

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Export Control Act 1982

Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018

Legislative Authority

The *Export Control Act 1982* (the Act) provides for the control of the export of certain goods and for related purposes.

Section 25 of the Act provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the Act. Regulation 3 of the *Export Control (Orders) Regulations 1982* (the Regulations), provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act. The *Export Control (Animals) Order 2004* (the Animals Order) is made under regulation 3 of the Regulations.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018* (the Amendment Order) amends the *Export Control (Animals) Order 2004* (the Animals Order) to allow:

- the collection of personal information or information that is commercial-in-confidence if the information relates to a live animal or animal reproductive material for export on or after 1 July 2018.
- the disclosure of personal information or information that is commercial-in-confidence if the information relates to a live animal or animal reproductive material for export on or after 1 July 2018.

The information may be collected from or disclosed to an agriculture regulator for the purpose of ensuring the health and welfare of live animals or the health and condition of animal reproductive material, in the course of export activities, or for administering or enforcing the Act, the Animals Order or the *Export Control (Prescribed Goods – General) Order 2005*.

The Amendment Order also removes transitional provisions in Part 3 of the Animals Order. These were inserted in the Animals Order by the *Export Control (Animals) Amendment (Approved Arrangements) Order 2015* to cover the period from 1 February 2016 to 31 December 2016, when exporters of live-stock were transitioning to approved arrangements under Part 1A of the Animals Order. These transitional provisions are now redundant, as the export of live-stock now entirely occurs under Part 1A.

Background

The export of animals from Australia is governed by the Animals Order. Part 1A relates to the export of live-stock only. Part 3 of the Animals Order relates to the export of live animals other than live-stock. Part 4 of the Animals Order relates to the export of animal reproductive material.

Impact and Effect

The disclosure and collection of information in relation to live animals and animal reproductive material will assist various agriculture regulators (Commonwealth, State or Territory authorities or other bodies) that are responsible for the health and welfare of live animals and the health and condition of animal reproductive material to perform their regulatory functions.

The Amendment Order will not have any adverse effect on the wider community as the exchange of information will only occur between agriculture regulators.

Consultation

The department consulted with the Australian Livestock Exporters' Council (ALEC), the Pet Industry Association of Australia, Australian SPF Services Ltd, the Ruminants Genetics Trade Advisory Group, Aviagen Australia Pty Ltd, the Horse Industry Consultative Committee, the International Pet and Animal Transport Association, Greyhound Racing NSW, Greyhounds Australasia and the Zoo and Aquarium Association.

The department consulted with the Office of Best Practice Regulation (OBPR). OBPR considered that this proposal will have no more than a minor impact on businesses, individuals and/or community organisations (**OBPR ID 21058**). Therefore, no Regulation Impact Statement was required.

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

The Amendment Order is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the [Attachment A](#).

Details of the *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the instrument is made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1– Amendments

Part 1 – Main amendments

Item 1 – subsection 1.05(1)

This item inserts definitions for “agriculture regulator” and “personal information” to provide meaning for new terms in the Amendment Order.

Item 2 – at the end of subsection 1A.29

This item inserts a note at the end of section 1A.29 referencing sections 6.04 and 6.05 in relation to the disclosure and collection of certain information in relation to live-stock.

Item 3 – at the end of Part 6

This item inserts two sections at the end of Part 6 to allow for the disclosure and collection of animal export information.

Section 6.04 – Disclosure of animal export information

Subsection 6.04(1) provides that the section applies in relation to personal information, or information that is commercial-in-confidence, if the information:

- relates to a live animal or animal reproductive material, for which a notice of intention to export (NOI) was given on or after 1 July 2018 (subparagraph 6.04(1)(a));
- was obtained by the Secretary or an authorised officer under or for the purposes of the Animals Order or the Act (subparagraph 6.04(1)(b));
- was not obtained in response to a request by the Secretary under the Animals Order or in response to a notice issued by the Secretary under the Animals Order or as part of an audit under the Animals Order, or under Part III of the Act (subparagraphs 6.04(c)(i)-(iv)).

Subsection 6.04(2) allows the Secretary to disclose information to an agriculture regulator for the purpose of ensuring the health and welfare of live animals or the health and condition of animal reproductive material, in the course of export activities and/or for administering or enforcing the Act, the Animals Order or the *Export Control (Prescribed Goods – General) Order 2015*.

Subsection 6.04(3) defines an “agriculture regulator”, as a Commonwealth, State or Territory authority or other body that is responsible for the health and welfare of animals, the health and condition of animal reproductive material or the regulation of agricultural production. It is also defined as a body that is authorised to perform functions or exercise powers in relation to the health and welfare of animals, the health and condition of animal reproductive material or the regulation of agricultural production under a Commonwealth law or the law of a State or Territory.

Subsection 6.04(4) provides that the disclosure of animal export information in this section is not limited by subsection 1A.29(4) of the Animals Order. Subsection 1A.29(4) allows the

Secretary to obtain evidence from the relevant Commonwealth, State or Territory authority in relation to the declaration made by exporters when applying for a health certificate and export permit. The subsection further allows the Secretary to give a copy of the declaration to the Commonwealth, State or Territory authority for that purpose.

The item inserts a Note at the end of section 6.04 providing that the disclosure of information referred to in subsection 6.04(1) may also be authorised in other circumstances, for example in the *Privacy Act 1988*.

Section 6.05 – Collection of information from agriculture regulators

Subsection 6.05(1) provides that the section applies in relation to personal information, or information that is commercial-in-confidence, if the information relates to a live animal or animal reproductive material, for which a NOI was given on or after 1 July 2018.

Subsection 6.05(2) allows the Secretary to collect information from an agriculture regulator for the purpose of ensuring the health and welfare of live animals or the health and condition of animal reproductive material, in the course of export activities and/or administering or enforcing the Act, the Animals Order or the *Export Control (Prescribed Goods – General) Order 2015*.

Subsection 6.05(3) provides that the section is not limited by subsection 1A.29(4) of the Animals Order. Subsection 1A.29(4) allows the Secretary to obtain evidence from the relevant Commonwealth, State or Territory authority in relation to the declaration made by exporters when applying for a health certificate and export permit. The subsection further allows the Secretary to give a copy of the declaration to the Commonwealth, State or Territory authority for that purpose.

The item inserts a note at the end of section 6.05 stating that the collection of information referred to in subsection 6.05(1) may also be authorised in other circumstances, for example in the *Privacy Act 1988*.

Part 2 – Technical amendments

Item 3 – Part 3 (heading)

This item repeals the heading and substitutes a new heading, “Export of live animals other than live-stock” to reflect that Part 3 only relates to live animals other than live-stock and that live-stock is now entirely covered by Part 1A.

Item 4 – Section 3.01

This item repeals the section on the application of Part 3. It substitutes a section containing a revised application to reflect that Part 3 applies only to the export of live animals other than live-stock. The item inserts a note to state that Part 1A applies to the export of live-stock.

Item 5 – Paragraph 3.03(d)

This item repeals the paragraph because live-stock is now entirely covered by Part 1A.

Item 6 – Paragraph 3.03(e)

This item omits the words “in the case of any other live animal” because the entire Part now applies only to live animals other than live-stock.

Item 7 – Paragraph 3.04(2)(a)

This item omits the words “including, in the case of a proposed export of live-stock by air, the exporter’s AMLI licence number” because the export of live-stock is now entirely covered by Part 1A.

Item 8 – Subparagraph 3.04(2)(b)(xiii)

This item omits the word “officer;” and substitutes the word “officer.”. This is a technical amendment to change the punctuation by deleting a semi-colon and substituting a full stop, as the repeal of subparagraph 3.04(2)(b)(xiv) in item 9 has the effect of making subparagraph 3.04(2)(b)(xiii) the last in the list.

Item 9 – Subparagraph 3.04(2)(b)(xiv)

This item repeals the subparagraph as the export of live-stock is now entirely covered by Part 1A.

Item 10 – Section 3.04A

This item repeals the section because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 11 – Section 3.05 (heading)

This item omits the words “and ESCAS” because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 12 – Subsection 3.05(1A)

This item repeals the subsection because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 13– Subsection 3.05(2)

This item omits the words “Despite subsections (1) and (1A), the Secretary may accept an NOI or an ESCAS” and substitutes the words “Despite subsection (1), the Secretary may accept an NOI” to remove the reference to an Exporter Supply Chain Assurance System (ESCAS), which is now entirely covered by Part 1A.

Item 14 – Section 3.07 (heading)

This item omits the words “and ESCAS” because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 15 – Paragraph 3.07(1)(b)

This item repeals the paragraph because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 16 – Paragraph 3.07(1)(c)

This item omits the words “or an ESCAS be varied” as the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 17– Paragraph 3.07(2)(b)

This item repeals the paragraph because the export of live-stock is now entirely covered by Part 1A.

Item 18 – Paragraph 3.07(2)(c)

This item omits the word “requirements” and substitutes the word “requirements.”. This is a technical amendment to change the punctuation by inserting a full stop as the repeal of the note in item 19 has the effect of making the word “requirements” the last word in the sentence.

Item 19– Subsection 3.07(2) (note)

This item repeals the note because the export of live-stock is now entirely covered by Part 1A.

Item 20– Subsections 3.07(2AA), (2A) and (2B)

This item repeals the subsections which are redundant because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 21– Subsection 3.07(3)

This item omits the words “or an ESCAS” because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 22– Subsection 3.07(4)

This item omits the words “or an ESCAS” because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 23– Subsection 3.07(5)

This item repeals the subsection because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 24– Section 3.08 (heading)

This item omits the words “and ESCASs” because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 25– Subsection 3.08(1)

This item repeals the subsection and substitutes a subsection that removes the redundant reference to the Exporter Supply Chain Assurance System (ESCAS), which is now entirely covered by Part 1A.

Item 26– Subsection 3.08(3)

This item repeals the subsection because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 27 – Sections 3.09A, 3.10, 3.11 and 3.12

This items repeals these sections which are redundant because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Item 28 – Paragraph 3.15(1)(f)

This items repeals the paragraph because the export of live-stock is now entirely covered by Part 1A.

Item 29 – Subsection 3.17(2)

This items repeals the subsection which is redundant because the Exporter Supply Chain Assurance System (ESCAS), which relates to live-stock, is now entirely covered by Part 1A.

Statement of Compatibility with Human Rights

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

Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018

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 *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018* (the Amendment Order) amends the *Export Control (Animals) Order 2004* (the Animals Order) to allow:

- the collection of personal information or information that is commercial-in-confidence if the information relates to a live animal or animal reproductive material for export on or after 1 July 2018.
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The information may be collected from or disclosed to an agriculture regulator for the purpose of ensuring the health and welfare of live animals or the health and condition of animal reproductive material, in the course of export activities, or for administering or enforcing the Act, the Animals Order or the *Export Control (Prescribed Goods – General) Order 2005*.

The Amendment Order also removes transitional provisions in Part 3 of the Animals Order which were inserted in the *Export Control (Animals) Amendment (Approved Arrangements) Order 2015*, and which are now redundant.

Human rights implications

This legislative instrument does engage an applicable right, the right to privacy, because it involves the collection and disclosure of personal information. However, the disclosure and collection of information is limited to agriculture regulators and it is reasonable and proportionate to the aim of ensuring the health and welfare of live animals in the course of export activities.

Conclusion

This legislative instrument is compatible with human rights.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources