

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

### *Quarantine Act 1908*

#### *Quarantine Amendment Proclamation 2005 (No. 3)*

The *Quarantine Proclamation 1998* (“the Proclamation”) provides the legislative basis for controlling the entry of animals, plants and other goods of quarantine concern into Australia, and for controlling the movement of animals, plants or other goods of quarantine interest between different parts of the Australian mainland.

Subsection 13(1) of the *Quarantine Act 1908* (“the Act”) provides that the Governor-General may, by proclamation, declare or prohibit a range of matters for the purposes of the Act. The range of matters that the Governor-General may prohibit includes the introduction or importation into Australia of any disease or pest or any substance, article or thing containing or likely to contain any disease or pest; the importation into Australia of any articles or things likely, in his or her opinion, to introduce, establish or spread any disease or pest; and the importation into Australia of any animals or plants or any parts of animals or plants. The range of matters which the Governor-General may declare includes ports where particular kinds of imported goods may be landed.

Subsection 13(2) of the Act provides that the power of prohibition under section 13 of the Act extends to authorise prohibition generally, or as otherwise provided by the instrument authorising the prohibition, including prohibition either absolutely or subject to specified conditions or restrictions. Subsection 13(2A) of the Act provides that a proclamation made under subsection 13(1) of the Act may provide that the importation of a thing is prohibited unless a permit for its import is granted by a Director of Quarantine. In addition, subsection 13(2B) of the Act states that an import permit granted pursuant to a proclamation made in accordance with subsection 13(2A) may be granted subject to compliance with any conditions or requirements set out in that permit.

The *Quarantine Amendment Proclamation 2005 (No.3)* (“the Amendment Proclamation”):

- amends sections 11, 13 and 13B of the Proclamation to permit changes to the kinds of goods (animals, plants and other items) that may be landed at certain ports;
- amends an item in table 13 of subsection 38(2) of the Proclamation to impose additional restrictions or conditions on the importation of the animal or animal part mentioned in the item; and
- amends Schedule 5 to the Proclamation to vary the types of seeds that may be imported into Australia without a permit.

Section 11 of the Proclamation declares ports where animals of particular kinds, or having particular descriptions, may be landed. Section 13 of the Proclamation declares ports where imported plants of particular kinds, or having particular uses, may be landed. Section 13B of the Proclamation declares where particular kinds of other goods may be landed.

Subsection 38(1) of the Proclamation provides that the importation into Australia of a dead animal or animal part (other than an animal or part to which subsection 38(2) applies) is prohibited unless a Director of Quarantine has granted a permit for its importation. The effect of subsection 38(1) is to allow the importation of an animal or part without a permit if it is an animal or part to which subsection 38(2) applies.

Section 63 of the Proclamation provides that the importation into Australia of a seed (other than a seed of a kind of plant mentioned in Schedule 5 to the Proclamation) is prohibited unless a Director of Quarantine has granted a permit for its importation. Schedule 5 to the Proclamation lists all species that have been assessed as permitted seeds. The effect of section 63 is to allow the importation into Australia of a seed of the plant species listed in Schedule 5 without a permit.

No consultation has occurred on these amendments because they are of a minor or machinery nature and do not substantially change the law.

The Amendment Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Proclamation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Details of the amendments are set out below:

Section 1 provides that the name of the Amendment Proclamation is the *Quarantine Amendment Proclamation 2005 (No. 3)*.

Section 2 provides that the Amendment Proclamation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 provides that Schedule 1 amends the *Quarantine Proclamation 1998*.

#### Schedule 1 - Amendments

Item 1 amends the Reader's Guide to replace the webpage reference to SCALEplus with a webpage reference to ComLaw. ComLaw has superseded SCALEplus as the legal information retrieval system for the Commonwealth. ComLaw is owned by the Australian Attorney-General's Department and incorporates the Federal Register of Legislative Instrument ("FRLI") which was established on 1 January 2005 under section 20 of the *Legislative Instruments Act 2003*.

Items 2 to 9 amends the Reader's Guide to reflect the changes made by the Amendment Proclamation. The Reader's Guide is not part of the law. Its purpose is to assist readers to understand and use the Proclamation.

Item 10 replaces items 4 and 5 in table 4 of section 11 of the Proclamation with new items 4 and 5. The effect of the new items 4 and 5 is to allow fish, whether dead or alive, to be landed at the seaport of Cairns and at Cairns Airport. This amendment facilitates the use of Cairns as an entry point for fish caught in the nearby international fishing grounds, and for live ornamental fish.

Item 11 inserts a new item in table 4 of section 11 of the Proclamation. The effect of this new item is to allow dead fish to be landed at the Horn Island Airport. This amendment facilitates the use of Horn Island Airport as an entry point for fish caught in the nearby international fishing grounds.

Item 12 replaces items 8 and 9 in table 4 of section 11 of the Proclamation with new items 8 and 9. The effect of the new items is to allow fish, whether dead or alive, to be landed at the seaport of Townsville and at Townsville Airport. This amendment facilitates the use of Townsville as an entry point for fish caught in the nearby international fishing grounds, and for live ornamental fish.

Item 13 amends item 2 in table 6 of section 13 of the Proclamation. The amendment prevents the landing of sawn timber at the seaport of Yamba unless it is from Norfolk Island or New Zealand, and allows the landing of Kentia palm seed from Norfolk Island. The port of Yamba's proximity to agricultural land makes the landing of sawn timber from other overseas locations an unacceptable quarantine risk. Kentia palm seeds from Norfolk Island are, on the other hand, considered to be a very low quarantine risk.

Item 14 inserts four new ports into table 6D of subsection 13B(2) of the Proclamation. The new ports are Horn Island Airport, Mourilyan Harbour, Thursday Island and Weipa. The effect of this amendment is to allow personal effects that are accompanied passenger baggage to be landed at these ports.

Item 15 replaces item 1 in table 13 of section 38 of the Proclamation with a new item 1. The effect of the new item is to impose two additional conditions or restrictions on the importation of preserved animals or animal tissues (including fish) into Australia without a permit. The two additional requirements are that the container in which the material is held is to be reliably sealed and that no animal, plant or human is to be exposed directly or indirectly to the material or any of its derivatives. These additional requirements result from a review by Biosecurity Australia. The review found that a quarantine risk could arise if the material is exposed to an animal, plant or human.

Items 16 and 17 remove two species of plant from Schedule 5 to the Proclamation. These species are removed because they are now considered to be a weed. The effect of this amendment is to prohibit the importation into Australia of the seeds of these plant species without a permit.

Item 18 inserts new plant species into Schedule 5 to the Proclamation. The effect of this amendment is to allow the importation of the seed of these plant species into Australia without an import permit.

Item 19 amends certain entries in Schedule 5 to the Proclamation that describe a plant genus and exclude certain species of that plant genus. The effect of these entries is to allow the importation into Australia without a permit of all seeds of the listed plant genus except seeds of the excluded plant species. The amendment inserts some new species of plants as exclusions and removes some existing species of plants from the exclusions category. The effect of this amendment is, in the case of the insertion of a new species, to limit the range of seeds that falls within a particular plant genus that may be imported without a permit. In the case of the removal of existing species, the effect is to broaden the range of seeds that falls within a particular plant genus that may be imported without a permit.