of the occupier, in order to find out whether the provisions of the Act are being complied with.

66AC Monitoring warrants

304. New section 66AC provides for the issuing by a magistrate of a monitoring warrant authorising the entry and search of premises for the purposes of finding out whether the provisions of the Act are being complied with. This new section provides for the details that must be set out in the monitoring warrant.

66AD Seizures without offence-related warrant in emergency situations

305. New section 66AD sets out the power of a quarantine officer to seize evidential material found on premises entered in a monitoring capacity (that is, premises entered into under clause 66AB or 66AC). The power is limited to emergency situations where there is an urgent and serious need to seize a thing in order to prevent its concealment, loss or destruction.

Division 3 - Offence related searches and seizures

66AE Offence-related searches and seizures

306. New section 66AE specifies the powers of a quarantine officer to enter and search where the officer has reasonable grounds for suspecting that there may be particular evidential material on the premises. The powers under this section are limited to premises approved under the Act (such as those under section 46A), quarantine stations, premises at which procedures may be carried out under a compliance agreement or where the occupier of the premises has consented to the entry.
This clause also provides for the stopping and detaining of aircraft, ships and vehicles and for a power of seizure of the particular evidential material found at the premises by a quarantine officer.

66AF Offence-related warrants

307. New section 66AF sets out the rules for the issuing by a magistrate of offence-related warrants authorising the entry and search of premises if the magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, evidential material at the premises. This clause also provides for the details that must be set out in the offence-related warrant.

66AG The things that are authorised by a search warrant

308. New section 66AG sets out for the powers of the executing officer of an offence-related warrant and of officers assisting in the execution of that warrant. These include specified powers of entry, search and seizure of evidential material found at the premises. They also include the powers referred to in clause 66AA to inspect, take samples, take photographs or make video or audio recordings, make copies of documents and to secure the premises or things on the premises. Powers for the seizure of other evidential material found are also set out in this provision.

Division 4 - Warrants granted by telephone or other electronic means

66AH Warrants may be granted by telephone or other electronic means

309. New section 66AH sets out the circumstances which must be present before a monitoring warrant or an offence related warrant may be granted over the telephone or by other electronic means. It provides for the granting of the warrant by a magistrate and for the procedures which must be followed in relation to such warrants.

Division 5 - Stopping and searching vessels or vehicles

66AI Searches without warrant in emergency situations

310. New section 66AI allows a quarantine officer, in an emergency situation, to stop and detain a vessel (aircraft or ship) or a vehicle and to search the vessel or vehicle for and to seize evidential material. It provides for the ability to seize other evidential material found on the aircraft, vehicle or ship if the circumstances are serious and urgent and it is necessary to seize the material to prevent its concealment, loss or destruction.

66AJ How a quarantine officer exercises a power under section 66AI

311. New section 66AJ sets out how a quarantine officer may exercise the powers set out in 66AI. The provision allows for a quarantine officer to use such assistance as necessary in exercising these powers, and to use such force as is necessary and reasonable in the circumstances and sets out the limitations which apply.

Division 6 - General rules about premises and warrants

66AK Availability of assistance, and use of force, in executing a warrant

312. New section 66AK provides for when an executing officer may obtain assistance and when an executing officer or officer assisting may use reasonable force in executing the warrant.
66AL Announcement before entry under warrants

313. New section 66AL sets out the requirements to be observed before entry and specifies when these requirements do not have to be complied with.

66AM Details of warrant to be given to occupier etc.

314. New section 66AM specifies the persons to whom the executing officer or officer assisting must make available a copy of the warrant that is being executed. This clause requires the executing officer named in the warrant to identify himself or herself to the occupier or person representing the occupier who is at the premises.

66AN Occupier entitled to be present during search under warrants

315. New section 66AN provides for the right of the occupier to observe the search being conducted.

66AO Use of equipment to examine or process things

316. New section 66AO authorises a person who enters premises under Part VIA to bring to the premises equipment that is reasonably necessary for the examination or processing of things found at the premises. This new section also set out the circumstances in which things may be removed from the premises in order to examine them and also provides for the use of equipment already at the premises.

66AP Use of electronic equipment at premises

317. New section 66AP provides the circumstances in which a person who enters premises under this Part may operate electronic equipment for the purpose of exercising their powers under the Act. It also provides for seizure of the equipment and any device such as a computer disk or a tape which can be used to access evidential material and provides for the use of facilities and the copying of material to a storage device and the removal of the device from the premises. This clause also provides for the securing of the electronic equipment.

66AQ Compensation for damage to equipment

318. New section 66AQ makes provision for compensation to be payable by the Commonwealth to the owner of equipment that is damaged by being operated where the damage is caused by insufficient care in selecting the person to operate the equipment or insufficient care by the person operating the equipment. In determining the amount of compensation payable, regard is to be had to the action of the occupier of the premises or of the employees or agents of the occupier.

66AR Copies of seized things to be given

319. New section 66AR requires a person who seizes a document, film, computer file or other thing that can be readily copied or a storage device in which there is information that can be readily copied to give a copy of the thing or information to the occupier on request.
66AS  Retention of things that are seized

320. New section 66AS provides for the return of a thing that has been seized, including where the reason for its seizure no longer exists, where it is decided not to use the thing in evidence or at the end of 60 days after the thing is seized. A thing does not have to be returned where an order is obtained from a magistrate under clause 66AT, or proceedings have commenced, or person is required by a law of the State or the Commonwealth to retain, destroy or otherwise dispose of the thing.

66AT  Magistrate may permit a thing to be kept

321. New section 66AT enables a magistrate to order that a person may keep a thing that has been seized for the period specified in the order. It sets out the procedures for obtaining the order, and the things a magistrate must be satisfied of before making such an order.

66AU  Release of seized goods

322. New section 66AU provides for the release by the Secretary of evidentiary material unconditionally or on conditions.

66AV  Quarantine officer must produce identity card

323. New section 66AV sets out when a quarantine officer must produce his or her identity card.

66AW  Giving of consent

324. New section 66AW requires that a person be told that they may refuse consent. It also provides that consent is not lawful unless the person has voluntarily consented to entry.

66AX  Receipts for things seized or moved

325. New section 66AX requires the giving of receipts for things that are seized under Part VIA or moved under new subsection 66AO(2).

Item 222 - Subsection 66B(1)

326. This item repeals existing subsection 66B(1) and substitutes a new subsection that provides that a Director of Quarantine may, on behalf of the Commonwealth, enter into a compliance agreement in connection with the application of particular procedures in respect of goods and the supervision, monitoring and testing of the person’s compliance with those procedures. This new subsection clarifies the scope of compliance agreements.

Item 223 - Subsection 66B(3)

327. This item amends subsection 66B(3) to reflect the fact that a Director of Quarantine will be the person entering into the agreement. The amendments also clarify that there is a power to vary the terms of an agreement.
328. This item deleted the reference to “under this Act” in subsections 66B(4)-(6). These words are unnecessary with the insertion of the new definition for procedures (see item 225).

Item 225 - Subsection 66B(7) (including the penalty)

329. This item redrafts the existing provision including the penalty and substitutes a penalty that is drafted in accordance with current Commonwealth policy.

330. This item also inserts new subsection 66B(8) which provides a definition for procedures. This definition clarifies that compliance agreements may be entered into in respect of anything under the Act or anything in connections with activities carried out in the performance of functions related to quarantine. New section 5(1A), item 59, clarifies the scope of the phrase under this Act. Item 226 - Saving of agreements

331. This item is a savings provision that also validates any prior agreements.

Item 227 - Section 67

332. This item repeals existing section 67 and substitutes new section 67 which is drafted in accordance with Commonwealth policy. The new section takes account of the new definitions of disease and pest and clarifies that contravention of any conditions or requirements of a permit or permission is also an offence.

333. The very broad reverse onus provision in existing subsection (2) is replaced by a provision that provides for the evidential burden to lie with the defendant only in certain circumstances.

334. New subsection 67(5) replaces subsection 67(1B) and extends the existing provision to apply to the situation where a person is reckless as to whether or not the condition or requirement is complied with.

335. New subsection 67(6) inserts a new offence into the Act. This new subsection provides that it is an offence for a person to do an act that hinders or prevents another person from complying with a condition or requirement of a permit given under the Act, regulations or any proclamation under the Act and that person is reckless as to whether or not the doing of the act hinders or prevents the other person from complying with the condition or requirement.

Item 228 - Section 67A (penalty)

336. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy

Item 229 - Sections 68, 68A and 69

337. This item repeals existing sections 68, 68A and 69 and substitutes new sections 68, 68A and 69.
338. New section 68 replaces and enhances the existing section 68. The new section, provides that offending goods can be required to be exported from Australia in order to encourage compliance with Australia’s quarantine requirements and to keep quarantine issues off-shore. The new section also introduces a system of rectification which enables importers to rectify deficiencies that might otherwise cause their goods to be seized and disposed of.

339. New subsection 68(1) provides that the section applies to animal, plants and goods that have been imported, introduced, brought into a port or other place in Australia or removed from one part of Australia to another part of Australia in contravention of the Act. It also provides that the section applies to certain goods that have been moved or dealt with in contravention of the Act. The phrase in contravention of the Act, is clarified by new subsection 5(1A), item 59.

340. New subsection 68(2) provides that a quarantine officer may seize goods that have been imported in contravention of the Act. The goods will be forfeited to the Commonwealth. A notice is required to be sent to the importer, owner or person in possession or control of the goods as the case may be. Goods that have been seized under this subsection may be sold, destroyed, exported from Australia or the Cocos Islands or otherwise disposed of in any way that a Director of Quarantine thinks appropriate.

341. New subsection 68(3) provides that a Director of Quarantine may give a notice to a specified person which states that the animals, plants or goods will be seized, and sold, destroyed, exported from Australia or otherwise disposed of in any way that the Director thinks appropriate unless within the time stated on the notice, the animals, plants or goods are destroyed, exported from Australia or otherwise dealt with in a way set out in the notice and any other requirements set out in the notice relating to the animals, plants or goods are complied with. This provision creates some flexibility to deal with situations where the importation would be in contravention of the Act, regulations etc due to a minor technical deficiency.

342. For example, a permit might require that an animal being imported into Australia be accompanied by certain certificates. If the animal arrives in Australia without the certificate, this provision will enable the importer to provide that certificate or export the animal within a time stated on a notice and avoid forfeiture and seizure of the goods.

343. New subsection 68(4) provides that where the goods have been imported, the notice may be given to the importer or in other circumstances to the owner, or the person in possession or control, of the animals, plants or goods.

344. New subsection 68(5) provides that the notice is not to be given in circumstances where he or she is not satisfied that if the thing was dealt with in a manner set out in the notice that there would not be an unacceptably high level of quarantine risk associated with the thing. The notice must also not be given where the Director is not satisfied that the notice will be complied with or that the person will not within a time set out in the notice advise that he person does not wish to deal with the goods as required by the notice.

345. New subsection 68(6) ensures that no other provision of the Act, regulations or a proclamation will be contravened where the person moves, deals or interferes with goods that have not been released from quarantine, where such moving, dealing or interfering is necessary to comply with a notice given under this section.

346. New subsection 68(7) clarifies that the liability for an offence is not affected by the issuing or complying with a rectification notice. For example, if goods were imported contrary to a proclamation by the importer not obtaining a permit, and the permit is subsequently issued after
importation and the issuing of a rectification notice, the importer remains liable for an offence under this section.

347. New subsection 68(8) provides that the Director may amend or vary the notice at any time before the person complies with the notice.

348. New subsection 68(9) provides that where a notice is given but the person either fails to comply with it within the stated time or gives notice to the Director that they do not wish to deal with the goods in the manner stated in the notice, then the thing is forfeited to the Commonwealth and may be seized and sold, destroyed, exported from Australia or otherwise disposed of.

349. New section 68A redrafts the existing provision in a more modern drafting style and replaces the Chief Quarantine Officer with Director of Quarantine to take account of the fact that the appointment of a Chief Quarantine Officer is discretionary.

350. New section 69 redrafts the existing provision in a more modern drafting style and removes the reference to officer of Customs. It also extends its operation to animals under quarantine surveillance and to commercial quarantine premises.

Item 230 - Subsection 69A(1)

351. This item is a consequential amendment following the repeal of sections 48 and 58.

Item 231 - Subsection 69A(4)

352. This item recognises that a pest might affect an animal as well as a disease.

Item 232 - Subsection 69A(6)

353. This item is a consequential amendment to take account of the repeal of section 48.

Item 233 - Paragraph 69A(9)(b)

354. This item recognised that a pest might affect an animal as well as a disease.

Item 234 - Subsection 69A(12)

355. The provision is redrafted to comply with the Criminal Code.

Item 235 - Section 70(1)

356. This item is one of a number of minor technical amendments which have the purpose of achieving a consistent use of examine instead of the inspect throughout the Act.

Item 236 - Paragraphs 70(1)(d) and (e)
357. This item amends paragraphs 70(1)(d) and (e) to ensure that a quarantine officer can examine any plants, as well as goods and animals.

Item 237 - Subsection 70(2)

358. This item is one of a number of minor technical amendments which have the purpose of achieving a consistent use of examine instead of inspect throughout the Act. This item also repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 238 - Subsection 70(3)

359. This item amends paragraph 70(3) to ensure that a quarantine officer can examine any animals plants or other goods including any other thing (by virtue of the definition of goods in section 5(1)) such as the ballast water.

Item 239 - Section 70AA

360. This item is a minor technical amendment consequential to the amendment to the definition of goods.

Item 240 - Section 70AA

361. This item is one of a number of minor technical amendments which have the purpose of achieving a consistent use of examine instead of the inspect throughout the Act.

Item 241 - Subsection 70AA(3)

362. This item is one of a number of minor technical amendments which have the purpose of achieving a consistent use of examine instead of inspect throughout the Act. This item also repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 242 - Section 70A

363. This item repeals existing section 70A and substitutes a new section that provides for additional powers for quarantine officers. In particular the new section extends the types of things which can be examined and about which questions may be asked and the types of vessels to which the section applies. The new section clarifies that some of the powers apply to things about to be placed on vessels or installation. In addition, the offence provisions have been redrafted in accordance with Commonwealth policy.

Item 243 - Subsection 70B(2)

364. This item inserts a note to alert the reader to the interaction of sections 70B and 74C.
Item 244 - Subsection 70B(3)

365. This item omits the words “or other records” as a document is defined in item 19, section 5(1), to include other records.

Item 245 - Subsection 70B(3)

366. This item inserts a note to alert the reader to the interaction of sections 70B and 74C.

Item 246 - Subsection 70B(4)

367. This item omits the words ‘in contact with” and substitutes “exposed to” in accordance with the definition inserted by item 60, section 5B.

Item 247 - Subsection 70B(4)

368. This item inserts a note to alert the reader to the interaction of sections 70B and 74C.

Item 248 - Subsection 70B(5) and (6)

369. This item repeals subsection 70B(5) and substitutes new subsection 70B(5) which is revised to take account of the new definition of document in item 16.

370. This item also repeals subsection 70B(6) and substitutes new subsection 70B(6) which is revised by removing references to a power to “cause tests to be carried out”. This reference is no longer necessary as it is covered by the general provision contained in new section 5C, inserted by item 60.

Item 249 - Section 70C

371. This item repeals section 70C and substitutes new sections 70BA, 70BB, 70C and 70CA.

372. New section 70BA provides that where a quarantine officer has the power to carry out tests on any samples, the officer has the power to carry out tests that result in the destruction, or reduce the value of the samples or of a package or goods associated with the samples.

373. New section 70BB provides that quarantine officers may be accompanied by animals and use the animal to assist them in the exercise of their powers as specified in subsection 70BB(1). The provision does not apply unless the officer is authorised by a Director of Quarantine to handle animals in the performance of his or her functions or duties and the animal is under the effective control of the quarantine officer (70BB(2)). Where the quarantine officer is exercising powers under a warrant, the warrant must authorise the use of an animal.

374. New section 70C redrafts the existing provision consistent with the Criminal Code.

375. New section 70CA provides a new offence for making false or misleading statements in relation to approvals, permits, compliance agreements etc.
Item 250 - Subsection 70D(3) (including the penalty)

376. This item repeals the existing offence and penalty provision and provides for an offence and penalty that is drafted in accordance with current Commonwealth policy.

Item 251 - After section 70D

377. This item inserts new section 70E. The new section consolidates provisions currently in the Quarantine (Animal) Regulations (regulations 45 and 46) and in the Act (section 76), and extends these provisions to commercial quarantine premises.

Item 252 - Subsection 71(1) (including the penalty)

378. This item repeals existing subsection 71(1) and substitutes a provision that is drafted in a more modern drafting style. The penalty provision is redrafted in accordance with current Commonwealth policy and the item also clarifies that a penalty against the section is an offence of strict liability.

Item 253 - Subsection 72(2)

379. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 254 - Subsection 72(3) (penalty)

380. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 255 - Subsection 72(4) (penalty)

381. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 256 - Subsection 72(5) (penalty)

382. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 257 - After subsection 72(5)

383. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.
Item 258 - Subsection 72(6) (penalty)

384. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 259 - After subsection 72(6)

385. This item inserts new subsection 72(6A) which clarifies that an offence against subsections (2), (3), (4) or (6) is an offence of strict liability.

Item 260 - Subsection 73(1) (penalty)

386. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 261 - Subsection 73(2) (penalty)

387. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 262 - Subsection 73(3)

388. This item omits all the words after “questions” which create an offence against the section. The offence is redrafted under item 263.

Item 263 - After subsection 73(3)

389. This item inserts new subsections 73(3A) and (3B) which provide for an offence redrafted in accordance with current Commonwealth policy and clarifies that an offence against the section is an offence of strict liability.

Item 264 - Subsection 74(1)

390. This item repeals subsection 74(1) and substitutes new subsection 74(1) which redrafts the provision in a more modern style and ensures that the provision is expanded to deal with the increased use of commercial quarantine premises by referring to places approved under section 46A or any other place approved by a Director of Quarantine. This provision also replaces a requirement that a notice be prescribed with an ability that the notice can be approved by a Director of Quarantine.

Item 265 - Saving of notices
391. This item is a savings provision in relation to any notice prescribed under subsection 74(1) prior to amendment.

Item 266 - subsection 74(2) (penalty)

392. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 267 - After subsection 74(2)

393. This item inserts new subsection 74(2A) which clarifies that an offence against the section is an offence of strict liability.

Item 268 - Section 74AA (penalty)

394. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 269 - At the end of section 74AA

395. This item inserts new subsection (2) which provides that an offence against the section is an offence of strict liability.

Item 270 - Sections 74AB, 74A, 74B, 74BA and 74C

396. This item repeals sections 74AB, 74A, 74B, 74BA and 74C. The repealed sections in relation to warrants, search and entry powers are replaced by new Part VIA inserted by item 221.

397. This item inserts a new section 74BB and rewrites sections 74BC and 74C to reflect Commonwealth policy.

398. New section 74BB provides for the issue of identity cards to quarantine officers.

399. New section 74BC specifies when a quarantine officer may require a person to answer questions or to produce documents.

400. New section 74C provide for offences relating to failure to answer a question or produce a document, failure to deliver a sample, giving false or misleading answers or failing to correct false or misleading information in a document.

Item 271 - Saving of warrants, consents and notices

401. This item is a savings provision in respect of any warrant issued, consent given or notice issued prior to the amendments of these provisions.

Item 272 - Subsection 74D
402. This item redrafts the existing provision, section 74D, in a more modern style and extends its application to vessels as well as vehicles. It repeals the existing offence and penalty provision and provides for an offence and penalty that is drafted in accordance with current Commonwealth policy.

403. This item also inserts new section 74DA which provides that a quarantine officer may direct the master or owner of a vessel to provide reasonable assistance to an officer in the exercise of his or her functions or duties or in the exercise of a power under the act or regulations in relation to the vessel or installation. It creates an offence for failure to comply with such a direction.

Item 273 - Subsection 74E(1) (penalty)

404. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 274 - Subsection 75(1) (including the penalty)

405. This item repeals existing subsection 75(1) and substitutes new subsection 75(1) which is redrafted in a more modern style.

406. This item also repeals the existing offence and penalty provision and provides for an offence and penalty that is drafted in accordance with current Commonwealth policy. This item also clarifies that the offence is one of strict liability.

Item 275 - subsection 75A(1) (at the end of paragraphs (a) and (b) of the definition of approved person)

407. This item provides for a minor technical amendment.

Item 276 - Subsection 75A(1) (paragraphs (c) and (d) of the definition of approved person)

408. This item repeals existing paragraphs (c) and (d) and consequential to the new definition of police officer in item 45, substitutes a new paragraph which refers only to a police officer.

Item 277 - Subsequent 75A(1) (definition of officer of Customs)

409. This item repeals the subsection that defines an officer of Customs. The definition is now found in section 5(1), Item 37.

Item 278 - Subsection 75A(1) (paragraph (b) of the definition of prescribed vessel)

410. This item substitutes a new paragraph (b) consequential to the new definition of aircraft in item 4.

Item 279 - At the end of paragraphs 75A(2)(a), (b), (c), (d) and (e)
411. This item is a minor technical amendment to punctuation.

**Item 280 - Paragraph 75A(2)(b)**

412. Consequential to the new definition of aircraft in item 4, this item amends paragraph 75A(2)(b) so that it refers to ‘aircraft’ rather than ‘a vessel used in navigation by air’.

**Item 281 - Paragraph 75A(2)(e)**

413. This item is consequential to the repeal of section 50 and insertion of new section 20D in its place.

**Item 282 - Subsection 75A(6)**

414. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

**Item 283 - Section 75B(1)**

415. This item provides for a minor technical amendment consequential on the new definition of overseas vessel.

**Item 284 - Subsection 75B(2)**

416. This item repeals the definition of prescribed overseas vessel; a new definition is inserted by the following item to take account of the replacement of the word oversea with overseas.

**Item 285 - Subsection 75B(2)**

417. This item inserts a definition of a *prescribed overseas vessel* for the purposes of the section.

**Item 286 - Sections 76, 77 and 78**

418. This item provides for the repeal of sections 76, 77 and 78 and substitutes new provisions.

419. New section 76 redrafts the existing section 76 in a more modern style and brings certain offences from the Quarantine (General) Regulations (regulation 55) and Quarantine (Animal) Regulations (regulations 45 and 47) and the Quarantine (Plants) Regulations (regulation 34) into the Act, thereby attracting more appropriate penalties.

420. New section 77 redrafts the existing offence in accordance with Commonwealth policy and imposes a higher penalty.
421. New section 78 redrafts existing section 78 in a more modern style and extends the application of the provision to quarantinable pests as well as diseases. The penalty provision is also redrafted in accordance with current Commonwealth policy.

Item 287 - Subsection 78A(1) (definition of Commonwealth)

422. This item repeals a definition.

Item 288 - Subsection 78A(1) (paragraph (d) of the definition of vessel)

423. This item amends paragraph 78A(1)(d) to ensure that the provision applies where a vessel is at a place other than a port.

Item 289 - Subsections 78A(2), (3) and (4) (including the note to subsection (4))

424. This item repeals the existing subsections 78A(2), (3) and (4) and substitutes new provisions redrafted to provide greater clarity. New subsection 78A(2) provides that a quarantine officer may give a direction to the owner or master of a vessel or installation that requires that a specified process is to be carried out with respect to the vessel or installation. New subsection 78A(3) provides examples of the processes that may be specified in the direction and provides that the direction may specify where the process is to be carried out.

425. New subsection 78A(4) redrafts the penalty provision in accordance with current Commonwealth policy.

Item 290 - Saving of orders

426. This item is a savings provision for any order given under section 78A prior to amendment.

Item 291 - After section 78A

427. This item inserts new section 78AA, which subsumes existing section 43 and some of the requirements in the Quarantine (General) Regulations. It applies in respect of a vessel or installation that is subject to quarantine or a person who is subject to quarantine and is on board a vessel or installation. New subsection 78AA(1) provides that a quarantine officer may give a direction to the master of the vessel or installation requiring a specified process to be carried out in relation to the vessel or installation.

428. New subsection 78AA(2) provides examples of the processes that might be specified in the direction and that the direction may specify where the specified process is to be carried out.

429. New subsection 78AA(3) provides that a person is guilty of an offence if they fail to comply with the direction.

Item 292 - Section 78B
430. This item is a technical amendment as a result of the amendments to section 78A and the introduction of 78AA.

Item 293 - Section 78B (penalty)

431. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 294 - After section 78B

432. This item inserts new **section 78C** provides that a quarantine officer may cause a vessel, cargo or other goods or any thing on a vessel to be moved to another place if the vessel is in an insanitary condition or is carrying diseases or pests and presents an unacceptably high level of quarantine risk if quarantine measures are not taken. New section 5D defines “level of quarantine risk”.

Item 295 - After section 79

433. This item inserts new **section 79A** which provides for some limited exclusions in relation to the privilege against self incrimination. The material required under section 27A, 27B or 28 or 70(2) or 70AA(3), is considered of such significance and vital importance to the integrity of the quarantine regime, that it overrides the privilege against self incrimination. Subsection 79A(2) provides that any information given or document produced in such circumstances is not admissible in evidence against the person in any criminal proceedings other than a preceding for an offence against the relevant section. This new section reflects Commonwealth policy.

- Item 296 - Paragraph 80(a)

434. This item makes a minor amendment to ensure compatibility with the Criminal Code.

Item 297 - Paragraph 80(b)

435. This item makes a minor amendment to ensure compatibility with the Criminal Code.

Item 298 - Section 80

436. This item amends the provision to ensure compatibility with the Criminal Code.

Item 299 - Subsection 81(1) (penalty)

437. This item repeals the existing penalty provision and provides for a penalty that is drafted in accordance with current Commonwealth policy.

Item 300 - Subsection 81(2)
438. This item repeals subsection 81(2) as this offence is covered by the *Crimes Act 1914*.

**Item 301 - Sections 82, 83, 84 and 85**

439. This item repeals sections 82, 83, 84 and 85.

440. New section 82 inserts into the Act a provision relating to the protection from civil prosecution that are provided in the Quarantine (Plants) and (Animals) Regulations in a way that accords with Commonwealth policy and extends the limitation of liability to persons who are assisting officers, to analysts and to persons approved under sections 75A and 75B.

441. New section 83 redrafts the existing section in accordance with Commonwealth policy and extends it to an agent.

442. This item also inserts new section 84 which redrafts the existing offence for a quarantine officer who maliciously orders a vessel, installation, person, animal, plant or other goods into quarantine in accordance with Commonwealth policy and increases the maximum penalty to 5 years imprisonment.

**Item 302 - Section 86D**

443. This item repeals section 86D as it is contrary to current Commonwealth policy.

**Item 303 - Before section 86E**

444. This item inserts new section 86DA which provides that an analyst may give a certificate as to a range of matters set out in subsection 86DA(2) which is admissible as prima facie evidence of the matters in the certificate and the correctness of the certificate. This section is designed to overcome some of the evidential problems that might arise due to the loss of the averment provision in section 86D of the Act.

**Item 304 - Subsection 86E(1)**

445. This item redrafts a phrase in a more modern style.

**Item 305 - Paragraphs 86E(1)(a) and (b)**

446. This item amends paragraphs 86E(1)(a) and (b) to clarify that the paragraphs apply to examinations or services and certificates under the regulations as well as the Act.

**Item 306 - Paragraph 86E (1)(c)**

447. This item enables a determination to be made in respect of approvals made under section 46A of the Act which recognises the increased usage of commercial premises for quarantine.
Item 307 - Paragraph 86E (1)(d)

448. This item amends paragraph 86E(1)(d) to ensure that it applies to places approved under section 46A as well as subsection 44A(5). It also inserts new paragraphs providing that a determination may be made in respect of permits and compliance agreements.

Item 308 - Subsection 86E(2AB)

449. This item amends section 86E(2AB) to reflect the amendments made to section 63A in item 219.

Item 309 - Subsection 86E(2E)

450. Consequential to the recognition of commercial quarantine premises provided by these amendments, this item amends subsection 86E(2E) to extend its application to a place approved under section 46A.

Item 310 - At the end of 86E(2E)(b)

451. This item extends paragraph (b) to places in recognition of the increased reliance on commercial premises for quarantine.

Item 311 - At the end of section 86E

452. This item inserts new subsection 86E(5) which provides that a Director of Quarantine may determine that a fee is not payable in circumstances set out in the determination, in respect of examinations or services carried out or provided for under the Act. This provides a discretion to cater for circumstances that may justify non payment of a fee.

Item 312 - Before section 87

453. This item inserts new section 86G which provides that the Criminal Code applies to all offences against this Act.

Item 313 - Paragraph 87(1)(e)

454. This item extends this regulation making power to accommodate quarantinable pests.

Item 314 - Paragraphs 87(1)(f), (g) and (h)

455. This item extends these regulation making powers to accommodate pests as well as diseases.
Item 315 - At the end of paragraph 87(1)(i)

456. This item extends this regulation making power to accommodate quarantinable pests.

Item 316 - Paragraph 87(1)(k)

457. This item redrafts paragraph 87(1)(k) in a more modern drafting style.

Item 317 - Saving of regulations

458. This item is a savings power for any regulations made under paragraph 87(1)(k) prior to amendment.

Item 318 - paragraph 87(1)(la)

459. This item amends this regulation making power to ensure that it applies to pests as well as diseases.

Item 319 - Paragraph 87(1)(lb)

460. This item redrafts paragraph 87(1)(lb) to take account of the new definitions of *aircraft* and *treatment*.

Item 320 - Saving of regulations

461. This item is a savings provision for any regulations made under paragraph 87(1)(lb) prior to amendment.

Item 321 - Subparagraph 87(1)(qa)(ii)

462. This item ensures that this regulating power extends to pests as well as disease agents.

Item 322 - Paragraphs 87(1)(ra) and (rb)

463. This item substitutes new paragraphs 87(1)(ra) and (rb) which ensure that these regulation making powers encompass applications for permits, authorisations or approvals under the Act, regulations or procedures for consideration of such applications and the granting or refusing of such applications and the making of orders, determinations, or declarations under the Act or regulations and the giving of notices or directions, or the making of any requirement under the Act or regulations.

464. Paragraph 87(1)(rb) ensures that regulations may be made to prescribe the manner in which any permit, authorisation, approval, notice, direction, requirement or other instrument granted or given, or any order, determination, declaration or other instrument made, under this Act or the regulations may be produced to a person or body.
Item 323 - Saving of regulations

465. This item is a savings provision for any regulations made under paragraph 87(1)(ra) or (rb) prior to amendment.

Item 324 - Paragraph 87(1)(v)

466. Consequential to the repeal of the definition of diseases or pests affecting animals or plants, this item amends paragraph 87(1)(v) to refer to diseases or pests.

Item 325 - Subsection 87(1B)

467. This item amends subsection 87(1B) to refer to diseases or pests. The existing provision refers only to diseases.

Item 326 - Subparagraph 87(1B)(a)(i)

468. This item ensures that this regulation making power extends to powers to examine as well as to search and enter.

Item 327 - Paragraph 87(1B)(e)

469. This item amends paragraph 87(1B)(e) to ensure that this regulation making power applies to pests as well as diseases.