

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture and Water Resources

*Export Control Act 1982*

*Export Control (Animals) Amendment (Approved Export Programs and Other Measures)  
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. Section 9A of the Act empowers the regulations to provide for matters relating to approved export programs. Regulation 3 of the *Export Control (Orders) Regulations 1982* 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 (Approved Export Programs and Other Measures) Order 2018* (the instrument) sets up a scheme for approved export programs. An approved export program is relevantly defined in subsection 9A(2) of the Act as a program of activities to be undertaken by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of eligible live animals in the course of export activities.

The instrument removes the current programs of activities specified in exporters' approved arrangements to be undertaken by accredited veterinarians. Further, it provides for two types of approved export programs to exist in their own right: those held by exporters for activities to be undertaken by an accredited veterinarian; and those created at the Secretary's initiative for activities to be undertaken by authorised officers. This provides a greater level of legal certainty for enforcement and compliance action in relation to approved export programs, particularly the offences in Part IIA of the Act.

The instrument also supports the implementation of the recommendations in the Independent Review of Conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer undertaken by Dr McCarthy (the McCarthy Review).

Through this instrument, the Australian Government is continuing to implement measures to improve the regulation of the export of live-stock and promote improved animal welfare outcomes for such live-stock.

## **Background**

By providing for an approved export program to be made at the Secretary's initiative, the instrument creates an observer program. This allows the Secretary to direct authorised officers to act as observers on a live-stock export voyage for the purpose of ensuring the health and welfare of the live animals in the course of export activities. An exporter must allow an authorised officer to accompany live-stock where the Secretary has given a direction to the authorised officer.

Under the current regulatory scheme, the Secretary may direct an authorised officer to monitor an accredited veterinarian on a live-stock export voyage where the accredited veterinarian is undertaking activities in a program of activities that is specified in the exporter's approved export program.

The instrument allows the Secretary to approve a program of activities on his or her own initiative, and to direct an authorised officer to undertake activities in the approved export program (whether or not an accredited veterinarian is accompanying the live-stock on an export voyage).

From commencement, the Secretary has the discretion to approve a program of activities to be undertaken by an authorised officer for exports of live-stock by sea. This will become a mandatory requirement for exports of live-stock by sea on a date fixed by the Minister by notifiable instrument or on 1 October 2018, whichever is sooner.

The instrument also allows for another type of approved export program. It requires an exporter to hold an approved export program to be undertaken by an accredited veterinarian for all exports of live-stock. This is consistent with an exporter's current obligations under the Animals Order.

The instrument separates an exporter's approved export program from his or her approved arrangement. Division 1A.2 of the Animals Order deals with approved arrangements for the preparation of live-stock. Division 1A.7 deals with approved export programs separately.

The instrument allows the Secretary to vary, suspend and cancel an approved export program that is held by an exporter, either on the holder's request or on the Secretary's own motion. The Secretary may vary or cancel an approved export program where the activities are to be undertaken by an authorised officer. The instrument also provides the period of effect of approved export programs and the consequences of inconsistency between approved export programs.

The instrument requires an exporter to allow an accredited veterinarian to accompany live-stock during their transport from Australia to their overseas destination if required by the exporter's approved export program.

The instrument provides that the Secretary may give a direction to an exporter in relation to the implementation of an approved export program. The Secretary may publish records and

reports made by accredited veterinarians or authorised officers in relation to approved export programs.

The instrument requires an exporter to declare certain matters in lodging an application for an export permit and health certificate. An exporter must declare that an accredited veterinarian has undertaken the activities in the approved export program held by the exporter that apply in relation to the preparation of the live-stock for export. Where sheep are to be exported and the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018* applies in relation to the sheep, the exporter must also declare that certain requirements have been met in regard to the proposed export voyage. These changes support the implementation of the recommendations of the McCarthy Review, which are given effect in the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018*.

### **Impact and Effect**

The instrument allows the Secretary to make an approved export program to be undertaken by an authorised officer. Where the Secretary uses the power in section 9D of the Act to direct an authorised officer to undertake some or all the activities in an approved export program, an exporter must pay the reasonable costs of the authorised officer in accordance with section 1A.52 of the Animals Order. Costs includes the costs of the officer's salary, transport and accommodation.

The instrument also separates an exporter's approved export program from his or her approved arrangement. Under the transitional arrangements, an approved arrangement continues in force after the commencement time, but will be taken not to include the program of activities to be undertaken by an accredited veterinarian. The exporter must vary the record of the approved arrangement to omit the program of activities to be undertaken by an accredited veterinarian and give the varied written record to the Secretary by 30 August 2018. This ensures that the written record of the approved arrangement accurately reflects the changes as a result of the instrument. This date is intended to allow exporters sufficient time to vary the written record of the approved arrangement following the commencement time.

At the commencement time, the program of activities to be undertaken by an accredited veterinarian that is specified in an approved arrangement will become a transitional approved export program. An exporter must apply for approval of a new program of activities by 30 August 2018, or their transitional approved export program will lapse. This arrangement facilitates a transition to the new approved export programs under Subdivision A. This date is intended to allow exporters sufficient time to prepare an application for approval of a new program of activities to be undertaken by an accredited veterinarian in accordance with the new requirements in the instrument. The Secretary must make a decision on the application by 31 October 2018 or it is deemed to be refused. This allows the Secretary two months to consider applications and provides certainty for applicants about timeframes for decisions.

The implementation of this instrument provides an alternate regulatory approach to directions issued to authorised officers under sections 9D and 9E of the Act, who are acting as observers on vessels, and directions to exporters issued under section 17 of the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act).

The instrument allows an exporter to apply for approval of a program of activities and approval of a proposed arrangement at the same time.

The instrument also requires the exporter to make additional declarations that certain requirements have been met in relation to the proposed voyage.

The instrument will increase the burden on exporters of live-stock. However, these changes will ensure greater oversight of live-stock export voyages to ensure the health and welfare of live animals during their transport from Australia to their overseas destination. This is to ensure that standards for animal welfare are maintained throughout the preparation of the live-stock for export and the voyage.

### **Details/Operation**

Details of the instrument are set out in Attachment A.

### **Consultation**

Key stakeholders engaged with Dr McCarthy during his review.

### **Other**

The legislative instrument 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 B.

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

**Details of the Export Control (Animals) Amendment (Approved Export Programs and Other Measures) Order 2018**

**Section 1 – Name**

This section provides that the name of the legislative instrument is the *Export Control (Animals) Amendment (Approved Export Programs and Other Measures) Order 2018*.

**Section 2 – Commencement**

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table in subsection 2(1) commences, or is taken to have commenced, in accordance with column 2 of that table. Any other statement in column 2 has effect according to its terms.

Item 1 of the table in subsection 2(1) provides that sections 1 to 4 of the instrument (and anything else in the instrument not specified in the commencement table in subsection 2(1) of the instrument) commences on the day after the instrument is registered.

Item 2 of the table in subsection 2(1) provides that Schedule 1, Part 1 of the instrument commences on the day after the instrument is registered.

Item 3 of the table in subsection 2(1) provides that Schedule 1, Part 2 of the instrument commences on a single day to be fixed by the Minister by a notifiable instrument. However, if Schedule 1, Part 2 of the instrument does not commence before 1 October 2018, it commences on 1 October 2018. This allows the Minister to specify the commencement date for Schedule 1, Part 2 of the instrument, but ensures that Schedule 1, Part 2 will come into force after the instrument is registered no later than 1 October 2018.

Item 4 of the table in subsection 2(1) provides that Schedule 2 of the instrument commences immediately after the commencement of the provisions in item 2 of the table in subsection 2(1).

Item 5 of the table in subsection 2(1) provides that Schedule 3 of the instrument commences the day after this instrument is registered.

Subsection 2(2) provides that any information in column 3 of the table that is set out in subsection 2(1) of the instrument will not be part of the instrument. Information will be able to be inserted in this column, or information in it will be able to be edited, in any published version of the instrument.

**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—Approved export programs

#### Part 1—Amendments commencing day after registration

##### *Export Control (Animals) Order 2004*

#### **Item 1 – Subsection 1.05(1)**

Item 1 inserts a definition for **holder** of an approved export program. **Holder** of an approved export program means the exporter to whom the approval of the program under paragraph 1A.36(1)(a) was given.

#### **Item 2 – Paragraph 1A.01(g)**

Item 2 repeals paragraph 1A.01(g) and inserts a new paragraph (g). Paragraph (g) provides that, as a condition on the export of live-stock in section 1A.01, the approved arrangement for the exporter must be in effect in relation to the live-stock. This provision is to ensure the export of the live-stock is prohibited if the approved arrangement that relates to the live-stock being prepared for export is suspended or revoked.

#### **Item 3 – After paragraph 1A.01(h)**

Item 3 inserts an additional condition on the export of live-stock in section 1A.01. Paragraph (ha) requires that the exporter is the holder of an approved export program that is in force under Subdivision A of Division 1A.7, which applies to some or all of the exporter's export activities in relation to the live-stock to be exported.

Under paragraph 1A.01(g) an exporter, as a condition of export, is required to have an approved arrangement that is in effect in relation to the live-stock. The approved arrangement currently includes a program of activities to be undertaken by the accredited veterinarian. This item ensures that, once an exporter's approved export program has been separated from an approved arrangement, the exporter must still hold an approved export program to export live-stock.

An exporter's approved export program that is suspended in full is not in force during the period of suspension (see subsection 1A.37(2)). This means that the exporter is prohibited from exporting live-stock by paragraph 1A.01(ha) during the period of suspension.

Similarly, where part of an exporter's approved export program is suspended in part, that part of the approved export program is not in force during the period of suspension (see subsection 1A.37(2)). Where that part applies to some or all of the export activities of the exporter in relation to the consignment of live-stock that the exporter intends to export, the exporter is prohibited from exporting the live-stock under paragraph 1A.01(ha). However, if the part of the approved export program that is suspended does not apply to some or all of the

activities of the exporter in relation to the live-stock that is intended to be exported, the exporter may export the live-stock (provided that other conditions on export are met).

For example, an exporter holds an approved export program that covers the export of slaughter cattle by sea to Indonesia, Japan and several other countries. If part of the approved export program is suspended, and that part only applies to export activities in relation to slaughter cattle for export to Indonesia by sea, the exporter is prohibited from exporting slaughter cattle to Indonesia by sea. The exporter may still export slaughter cattle to Japan by sea.

#### **Item 4 – Paragraph 1A.05(1)(d)**

Item 4 repeals paragraph 1A.05(1)(d). This reflects that approval of a program of activities is dealt with in Division 1A.7 (Approved export programs) of Part 1A.

#### **Item 5 – Subsection 1A.05(1) (note)**

Item 5 repeals the note at the end of subsection 1A.05(1). The note is no longer required because approval of a program of activities is dealt with in Division 1A.7 (Approved export programs) of Part 1A.

#### **Item 6 – Subsection 1A.07(2)**

Item 6 omits “, (d)” from subsection 1A.07(2). This reflects the repeal of paragraph 1A.05(1)(d) in item 4 above. Paragraph 1A.05(1)(d) is no longer a consideration in imposing conditions on approval of a proposed arrangement.

#### **Item 7 – Paragraph 1A.10(1)(c)**

Item 7 repeals paragraph 1A.10(1)(c). This reflects that variation of approved export programs under Subdivision A is dealt with in Division 1A.7 (Approved export programs) of Part 1A.

#### **Item 8 – After paragraph 1A.29(3)(b)**

Item 8 inserts paragraph (ba) after paragraph 1A.29(3)(b), which sets out the requirements for a declaration by an exporter in an application for an export permit and (if required) a health certificate. Paragraph (ba) provides that the declaration by the exporter must state that an accredited veterinarian has undertaken the activities in the approved export program held by the exporter under Subdivision A of Division 1A.7 that apply in relation to the preparation of the live-stock. This clarifies that, to apply for an export permit and health certificate, an exporter must be satisfied that an accredited veterinarian has undertaken the activities in the approved export program that apply to the live-stock to be exported.

#### **Item 9 – Subsection 1A.29(4)**

Item 9 omits the phrase “paragraph (3)(a)” and substitutes the phrase “paragraphs (3)(a) and (ba)”. This clarifies that the Secretary may obtain evidence about the matters relating to the declaration by the exporter in paragraph 1A.29(3)(a) and paragraph 1A.29(3)(ba) directly from the Commonwealth, State or Territory authority concerned.

Subsection 1A.29(4) is also amended by item 3 of Schedule 2 of the instrument.

#### **Item 10 – After subparagraph 1A.30(1)(f)(i)**

Item 10 inserts paragraph (ia) after subparagraph 1A.30(1)(f)(i), which sets out the requirements for the Secretary to grant an export permit for the export of live-stock. Paragraph (ia) provides that the Secretary must be satisfied that an accredited veterinarian has undertaken the activities in the approved export program held by the exporter under Subdivision A of Division 1A.7 that apply in relation to the preparation of the live-stock. This reflects the matter that the exporter must declare in an application for an export permit under paragraph 1A.29(3)(b).

#### **Item 11 – Division 1A.7 of Part 1A**

Item 11 repeals Division 1A.7 and inserts a new Division 1A.7 to Part 1A, which deals with approved export programs. Division 1A.7 contains four subdivisions:

- Subdivision A—Exporter’s approved export programs
- Subdivision B—Secretary’s approved export programs
- Subdivision C—Other powers of Secretary
- Subdivision D—Other provisions

##### Subdivision A—Exporter’s approved export programs

Subdivision A creates a scheme for an approved export program that is held by an exporter. It provides for the application, approval, period of effect, variation, suspension and cancellation of approved export programs under Subdivision A.

A Secretary’s approved export program under Subdivision B may apply to some or all of the same export activities of an exporter as an exporter’s approved export program under Subdivision A. Section 1A.51 deals with circumstances where there is inconsistency between activities in a Secretary’s approved export program and an exporter’s approved export program.

##### *Section 1A.35 – Application by exporter for approval of program of activities*

Section 1A.35 sets out matters relating to an application by an exporter for approval of a program of activities. It is intended that an exporter have only one approved export program that covers all the activities to be undertaken by the accredited veterinarian in relation to all the kinds or classes of live-stock the exporter want to export.

Subsection 1A.35(1) provides that an exporter who wants to export one or more kinds or classes of live-stock may prepare a program of activities to be undertaken by an accredited veterinarian. The program of activities must be for the purpose of ensuring the health and welfare of each kind or class of live-stock in the course of some or all of the exporter’s export activities. The person must apply, in writing, to the Secretary for approval of the program of activities.

An exporter’s approved export program under Subdivision A may cover some or all of the exporter’s export activities in relation to one or more kinds of live-stock. For example, an exporter’s approved export program may apply to the export of breeder cattle by air to



Taiwan, and to the export of breeder sheep by air to Argentina. An exporter may not hold more than one approved export program.

Subsection 1A.35(2) provides that the program of activities in relation to one or more kinds or classes of live-stock:

- may be undertaken inside or outside Australia; and
- may include any of the activities set out in subsection 9A(3) of the Act; and
- may include activities other than those referred to in subsection 9A(3) of the Act; and
- may differ depending on the country to which a kind or class of live-stock is to be exported, the kind or class of live-stock, the method of transport or any other relevant matter.

Subsection 1A.35(3) sets out requirements for an application for approval of a program of activities under paragraph 1A.35(1)(b). The application:

- must be accompanied by a written record of the program of activities; and
- may be made at the same time as an application for approval of an arrangement under section 1A.02, if the proposed arrangement is in relation to the live-stock that are covered by the program of activities.

To export live-stock, an exporter must hold an approved arrangement that is in effect in relation to the live-stock for export. Paragraph 1A.02(1) allows an exporter to apply for an approved arrangement, which covers the preparation of all live-stock for export by the exporter. An exporter only holds one approved arrangement. An exporter can also only hold one approved export program.

Allowing an application for approval of a program of activities to be made at the same time as an application for approval of an arrangement under section 1A.02 is designed to reduce the administrative burden on exporters.

#### *Section 1A.36 – Assessment of application and Secretary's decision*

Section 1A.36 sets out matters relating to the assessment of an application from an exporter for approval of a program of activities and the Secretary's decision on the application.

Subsection 1A.36(1) provides that, on receiving an application from an exporter under paragraph 1A.35(1)(b) for approval of a program of activities, the Secretary must decide to approve the program of activities or not to approve the program of activities.

Subsection 1A.36(2) allows the Secretary to request further information or documents relevant to the application for the purpose of making a decision on the application. The Secretary may make this request of the applicant, or another person who the Secretary considers may have information or documents relevant to the application. For example, the Secretary may request further information about how the program of activities differs depending on the country to which a kind or class of live-stock is to be exported.

Subsection 1A.36(3) provides that the Secretary may make the request for further information either orally or in writing. This provides the Secretary with flexibility in requesting further information or documents by allowing for requests to be made by phone or in person. In some cases, the Secretary may provide the person with written confirmation following a verbal request for information or documents.

The Secretary's request for information or documents must also specify the period within which the information or documents must be provided to the Secretary. The time period to respond to a request for further information or documents is relevant to the initial consideration period for the application, set out at subsections 1A.36(7) and 1A.36(8).

Subsection 1A.36(4) allows the Secretary to approve the program of activities if the Secretary is satisfied that the program of activities is for the purpose of ensuring the health and welfare of each kind or class of live-stock in the course of export activities.

Subsection 1A.36(5) clarifies that a program of activities that is approved under paragraph 1A.36(1)(a) is an approved export program for the purposes of subsection 9A(2) of the Act.

Three notes are included at the end of subsection 1A.36(5). Note 1 directs the reader to Part IIA of the Act, which deals with approved export programs and offences relating to approved export programs. Note 2 provides that an exporter may commit an offence under Subdivision B of Division 2 of Part IIA of the Act for certain contraventions relating to approved export programs. Note 3 provides that the Secretary may direct an authorised officer to undertake some or all of the activities in an exporter's approved export program under section 9D of the Act.

Subsection 1A.36(6) provides that, if the Secretary decides to approve the program of activities, the Secretary may set an expiry date for the approved export program if the Secretary considers it appropriate. It is not a requirement for an approved export program to have an expiry date. Section 1A.37 sets out the period of effect of an approved export program.

Subsection 1A.36(7) provides that, if the Secretary does not make a decision on an application for approval of a program of activities within 60 days, the application is taken to be refused. The 60 day period is referred to as the ***initial consideration period***. The initial consideration period starts either on the day that the application is received or the day the application is varied by an applicant. The initial consideration period may be extended by a request made under subsection 1A.36(2).

The purpose of an initial consideration period is to provide the applicant with certainty about the timeframe for a decision on their application. If the application is deemed to be refused under subsection 1A.36(7), the applicant may apply for reconsideration of the decision. This is set out in the note at the end of subsection 1A.36(10).

Subsection 1A.36(8) provides that the initial consideration period for an application is extended if the Secretary makes a request under subsection 1A.36(2) for information or documents relevant to the application. The initial consideration period is extended by the number of days that the request is with the applicant, starting with the day the request was made and ending on the day the request was complied with or, if the request was not complied with within the period specified in the request, the last day of that period.

Subsection 1A.36(9) provides that, if the Secretary approves the program of activities, the Secretary must give the applicant a written notice. The notice must include the day the approved export program takes effect and specify that either the approved export program

remains in force unless it is suspended or cancelled or, if applicable, the expiry date for the approved export program.

The purpose of the notice is to inform the applicant of the Secretary's decision to approve the program of activities and when the approved export program takes effect.

Subsection 1A.36(10) provides that, if the Secretary does not approve the program of activities, the Secretary must give the applicant a written notice. The notice must set out the reasons for the decision and the applicant's right to apply for reconsideration of the decision.

A note is included at the end of subsection 1A.36(10). It directs the reader to section 6.03 of the Animals Order and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, which deals with reconsideration and review of decisions.

#### *Section 1A.37 – Period of effect of approved export program*

Subsection 1A.37(1) provides the period of effect of an approved export program under Subdivision A. If there is an expiry date, the approved export program remains in force until the expiry date, unless it is cancelled under section 1A.43 or 1A.44. If there is no expiry date, the approved export program remains in force until it is cancelled under section 1A.43 or 1A.44.

Subsection 1A.37(2) provides that if an approved export program is suspended, in full or in part, the approved export program (or part of the approved export program) that is suspended is not in force during the period of the suspension. This is relevant to paragraph 1A.01(ha), which provides that it is a condition for the export of live-stock for the exporter to hold an approved export program that is in force under Subdivision A that applies to some or all of the exporter's activities in relation to the live-stock.

Where an exporter holds an approved export program that is suspended in full, the exporter is prohibited from exporting live-stock under paragraph 1A.01(ha) during the period of suspension.

Similarly, where part of an exporter's approved export program is suspended in part, that part of the approved export program is not in force during the period of suspension. Where that part applies to some or all of the export activities of the exporter in relation to the consignment of live-stock that the exporter intends to export, the exporter is prohibited from exporting the live-stock by paragraph 1A.01(ha). However, if the part of the approved export program that is suspended does not apply to some or all of the activities of the exporter in relation to the live-stock that is intended to be exported, the exporter may export the live-stock.

For example, an exporter holds an approved export program that covers the export of slaughter cattle by sea to Indonesia, Japan and several other countries. If the part of the approved export program is suspended, and that part only applies to export activities in relation to slaughter cattle for export to Indonesia by sea, the exporter is prohibited from exporting slaughter cattle to Indonesia by sea. The exporter may still export slaughter cattle to Japan by sea (provided that other conditions on export are met).

*Section 1A.38 – Holder may apply for approval of variation of approved export program*

Subsection 1A.38(1) allows the holder of an approved export program to apply to the Secretary, in writing, for approval to vary an approved export program. The written request is intended to inform the Secretary of the basis for the request to vary the approved export program. This information will be relevant to the Secretary's consideration of the request under subsection 1A.38(2).

Subsection 1A.38(2) provides that, on receiving an application under subsection 1A.38(1) to approve a variation, the Secretary must decide either to approve the variation or not approve the variation.

Subsection 1A.38(3) allows the Secretary to request further information or documents relevant to the application for the purpose of making a decision on the application. The Secretary may make this request of the applicant, or another person who the Secretary considers may have information or documents relevant to the application. For example, the Secretary may request further information about the kind or class of live-stock to which the variation will apply.

Subsection 1A.38(4) provides that the Secretary may make the request for further information either orally or in writing. This provides the Secretary with flexibility in requesting further information or documents by allowing for requests to be made by phone or in person. In some cases, the Secretary may provide the person with written confirmation following a verbal request for information or documents.

The request for further information or documents must also specify the period within which the information or documents must be provided to the Secretary. The time period to respond to a request for further information or documents is relevant to the initial consideration period for the application, set out at subsections 1A.38(6) and 1A.38(7).

Subsection 1A.38(5) provides that the Secretary may approve a variation if the Secretary is satisfied that the approved export program, as proposed to be varied, is for the purpose of ensuring the health and welfare of a kind or class of live-stock in the course of export activities to which the approved export program relates.

Subsection 1A.38(6) provides that, if the Secretary does not make a decision on an application for approval of a program of activities within 60 days, the application is taken to be refused. The 60 day period is referred to as the ***initial consideration period***. The initial consideration period starts either on the day that the application is received or the day the application is varied by an applicant. The initial consideration period may be extended by a request made under subsection 1A.38(7).

Subsection 1A.38(7) provides that the initial consideration period for an application is extended if the Secretary makes a request under subsection 1A.38(3) for information or documents relevant to the application. The initial consideration period is extended by the number of days that the request is with the applicant, starting with the day the request was made and ending on the day the request was complied with or, if the request was not complied with within the period specified in the request, the last day of that period.

Subsection 1A.38(8) provides that, if the Secretary approves a variation, the Secretary must give the applicant a written notice. The notice must include the details of the variation that the Secretary has approved and the day the variation comes into effect.

The purpose of a notice under this subsection is to inform the holder of the approved export program of the Secretary's decision to approve the variation, as well as the terms under which the approval is given.

Subsection 1A.38(9) provides that, if the Secretary does not approve a variation, the Secretary must give the applicant a written notice. The notice must set out the reasons for the decision and the holder's right to apply for reconsideration of the decision.

A note is included at the end of subsection 1A.38(9) which directs the reader to section 6.03 of the Animals Order and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, which deals with reconsideration and review of decisions.

#### *Section 1A.39 – Secretary may require holder to vary approved export program*

Subsection 1A.39 enables the Secretary to require a variation to an exporter's approved export program.

Subsection 1A.39(1) provides that, if the Secretary is satisfied that a variation is necessary for the purpose of ensuring the health and welfare of a kind or class of live-stock in the course of export activities, the Secretary may require the holder of an approved export program to vary the approved export program by written notice.

Subsection 1A.39(2) provides that the written notice must:

- identify (in general or specific terms) the variation required; and
- require the holder to give the varied approved export program to the Secretary within a specified period; and
- set out:
  - the reasons for the decision to require the holder to vary the approved export program; and
  - the holder's right to apply for reconsideration of the decision.

The purpose of this notice is to inform the holder of the approved export program that the Secretary is requiring the holder to vary the approved export program, and the details relating to that variation.

A note is included at the end of subsection 1A.39(2) which directs the reader to section 6.03 of the Animals Order and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, which deals with reconsideration and review of decisions.

Subsection 1A.39(3) requires the holder to comply with the notice. This subsection clarifies that compliance with the notice to vary is a requirement of the Animals Order. This is relevant to subparagraph 1A.12(1)(a)(i), which provides that the Secretary may suspend or revoke the approval of an arrangement for the preparation of live-stock for export if the Secretary reasonably believes that the exporter has not complied with the Animals Order. Failure to comply with the notice to vary may be a ground for suspension or revocation of the exporter's approved arrangement.

Subsection 1A.39(4) provides that, if the holder gives the varied approved export program to the Secretary in compliance with the notice, the Secretary may give the holder a written notice. The notice must state the day the varied approved export program takes effect.

The purpose of this notice is to ensure that the holder is notified that the variation has been approved and knows when the varied approved export program comes into effect.

Subsection 1A.39(5) provides that the Secretary may amend or revoke a notice given under subsection 1A.39(1) by giving a further written notice to the holder. For example, this may occur if the Secretary identifies a further variation that is required as a result of the variation that the Secretary required in the initial written notice to the holder.

#### *Section 1A.40 – When an approved export program includes a variation*

Section 1A.40 provides that an approved export program under Subdivision A includes a variation if:

- the variation was approved under paragraph 1A.38(2)(a); or
- the Secretary required the variation by notice under subsection 1A.39(1) and the Secretary approved the varied approved export program under subsection 1A.39(4).

This section clarifies that an approved export program does not include a variation, whether requested by an exporter or required by the Secretary, until that variation has been approved by the Secretary.

#### *Section 1A.41 – Holder may request suspension of approved export program*

Subsection 1A.41(1) allows the holder of an approved export program to request the Secretary to suspend the approved export program, in full or in part.

Subsection 1A.41(2) provides that a request to suspend the approved export program must meet the following requirements:

- be in writing; and
- specify whether the whole or part of the approved export program is to be suspended; and
- if part of the approved export program is to be suspended—specify (as relevant):
  - the part of the approved export program that is to be suspended; or
  - the activities that are to be suspended; or
  - any other aspects in relation to which the approved export program is to be suspended; and
- specify the reason for the suspension.

The written request is intended to inform the Secretary of the basis for the request. This information will also be relevant to the Secretary's consideration of a request to cancel a suspension under subsection 1A.41(6) in that the Secretary will consider whether the reasons for requesting the suspension no longer exist, before agreeing to cancel a suspension.

Subsection 1A.41(3) provides that, if the Secretary receives a request from the holder of an approved export program to suspend all or part of the approved export program, the Secretary may, by written notice to the holder, suspend the approved export program in full or part, as requested. The suspension has effect on either the day specified in the notice or, if no day is

specified, the day the notice is given to the holder. The power to suspend an approved export program on the holder's request is a discretionary power of the Secretary.

A note is included at the end of subsection 1A.41(3) which refers the reader to subsection 1A.37(2). Subsection 1A.37(2) provides that an approved export program, or part of an approved export program, that is suspended is not in force during the period of suspension.

Subsection 1A.41(4) provides that the holder of an approved export program that is suspended, in full or in part, may request the Secretary to cancel the suspension.

Subsection 1A.41(5) provides that a request to cancel the suspension of an approved export program must be in writing and state the reason for the request.

Subsection 1A.41(6) provides that, if the Secretary receives a request to cancel the suspension of an approved export program, the Secretary may either:

- cancel the suspension by written notice to the holder, if the Secretary is satisfied that the reasons for the suspension no longer exist and there is no other reason why the suspension should not be cancelled; or
- in any other case:
  - suspend the approved export program, in full or in part, under section 1A.42; or
  - cancel the approved export program under section 1A.44.

#### *Section 1A.42 – Secretary may suspend approved export program*

Subsection 1A.42(1) provides that, if the Secretary is satisfied that suspension is necessary for the purpose of ensuring the health and welfare of a kind or class of live-stock in the course of export activities to which the approved export program relates, the Secretary may give the holder of the approved export program a written notice to suspend the approved export program, in full or in part.

A note is included at the end of subsection 1A.42(1), which refers the reader to subsection 1A.37(2). Subsection 1A.37(2) provides that an approved export program, or part of an approved export program, that is suspended is not in force during the suspension.

Subsection 1A.42(2) provides that a period of suspension must not be more than 12 months. This ensures that an approved export program is not suspended indefinitely.

Subsection 1A.42(3) provides that a notice to suspend an approved export program must include the following information:

- that the approved export program, or part of the approved export program, is to be suspended; and
- if part of the approved export program is to be suspended, specify (as relevant):
  - the part of the approved export program that is to be suspended; or
  - the activities that are to be suspended; or
  - any other aspects in relation to which the approved export program is suspended; and
- the reasons for the suspension; and
- the date the suspension is to begin and the period of suspension; and

- the holder's right to apply for reconsideration of the decision to suspend.

A note is included at the end of subsection 1A.42(3) which directs the reader to section 6.03 of the Animals Order and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, which deals with reconsideration and review of decisions.

Subsection 1A.42(4) clarifies that the Secretary may, under section 1A.44, cancel an approved export program that is suspended, or a part of which is suspended:

- even if the period of the suspension has not ended; and
- on the same or similar grounds as the grounds for the initial suspension.

#### *Section 1A.43 – Holder may request cancellation of approved export program*

Subsection 1A.43(1) enables the holder of an approved export program (including an approved export program that is suspended in full or in part) to request the Secretary, in writing, to cancel the approved export program.

A note is included at the end of subsection 1A.43(1) to clarify that if the holder only wishes to cancel part of the approved export program, the holder may apply to the Secretary to approve a variation of the approved export program under section 1A.38.

Subsection 1A.43(2) provides that, if the Secretary receives a request from the holder of an approved export program to cancel the approved export program under subsection 1A.43(1), the Secretary must, by written notice, cancel the approved export program. It is mandatory for the Secretary to cancel the approved export program upon the holder's request. The written notice must be given to the holder. The cancellation has effect either on the day specified in the notice or, if no date is specified, the day the notice is given to the holder.

#### *Section 1A.44 – Secretary may cancel approved export program*

Subsection 1A.44(1) provides that, if the Secretary is satisfied that cancellation is necessary for the purpose of ensuring the health and welfare of each kind or class of live-stock in the course of export activities to which the approved export program relates, the Secretary may give the holder of the approved export program a written notice to cancel the approved export program.

Subsection 1A.44(2) provides that a notice to cancel an approved export program must include the following information:

- that the approved export program is to be cancelled; and
- the reasons for the cancellation; and
- the date the cancellation is to take effect; and
- the holder's right to apply for reconsideration of the decision.

A note is included at the end of subsection 1A.44(2) which directs the reader to section 6.03 of the Animals Order and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, which deals with reconsideration and review of decisions.



## Subdivision B—Secretary’s approved export programs

Subdivision B creates a scheme for approved export programs that are to be undertaken by authorised officers. It provides for the approval, period of effect, variation and cancellation of approved export programs under Subdivision B.

A Secretary’s approved export program under Subdivision B may apply to some or all of the same export activities of an exporter as an exporter’s approved export program under Subdivision A. Section 1A.51 deals with circumstances where there is inconsistency between activities in a Secretary’s approved export program and an exporter’s approved export program.

### *Section 1A.45 – Approvals of programs of activities to be undertaken by authorised officers*

Subsection 1A.45(1) enables the Secretary, on the Secretary’s own initiative, to approve one or more programs of activities to be undertaken by an authorised officer for the purpose of ensuring the health and welfare of one or more kinds or classes of live-stock that are to be exported by sea, in the course of export activities.

This subsection provides the Secretary a discretionary power to approve a program of activities to be undertaken by an authorised officer in relation to exports of live-stock by sea. The purpose of this subsection is to enable the Secretary to require an approved export program to be undertaken by an authorised officer for some or all exports of live-stock by sea. The Secretary may approve multiple programs of activities to be undertaken by an authorised officer in relation to a kind or class of live-stock.

Two notes are included at the end of subsection 1A.45(1). Note 1 provides that the activities in an approved export program that is approved under subsection 1A.45(1) only have to be undertaken if the Secretary directs an authorised officer to undertake the activities under section 9D of the Act. Subsection 9D(1) of the Act provides the Secretary with a discretionary power direct an authorised officer to undertake some or all of the activities in an approved export program. Subsection 9D(2) requires that if the Secretary gives a direction to an authorised officer, the Secretary must notify, in writing, the exporter to whose export activities the approved export program relates.

Note 2 provides that an approved export program under Subdivision A and an approved export program under Subdivision B may apply to the same export activities of an exporter. Section 1A.51 provides for circumstances where there is inconsistency between an approved export program under Subdivision A and an approved export program under Subdivision B.

The discretion given to the Secretary under subsection 1A.45(1) to approve a program of activities will become a mandatory requirement to approve a program of activities upon commencement of Part 2 of Schedule 1. Part 2 of Schedule 1 of the instrument will commence as set out in the table in subsection 2(1). It will provide that the Secretary must approve a program of activities to be undertaken by an authorised officer for all exports of live-stock by sea. The purpose of the change from a discretionary power to a mandatory requirement for an approved export program for exports of live-stock by sea is to allow for a transitional period. This will provide the department time to increase the application of approved export programs to live-stock export voyages over a period of time and to plan for

implementation and resourcing requirements. It will also provide time for industry to transition to the new arrangements.

Subsection 1A.45(2) sets out the matters to which a program of activities may relate. A program of activities in relation to one or more kinds or classes of live-stock may:

- be undertaken inside or outside Australia; and
- include any of the activities referred to in subsection 9A(3) of the Act; and
- include any activities other than those referred to in subsection 9A(3) of the Act; and
- differ depending on the country to which the kind or class of live-stock is to be exported, the kind or class of live-stock, the method of transport, and any other matter the Secretary considers relevant.

Subsection 1A.45(3) requires that a program of activities that is approved under subsection 1A.45(1) must be in writing.

Subsection 1A.45(4) clarifies that a program of activities that is approved under subsection 1A.45(1) is an approved export program for the purposes of the Act.

A note is included at the end of subsection 1A.45(4), which directs the reader to subsection 9A(2) of the Act. Subsection 9A(2) of the Act defines an approved export program.

Subsection 1A.45(5) enables the Secretary to set an expiry date for an approved export program under Subdivision B if the Secretary considers it is appropriate. It is not a requirement for an approved export program to have an expiry date. Section 1A.46 sets out the period of effect for approved export programs.

#### *Section 1A.46 – Period of effect of approved export program*

Section 1A.46 provides the period of effect of an approved export program under Subdivision B. If there is an expiry date, an approved export program remains in force until the expiry date unless it is cancelled. If there is no expiry date, an approved export program remains in force until it is cancelled.

#### *Section 1A.47 – Secretary may vary approved export program*

Subsection 1A.47(1) enables the Secretary to vary an approved export program that is in force under Subdivision B if the Secretary is satisfied that the approved export program, as proposed to be varied, is for the purpose of ensuring the health and welfare of a kind or class of live-stock in the course of export activities to which the approved export program relates. This allows the Secretary to vary an approved export program that the Secretary approved on his or her own initiative under subsection 1A.45(1).

Subsection 1A.47(2) provides that, if the Secretary varies an approved export program under subsection 1A.47(1), the Secretary must notify, in writing, the exporters to whose export activities the approved export program relates. This ensures that exporters who may be affected by the change in the Secretary's approved export program are made aware of the change.

Subsection 1A.47(3) requires the notice to exporters to include the details of the variation and the date the variation comes into effect.

#### Subdivision C—Other powers of Secretary

##### *Section 1A.48 – Secretary may give direction to exporter in relation to implementation of approved export program*

Subsection 1A.48(1) provides that the Secretary may give a direction, either orally or in writing, to an exporter in relation to the implementation of an approved export program. This provides the Secretary with flexibility to give a direction by phone or in person, which may be useful in urgent circumstances or when it is impractical or impossible to give the exporter a direction in writing. In some cases, the Secretary may provide an exporter with a written confirmation after giving an oral direction.

The direction may be given in relation to a particular export of a kind or class of live-stock, or the export of a kind or class of live-stock generally. The direction may be given in relation to an approved export program in force under Subdivision A or Subdivision B.

This subsection allows the Secretary to require further action to be taken in addition to the requirements of an approved export program. It is designed to give the Secretary flexibility to deal with changing circumstances, where it may not be possible or appropriate to vary the approved export program. The power may also be used to require further activities to be undertaken or to not require certain activities in an approved export program to be undertaken. For example, the Secretary may give a direction to an exporter to increase the rates of testing of live-stock in response to a change in conditions on board a vessel.

Subsection 1A.48(2) provides that an exporter who is given a direction under subsection 1A.48(1) must comply with the direction. This makes it a requirement of the Animals Order for an exporter to comply with a direction given under subsection 1A.48(1). This subsection is relevant to subparagraph 1A.12(1)(a)(i), which provides that the Secretary may suspend or revoke the approval of an arrangement if the Secretary reasonably believes that the exporter has not complied with the Animals Order.

##### *Section 1A.49 – Secretary may publish records and reports in relation to approved export programs*

Section 1A.49 provides that the Secretary may publish records and reports that are made by accredited veterinarians or authorised officers in relation to approved export programs. Records and reports may include photographs and video footage.

The authority for the power to publish records and reports is provided by paragraph 9A(4)(c) of the Act. Section 1A.49 constitutes an authorisation for the publication of information for the purposes of the *Privacy Act 1988* and other laws (including the common law). It therefore provides an exception to the Australian Privacy Principles and other requirements of confidentiality. The Secretary does not require consent to publish these records and reports, and the records and reports may include personal information within the meaning of the *Privacy Act 1988*.

The publication of records and reports relating to approved export programs encourages good animal welfare practices on live-stock export voyages, and provides assurance to farmers and members of the community about oversight of the health and welfare of exported live animals.

A note is included under section 1A.49, which provides that sections 4A.14 and 4A.15 of the Animals Order require an accredited veterinarian to keep certain records and make reports in connection with approved export programs. These records and reports may be published by the Secretary under section 1A.49. The note also provides that an accredited veterinarian may commit an offence under section 9G of the Act if they contravene section 4A.14 or 4A.15.

#### Subdivision D—Other provisions

##### *Section 1A.50 – Circumstances in which exporter must allow accredited veterinarian or authorised officer to accompany live-stock*

Subsection 1A.50(1) provides that an exporter must allow an accredited veterinarian to accompany a kind or class of live-stock during their transport from Australia to their overseas destination if an approved export program provides for an accredited veterinarian to accompany the live-stock during their transport.

A note is included at the end of subsection 1A.50(1), which provides that an exporter may commit an offence under section 9J of the Act if the exporter contravenes this subsection. Section 9J of the Act provides that it is a strict liability offence if a person contravenes a requirement to allow an accredited veterinarian or authorised officer to accompany live animals during their transport from Australia to their overseas destination in connection with an approved export program.

Subsection 1A.50(2) provides that an exporter must allow an authorised officer to accompany live-stock during their transport from Australia to their overseas destination if the Secretary gives a direction to an authorised officer under subsection 9D(1) or 9E(1) of the Act. Subsection 9D(1) of the Act allows the Secretary to direct an authorised officer to undertake some or all of the activities in an approved export program. Subsection 9E(1) of the Act allows the Secretary to direct an authorised officer to monitor, review or audit the accredited veterinarian undertaking activities in an approved export program and the activities of an exporter in relation to an approved export program.

A note is included at the end of subsection 1A.50(1), which provides that an exporter may commit an offence under section 9J of the Act if the exporter contravenes this subsection.

##### *Section 1A.51 – Inconsistency between activities in Secretary's approved export program and exporter's approved export program*

Subsection 1A.51(1) provides that section 1A.51 applies if, under section 9D of the Act, the Secretary has directed an authorised officer to undertake some or all of the activities in an approved export program in force under Subdivision B in relation to an exporter's export activities.

Subsection 1A.51(2) provides that if some or all of the activities that the authorised officer has been directed to undertake are inconsistent with activities (the ***inconsistent activities***) in

the approved export program held by the exporter, the inconsistent activities are taken not to be a part of the approved export program held by the exporter during the time the direction under section 9D of the Act is in force.

The purpose of this section is to deal with circumstances where there is a potential conflict between activities to be undertaken under an approved export program under Subdivision B and an approved export program under Subdivision A. For example, the circumstance may arise when an authorised officer has been directed to undertake activities in the approved export program under Subdivision B on a voyage, and an accredited veterinarian is undertaking some or all of the same activities as part of the approved export program held by the exporter.

This section will help to clarify the application of the offence in section 9I of the Act. Section 9I makes it an offence for a person undertaking export activities to not ensure that an accredited veterinarian is engaged to undertake activities in an approved export program. Subsection 1A.51(2) clarifies that an approved export program under Subdivision A is taken to not include activities in circumstances where those activities are to be undertaken by an authorised officer under an approved export program under Subdivision B, as directed by the Secretary under section 9D of the Act.

#### *Section 1A.52 – Payment of costs of authorised officers etc.*

Subsection 1A.52(1) requires an exporter to pay the reasonable costs of any activities undertaken by an authorised officer under section 9D or 9E of the Act in relation to an approved export program. For example, the Secretary may give a direction to an authorised officer to undertake activities in an approved export program under Subdivision B. The department will be able to recover the reasonable costs from an exporter of the activities undertaken by an authorised officer in relation to the approved export program.

Subsection 1A.52(2) provides that **costs** includes the costs of the officer's salary, transport and accommodation.

Subsection 1A.52(3) provides that an amount payable by an exporter under subsection 1A.52(1) is a debt due to the Commonwealth.

#### **Item 12 – Subsection 4A.14(1)**

Item 12 omits the word “nominated” and substitutes the word “engaged”. This reflects that an accredited veterinarian is engaged by an exporter to undertake an approved export program.

#### **Item 13 – Subsection 4A.14(1)**

Item 13 inserts the phrase “activities in” after the word “undertake”. This clarifies that an accredited veterinarian is engaged by an exporter to undertake activities in an approved export program.

#### **Item 14 – Subsection 4A.15(1)**

Item 14 omits the word “nominated” and substitute the word “engaged”. This reflects that an accredited veterinarian is engaged by an exporter to undertake an approved export program.

#### **Item 15 – Subsection 4A.15(1)**

Item 15 inserts the phrase “activities in” after the word “undertake”. This clarifies that an accredited veterinarian is engaged by an exporter to undertake activities in an approved export program.

#### **Item 16 – At the end of Part 7**

Item 16 inserts Division 3, which deals with transitional provisions relating to the instrument.

#### *Section 7.08 – Definitions*

Section 7.08 provides definitions for Division 3. **Commencement time** means the time when Part 1 of Schedule 1 to the instrument commences. This is set out in the table in subsection 2(1) of the instrument. **Transitional approved export program** means the approved export program that exists because of subsection 7.12(2).

#### *Section 7.09 – Application of amendments—conditions of export of live-stock*

Section 7.09 provides that the amendments made by items 1, 3 and 11 of Part 1 of Schedule 1 of the instrument apply to export activities in relation to live-stock that occur after the commencement time. Commencement time is defined in section 7.08.

The purpose of section 7.09 is to clarify that the requirements relating to approved export programs apply to export activities that occur after commencement. For example, where live-stock have been prepared for export but have not been exported before the commencement time, the requirements relating to approved export programs apply from the commencement time. The exporter will need to hold an approved export program under Subdivision A that applies to some or all of the export activities in relation to the live-stock and the approved export program will need to be in force.

#### *Section 7.10 – Application of amendments—Application for approval of proposed arrangements*

Section 7.10 provides that the amendments made by items 4, 5 and 6 of Part 1 of Schedule 1 of the instrument apply in relation to:

- an application for approval of an arrangement under section 1A.02 that had been made before the commencement time but had not been decided before that time; and
- an application for approval of an arrangement under section 1A.02 that is made after the commencement time.

The purpose of section 7.10 is to clarify that the new requirements relating to approved export programs apply to applications for approved arrangements that are undecided at the commencement time or are made after the commencement time. The applications will be determined according to the new requirements.

*Section 7.11 – Application of amendments—applications for export permits and health certificates for live-stock*

Section 7.11 provides that the amendments made by items 8, 9 and 10 of Part 1 of Schedule 1 of the instrument apply in relation to:

- an application for an export permit and (if required) a health certificate under section 1A.29 that had been made before the commencement time but had not been decided before that time; and
- an application for an export permit and (if required) a health certificate under section 1A.29 that is made after the commencement time.

The purpose of section 7.11 is to clarify that the new requirements relating to the declaration by an exporter in an application for an export permit apply to applications for an export permit and health certificate that are undecided at the commencement time or are made after the commencement time. The application for an export permit and health certificate must be made according to the new requirements.

A note is included at the end of section 7.11, which sets out the process if an exporter applied for an export permit and (if required) a health certificate for the export of live-stock before the commencement time. The exporter will need to vary the declaration included in the application to state the matter referred to in paragraph 1A.29(3)(ba). The Secretary will also need to be satisfied of the matter referred to in subparagraph 1A.30(1)(f)(ia) before granting the export permit for the live-stock.

*Section 7.12 – Transitional—programs of activities in approved arrangements to be undertaken by accredited veterinarians*

Section 7.12 sets out matters relating to the transition of programs of activities to be undertaken by accredited veterinarians that are specified in approved arrangements immediately before the commencement time.

Subsection 7.12(1) provides that this section applies to:

- an approved arrangement for an exporter that is in effect immediately before the commencement time; and
- an approved arrangement for an exporter that is suspended, either in full or in part, immediately before the commencement time.

Subsection 7.12(2) provides that the program of activities specified in the approved arrangement to be undertaken by an accredited veterinarian is taken to have been approved by the Secretary under paragraph 1A.36(1)(a) at the commencement time and the approval is taken to have been given to the exporter.

This means that a program of activities in an approved arrangement immediately before commencement time is deemed to be an approved export program under Subdivision A of the instrument, and the exporter is deemed to be the holder of the approved export program. The approved export program is a transitional approved export program, as defined in section 7.08.

A note is included at the end of subsection 7.12(2), which provides that the program of activities is an approved export program for the purposes of the Act, as defined in

subsection 9A(2) of the Act. This is set out at subsection 1A.36(5) in Part 1 of Schedule 1 of the instrument. The note also provides that the exporter is the holder of the approved export program, as defined in subsection 1.05(1) in Part 1 of Schedule 1 of the instrument.

Subsection 7.12(3) provides that, after the commencement time, the approved arrangement is taken not to specify the program of activities referred to in subsection 7.12(2). The effect of this subsection is that, after the commencement time, all approved arrangements will be treated as if they do not include the program of activities to be undertaken by an accredited veterinarian.

Subsection 7.12(4) is an avoidance of doubt provision. Except as provided by subsection 7.12(3), the approved arrangement continues to have the same effect as it had immediately before the commencement time.

A note is included at the end of subsection 7.12(4), which provides that the approved arrangement may be varied, suspended or revoked under Division 1A.2 of Part 1A.

Subsection 7.12(5) provides that the exporter must:

- vary the record of the approved arrangement so that it does not specify the program of activities referred to in subsection 7.12(2); and
- give the varied written record of the approved arrangement to the Secretary before the end of 30 August 2018.

Under section 7.12, at the commencement time a program of activities specified in an exporter's approved arrangement is taken to be an approved export program under Subdivision A. The approved arrangement continues to be in effect after the commencement time.

From the commencement time, an approved arrangement will be separate to an approved export program. The purpose of section 7.12 is to ensure that, by 30 August 2018, the written records of approved arrangements are updated to reflect the separation of exporters' approved arrangements and exporters' approved export programs.

A note is included at the end of subsection 7.12(5), which provides that the Secretary may suspend or revoke the exporter's approved arrangement under section 1A.12 if the exporter does not vary the record of the approved arrangement and give the varied written record to the Secretary within the specified time.

#### *Section 7.13 – Transitional—exporter must apply for approval of program of activities*

Subsection 7.13(1) provides that an exporter who holds a transitional approved export program (including a transitional approved export program that is suspended in full or in part because of section 7.15 or 7.16) must, before the end of 30 August 2018, apply to the Secretary under paragraph 1A.35(1)(b) for approval of a program of activities to be undertaken by an accredited veterinarian. The program of activities must be for the purpose of ensuring the health and welfare of live-stock in the course of the exporter's export activities.

The purpose of this subsection is to facilitate the transition from transitional approved export programs, which were specified in an exporter's approved arrangement prior to the



commencement time, to approved export programs that are applied for and approved under Subdivision A.

Subsection 7.13(2) provides that, if the exporter makes an application as required by subsection 7.13(1) and the Secretary receives the application before the end of 30 August 2018, the exporter's transitional approved export program remains in force, subject to sections 7.15 and 7.16, until:

- the Secretary makes a decision on the application; or
- if the Secretary does not make a decision on the application by the end of 31 October 2018, the end of that day.

The purpose of this subsection is to enable an exporter to continue to export live-stock while their application for approval of a program of activities is being decided by the Secretary. The subsection also clarifies that an approved export program will cease to be in force when the Secretary makes a decision on the application or the end of 31 October 2018, whichever is earlier. If the Secretary makes a decision on the application, the transitional approved export program will cease whether the Secretary decides to approve the exporter's application or to refuse to approve the application. The Secretary may still suspend or cancel the transitional approved export program sooner under section 1A.42 or 1A.43.

Subsection 7.13(3) provides that the Secretary is taken to have decided not to approve the program of activities at the end of 31 October 2018 if:

- the exporter made an application as required by subsection 7.13(1); and
- the Secretary received the application before the end of 30 August 2018; and
- the Secretary has not made a decision on the application before the end of 31 October 2018.

This provides the Secretary with a reasonable time period to make a decision on an application for approval of a program of activities. It ensures that, if the Secretary does not make a decision on an application by the end of 31 October 2018, the application is deemed to be refused.

Subsection 7.13(4) provides that subsections 1A.36(7) and (8) do not apply in relation to an application referred to in subsection 7.13(2) or 7.13(3). The effect of subsection 7.13(4) is that, when an exporter who has a transitional approved export program applies for approval of a program of activities under paragraph 1A.35(1)(b), the timeframe for decision provided for in subsections 1A.36(7) and (8) do not apply. The Secretary has only until the end of 31 October 2018 to consider the exporter's application. This timeframe cannot be extended by a request by the Secretary for further information or documents in relation to the application.

Subsection 7.13(5) provides that if the Secretary has not received an application from an exporter for approval of a program of activities by the end of 30 August 2018, the exporter's transitional approved export program remains in force, subject to section 7.15 and 7.16, until the end of that day. This means that a transitional approved export program will cease on 30 August 2018 if the exporter has not applied for approval of a program of activities by that date.

This means that an exporter will be unable to continue to export live-stock on the basis that they no longer hold a transitional approved export program. An exporter will need to apply

for approval of a program of activities under paragraph 1A.35(1)(b) if they wish to export live-stock in the future, but will be unable to export live-stock until the application is approved by the Secretary. The timeframe for considering the application for approval of the program of activities is set out in subsections 1A.36(7) and 1A.36(8).

*Section 7.14 – Transitional—application for approval of variation of approved arrangement*

Subsection 7.14(1) provides that section 7.14 applies if all of the following apply:

- an exporter has made an application under paragraph 1A.09(2)(a) for approval to vary an approved arrangement before the commencement time; and
- one or more of the proposed variations to the approved arrangement (the **relevant variations**) for which approval had been sought related to the program of activities specified in the approved arrangement to be undertaken by an accredited veterinarian; and
- the application had not been decided before the commencement time.

Subsection 7.14(2) provides that the application by the exporter is taken to be an application under subsection 1A.38(1) to approve the relevant variations of the exporter's transitional approved export program. This subsection means that an application to vary an approved arrangement made before commencement time that relates to the program of activities specified in the approved arrangement is taken to be an application under subsection 1A.38(1).

Subsection 7.14(3) provides that if the application referred to in paragraph 7.14(1)(a) also related to variations of the approved arrangement (the **other variations**) in addition to the relevant variations, the application continues to have effect for the purposes of section 1A.09 in relation to the other variations. This means that an application to vary an approved arrangement made before commencement time where some of the proposed variations are not relevant to the program of activities is taken to be an application to vary the approved arrangement under section 1A.09.

*Section 7.15 – Transitional—approved arrangement suspended in full immediately before commencement time*

The purpose of section 7.15 is to ensure that a suspension in full of an approved arrangement carries across to the transitional approved export program after the commencement time.

Subsection 7.15(1) provides that section 7.15 applies if an approved arrangement (the **suspended approved arrangement**) for an exporter is suspended in full immediately before the commencement time.

Subsection 7.15(2) provides that the exporter's transitional approved export program that relates to the suspended approved arrangement is taken to be suspended in full under subsection 1A.42(1).

A note is included at the end of subsection 7.15(2), which provides that an approved export program that is suspended in full under subsection 1A.42(1) is not in force during the period of the suspension. This is set out in subsection 1A.37(2).

Subsection 7.15(3) provides the period of suspension for the transitional approved export program if the Secretary receives an application for approval of a program of activities as required by subsection 7.13(1) before the end of 30 August 2018. The transitional approved export program is suspended in full under subsection 1A.42(1) until the earlier of the following:

- the end of the period of suspension of the suspended approved arrangement;
- either:
  - the day the Secretary makes a decision on the application; or
  - if the Secretary does not make a decision on the application before the end of 31 October 2018, the end of that day.

However, the exporter's transitional approved export program may be cancelled sooner under section 1A.43 or 1A.44.

This subsection means that, if the period of suspension ends before the Secretary makes a decision on the application for approval of a program of activities and before 31 October 2018, the transitional approved export program is no longer suspended. The transitional approved export program will cease to be in force as provided by subsection 7.13(2).

Subsection 7.15(4) provides for the period of suspension for the transitional approved export program referred to in subsection 7.15(2) if the Secretary does not receive an application for approval of a program of activities as required by subsection 7.13(1) before the end of 30 August 2018. The transitional approved export program is suspended in full under subsection 1A.42(1) until the earlier of the following:

- the end of the period of suspension of the suspended approved arrangement;
- the end of 30 August 2018.

However, the exporter's transitional approved export program may be cancelled sooner under section 1A.43 or 1A.44.

This means that, if the period of suspension ends before 30 August 2018, the transitional approved export program is no longer suspended. The transitional approved export program will cease to be in force as provided by subsection 7.13(2).

#### *Section 7.16 – Transitional—approved arrangements suspended in part immediately before commencement time*

The purpose of section 7.16 is to ensure that a suspension of a part of an approved arrangement carries across to the transitional approved export program at the commencement time.

Subsection 7.16(1) provides that section 7.16 applies if:

- an approved arrangement for an exporter is suspended in part immediately before the commencement time; and
- the whole or a part of the suspended part of the approved arrangement related to the program of activities (the ***exporter's transitional approved export program***) specified in the approved arrangement to be undertaken by an accredited veterinarian.

Subsection 7.16(2) provides when the exporter's transitional approved export program is taken to be suspended in full. If the suspended part of the approved arrangement corresponds to the whole of the exporter's transitional approved export program:

- the exporter's transitional approved export program is taken to be suspended in full under subsection 1A.42(1); and
- the period of suspension for the exporter's transitional export program is set out in subsections 7.15(3) and 7.15(4).

This means that if the part of the approved arrangement that is suspended corresponds to the whole of the transitional approved export program, the transitional approved export program is suspended in full.

A note is included at the end of subsection 7.16(2), which provides that an approved export program that is suspended in full under subsection 1A.42(1) is not in force during the period of the suspension. This is set out at subsection 1A.37(2).

Subsection 7.16(3) provides when the exporter's transitional approved export is taken to be suspended in part. If the suspended part of the approved arrangement corresponds to a part of the exporter's transitional approved export program, that part of the transitional approved export program is taken to be suspended under subsection 1A.42(1).

This means that if the part of the approved arrangement that is suspended corresponds to part of the transitional approved export program, only the corresponding part of the transitional approved export program is suspended. The part of the transitional approved export program that does not correspond to the suspended part of the approved arrangement is not suspended and continues in effect.

Two notes are included at the end of subsection 7.16(3). Note 1 provides that an approved export program that is suspended in full under subsection 1A.42(1) is not in force during the period of the suspension. This is set out at subsection 1A.37(2).

Note 2 provides that the part of the exporter's transitional approved export program that is not suspended remains in force subject to section 7.13. That part of the transitional approved export program may be varied, suspended or cancelled under Subdivision A of Division 1A.7 of Part 1A.

Subsection 7.16(4) provides that subsections 7.16(5) and 7.16(6) apply if a part (the **relevant part**) of the exporter's transitional approved export program is taken to be suspended under subsection 1A.42(1) because of subsection 7.16(3). Subsections 7.16(5) and 7.16(6) provide the period of suspension of the exporter's transitional export program when it is suspended in part.

Subsection 7.16(5) provides the period of suspension if the exporter applies for approval of a program of activities as required by subsection 7.13(1) and the Secretary receives the application by the end of 30 August 2018. The relevant part of the exporter's transitional approved export program is suspended under subsection 1A.42(1) until the earlier of the following:

- the end of the period of suspension of the suspended part of the approved arrangement;

- either:
  - the day the Secretary makes a decision on the application; or
  - if the Secretary does not make a decision on the application by the end of 31 October 2018, the end of that day.

However, the exporter's transitional approved export program may be cancelled sooner under section 1A.43 or 1A.44.

This means that if the period of suspension ends before the Secretary has made a decision on the application for approval and before 31 October 2018, the relevant part of the exporter's transitional approved export program is no longer suspended. The transitional approved export program will cease to be in force as provided by subsection 7.13(2).

Subsection 7.16(6) provides the period of suspension if the Secretary does not receive an application by the exporter as required by subsection 7.13(1) by the end of 30 August 2018. The exporter's transitional approved export program is suspended under subsection 1A.42(1) until the earlier of the following:

- the end of the period of suspension of the suspended part of the approved arrangement;
- the end of 30 August 2018.

However, the exporter's transitional approved export program may be cancelled sooner under section 1A.43 or 1A.44.

Subsection 7.16(7) provides for circumstances where suspension of part of an approved arrangement ceases to have effect. If the whole of the suspended part of the approved arrangement corresponds to the whole or a part of the exporter's transitional approved export program, the period of suspension of the part of the approved arrangement is taken to have ended at the commencement time. The purpose of this subsection is to clarify that the approved arrangement does not continue to be suspended. Rather, the part of the approved arrangement that was suspended is taken to be a transitional approved export program that is suspended, either in full or in part.

## Part 2—Amendments commencing later

### **Item 17 – Subsection 1A.45(1)**

Item 17 repeals subsection 1A.45(1), except for the notes, and inserts a new subsection (1). Subsection (1) provides that the Secretary must approve one or more programs of activities to be undertaken by authorised officers for the purpose of ensuring the health and welfare of each kind or class of live-stock that is to be exported by sea in the course of export activities.

Part 2 of Schedule 1 of the instrument will commence as set out in the table in subsection 2(1). Part 2 of Schedule 1 will change subsection 1A.45(1) from a discretionary power to approve a program of activities to a mandatory requirement to approve a program of activities. This will provide that the Secretary must approve a program of activities to be undertaken by an authorised officer for all exports of live-stock by sea. The purpose of the change from a discretionary power to a mandatory requirement for an approved export program for exports of live-stock by sea is to allow for a transition period. This will provide the department time to increase the application of approved export programs to live-stock

export voyages over a period of time and to plan for implementation and resourcing requirements. It will also provide time for industry to transition to the new arrangement.

### **Item 18 – At the end of Division 3 of Part 7**

Item 18 inserts section 7.18 to deal with the application of amendments made by the instrument to the Animals Order in relation to the Secretary's approved export programs.

Section 7.18 provides that the amendments made by item 17 of Part 2 of Schedule 1 of the instrument apply to in relation to each kind or class of live-stock that is to be exported by sea after commencement of that item. This means that the mandatory requirement for the Secretary to approve one or more programs of activities to be undertaken by authorised officers for exports of live-stock by sea applies in relation to exports of live-stock by sea after commencement of item 17. The mandatory requirement does not apply in relation to exports of live-stock after the commencement of item 17.

### **Schedule 2—Exports of sheep by sea to the Middle East**

*Export Control (Animals) Order 2004*

#### **Item 1 – Paragraph 1A.29(2)(b)**

Item 1 inserts the phrase “and, if applicable, subsection (3A)” after the words “subsection (3)” in paragraph 1A.29(2)(b). This clarifies that an application for an export permit and health certificate must include a declaration by the exporter in accordance with subsection (3) and, if applicable, subsection (3A).

#### **Item 2 – After subsection 1A.29(3)**

Item 2 inserts new subsections (3A) and (3B). Subsection (3A) sets out additional matters that an exporter must declare in an application for an export permit and (if required) a health certificate for live-stock. The requirement for the declaration to include additional matters applies where the live-stock are sheep and the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018* applies in relation to the sheep.

The additional matters that an exporter must declare are:

- that:
  - the vessel on which the sheep are to be transported is equipped with automatic live-stock watering systems that have water receptacles at a height suitable for the sheep; and
  - details of those watering systems are set out in the record of equipment and arrangements attached to the Australian certificate for the carriage of livestock for the vessel issued by the Australian Maritime Safety Authority under *Marine Order Part 43 (Cargo and cargo handling—livestock) 2018*; and
- that a heat stress management plan for the proposed export voyage is in place; and
- that bedding (such as straw, shavings or sawdust) of at least 1 tonne for every 10,000 sheep will be provided on the vessel; and
- the area of the pen space on the vessel for each sheep, and that the pen space for each sheep meets the requirements in section 10 of the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018*;

- that the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer as required by subsection 9(1) of the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018*.

This section reflects changes arising from recommendations from the McCarthy Review. Recommendations from the McCarthy Review are given effect in *Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018*, which is made under section 17 of the AMLI Act. Compliance with orders made under section 17 of the AMLI Act is a condition on a live-stock export licence (see paragraph 17(5)(a) of the AMLI Act).

Section 1A.30 provides that the Secretary may grant an export permit for live-stock if, among other things, the exporter has applied for the permit under section 1A.29. This means that the Secretary is unable to grant an export permit and health certificate for the live-stock unless an exporter has made the required declaration as part of their application.

Subsection (3B) provides that an expression used in subsection 1A.29(3A) and in the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018* has the same meaning in subsection 1A.29(3A) as it has in that Order.

A note is included at the end of subsection (3B), which provides that the expressions ***heat stress management plan***, ***independent qualified mechanical engineer*** and ***pen air turnover*** are defined in section 5 of the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018*.

### **Item 3 – Subsection 1A.29(4)**

Item 3 inserts the phrase “and (3A)(a) to (e)” after the word “directly” in subsection 1A.29(4). This clarifies that the Secretary may obtain evidence about the matters relating to the declaration by the exporter in paragraph 1A.29(3)(a) and the additional matters relating to the declaration for exports of sheep by sea in paragraph 1A.29(3A)(a) to (e) directly from the Commonwealth, State or Territory authority concerned.

### **Item 4 – Subsection 1A.30(1) (note)**

Item 4 omits the phrase “described in subsection 1A.29(3)” and substitutes the phrase “required by paragraph 1A.29(2)(b)”. This clarifies that paragraph 1A.30(1)(a) has the effect that the Secretary may only grant an export permit if the exporter has made an application that includes the declaration required by paragraph 1A.29(2)(b). The declaration required by paragraph 1A.29(2)(b) is the declaration by the exporter in accordance with subsection 1A.29(3) and, if applicable, subsection 1A.29(3A).

### **Item 5 – In the appropriate position in Division 3 of Part 7**

Item 5 inserts section 7.17.

*Section 7.17 – Application of amendments—applications for export permits and health certificates for sheep to be exported by sea*

Section 7.17 provides for the application of amendments in relation to applications for export permits and health certificates for live-stock. The amendments made by items 1 to 4 of Schedule 2 to the instrument apply in relation to:

- an application under section 1A.29 that had been made before the commencement of that Schedule but had not been decided before that time; and
- an application under section 1A.29 that is made after the commencement of that Schedule.

A note is included at the end of section 7.17, which provides that:

- if, before the commencement of Schedule 2 of the instrument, the exporter submitted an application for an export permit and (if required) a health certificate under section 1A.29; and
- the application was in relation to live-stock in relation to which the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018* applies; and
- the application had not been decided before commencement of Schedule 2,

the exporter will need to vary the declaration included in the application to state the matters referred to in subsection 1A.29(3A).

Schedule 3—Other amendments

*Export Control (Animals) Order 2004*

**Item 1 – Section 1A.04**

Item 1 repeals section 1.04 and inserts a new section 1.04.

*Section 1A.04 – When the Secretary is taken to have refused application*

Section 1A.04 provides that the Secretary is taken to have refused the application for approval of a proposed arrangement if the Secretary has not made a decision on the application within 60 days after:

- the day the application was received; or
- if the application was varied, the day the application was varied.

However, the 60 day period does not include any period between the Secretary making a written request for information or documents in relation to the application under subsection 1A.03(2) and the applicant providing the information or documents requested.

This section replicates the existing section 1A.04, but removes the requirement for the application to have been received after 31 December 2016. This requirement is no longer relevant.



## **Item 2 – Section 1A.09(4)**

Item 2 repeals subsection 1A.09(4) and inserts a new subsection (4). Subsection (4) provides that the Secretary is taken to have refused an application from an exporter to vary an approved arrangement if the Secretary has not made a decision on the application within 60 days after:

- the day the application was received; or
- if the application was varied, the day the application was varied.

However, the 60 day period does not include any period between the Secretary making a written request for information or documents in relation to the application under subsection 1A.09(3) and the applicant providing the information or documents requested.

This section replicates the existing subsection 1A.09(4), but removes the requirement for the application to have been received after 31 December 2016. This requirement is no longer relevant.

## **Item 3 – Before section 7.01**

Item 3 inserts a heading for Division 1, which relates to transitional provisions relating to the *Export Control (Animals) Amendment (2014 Measures No. 1) Order 2014*.

## **Item 4 – Section 7.01**

Item 4 repeals section 7.01, which deals with transitional arrangements in relation to ESCASs. These provisions are no longer required.

## **Item 5 – Before section 7.07**

Item 5 inserts a heading for Division 2, which relates to transitional provisions relating to the *Export Control (Animals) Amendment (2017 Measures No. 1) Order 2017*.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**Export Control (Animals) Amendment (Approved Export Programs and Other Measures) Order 2018**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to set up a comprehensive scheme for approved export programs. An approved export program is relevantly defined in subsection 9A(2) of the Act as a program of activities to be undertaken by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of eligible live animals in the course of export activities.

The Legislative Instrument will:

- create an independent observer program, which allows the Secretary to direct an authorised officer to undertake activities in an approved export program on a live-stock export voyage;
- require an exporter to have an approved export program to be undertaken by an accredited veterinarian for all live-stock exports;
- provide a power for the Secretary to vary, suspend or cancel an approved export program;
- provide a power for the Secretary to give directions to an exporter in relation to the implementation of an approved export program; and
- provide a power for the Secretary to publish records and reports made by accredited veterinarians and authorised officers in relation to approved export programs.

**List of human rights**

The Legislative Instrument will engage, or have the potential to engage, the following right under the *International Covenant on Civil and Political Rights* (ICCPR):

- Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy.

**Assessment of compatibility with human rights**

**Right to protection from arbitrary interference with privacy (Article 17 of the ICCPR)**

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined “privacy”, the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

### ***Publication of records and reports***

The proposed item 11 (section 1A.49 in the Animals Order) provides a power for the Secretary to publish records and reports made by accredited veterinarians and authorised officers in relation to approved export programs, should he or she wish to do so.

To the extent that the power in item 11 (section 1A.49) limits the rights protected under Article 17 of the ICCPR, this limitation is not arbitrary, and is reasonable, necessary and proportionate to the achievement of a legitimate objective.

The items pursues the legitimate objective of ensuring public awareness of matters relating to the health and welfare of live animals in the course of export activities.

The publication of records and reports relating to approved export programs is necessary, reasonable and proportionate to the legitimate objective. The Australian Government has a responsibility to ensure that exporters maintain high standards of animal health and welfare throughout the export chain. Farmers, exporters and members of the wider community have an interest in ensuring the health and welfare of exported livestock is protected. The publication of records and reports relating to approved export programs will encourage good animal welfare practices on live-stock export voyages, and provide assurance to farmers and members of the community about oversight of the health and welfare of exported live animals.

Where exporters have good animal welfare practices in place under an approved export program, the publication of records and reports relating to approved export programs will have no negative impact on their reputation. The records and reports will demonstrate the exporter is complying with their obligations in an approved export program in relation to the health and welfare of live-stock that are being exported. It is only those exporters who are not satisfying their animal welfare obligations in an approved export program that applies to the live-stock who may experience negative publicity following publications of records or reports.

There are restrictions on the use of the proposed power to publish reports or records relating to approved export programs. The restrictions ensure that the power is proportionate to achieving the objective of ensuring public awareness of matters relating to the health and welfare of live animals. The power to publish records and reports is a power of the Secretary. The Secretary may only publish records and reports that are given by an accredited veterinarian or authorised officer in relation to approved export programs. It does not allow the Secretary to publish other information relating to approved export programs.

### Summary

The Legislative Instrument is compatible with the right to protection from arbitrary interference with privacy under Article 17 of the ICCPR because, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

### **Conclusion**

The Legislative Instrument is compatible with human rights because, to the extent that the Legislative Instrument may limit human rights, those limitations are reasonable, necessary and proportionate.

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