

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 342**

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

*Australian Meat and Live-stock Industry Act 1997*

*Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulation  
2009 (No. 2)*

Section 11 of the *Australian Meat and Live-stock Industry Act 1997* (the Act) sets out the requirements for an application for a licence to export live-stock from Australia. Subsection 11(1) provides that an application for an export licence must be made in accordance with the regulations. Subsection 11(2) provides that an applicant for an export licence must pay the prescribed fee in respect of the application.

Subsection 74(1) of the Act provides that the Governor-General may make regulations prescribing all matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the *Export Control (Animals) Order 2004*, made under the *Export Control Act 1982*, provides that the export of live-stock is prohibited unless the exporter holds a live-stock export licence.

Regulation 15 of the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998* (the Regulations) deals with application fees for an export licence under the Act and provides for three specific components to the fee: (a) a lodgement component; (b) an external vetting agency component; and (c) an assessment component.

The purpose of the *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2009 (No. 2)* (the Amendment Regulations) is to amend the Regulations to increase the assessment component of the export licence application fee.

This fee covers the cost for assessing whether the Secretary of the Department of Agriculture, Fisheries and Forestry may grant a live-stock export licence and any inspection, evaluation or demonstration of the applicant's live-stock export business undertaken by an authorised officer or other appropriately qualified person nominated by the Secretary. The fee increase was required due to the loss of the 40 per cent contribution, which had been provided by the Australian Government (the Government), for export certification services. The contribution lapsed on 30 June 2009. The revised fee also reflects the increase in service costs since the last fee increase in 2004.

Previously, an amendment was made to the Regulations which commenced on 1 July 2009 to support a return to full cost recovery. On 15 September 2009 the

Senate passed a motion to disallow the *Export Control (Fees), Amendment Orders 2009 (No. 1)*, the *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2009 (No. 1)*, the *Export Inspection (Establishment Registration Charges) Amendment Regulations 2009 (No. 1)*, and the *Export Inspection (Quantity Charge) Amendment Regulations 2009 (No. 1)*. The disallowance decision by the Senate was in line with the recommendation of the Rural and Regional Affairs and Transport References Committee inquiry into the Government's management of the removal of the 40 per cent fee rebate for the Australian Quarantine and Inspection Services (AQIS) export certification functions. The Committee recommended that the Senate move to disallow the export fees and charges in its report released to the Senate on 14 September 2009.

Following disallowance, AQIS export fees and charges immediately reverted to those that were in place prior to 1 July 2009. The disallowance of the export fees and charges did not reinstate the 40 per cent contribution which was in place prior to 1 July 2009. Consequently, significant shortfalls in revenue have been experienced by all export programs.

Section 48 of the *Legislative Instruments Act 2003* provides that if a legislative instrument is disallowed then another legislative instrument, that is the same in substance, must not be made within six months of the disallowance unless the disallowance has been rescinded.

The Minister for Agriculture, Fisheries and Forestry reached an agreement with the Opposition and Greens senators to facilitate Senate passage of a \$127.4 million industry reform program. Agreement to this package enabled the Senate to reverse its previous decision from 15 September 2009 to block new export certification fees and charges to return industry to full cost recovery. On 25 November 2009 the Senate passed a rescission motion which allows an instrument that is same in substance to be made within six months of the disallowance. The Amendment Regulations support a return to full cost recovery.

In addition to increasing the charge in paragraph 15(1)(c) of the Regulations, the Amendment Regulations also altered the prescribed unit of time in the paragraph from a half hour to a quarter hour to maintain consistency with fee charging units contained in other export legislation.

AQIS commenced consultation with its Industry Consultative Committees (ICCs) following the Government's decision to allow the 40 per cent contribution to lapse. Further to this, joint AQIS/Industry Ministerial Taskforces were also established for the fish, grain, dairy, meat, horticulture and live animal export industries. The Ministerial taskforces were consulted regarding the revised fees and charges resulting from the impending cessation of the 40 per cent Government contribution.

Consultation with the live animal export industry on these changes occurred through the Livestock Exporters Industry Consultative Committee (LEICC). The LEICC is the principal advisory forum for AQIS and the livestock export industry to consult on all issues relating to Australian livestock exports. The membership of the LEICC comprises of representatives from the following key industry sectors:

- Australian Livestock Exporters' Council

- LiveCorp
- Cattle Council of Australia
- Sheepmeat Council of Australia
- Australian Maritime Safety Authority
- Meat and Livestock Australia
- LiveShip
- AQIS and Department of Agriculture, Fisheries and Forestry representatives

The Amendment Regulations are part of a package of amendments that related to fees and charges associated with export related activities. The 'package' included amendments to the following:

1. *Export Control (Fees) Orders 2001*
2. *Export Inspection (Establishment Registration Charges) Regulations 1985*
3. *Export Inspection (Quantity Charge) Regulations 1985*
4. *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998*
5. *Export Inspection and Meat Charges Collection Regulations 1985*

Amendments to the *Export Control (Fees) Orders 2001* were made by the Minister on 26 November 2009. Amendments to all the regulations were made on the same day as these Amendment Regulations.

As these amendments make changes in relation to cost recovery, a Cost Recovery Impact Statement was prepared.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the Amendment Regulations are set out below.

Regulation 1 specifies the name of the Amendment Regulations as the *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2009 (No. 2)*.

Regulation 2 provides that the Amendment Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that Schedule 1 amends the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998*.

#### Schedule 1 – Amendments

Item 1 omits the current fee of \$75.00 per half hour provided under paragraph 15(1)(c) and replaces it with a fee of \$70.50 per quarter hour. The effect of this is to increase the fee in relation to the assessment of export licensing applications. The fee increase was required due to the loss of the 40 per cent contribution provided by the Government, which lapsed on 30 June 2009. The fee is also increased to account for an increase in service costs since the fee was inserted in 2004. These increased costs

include the costs of employing the authorised officer or other appropriately qualified person to undertake the assessment and/or conduct or observe the applicant's live-stock export business when necessary to satisfy the Secretary that the requirements have been met.

This fee has not increased since it was first inserted in 2004 despite several increases for other fees for services provided by AQIS's Live Animal Export Program.

The assessment fee will be consistent with fees for similar work in other amendment instruments in the package. For example a fee inserted into the *Export Control (Fees) Orders 2001* for processing documents for the export of live animals is also \$70.50 per quarter hour.

In addition to increasing the charge, item 1 altered the unit of time from a half hour to a quarter hour. This maintains consistency with fee charging units contained in other export legislation.

The revenue for live export licence charges collected in 2008-09 was \$27,054. Of this, \$16,232 was derived from industry contributions, while \$10,822 was received from the 40 per cent Government contribution. The projected revenue for live export licence charges in 2009-10 is expected to be \$30,456. All of this will be derived from live export licence charges in line with the return to 100 per cent cost recovery. The figures represent an increase in total revenue of \$3,402.