**EXPLANATORY STATEMENT**

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

*Export Control (Orders) Regulations 1982* and *Export Control Act 1982*

*Export Control (Fees) Amendment Order 2012 (No. 1)*

**Legislative Authority**

Pursuant to section 25 of the *Export Control Act 1982* (Act) and regulation 3 of the *Export Control (Orders) Regulations 1982* (Regulations), the *Export Control (Fees) Orders 2001* (Orders) impose fees in connection with the performance of services by the Secretary, delegates of the Secretary and authorised officers in connection with the provision of export certification. The fees are applied to a number of commodities, including plants and plant products.

**Purpose**

The purpose of the *Export Control (Fees) Amendment Order 2012 (No. 1)* (Amendment Order) is to implement a revised charging regime for the export of horticultural products. This revised regime is based on a new service delivery arrangement. The proposed Amendment Order amends the Orders to:

* provide a new structure and rates for the collection of fees for audit, inspection and general services;
* provide new rates for the collection of overtime loading fees; and
* provide a new structure and rates for the collection of export certification fees.

**Consultation**

Regular consultation with the horticulture export industry on cost recovery and regulatory activity occurred through the Horticulture Exports Consultative Committee (HECC). The HECC is the principal advisory forum for the Department of Agriculture, Fisheries and Forestry (DAFF) and the horticulture export industry to consult on all issues relating to Australian horticulture exports.

This consultation provides a process for monitoring of fees charged on an on-going basis and provides information on the changing dynamics of the industry that may need consideration in the review of fees and charging structures. It allows DAFF to work in partnership with the industry to:

* review DAFF activities and resources supporting export inspection and certification services for the industry,
* identify improved service delivery arrangements,
* ensure that risk is appropriately managed within the industry to the benefit of all stakeholders.

During the implementation of the Export Reform Certification Program the role of HECC was subsumed within the Joint DAFF Biosecurity Horticulture Ministerial Taskforce (MTF). Consultation to develop the new fees and charges model, and the associated service delivery model, occurred through this task force.

In order to achieve broader consultation with industry the Horticulture Exports Senior Advisory Group (HESAG) was formed and met on 14 December 2011. The current status on the fees and charges was discussed and feedback sought from this group.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the proposed amendment to the *Export Control (Fees) Orders 2001* (ID 13667).A Cost Recovery Impact Statement was prepared by DAFF and approved by the Department of Finance and Deregulation.

**Details of the *Export Control (Fees) Amendment Order 2012 (No.1)***

Section 1 – Name of Order

This order provides that the name of the Order is the *Export Control (Fees) Amendment Order 2012 (No. 1).*

Section 2 – Commencement

This order provides that the Order commences on 1 July 2012.

Section 3 – Amendment to *Export Control (Fees) Orders 2001*

This order provides that Schedule 1 amends the *Export Control (Fees) Orders 2001.*

Schedule 1 – Amendments

**Item 1** omits the definition of ‘AQIS’ from suborder 4(1) of the Orders. This reference has become obsolete. All subsequent references to ‘AQIS’ have also been removed from the Orders.

**Item 2** omits the definition of ‘cut flowers’ from suborder 4(1) of the Orders.

Horticultural products such as fresh fruit, fresh vegetables, cut flowers, nursery stock, unprocessed nuts and dried fruit will now be covered under the definition of ‘plant’ and ‘plant products’ within the meaning of the *Export Control (Plants and Plant Products) Order 2011*.

The purpose of the amendment is to maintain consistency between the *Export Control (Plants and Plant Products) Order 2011* and the Orders when defining such products.

**Item 3** omits the definition of ‘dried fruit’ from suborder 4(1) of the Orders. The purpose of this amendment is the same as above at item 2.

**Item 4** substitutes an amended definition for ‘‘EXDOC’’ in suborder 4(1) of the Orders. The purpose of this amendment is to remove the term ‘‘AQIS’’ from the definition of EXDOC.

**Item 5** omits the definition of ‘fresh fruit’ from suborder 4(1) of the Orders. The purpose of this amendment is the same as above at item 2.

**Item 6** omits the definition of ‘horticulture products’ in suborder 4(1) of the Orders. The purpose of this amendment is the same as above at item 2.

**Item 7** omits the definition of ‘nursery stock’ in suborder 4(1) of the Orders. The purpose of this amendment is the same as above at item 2.

**Item 8** omits the definition of ‘plants’ in suborder 4(1) of the Orders. The purpose of this amendment is the same as above at item 2.

**Item 9** substitutes an amended definition of ‘plant products’ which deletes the words ‘but not horticultural products’ from the definition. Products were previously defined as horticultural products will now be covered under the meaning of plants and plant products in the *Export Control (Plants and Plant Products) Order 2011*.

**Item 10** inserts an amended definition of ‘plants’ which deletes the words ‘but not horticultural products’ from the definition. Products were previously defined as horticultural products will now be covered under the meaning of plants and plant products in the *Export Control (Plants and Plant Products) Order 2011*.

**Item 11** omits ‘*Export Control (Plants and Plant Products) Orders 2005*’ and inserts the correct citation ‘*Export Control (Plants and Plant Products) Order 2011*’. This corrects a typographical error within the Orders.

**Item 12** substitutes an amended section 14 which makes fees for all inspection, audit and general services payable by the person for whom the services are performed. This was previously provided for in the old section 22A of the Orders.

Item 12 also substitutes the previous section 14A with section 15 which retains the fee of $36 per quarter hour but now includes new time-based maximum fees of $1,152 per day (8 hours or 32 quarter hour units) and $5,760 per week (5 days or 160 quarter hour units). These fees do not include overtime.

**Item 13** omits Order 22A of the Orders which provided that fees for all inspection, audit and general services are payable by the person for whom the services are performed. This is now provided for in section 14 of the Orders.

**Item 14** omits the reference to ‘AQIS’ from subparagraph 23AA(5)(b)(iii) of the Orders and inserts ‘the Department’. The purpose of the amendment is as outlined above at item 1.

**Item 15** omits the reference to ‘AQIS’ from subparagraph 24(1A)(b)(iii) of the Orders and inserts ‘the Department’. The purpose of the amendment is as outlined above at item 1.

**Item 16** omits Part 7 from the Orders. This Part which previously dealt with fees for horticultural products has been absorbed into Part 3 of the Orders, dealing with fees for grains, plants and plant products. Fees for horticultural products will now be covered within this Part which accommodates these changes under a revised definition for plants and plant products and an amendment to remove the definition of horticultural products from the Orders. Amendments have also been made to remove Schedule 6 of the Orders, previously under Orders 34A, 34D of Part 7 of the Orders.

Under the new cost recovery arrangement, fees for horticulture products will change from the existing rates to rates which apply under the regime for grains, plants and plant products.

A fee of $36 per quarter hour and new time-based maximum fees of $1,152 per day (8 hours or 32 quarter hour units) and $5,760 per week (5 days or 160 quarter hour units) apply for all inspection, audit and general services. These maximum fees do not include overtime.

Fees for these services will be payable by the person for whom the services are performed. The fees do not apply to services that may be provided by non-government employed authorised officers.

Overtime fees apply to the provision of all services, including export certification services that are provided outside of the department’s normal working hours.

Suborder 16(2) provides the overtime fees payable where the overtime period is continuous with the authorised officer’s ordinary hours of work. Suborder 16(3) provides the overtime fees payable where the overtime period is not continuous with the authorised officer’s ordinary hours of work.

The previous overtime fees for horticultural products have been recalculated against the current average salary cost and penalties payable to those staff eligible for extra duty allowances since the fees were last adjusted in December 2009.

Export certification fees are provided in Schedule 5 of the Orders. A fee of $500 applies where a phytosanitary certificate, an export permit or any other certificate is issued as a replacement certificate; $100.00 where a phytosanitary certificate, an export permit or any other certificate is issued manually; and $16.00 where a phytosanitary certificate, an export permit or any other certificate is issued electronically.

These adjustments to the rates of charge reflect the cost of export certification and documentation services under the new services delivery arrangement.

**Item 17** omits the word ‘other’ before ‘plant products’ in the list of products relating to export documentation fees. ‘Plant’ and ‘plant products’ are defined separately in subsection 4(1) of the Orders.

**Item 18** omits the words ‘by AQIS’ from paragraph 41(1)(b) of the Orders. The purpose of this amendment is as outlined at item 1.

**Item 19** omits the words ‘by AQIS’ from Order 42 of the Orders. The purpose of this amendment is as outlined at item 1.

**Item 20** omits the words ‘an invoice for the fee issued by AQIS’ from paragraph 44(1)(b) and in this same place inserts the words ‘the invoice for the fee’. The purpose of this amendment is as outlined at item 1.

**Item 21** omits Schedule 6 of the Orders. Schedule 6 is no longer required, as Order 15 now covers horticultural products imposing a fee of $36 per quarter hour and new maximum daily and weekly fees in relation to an inspection service. Orders 34A, 34D which previously provided for fees for horticultural products in Schedule 6 have also been removed with Part 7 of the Orders.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Export Control (Fees) Amendment Order 2012 (No. 1)***

This Legislative Instrument is 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*.

**Overview of the Legislative Instrument**

The purpose of the *Export Control (Fees) Amendment Order 2012 (No. 1)* is to implement a revised charging regime for the export of horticultural products. This revised regime is based on a new service delivery arrangement. The proposed Amendment Order amends the Orders to:

* provide a new structure and rates for the collection of fees for audit, inspection and general services;
* provide new rates for the collection of overtime loading fees; and
* provide a new structure and rates for the collection of export certification fees.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Joseph William Ludwig MP, Minister for Agriculture, Fisheries and Forestry**