

EXPLANATORY STATEMENT

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

Export Control (Orders) Regulations 1982

Export Control (Animals) Amendment Order 2012 (No. 1)

Subsection 25 (1) of the *Export Control Act 1982* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

Paragraph 25 (2) (g) of the Act provides that the regulations may make provision for or in relation to empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

The *Export Control (Orders) Regulations 1982* (the Regulations) are made under the Act. Regulation 3 provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations under the Act.

The *Export Control (Animals) Order 2004* (the Animals Order) is made under the Regulations. The Animals Order regulates the export of live animals (including livestock as defined in the Order) and animal reproductive material.

Purpose

The purpose of the *Export Control (Animals) Amendment Order 2012 (No. 1)* (the Amendment Order) is to amend the Animals Order to introduce a regulatory framework under which Australian livestock exporters will be required to have in place an exporter supply chain assurance system (ESCAS) for all feeder and slaughter livestock exported from Australia. Implementation of the regulatory framework will be phased, with 75 per cent of trade covered from 1 March 2012, 99 per cent covered from 1 September 2012 and all trade covered from 1 January 2013.

Incorporated documents

The Amendment Order incorporates by reference the *Terrestrial Animal Health Code* (2010) published by the World Organisation for Animal Health into the Order under the definition of ‘OIE recommendations’.

Consultation

In developing the regulatory framework informing this Order, the Australian Government consulted with a range of stakeholders including the domestic livestock industry, the livestock export industry, state and territory governments, Australia’s trading partners, animal welfare organisations and the Australian Veterinary Association.

A Regulation Impact Statement ('Livestock Exports – Regulatory Framework for Animals Welfare Assurance', reference number 12978) has been approved by the Office of Best Practice Regulation.

The Amendment Order is a legislative instrument for the purposes of the *Legislative Instrument Act 2003*.

Human rights compatibility statement

The amendments in the Amendment Order are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The amendments implement a new regulatory framework for livestock exports and do not engage any human rights issues.

Details of the Amendment Order are set out below:

Section 1

1. This section provides that the Amendment Order is named the *Export Control (Animals) Amendment Order 2012 (No. 1)*.

Section 2

2. This section provides that the Amendment Order commences on 1 March 2012.

Section 3

3. This section provides that Schedule 1 of the Amendment Order amends the *Export Control (Animals) Order 2004*.

SCHEDULE 1 Amendments

Item 1

1. Item 1 amends subsection 1.05 (1) of the Animals Order to insert three additional definitions.

- The first definition defines the term 'AMLI Indonesia Order' as meaning the *Australian Meat and Live-stock Industry (Export of Live-stock to the Republic of Indonesia) Order 2011 (No. 2)*. The AMLI Indonesia Order implements a system for supply chain assurance of non-breeder livestock exported to the Republic of Indonesia. The AMLI Indonesia Order is to be repealed by the *Australian Meat and Live-stock Industry (Export of Live-stock to the Republic of Indonesia Repeal) Order 2012* and the matters that were formerly dealt with by the AMLI Indonesia Order are to be regulated by the Animals Order.
- The second definition defines the term 'ESCAS' as meaning exporter supply chain assurance system. The purpose of an ESCAS is to require Australian exporters to ensure that: animals will be transported and handled at or better than the internationally accepted standards for animal welfare established by the World Organisation for Animal Health (OIE); they have control of the

movement of animals throughout the supply chain; they can trace or account for animals throughout the supply chain; and that they arrange independent auditing and reporting of their supply chain against these new requirements.

- The third definition defines the term ‘OIE recommendations’ as meaning ‘the recommendations and standards set out in Section 7 of the Terrestrial Animal Health Code (2010) published by the World Organisation for Animal Health’.

Note On 1 March 2012, the Terrestrial Animal Health Code (2010) was available on the Internet at http://web.oie.int/eng/normes/mcode/a_summry.htm.

Items 2 and 3

2. Items 2 and 3 amend paragraphs 2.02 (b) and 2.02 (e) of the Animals Order which is contained in Part 2 of the Animals Order relating to exports of livestock by sea. Section 2.02 provides that export of livestock is prohibited unless the requirements of paragraphs (a) to (i) are met. The amendments insert ESCAS requirements into the livestock export approval process. The effect of this amendment is that the export of livestock will be prohibited unless the Secretary of the Department of Agriculture, Fisheries and Forestry (the Secretary) has approved an ESCAS (if required) before the exporter begins sourcing, transporting or preparing livestock for export.

3. Item 3 amends paragraph 2.02 (e) of the Animals Order such that the export of livestock will be prohibited unless, additionally, the exporter complies with the approved ESCAS.

4. It will be possible for the Secretary to approve an ESCAS subject to conditions; see Item 12 below. Compliance with an ESCAS will require compliance with any conditions that the Secretary may have imposed in respect of an ESCAS.

5. Paragraph 2.02 (b) is subject to subsection 2.43 (2), which is amended by Item 5 of the Amendment Order.

Item 4

6. Item 4 inserts a new section 2.42A into the Animals Order, which relates to ESCASs.

7. Subsections (1) and (2) set out mandatory ESCAS requirements.

8. Subsection (3) permits an exporter to refer the Secretary to documents that have already been provided that describe a relevant ESCAS. The effect of this provision is that, if an exporter intends to use a previously approved supply chain and there are no relevant changes, the exporter will not have to re-submit documentation that describes and evidences that supply chain. Instead the exporter will need to provide a statement that there are no relevant changes to the previously approved supply chain.

9. If an exporter relies on subsection (3), the Secretary retains discretion in relation to the approval of the ESCAS, and whether to impose conditions in relation to the ESCAS.

10. Subsection (4) provides that an ESCAS is not required for breeder livestock.

Item 5

11. Item 5 amends section 2.43 to require, in addition to NOIs and CRMPs, ESCASs to be given to the Secretary.
12. The section has been amended to specify a timeframe within which a NOI, a CRMP, and any documents describing and evidencing an ESCAS are to be given to the Secretary, and to broaden the circumstances in which the Secretary is able to accept late documents under this provision.

Items 6 to 8

13. Item 6 is a consequential amendment to section 2.44. The section allows for ESCAS approvals by the Secretary.
14. Item 7 is a consequential amendment to paragraph 2.44 (1) (a). This amendment provides that the Secretary is able to require further information relating to an ESCAS for a proposed export.
15. Item 8 is a consequential amendment to paragraph 2.44 (1) (b). This amendment permits the Secretary, by notice in writing, to direct that an ESCAS be varied in a specified way. This provision deals with requirements to vary ESCASs prior to their approval; Item 19 deals with variations of approved ESCASs.

Item 9

16. Item 9 amends subsection 2.44 (2) to remove compliance with the Australian Standards for the Export of Live-stock as a specific criterion for approval of a NOI or a CRMP as such compliance is already a condition of an exporter's AMLI licence.

Item 10

17. Item 10 inserts a new subsection 2.44 (2A) and subsection 2.44 (2B) into the Animals Order. Subsection 2.44 (2A) relates to the Secretary's discretion in relation to approval of ESCASs.
18. In deciding whether to approve an ESCAS, subsection 2.44 (2B) requires the Secretary to consider the matters in subparagraph 2.42A (a) (i) to (vii). These particular items do not limit the matters to which the Secretary may have regard, for example non-compliance with conditions of a previously approved ESCAS may be considered when deciding whether to approve an ESCAS for future consignments.

Item 11

19. Item 11 amends section 2.44 (3) and requires the Secretary to give written notice to the exporter of his or her decision whether or not to approve an ESCAS.

Items 12 and 13

20. Item 12 amends section 2.44 (4) and permits the Secretary to approve an ESCAS subject to a condition.
21. Item 13 inserts a new subsection 2.44 (5) into the Animals Order. Without

limiting the discretion of the Secretary, this amendment sets out specific matters that the Secretary may create conditions with respect to when making a decision to approve or not approve an ESCAS. These conditions are not restricted to ones regulating the relevant OIE recommendations, but can relate to any other matter more generally that the Secretary considers appropriate.

22. Subsection 2.44 (5) is based on subsection 6 (4) of the AMLI Indonesia Order, with modifications as appropriate.

Items 14 to 17

23. Items 14, 15, 16, and 17 are amendments to section 2.45.

24. Item 14 is a consequential amendment to section 2.45.

25. Item 15 is a consequential amendment to subsection 2.45 (1). This amendment adds references to ESCASs, in addition to NOIs and CRMPs, in relation to the effect of approval. It also aligns the language of this section more closely with that of the offence provision in section 9 of the *Export Control Act 1982*. Under that provision, where a licence or permission granted under the regulations is subject to a condition or restriction to be complied with by a person, the person is required to comply with the condition or restriction. Failure to do so is a strict liability offence.

26. Item 16 is a consequential amendment to subsection 2.45 (1).

27. Item 17 is a consequential amendment to subsection 2.45 (2). This amendment provides that approval of an ESCAS for a proposed export does not oblige the Secretary to grant an export permit for the export.

Item 18

28. Item 18 is a consequential amendment to section 2.46.

Item 19

29. Item 19 inserts a new section 2.46A into the Animals Order. The amendment relates to variation and revocation of approved ESCASs. This provision is intended to permit the Secretary to vary conditions even after livestock have landed in the export country.

30. Subsection 2.46A (2) sets out requirements that are placed on exporters.

31. Paragraph 2.46A (2) (a) imposes requirements on exporters that relate to notification of any relevant change in any circumstance that relates to an approved ESCAS. Exporters are required to advise the department as soon as practicable, but no later than 5 working days after becoming aware of the change. This provision is concerned with notification of the Secretary and does not authorise any action that would breach an approved ESCAS or any conditions imposed on an approved ESCAS. The provision is subject to any conditions imposed on the ESCAS approval – for example, the Secretary might impose a condition that requires notification of changes earlier than the time specified in this provision, or to be reported in a particular way.

32. Paragraph 2.46A (2) (b) requires an exporter to comply with any requirement of

the Secretary that an approved ESCAS be varied in a specified manner.

33. Subsection 2.46A (3) relates to revocation of approvals of ESCASs. The Secretary has a general power to revoke approval of an ESCAS, arising from paragraph 13 (1) (a) of the *Legislative Instruments Act 2003* and subsection 33 (3) of the *Acts Interpretation Act 1901*. Subsection 2.46A (3) provides two further circumstances in which the Secretary may revoke approval of an ESCAS, and provides also that those circumstances do not restrict the circumstances in which the Secretary is able to revoke approval.

Item 20

34. Item 20 is a consequential amendment to subsection 2.47 (2).

Item 21

35. Item 21 is a consequential amendment to paragraph 2.52 (3) (a).

Item 22

36. Item 22 is a consequential amendment to paragraph 2.54 (3) (b).

Item 23

37. Item 23 is a consequential amendment to paragraph 2.58 (2) (d). The effect of this amendment is that an application for an export permit will have to include a declaration that the exporter has complied with the ESCAS.

Item 24

38. Item 24 inserts paragraph 2.58 (2) (e) into the Animals Order. The effect of this amendment is that, if an ESCAS is required, an application for an export permit will have to include a declaration that no relevant circumstances have changed in relation to the ESCAS.

Item 25

39. Item 25 is a consequential amendment to subparagraph 2.59 (1) (c) (iv). The effect of this amendment is that, before granting an export permit, the Secretary must also be satisfied that the exporter has complied with the approved ESCAS.

Item 26

40. Item 26 inserts subparagraph 2.59 (1) (c) (v) into the Animals Order. The effect of this amendment is that, before granting an export permit, the Secretary must also be satisfied that the exporter is in a position to comply with the approved ESCAS.

Item 27

41. Item 27 inserts paragraph 2.60 (1) (d) into the Animals Order. The effect of this amendment is that the Secretary will be able to refuse to grant an export permit if the permit would, if granted, have allowed the livestock concerned to be dealt with other than in accordance with the approved ESCAS.

Item 28

42. Items 28 to 49 are within Part 3 of the Animals Order relating to exports of livestock by means other than sea. The amendments are generally equivalent to Items 2 to 27 made in respect of export of livestock by sea.

43. Item 28 amends subsection 3.03 (b) and corresponds to the amendments made by Item 2 and Item 3.

Item 29

44. Item 29 amends section 3.04 in a manner that corresponds to the amendment made by Item 4.

Item 30

45. Item 30 is a consequential amendment to section 3.05.

Items 31 and 32

46. Item 31 amends subsection 3.05 (1) in a manner that corresponds to the amendment made by Item 5.

47. Item 32 amends subsection 3.05 (2) in a manner that corresponds to the amendment made by Item 5.

Item 33

48. Item 33 amends section 3.07 in a manner that corresponds to the amendment made by Item 6.

Item 34

49. Item 34 amends paragraph 3.07 (1) (a) in a manner that corresponds to the amendment made by Item 7.

Item 35

50. Item 35 amends paragraph 3.07 (1) (b) in a manner that corresponds to the amendment made by Item 8.

Items 36 and 37

51. Items 36 and 37 amend subsection 3.07 (2) in a manner that corresponds to the amendments made by Item 9

Item 38

52. Item 38 amends subsection 3.07 (2) in a manner that corresponds to the amendment made by Item 10.

Item 39

53. Item 39 amends subsection 3.07 (3) in a manner that corresponds to the

amendment made by Item 11.

Item 40

54. Item 40 amends subsection 3.07 (4) in a manner that corresponds to the amendment made by Item 12, but with appropriate adaptations for exports of livestock by means other than sea.

Item 41

55. Item 41 inserts a new subsection 3.07 (5) into the Animals Order in a manner that corresponds to the amendment made by Item 13.

Item 42

56. Item 42 amends section 3.08 in a manner that corresponds to the amendment made by Item 14.

Item 43

57. Item 43 amends subsection 3.08 (1) in a manner that corresponds to the amendment made by Item 15.

Item 44

58. Item 44 amends subsection 3.08 (1) in a manner that corresponds to the amendment made by Item 16.

Item 45

59. Item 45 amends subsection 3.08 (2) in a manner that corresponds to the amendment in Item 17

Item 46

60. Item 46 amends the heading to section 3.09 in a manner that corresponds to the amendment made in Item 18.

Item 47

61. Item 47 inserts a new section 3.09A in a manner that corresponds to the amendment made in Item 19.

Item 48

62. Item 48 amends subsection 3.10 (2), and corresponds to the amendment made by Item 20.

Item 49

63. Item 49 amends paragraph 3.15 (1) (a), and corresponds to the amendments made by Item 25.

Item 50

64. Item 50 is a consequential amendment to paragraph 3.15 (1) (b).

Item 51

65. Item 51 inserts a new paragraph 3.15 (1) (j), and corresponds to the amendments made by Item 26.

Item 52

66. Item 52 is a consequential amendment to section 5.01.

Item 53

67. Item 53 inserts a new section 5.01A into the Animals Order. The amendments made by Item 13 and Item 41 permit the Secretary to impose conditions related to auditing on ESCASs. For the avoidance of doubt, section 5.01A clarifies that nothing in Part 5 of the Animals Order limits the conditions that can be imposed on an ESCAS in relation to audits.

Item 54

68. Item 54 inserts new sections 7.03, 7.04, 7.05, 7.06 and 7.07 into Part 7 of the Animals Order which relate to transitional arrangements.

69. Section 7.03 permits the Secretary to declare by notice published on the Department's website that ESCAS requirements under the Animals Order do not apply to a country, or class of countries (the declared countries), in relation to specified livestock (the declared livestock), until a specified date (the declaration date). For the export of declared livestock to declared countries, ESCAS requirements will not apply if:

- the proposed export occurs before the declaration date; **and**
- in the case of export other than by sea, an export permit is granted before the declaration date; **or**
- in the case of export by sea, a permission to leave for loading is given for an export prior to the declaration date.

70. In effect, Section 7.03 allows the implementation of the regulatory framework for livestock exports, including ESCAS requirements, through a phased approach. The regulatory framework will apply to 75 per cent of trade from 1 March 2012, 99 per cent of trade from 1 September 2012 and all trade from 1 January 2013. For example, ESCAS requirements will not apply to exports of cattle to Russia prior to 1 January 2013 if declared as such on the Department's website.

71. Section 7.04 permits the Secretary to declare by notice published on the Department's website that ESCAS requirements under the Animals Order do not apply to a country, or class of countries (the declared countries), in relation to specified livestock (the declared livestock). For the export of declared livestock to declared countries, ESCAS requirements will not apply indefinitely.

72. In effect, Section 7.04 allows for existing arrangements with countries which

produce outcomes equivalent to or greater than those required by the regulatory framework. For example, the requirements for livestock exports to Egypt under the *Australian Meat and Live-stock Industry (Export of Live-stock to Egypt) Order 2008*.

73. Section 7.05 explains the effect of sections 7.03 and 7.04.

74. Section 7.06 sets out transitional arrangements in relation to the repeal of the AMLI Indonesia Order by the *Australian Meat and Live-stock Industry (Indonesia Repeal) Order 2012*. An ESCAS is taken to have been approved for the purposes of the Animals Order if an approval has been granted under section 6 of the AMLI Indonesia Order. Any conditions imposed in respect of that approval are taken to have been granted under the Animals Order.

75. Section 7.07 sets out transitional arrangements in relation to the timing of giving NOIs, CRMPs and ESCASs to the Secretary.