

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture and Water Resources

*Export Control Act 1982*

*Export Control (Animals) Amendment (Notices of Intention to Export) 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* (the Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act. The *Export Control (Animals) Order 2004* (the Animals Order) is made under regulation 3 of the Regulations.

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

### **Purpose**

The *Export Control (Animals) Amendment (Notices of Intention to Export) Order 2018* (the Amendment Order) introduces provisions for the Secretary of the Department of Agriculture and Water Resources (the Secretary) to approve or refuse a Notice of Intention to export (NOI). The Amendment Order applies to all types of live-stock to ensure consistency across the sector as well as assisting exporters with managing mixed consignments.

The purpose of the Amendment Order is to include an additional decision point that will provide increased transparency of the process for the approval for export of live-stock. The additional decision point will provide added assurance that the export of live-stock will be compliant with the regulatory requirements throughout the export supply chain. It also provides exporters with increased clarity at an earlier stage in the supply chain about a proposed export. This reduces the likelihood of exporters incurring significant costs in relation to an export that may not occur.

Some stakeholders have expressed concerns about the adequacy of the current framework in relation to protecting animal welfare. Under the current framework, the department approves exports of live-stock by issuing an export permit when the live-stock have been loaded onto a conveyance for export. This situation risks the health and welfare of the relevant live-stock while legal proceedings are afoot and can impose significant costs on all parties.

## **Background**

The Amendment Order is part of the regulatory framework that enables the Australian Government to regulate the export of live-stock from Australia. The release of whistle-blower footage of shipments of sheep to the Middle East has highlighted a need to protect animal welfare outcomes under export legislation.

In response to Australian community concerns about animal welfare during live-stock export shipments, the Australian Government recently made amendments to legislative instruments to enhance protection of animals during export. The changes to the regulation of these exports was informed by Dr Michael McCarthy's *Independent review of conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer* (May 2018).

## **Impact and Effect**

This Amendment Order introduces a new decision point at the NOI stage and ensures that animal welfare outcomes are protected. This additional decision point, requires the Secretary when deciding whether to approve an NOI, to consider various factors such as whether the international transport arrangements, which include, for example, the ship and loading arrangements, bedding, crew and route for the live-stock are adequate for animal health and welfare.

## **Details/Operation**

Details of the instrument are set out in [Attachment A](#).

## **Consultation**

The department has informed the Australian Livestock Exporters Council, Australian Livestock Export Corporation Limited and the RSPCA. The legislative amendments did not require a regulatory impact statement, as they are likely to have no more than minor regulatory impacts on business, community organisations or individuals. A Regulation Impact Statement is not required (OBPR ID: 24056).

## **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 (Notices of Intention to Export) Order 2018***

**Section 1 – Name**

This section provides that the name of the Amendment Order is the *Export Control (Animals) Amendment (Notices of Intention to Export) Order 2018*.

**Section 2 – Commencement**

Subsection 2 provides that the instrument will commence on the day after registration.

**Section 3 – Authority**

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

**Section 4 – Schedules**

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

**Schedule 1—Amendments**

*Export Control (Animals) Order 2004*

**Item 1 – Paragraph 1A.01(c)**

Item 1 repeals the paragraph and substitutes a new paragraph that provides that an NOI for the export must be approved under section 1A.25A and the approval must be in force. The paragraph further provides that if the exporter was required to vary the NOI under section 1A.26, he or she must ensure that the NOI has been varied as required. This provision gives effect to section 7 of the Act which enables the prohibition of export from Australia of prescribed goods unless specified conditions and restrictions are complied with.

**Item 2 – Subsection 1A.24(5) (note)**

Item 2 repeals the note.

**Item 3 – After section 1A.25**

Item 3 inserts 1A.25A which provides that the Secretary may approve an NOI.

Subsection 1A.25A(1) provides that if an exporter gives the Secretary an NOI for a proposed export of live-stock under section 1A.25 or 1A.26, the Secretary may approve the NOI. Paragraph 1A.25A(1)(a) enables the Secretary, for the purpose of deciding whether to approve the NOI, to request, by notice in writing to the exporter, further information about a proposed export. Paragraph 1A.25A(1)(b) provides that the Secretary may, for the purpose of deciding whether to approve the NOI, by notice in writing to the exporter, direct that an NOI be varied in a specified way.

A note at the end of subsection 1A.25A(1) directs the reader to section 1A.27 which provides that if the live-stock are to be exported by air, an approval of the premises at which the live-stock are to be prepared may also be required.

Subsection 1A.25A(2) provides for the criteria for approval of an NOI. The criteria for approval of an NOI is whether the proposed export complies with the following:

- the requirements of this Order;
- the requirements of the AMLI Act and regulations under that Act;
- orders and directions under the AMLI Act;
- the conditions of the exporter's AMLI licence; and
- whether the international transport arrangements for the live-stock are adequate for their health and welfare.

A note at the end of subsection 1A.25A(2) directs the reader to section 3 of the *Australian Meat and Live-stock Industry (Standards) Order 2005* which provides that the holder of a live-stock export licence must not export live-stock except in accordance with the *Australian Standards for the Export of Livestock*.

Subsection 1A.25A(3) provides that the Secretary must not approve an NOI for a proposed export for which an ESCAS is required unless the Secretary is satisfied that an approved ESCAS applies to the proposed export.

A note at the end of subsection 1A.25A(3) directs the reader to Division 1A.3 in relation to approval of ESCASs. The note provides that an ESCAS is not required for certain proposed exports, and directs the reader to subsection 1A.19(4).

Subsection 1A.25A(4) requires the Secretary to give an exporter who has given an NOI to the Secretary written notice:

- of the Secretary's decision whether or not to approve the NOI; and
- if the decision is a refusal, of the reasons for the decision.

A note is included at the end of subsection 1A.25A(4) which directs the reader to section 6.03 of the instrument and Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* for reconsideration and review of a decision to refuse to approve an NOI.

#### **Item 4 – Subsection 1A.26(2)**

Item 4 repeals subsection 1A.26(2) and inserts a new subsection 1A.26(2) which provides that if the Secretary has been informed by an exporter, or has otherwise become aware, of a change relevant to a proposed export, the Secretary may, by notice in writing to the exporter, do any of the following:

- cancel any approval of an NOI for the proposed export that has been given under section 1A.25A;
- require the exporter:
  - to vary an NOI for the proposed export given to the Secretary; or
  - to give the Secretary a new NOI for the proposed export.

#### **Item 5 – Paragraph 1A.29(3)(c)**

Item 5 inserts a requirement for the exporter to declare that no relevant circumstances have changed in relation to the approved NOI (in addition to the approved ESCAS) that applies to the export.

#### **Item 6 – Before paragraph 1A.30(1)(a)**

Item 6 inserts a new paragraph 1A.30(1)(aa) that provides that the Secretary may grant an export permit if an NOI for the export of the live-stock has been approved under section 1A.25A.

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

Item 7 inserts Division 4 which contains transitional provisions in the new section 7.19.

Subsection 7.19(1) provides that the amendments made by items 1 and 2 of Schedule 1 to the Amendment Order apply only in relation to an export of live-stock if the NOI for the proposed export is given to the Secretary after the commencement of the Amendment Order.

Subsection 7.19(2) provides that the amendments made by items 3 and 4 of Schedule 1 to the Amendment Order applies in relation to an NOI for a proposed export of live-stock if the NOI is given to the Secretary after the commencement of the Amendment Order.

Subsection 7.19(3) provides that the amendment made by item 5 of Schedule 1 to the Amendment Order applies in relation to an application for an export permit for a proposed export of live-stock if the NOI for the proposed export is given to the Secretary after the commencement of the Amendment Order.

Subsection 7.19(4) provides that the amendment made by item 6 of Schedule 1 to the Amendment Order applies in relation to granting an export permit for a proposed export of live-stock if the NOI for the proposed export is given to the Secretary after the commencement of the Amendment Order.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**Export Control (Animals) Amendment (Notices of Intention to Export) 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 introduce provisions for the Secretary of the Department of Agriculture and Water Resources (the Secretary) to approve or refuse an application for a Notice of Intention to export (NOI). This is to make the approval of an NOI by the Secretary necessary to enable the lawful export of livestock.

The Legislative Instrument will:

- provide for a prohibition on live-stock exports if an NOI is not approved and in force,
- provide a power for the Secretary to approve or refuse an NOI and the criteria for approval, and
- outline the effect of what approving an NOI in relation to an export is.

**List of human rights**

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

**Conclusion**

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

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