

EXPLANATORY STATEMENT

Issued by the authority of the Secretary for the Department of Agriculture, Fisheries and Forestry

Export Control Act 2020

Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023

Legislative Authority

The *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Fisheries and Forestry (the department) under section 432 of the *Export Control Act 2020* (the Act).

Section 432 of the Act relevantly provides that the Secretary of the department (the Secretary) may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

A number of provisions in the Act set the parameters of the Secretary's rule-making power and either:

- provide examples of the kinds of things for which the Secretary may make provision in the rules; or
- set out the default matters for the provision and allow the Secretary to give further detail, or set out additional requirements, in the rules.

Under section 289 of the Act, the Minister may give directions to the Secretary about the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 of the Act. Directions made by the Minister to the Secretary are legislative instruments but are not subject to disallowance or sunseting. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act for the purposes of rules relating to the export of goods.

Purpose

The Amendment Rules amend the *Export Control (Animals) Rules 2021* (the Animals Rules).

The amendments:

- provide for information required in relation to an application for a new government certificate following the revocation of an original government certificate
- clarify the circumstances in which a government certificate may be revoked
- provide an additional requirement for the approval of a proposed arrangement that the carrying out of export operations in relation to prescribed livestock will ensure compliance with importing country requirements
- include a new condition of an approved arrangement in relation to importing country requirements

- include a new condition of an approved arrangement in relation to the Australian Standards for the Export of Livestock (ASEL)
- prescribe the circumstances under which the holder of an approved arrangement for exporter supply chain assurance operations (ESCAO) may request the Secretary to suspend the approved arrangement or part of the approved arrangement
- include a new condition in relation to livestock export licences to manage risks where there is a suspected or recently confirmed case of an exotic animal disease, infection or infestation in relation to prescribed livestock
- clarify the requirements for the notice of proposed revocation of the approval of an Exporter Supply Chain Assurance System (ESCAS)
- clarify the requirements for the notice of revocation of the approval of an ESCAS
- provide the Secretary with a power to revoke a notice of intention to export a consignment of prescribed livestock or prescribed live animals under certain circumstances
- allow flexibility relating to certain show cause notices given under the Animals Rules by allowing a show cause notice to specify a period longer than 14 days within which a response to the notice is requested in relation to a variation, suspension or revocation
- clarify when a variation of an ESCAS, or a variation, suspension or revocation of the accreditation of a veterinarian takes effect, following the amendments to the show cause notice requirements
- impose additional record keeping requirements on an accredited veterinarian who is engaged to carry out export operations in an approved export program that relates to prescribed livestock, and
- impose additional obligations on exporters in relation to approved export programs.

Background

The department regularly reviews the rules made under the Act to ensure that it supports the competitiveness and productivity of Australia's agricultural export sector.

The amendments to the Animals Rules address issues that have been raised by stakeholders or identified by the department. The amendments ensure that the rules made under the Act remain fit for purpose and are updated to reflect current operational requirements.

Impact and Effect

A number of the amendments aim to improve and clarify administrative processes, through:

- providing for information that must be included in an application for a new government certificate following the revocation of an original government certificate
- clarifying the circumstances in which a government certificate may be revoked
- enabling the holder of an approved arrangement for ESCAO to request the Secretary to suspend an approved arrangement in certain circumstances
- clarifying notice requirements in relation to the revocation of an ESCAS
- clarifying the circumstances in which an accredited veterinarian is required to comply with record-keeping requirements relating to approved export programs, and
- providing flexibility for the Secretary to specify a longer period of response to show cause notices, in relation to a variation, suspension or revocation, in certain circumstances.

A number of amendments aim to strengthen the integrity of export arrangements. The amendments to the revocation of a notice of intention to export a consignment of prescribed livestock or prescribed live animals ensures that action may be taken against exporters of prescribed livestock or prescribed live animals where the exporter has not supplied true or accurate information or documents. The amendments requiring that an accredited veterinarian must keep a copy of all invoices relating to the purchase of drugs or products used to treat prescribed livestock is important for verification and traceability purposes. The amendments requiring an exporter to provide, and an accredited veterinarian to record the receipt of, copies of the parts of an approved export program relating to a program of export operations to be undertaken by an accredited veterinarian aim to ensure that the accredited veterinarian has the information they need to undertake the export operations in accordance with the approved export program.

The amendments requiring compliance with importing country requirements and the ASEL help ensure goods exported meet the standards required to maintain overseas market access for goods exported from Australia, and minimum animal health and welfare standards are met.

The new power to order a livestock export licence holder to stop moving or loading prescribed livestock aims to enable an efficient response during the initial period of a suspicion or detection of certain exotic animal diseases, infections or infestations.

The amendments are unlikely to have more than a minor regulatory impact and as such the preparation of a Regulation Impact Statement (RIS) is not required, as detailed in case OBPR22-03228.

Consultation

The department undertook public consultation on the amendments between 28 November 2022 and 20 January 2023, through the department's 'Have Your Say' website, and through direct industry engagement. Feedback from the consultation process was considered by the department and informed the development of the Amendment Rules. This included making modifications to the amendments where appropriate to address stakeholder feedback.

A summary of the outcomes from the consultation process was published on the department's website on 19 July 2023.

The department has communicated these changes to stakeholders through various industry forums including at the export industry monthly teleconference held on 15 November 2023, and at the accredited veterinarian (AAV) Australian Veterinary Association and Live Animal Export Regulatory Meeting held on 9 November 2023. Furthermore, on commencement of these changes, the department will release Export Advisory Notices and publish external website updates, policies and guidelines to support stakeholders through the changes.

Details/ Operation

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The amendments in the Amendment Rules commence the day after registration.

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

Other

The Amendment Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility with Human Rights is set out in Attachment B.

ATTACHMENT A

Details of the *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023* (the Amendment Rules).

Section 2 – Commencement

Section 2 provides for the commencement of each provision in the Amendment Rules.

This section provides that the Amendment Rules commences on the day after the instrument is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provisions of the Amendment Rules as originally made. It will not be amended to deal with later amendments of the Amendment Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Amendment Rules. This clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Amendment Rules.

Section 3 – Authority

This section provides that the Amendment Rules are made under the *Export Control Act 2020* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Rules. This enables the amendment of the: *Export Control (Animals) Rules 2021* (see Schedule 1 below).

Schedule 1 – Amendment of the *Export Control (Animals) Rules 2021*

Export Control (Animals) Rules 2021

The *Export Control (Animals) Rules 2021* (the Animals Rules) prescribes matters and makes other provision in relation to certain livestock (prescribed livestock), other live animals (prescribed live animals), and animal reproductive material (prescribed animal reproductive material) for the purposes of the Act.

Part 1 – Amendments

Item [1] – After section 2-14

Paragraph 65(2)(c) of the *Export Control Act 2020* (the Act) provides for the rules to prescribe information that an application for a government certificate must include.

This item inserts new section 2-14A after section 2-14 of the Animals Rules.

New section 2-14A makes provision in relation to applications for a new government certificate if the original government certificate is revoked in certain circumstances. New subsection 2-14A(1) provides that section 2-14A applies if the original government certificate in relation to any of prescribed livestock, prescribed live animals or prescribed animal reproductive material, is revoked under subsection 75(1) of the Act.

New subsection 2-14A(2) provides that for the purposes of paragraph 65(2)(c) of the Act, an application for a new government certificate in relation to the goods must include details of any changes from the information that was included in the application for the government certificate that was revoked.

A “government certificate” is defined in section 12 of the Act to mean, in short, a certificate in relation to goods that are to be, or have been exported and that relates to matters in respect of which an importing country requires certification, requirements of the Act that must be complied with before the goods may be exported, or any other matters concerning goods of that kind.

The note following new section 2-14A explains that the issuing body may accept any information or document previously given to an issuing body in connection with the application as satisfying any requirement to give that information or document under subsection 65(2) of the Act and refers the reader to subsection 65(3) of the Act.

Item [2] – After section 2-16

Subsection 75(1) of the Act provides for the circumstances in which the issuing body that issued a government certificate in relation to a kind of goods, or the Secretary, may revoke the certificate. Paragraph 75(1)(h) of the Act provides that a circumstance in which a government certificate may be revoked, is if circumstances prescribed by the rules exist.

This item inserts new section 2-16A after section 2-16 of the Animals Rules.

New section 2-16A prescribes, for the purposes of paragraph 75(1)(h) of the Act, circumstances in which a government certificate may be revoked. The circumstances are that the holder of the government certificate requests the issuing body that issued the certificate or the Secretary, in writing, to revoke the certificate.

Item [3] – Section 2-20

Existing section 2-20 of the Animals Rules provides for information that must be included in an application for a new government certificate in relation to prescribed livestock if the original government certificate is revoked under subsection 75(1) of the Act after the livestock are exported and before they are accepted into an importing country.

This item repeals section 2-20. This repeal is consequential to new section 2-14A (as inserted by item 1 of this Schedule). This provision is no longer necessary because new section 2-14A covers a broader range of circumstances in which certain information must be included in an application for a new government certificate if the original government certificate is revoked under subsection 75(1) of the Act.

Item [4] – Subsection 2-21(2) (note)

This item omits “2-20(2)”, and substitutes “2-14A(2)”.

This is a minor technical amendment and is consequential to the repeal of section 2-20 (in item 3 of this Schedule) and the insertion of new section 2-14A (as inserted by item 1 of this Schedule).

Item [5] – At the end of section 5-1

This item adds new subsection 5-1(7) at the end of section 5-1 of the Animals Rules.

Paragraph 151(2)(d) of Act provides for rules to prescribe any other requirement that must be met for the Secretary to approve a proposed arrangement. Existing section 5-1 of the Animals Rules prescribes, for the purposes of paragraph 151(2)(d) of the Act, other requirements that must be met for approval of a proposed arrangement.

New subsection 5-1(7) provides a requirement for the approval of a proposed arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations). It requires that the carrying out of a kind of export operations in relation to the prescribed livestock in accordance with the proposed arrangement will ensure compliance with any importing country requirements.

The term “exporter supply chain assurance operations” is defined in section 1-6 of the Animals Rules to mean, in short, export operations to assist exporters to comply with their obligations under the Animals Rules relating to exporter supply chain assurance systems (ESCAS), to ensure the humane treatment and handling of feeder or slaughter livestock that are exported up until, and including, the point of slaughter.

Item [6] – At the end of Division 2 of Part 1 of Chapter 5

Paragraph 152(1)(b) of the Act provides that an approved arrangement is subject to the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the approved arrangement). Subsection 5-2 of the Animals Rules currently provides, for the purposes of paragraph 152(1)(b) of the Act, that Division 2 of Part 1 of Chapter 5 prescribes conditions of an approved arrangement for a kind of export operations in relation to prescribed livestock (other than ESCAO).

This item adds new sections 5-4A and 5-4B at the end of Division 2 of Part 1 of Chapter 5.

New sections 5-4A and 5-4B provide conditions of an approved arrangement in relation to importing country requirements and requirements of the Australian Standards for the Export of Livestock respectively.

New section 5-4A provides that an approved arrangement must ensure that all importing country requirements relating to the following are met:

- Export operations carried out in relation to prescribed livestock in accordance with the arrangement;
- The prescribed livestock in relation to which the export operations are carried out.

New section 5-4B provides that an approved arrangement must ensure that the requirements of the Australian Standards for the Export of Livestock are met in relation to the following:

- Export operations carried out in relation to prescribed livestock in accordance with the arrangement;
- The prescribed livestock in relation to which the export operations are carried out.

The term “Australian Standards for the Export of Livestock (or ASEL)” is defined in section 1-6 of the Animals Rules as the document titled Australian Standards for the Export of Livestock published by the department as it exists from time to time. As set out in a note following that definition, in 2021, the ASEL could be viewed on the department’s website (<http://www.awe.gov.au>).

Subparagraph 432(3)(a)(i) of the Act provides that, despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in the document published by the department titled *Australian Standards for the Export of Livestock*, as in force or existing from time to time.

Item [7] – Before section 5-22

Section 169 of the Act provides for the suspension of an approved arrangement or part of the approved arrangement at the request of the holder of the approved arrangement. Subsection 169(2) provides that the holder of an approved arrangement may only request the Secretary to suspend the approved arrangement or a part of the approved arrangement in the circumstances prescribed by the rules (subsection 169(2)). There are currently no rules prescribed for the purposes of subsection 169(2) of the Act.

Subsection 169(4) sets out the requirements for a request made under subsection 169(1). In particular, the request must include any other information prescribed by the rules (paragraph

169(4)(e)). There are currently no rules prescribed for the purposes of paragraph 169(4)(e) of the Act.

Division 5 of Part 2 of Chapter 5 of the Animals Rules provides for approved arrangements for ESCAO.

“Export supply chain assurance operations” (ESCAO) is defined in section 1-6 of the Animals Rules as export operations to assist exporters to comply with their obligations under Part 9 of Chapter 6 of the Animals Rules (exporter supply chain assurance systems (ESCAS)) to ensure the humane treatment and handling of feeder livestock or slaughter livestock that are exported up until, and including, the point of slaughter, including:

- conducting audits in relation to entities; and
- giving assurances to the Secretary and exporters in relation to entities that meet certain standards for the control, traceability and welfare of feeder livestock or slaughter livestock.

This item inserts new sections 5-21A and 5-21B before section 5-22 in Division 5 of Part 2 of Chapter 5 of the Animals Rules.

New sections 5-21A and 5-21B respectively prescribe certain circumstances in which the holder of an approved arrangement may request the Secretary to suspend the approved arrangement or part thereof and information that must be included in a request for suspension.

New subsection 5-21A(1) provides that subsections 5-21A(2) and (3) prescribe, for the purposes of subsection 169(2) of the Act, the circumstances in which the holder of an approved arrangement may request the Secretary to suspend the approved arrangement or a part of the approved arrangement.

New subsection 5-21A(2) provides that the holder of the approved arrangement may request the Secretary to suspend the approved arrangement or part of the approved arrangement in circumstances where the holder considers that some or all of the exporter supply chain assurance operations covered by the arrangement will not be carried out for a continuous period of 12 months or more.

New subsection 5-21A(3) provides that the holder of the approved arrangement may request the Secretary to suspend the approved arrangement or part of the approved arrangement in circumstances where the holder does not have personnel with appropriate qualifications or expertise to carry out some or all of the exporter supply chain assurance operations in accordance with the arrangement.

New subsection 5-21B(1) provides that subsections 5-21B(2) and (3) prescribe, for the purposes of paragraph 169(4)(e) of the Act, the information that must be included in a request by the holder of an approved arrangement to suspend the approved arrangement or a part of the approved arrangement.

New subsection 5-21B(2) provides that information that must be included in a request by the holder of an approved arrangement to suspend the approved arrangement or part of the approved arrangement, is a plan for how each entity, in relation to which exporter supply chain assurance operations were carried out in accordance with the approved arrangement,

will be transitioned to alternative export operations to assist the entity to ensure the humane treatment and handling of feeder livestock or slaughter livestock that are exported up until, and including, the point of slaughter. Examples of alternative export operations for the purposes of subsection (2) would include the entity seeking assurance from the holder of another approved arrangement for exporter supply chain assurance operations, or the entity complying with an approved ESCAS.

New subsection 5-21B(3) provides that information that must be included in a request by the holder of an approved arrangement to suspend the approved arrangement or part of the approved arrangement, is a written declaration that, at the time the request is made, there are no export operations being carried out at or by any entity, in relation to which exporter supply chain assurance operations were carried out in accordance with the approved arrangement, involving feeder livestock or slaughter livestock.

New subsection 5-21B(4) provides that the written declaration referred to in new subsection 5-21B(3):

- must not be made if there are no reasonable grounds for making it; and
- must not be false or misleading; and
- must be signed and dated by the person who made it; and
- if the Secretary has approved a form for making the declaration—must be in that form.

The written declaration required by new subsection 5-21B(3) provides an assurance that animal welfare outcomes will not be adversely affected by the suspension of the approved arrangement. If there are still feeder livestock or slaughter livestock in the export operations carried out at or by the entity, at the time of the suspension of the approved arrangement, then the control, traceability and welfare of the livestock cannot be maintained.

The note following subsection 5-21B(4) explains that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents and refers the reader to sections 137.1 and 137.2 of the *Criminal Code Act 1995* and sections 368 and 369 of the Act.

Item [8] – Section 5-22 (heading)

Existing section 5-22 of the Animals Rules provides for other grounds for the suspension of an approved arrangement. This item omits “Other” and substitutes “Suspension by Secretary – other”.

The change to the heading to section 5-22 to “Suspension by Secretary – other grounds for revocation” is consequential to item [7] which inserts two new provisions prescribing circumstances for a suspension requested by the holder of an approved arrangement (as opposed to a suspension imposed by the Secretary).

Item [9] – At the end of Division 2 of Part 2 of Chapter 6

Paragraph 192(1)(b) of the Act provides that an export licence is subject to the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the licence).

Division 2 of Part 2 of Chapter 6 of the Animals Rules provides for general conditions of livestock export licences.

This item adds new section 6-8A at the end of Division 2 of Part 2 of Chapter 6, which imposes a condition on the holder of a livestock export licence in relation to an exotic animal disease, infection or infestation.

New section 6-8A provides for orders made by authorised officers. New section 6-8A provides that the holder of a livestock export licence must comply with an order given to the holder by an authorised officer in accordance with section 9-54 of the Animals Rules (as inserted by item 33 of this Schedule).

The purpose of new section 6-8A, together with the direction given under new section 9-54, is to allow for a prompt response to be able to manage the risks, and respond to, the suspicion or presence of an exotic animal disease, infection or infestation in Australia, as detailed further below in relation to item 33 of this Schedule.

Item [10] – Subsection 6-42(1)

Paragraph 192(1)(b) of the Act provides that an export licence is subject to the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the licence). Section 6-4 of the Animals Rules provides that Part 2 of Chapter 6 prescribes conditions of a livestock export licence. Section 6-7, in Part 2 of Chapter 6 of the Animals Rules, requires the holder of a livestock export licence to hold, and to comply with, an approved ESCAS in carrying out export operations in relation to the livestock. Part 9 of Chapter 6 deals with the approval of a proposed ESCAS and other matters relating to an ESCAS.

Subsection 6-42(1) of the Animals Rules provides that the Secretary may, by written notice to the holder of an approved ESCAS, revoke the ESCAS in certain circumstances.

This item omits “, by written notice to the holder of an approved ESCAS, revoke the” and substitutes “revoke an” in subsection 6-42(1) of the Animals Rules. This change is consequential to the amendment to subsection 6-42(3) made by item 13 of this Schedule.

Item [11] – Paragraph 6-42(1)(b)

This item inserts “of the approved ESCAS” after “holder” in paragraph 6-42(1)(b). This is a minor technical amendment to clarify that the provision applies in relation to the holder of the approved ESCAS.

Item [12] – Subsection 6-42(1) (note)

This item omits “The notice under subsection (1) of this section must also include the reasons for the decision (see subsection 382(1) of the Act).” in the note following subsection 6-42(1) of the Animals Rules.

This change is consequential to the amendment to subsection 6-42(1) made by item 10 of this Schedule, which removes the reference to the written notice requirement in subsection 6-42(1). The written notice requirement in subsection 6-42(1) has been removed by item 10

as a result of the notice requirements instead being set out in amended subsection 6-42(3) (as amended by item 13 of this Schedule).

Item [13] – Subsection 6-42(3)

Subsection 6-42(1) of the Animals Rules (as amended by items 10 and 12 of this Schedule) provides that the Secretary may revoke the approved ESCAS in certain prescribed circumstances. Subsection 6-42(2) provides that the Secretary must not revoke an approved ESCAS under subsection 6-42(1) unless the Secretary has given a written notice of the proposed revocation to the holder of the approved ESCAS in accordance with subsection 6-42(3).

Existing subsection 6-42(3) provides for the requirements of the written notice of proposed revocation under subsection 6-42(2).

This item repeals subsection 6-42(3) and substitutes new subsection 6-42(3), which provides for the requirements for a notice under subsection 6-42(2).

New subsection 6-42(3) provides that a notice under subsection 6-42(2) must:

- state that the Secretary proposes to revoke the approval of the ESCAS; and
- specify the grounds for the proposed revocation; and
- specify the date the proposed revocation is to take effect; and
- subject to subsection 6-42(4), request the holder of the approved ESCAS give to the Secretary within 14 days after the day the notice is given, or within such longer period specified in the notice, a written statement showing cause why the approved ESCAS should not be revoked; and
- include a statement setting out the holder's right to seek review of a decision to revoke the approved ESCAS; and
- if the notice includes the request referred to in new paragraph 6-42(3)(d)—state that the proposed revocation will take effect on the date specified under new paragraph 6-42(3)(c) if the Secretary does not receive a response to the request within:
 - 14 days after the notice is given; or
 - if the notice specifies a longer period – that longer period.

New subsection 6-42(3) includes a number of new requirements which are not contained in existing subsection 6-42(3). New paragraph 6-42(3)(b) provides a requirement that a notice under subsection 6-42(2) must specify the date the proposed revocation is to take effect. New paragraph 6-42(3)(f) provides a requirement that a notice under subsection 6-42(2) must specify when the revocation will take effect if the Secretary does not receive a response within the relevant period. New paragraph 6-42(3)(d) provides that, subject to subsection 6-42(4), a notice under subsection 6-42(2) must request the holder of the approved ESCAS to give to the Secretary a written statement in response to the notice showing cause why the approved ESCAS should not be revoked within:

- 14 days after the day the notice is given; or
- if the notice specifies a longer period – that longer period.

New paragraph 6-42(3)(d) allows the holder of the approved ESCAS to respond to the show cause notice within a period longer than 14 days after the notice was given, if that longer period is specified in the notice.

New paragraph 6-42(3)(d) allows the Secretary greater flexibility in determining the timeframe in which the holder of the approved ESCAS is required to provide a response to the show cause notice, for example where there are more complex issues to be addressed. This will allow the holder of an approved ESCAS more time to respond to the show cause notice in applicable cases.

Item [14] – Subsection 6-42(4)

This item omits “(3)(b)” and substitutes “(3)(d)” in subsection 6-42(4) of the Animals Rules. This is a minor technical amendment and is consequential to the amendments to subsection 6-42(3) made by item 13 of this Schedule, which repeals subsection 6-42(3) and substitutes new subsection 6-42(3).

Item [15] – At the end of Division 3 of Part 9 of Chapter 6

This item adds new section 6-42A at the end of Division 3 of Part 9 of Chapter 6, which sets out the requirements for a notice of revocation, including when the revocation takes effect.

The Animals Rules do not currently set out any requirements for a notice of revocation of an approved ESCAS. New section 6-42A provides for a notice of revocation of an ESCAS, similar to the notice of revocation of accreditation of an accredited veterinarian in section 9-25 of the Animals Rules.

New subsection 6-42A(1) provides that if the Secretary decides to revoke an approved ESCAS under subsection 6-42(1) (as amended by item 10 of this Schedule), the Secretary must give the holder of the approved ESCAS a written notice stating that the approval of the ESCAS is to be revoked, the grounds for the revocation, and the date the revocation is to take effect.

New subsection 6-42A(2) provides that the revocation must not take effect before the day after the response to a show cause notice is received from the holder, if:

- the show cause notice given to the holder of the approved ESCAS under subsection 6-42(2) included the request referred to in paragraph 6-42(3)(d) (as inserted by item 13 of this Schedule); and
- the Secretary receives a response from the holder to the request within:
 - 14 days after the show cause notice was given; or
 - if the show cause notice specified a longer period- that longer period.

New subsection 6-42A(3) provides that the revocation takes effect on the date specified in the show cause notice under paragraph 6-42(3)(c) if:

- the show cause notice given to the holder of the approved ESCAS under subsection 6-42(2) included the request referred to in paragraph 6-42(3)(d) (as inserted by item 13 of this Schedule); and
- the Secretary does not receive a response from the holder to the request within:
 - 14 days after the show cause notice was given; or
 - if the show cause notice specified a longer period – that longer period.

New subsection 6-42A(4) provides that the revocation takes effect on the date specified in the show cause notice under paragraph 6-42(3)(c) if the show cause notice given to the holder of

the approved ESCAS under subsection 6-42(2) did not include the request referred to in paragraph 6-42(3)(d) (as inserted by item 13 of this Schedule).

Item [16] – After paragraphs 8-9(1)(c) and 8-14(1)(c)

Under Part 1 of Chapter 8 of the Act, a notice of intention to export a consignment of prescribed goods may be required to be given. Section 243 of the Act provides that, if the rules provide for a notice of intention to export to be given, the notice must be made in the form and manner required by the rules, and include the information prescribed by the rules.

Section 8-9 of the Animals Rules provides for the revocation of the approval of a notice of intention to export a consignment of prescribed livestock. Subsection 8-9(1) sets out the grounds on which the Secretary may revoke the approval of a notice of intention to export a consignment of prescribed livestock.

Section 8-14 of the Animals Rules provides for the revocation of the approval of a notice of intention to export a consignment of prescribed live animals.

Subsection 8-14(1) sets out the grounds on which the Secretary may revoke the approval of a notice of intention to export a consignment of prescribed live animals.

This item adds new paragraph 8-9(1)(d) after paragraph 8-9(1)(c) and new paragraph 8-14(1)(d) after paragraph 8-14(1)(c) of the Animals Rules.

New paragraph 8-9(1)(d) sets out an additional ground on which the Secretary may revoke the approval of a notice of intention to export a consignment of prescribed livestock. This ground is where the exporter of the consignment made a false, misleading or incomplete statement in the notice of intention to export the consignment, gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Act or gave a false, misleading or incomplete information or documents to the Secretary or the department under a prescribed agriculture law.

The ground of revocation set out in new paragraph 8-9(1)(d) ensures that action may be taken against exporters of prescribed livestock where the exporter has not supplied true or accurate information or documents.

New paragraph 8-14(1)(d) provides for an additional ground on which the Secretary may revoke the approval of a notice of intention to export a consignment of prescribed live animals and mirrors new paragraph 8-9(1)(d).

Similar to new paragraph 8-9(1)(d), new paragraph 8-14(1)(d) ensures that action may be taken against exporters of prescribed live animals where the exporter has not supplied true or accurate information or documents.

It is already an offence for a person to knowingly provide false or misleading information or documents to a Commonwealth entity, by operation of sections 137.1 and 137.2 of the *Criminal Code Act 1995*. Sections 368 and 369 of the Act also provide that a person may be liable to a civil penalty if the person knowingly provides false or misleading information or documents in compliance with the Act. New paragraphs 8-9(1)(d) and 8-14(1)(d) will enable

action to be taken to revoke the approval of the notice of intention to export where a person has provided false, misleading or incomplete statements, information or documents.

New section 12-38 (as inserted by item 35 of this Schedule) provides that sections 8-9 and 8-14 (as amended by this item) apply in relation to statements made, or information or documents given to the Secretary, the Department or another person, before, on or after the commencement of the Amendment Rules. This will ensure that the department can take action after the commencement of the Amendment Rules to revoke the approval of a notice of intention to export in relation to any applicable false, misleading or incomplete statements, information or documents provided before, on or after the commencement of the amendments.

Item [17] – Paragraph 9-19(4)(c)

Section 312 of the Act provides that the rules may make provision for and in relation to the accreditation of veterinarians for the purposes of carrying out export operations in approved export programs. “Accredited veterinarian” is defined in section 12 of the Act as a veterinarian who is accredited in accordance with rules made for the purposes of subsection 312(1) of the Act.

Section 9-9 of the Animals Rules provides, for the purposes of section 312 of the Act that Part 3 of Chapter 9 of the Animals Rules makes provision for and in relation to the accreditation of veterinarians for the purposes of carrying out export operations in approved export programs. Subsection 9-19(1) of the Animals Rules allows the Secretary to vary any aspect of the accreditation of a veterinarian or to vary the conditions of the accreditation. Subsection 9-19(3) provides that the Secretary must not make a variation unless the Secretary has given a written notice to the accredited veterinarian in accordance with subsection 9-19(4). Subsection 9-19(4) sets out the requirements of the notice under subsection 9-19(3).

This item repeals existing paragraph 9-19(4)(c) and substitutes new paragraph 9-19(4)(c).

New paragraph 9-19(4)(c) provides that subject to subsection 9-19(5), the notice under subsection 9-19(3) must request the accredited veterinarian to give a written statement to the Secretary in response to the notice showing cause why the proposed variation should not be made within:

- 14 days after the day the notice is given; or
- if the notice specifies a longer period – that longer period.

New paragraph 9-19(4)(c) allows the veterinarian to respond to the show cause notice within a period longer than 14 days after the notice was given, if that longer period is specified in the notice.

New paragraph 9-19(4)(c) allows the Secretary greater flexibility in determining the timeframe in which the accredited veterinarian is required to provide a response to the show cause notice, for example where there are more complex issues to be addressed. This will allow accredited veterinarians more time to respond to the show cause notice in applicable cases.

Item [18] – Paragraph 9-19(7)(b)

Subsection 9-19(7) of the Animals Rules provides for when a variation to the accreditation of an accredited veterinarian takes effect.

This item inserts “or, if the show cause notice specified a longer period, the end of that longer period” after “given” in paragraph 9-19(7)(b). Amended paragraph 9-19(7)(b) has the effect that if the accredited veterinarian was given a show cause notice under subsection 9-19(3), the variation must not take effect before the earlier of the day after any response to the request is received by the Secretary and the end of 14 days after the show cause notice was given, or if a longer period was specified in the notice, that longer period.

This amendment is consequential to the amendment to paragraph 9-19(4)(c) made by item 17 of this Schedule, which provides a discretion for a longer period than 14 days to be specified in a show cause notice.

Item [19] – Paragraph 9-20(3)(f)

Section 9-20 of the Animals Rules provides that the Secretary may suspend the accreditation of a veterinarian, in whole or in part. Subsection 9-20(2) provides that the Secretary must not suspend the accreditation of a veterinarian unless the Secretary has given a written notice to the accredited veterinarian in accordance with subsection 9-20(3). Subsection 9-20(3) sets out the requirements of a notice under subsection 9-20(2).

This item repeals existing paragraph 9-20(3)(f) and substitutes new paragraph 9-20(3)(f).

New paragraph 9-20(3)(f) provides that the notice under subsection 9-20(2) must, subject to subsection 9-20(4), request the accredited veterinarian to give to the Secretary within 14 days after the day the notice is given, or if the notice specifies a longer period, that longer period, a written statement showing cause why the accreditation should not be suspended as proposed.

New paragraph 9-20(3)(f) will allow the accredited veterinarian to respond to the show cause notice within a period longer than 14 days after the notice was given if that longer period is specified in the notice.

New paragraph 9-20(3)(f) allows the Secretary greater flexibility in determining the timeframe in which the accredited veterinarian is required to provide a response to the show cause notice, for example where there are more complex issues to be addressed. This will allow accredited veterinarians more time to respond to the show cause notice in applicable cases.

Item [20] – Paragraph 9-20(3)(h)

This item omits “within 14 days after the notice is given” and inserts new subparagraphs 9-20(3)(h)(i) and (ii) in paragraph 9-20(3)(h) of the Animals Rules.

Amended paragraph 9-20(3)(h) has the effect that if a notice given under subsection 9-20(2) includes the request referred to in paragraph 9-20(3)(f) (as amended by item 19 of this Schedule), the notice must state that the proposed suspension will start on the date specified under paragraph 9-20(3)(d) if the Secretary does not receive a response to the request within

14 days after the notice is given, or if the notice specifies a longer period, within that longer period.

This amendment is consequential to new paragraph 9-20(3)(f) (as inserted by item 19 of this Schedule).

Item [21] – Paragraph 9-21(2)(b)

Section 9-21 of the Animals Rules deals with the notice and start of a suspension of accreditation of a veterinarian. Subsection 9-21(2) provides for the start of a suspension in certain circumstances.

This item repeals existing paragraph 9-21(2)(b) and substitutes new paragraph 9-21(2)(b).

New paragraph 9-21(2)(b) has the effect that the suspension must not start before the day after the response to a show cause notice is received if:

- The show cause notice given to the accredited veterinarian under subsection 9-20(2) included a request referred to in paragraph 9-20(3)(f) (as inserted by item 19 of this Schedule); and
- The Secretary receives a response from the accredited veterinarian to the request within 14 days after the show cause notice was given or if the notice specified a longer period, within that longer period.

This amendment is consequential to new paragraph 9-20(3)(f) (as inserted by item 19 of this Schedule).

Item [22] – Paragraph 9-21(3)(b)

Subsection 9-21(3) of the Animals Rules provides for the start of a suspension of the accreditation of a veterinarian in certain circumstances.

This item repeals existing paragraph 9-21(3)(b) and substitutes new paragraph 9-21(3)(b).

New paragraph 9-21(3)(b) has the effect that the suspension starts on the date specified in the notice under paragraph 9-20(3)(d) if:

- The show cause notice given to the accredited veterinarian under subsection 9-20(2) included a request referred to in paragraph 9-20(3)(f) (as inserted by item 19 of this Schedule); and
- The Secretary does not receive a response from the accredited veterinarian to the request within 14 days after the show cause notice was given or if the notice specified a longer period, within that longer period.

This amendment is consequential to new subsection 9-20(3)(f) (as inserted by item 19 of this Schedule).

Item [23] – Paragraph 9-24(3)(d)

Section 9-24 of the Animals Rules provides that the Secretary may revoke the accreditation of a veterinarian. Subsection 9-24(2) provides that the Secretary must not revoke the accreditation of a veterinarian unless the Secretary has given a written notice to the accredited

veterinarian in accordance with subsection 9-24(3). Subsection 9-24(3) sets out the requirements of a notice under subsection 9-24(2).

This item repeals existing paragraph 9-24(3)(d) and substitutes new paragraph 9-24(3)(d).

New paragraph 9-24(3)(d) provides that the notice under subsection 9-24(2) must, subject to subsection 9-24(4), request the accredited veterinarian to give to the Secretary within 14 days after the notice is given, or if the notice specifies a longer period, that longer period, a written statement showing cause why the accreditation should not be revoked.

New paragraph 9-24(3)(d) will allow the veterinarian to respond to the show cause notice within a period longer than 14 days after the notice was given if that longer period is specified in the notice.

New paragraph 9-24(3)(d) allows the Secretary greater flexibility in determining the timeframe in which the accredited veterinarian is required to provide a response to the show cause notice, for example where there are more complex issues to be addressed. This will allow accredited veterinarians more time to respond to the show cause notice in applicable cases.

Item [24] – Paragraph 9-24(3)(f)

This item omits “within 14 days after the notice is given” and inserts new subparagraphs 9-24(3)(f)(i) and (ii) in paragraph 9-24(3)(f) of the Animals Rules.

Amended paragraph 9-24(3)(f) has the effect that if a notice given under subsection 9-24(2) includes the request referred to in paragraph 9-24(3)(d) (as amended by item 23 of this Schedule), the notice must state that the proposed revocation will take effect on the date specified under paragraph 9-24(3)(c) if the Secretary does not receive a response to the request within 14 days after the notice is given, or if the notice specifies a longer period, within that longer period.

This amendment is consequential to new paragraph 9-24(3)(d) (as inserted by item 23 of this Schedule).

Item [25] – Paragraph 9-25(2)(b)

Section 9-25 of the Animals Rules deals with notices of revocation of the accreditation of veterinarians and when revocation takes effect. Subsection 9-25(2) provides for when revocation takes effect in certain circumstances.

This item repeals existing paragraph 9-25(2)(b) and substitutes new paragraph 9-25(2)(b).

New paragraph 9-25(2)(b) has the effect that the revocation must not take effect before the day after the response to a show cause notice is received if:

- The show cause notice given to the accredited veterinarian under subsection 9-24(2) included a request referred to in paragraph 9-24(3)(d) (as inserted by item 23 of this Schedule); and

- The Secretary receives a response from the accredited veterinarian to the request within 14 days after the show cause notice was given or if the notice specified a longer period, within that longer period.

This amendment is consequential to new paragraph 9-24(3)(d) (as inserted by item 23 of this Schedule).

Item [26] – Paragraph 9-25(3)(b)

Subsection 9-25(3) of the Animals Rules provides for when the revocation of the accreditation of a veterinarian takes effect in certain circumstances.

This item repeals existing paragraph 9-25(3)(b) and substitutes new paragraph 9-25(3)(b).

New paragraph 9-25(3)(b) has the effect that the revocation starts on the date specified in the notice under paragraph 9-24(3)(c) if:

- The show cause notice given to the accredited veterinarian under subsection 9-24(2) included a request referred to in paragraph 9-24(3)(d) (as inserted by item 23 of this Schedule); and
- The Secretary does not receive a response from the accredited veterinarian to the request within 14 days after the show cause notice was given or if the notice specified a longer period, within that longer period.

This amendment is consequential to new paragraph 9-24(3)(d) (as inserted by item 23 of this Schedule).

Item [27] – Paragraph 9-26(1)(c)

Section 9-26 of the Animals Rules provides for the record keeping requirements of accredited veterinarians who are engaged to carry out export operations in an approved export program that relates to prescribed livestock.

Subsection 9-26(1) sets out what the accredited veterinarians must keep a record of.

This item inserts “subject to subsection (1B),” before the words “details about” in paragraph 9-26(1)(c).

This amendment is consequential to new subsection 9-26(1B) (as inserted by item 30 of this Schedule). New subsection 9-26(1B) clarifies that the record-keeping obligations under paragraphs 9-26(1)(c) and (d) do not apply during the period that an accredited veterinarian accompanies, or is engaged to accompany, prescribed livestock during their transport from Australia to their overseas destination in connection with the approved export program.

“Approved export program” is defined in section 12 of the Act as a program of export operations approved under subsection 311(1). Section 311(1) enables the Secretary to approve programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purposes of ensuring:

- the health and welfare of eligible live animals; or
- the health and condition of eligible animal reproductive material.

Item [28] – Paragraph 9-26(1)(d)

Subsection 9-26(1) of the Animals Rules sets out what accredited veterinarians who are engaged to carry out export operations in an approved export program that relates to prescribed livestock, must keep a record of.

This item inserts “subject to subsection (1B)” after the words “sufficient information” in paragraph 9-26(1)(d).

This amendment is consequential to new subsection 9-26(1B) (as inserted by item 30 of this Schedule). New subsection 9-26(1B) clarifies that the record-keeping obligations under paragraphs 9-26(1)(c) and (d) do not apply during the period that an accredited veterinarian accompanies, or is engaged to accompany, prescribed livestock during their transport from Australia to their overseas destination in connection with the approved export program.

Item [29] – At the end of subsection 9-26(1)

Subsection 9-26(1) of the Animals Rules requires that an accredited veterinarians who is engaged to carry out export operations in an approved export program that relates to prescribed livestock must keep certain records.

This item adds new paragraph 9-26(1)(e) at the end of subsection 9-26(1).

New paragraph 9-26(1)(e) provides that an accredited veterinarian who is engaged to carry out export operations in an approved export program that relates to prescribed livestock, must keep a record of details about whether the holder of the approved export program has, in accordance with section 9-43A (as inserted by 32 of this Schedule), provided the accredited veterinarian with copies of the parts of the approved export program relating to the program of export operations to be undertaken by that accredited veterinarian.

Item [30] – After subsection 9-26(1)

Subsection 9-26(1) of the Animals Rules sets out what accredited veterinarians who are engaged to carry out export operations in an approved export program that relates to prescribed livestock, must keep a record of.

This item inserts new subsections 9-26(1A) and (1B) after subsection 9-26(1).

Currently, paragraph 9-26(1)(a) provides for certain record-keeping requirements where the accredited veterinarian administers or supervises any veterinary examination, inspection, testing or treatment of prescribed livestock in connection with the approved export program. Where a treatment involving the administration of a drug or product to prescribed livestock is carried out, then the accredited veterinarian is required to keep records of the name of the active constituent in the drug or product and the amount of the drug or product that was administered (subparagraph 9-26(1)(a)(iv)).

New subsection 9-26(1A) provides, in effect, that the accredited veterinarian must also keep a copy of all invoices received upon purchase of each drug or product for administration to prescribed livestock as mentioned in subparagraph 9-26(1)(a)(iv). Requiring accredited

veterinarians to hold copies of invoices used to purchase drugs or products used to treat prescribed livestock is important for verification and traceability purposes.

New subsection 9-26(1B) provides that paragraphs 9-26(1)(c) and (d) do not apply during the period that the accredited veterinarian accompanies, or is engaged to accompany, the prescribed livestock during their transport from Australia to their overseas destination in connection with the approved export program.

Paragraph 9-26(1)(c) requires that the accredited veterinarian must keep records of details about pre-export quarantine or isolation of prescribed livestock to which the approved export program relates, including the length and conditions of the quarantine or isolation.

Paragraph 9-26(1)(d) requires that the accredited veterinarian must keep records of sufficient information to identify (either generally or specifically as required to meet importing country requirements) prescribed livestock that have been examined, inspected, tested, treated, or prepared for export at premises that have been approved for pre-export quarantine or isolation under paragraph 8-5(2)(a).

The intention of new subsection 9-26(1B) is to clarify that, while the record-keeping obligations in section 9-26(1) apply to both land-based and shipboard accredited veterinarians, the requirements in paragraphs 9-26(1)(c) and (d) do not apply during the period that an accredited veterinarian accompanies, or is engaged to accompany, prescribed livestock during their transport from Australia to their overseas destination in connection with the approved export program.

Item [31] – Subsection 9-26(2)

Subsection 9-26(2) of the Animals Rules currently provides that the accredited veterinarian must retain each record referred to in subsection 9-26(1) for at least 2 years after the prescribed livestock to which the record relates leave the registered establishment where they were held and assembled for export.

This item inserts “, and copies of invoices referred to in subsection (1A),” after “subsection (1)” in subsection 9-26(2).

Amended subsection 9-26(2) has the effect that in addition to the records referred to in subsection 9-26(1), the accredited veterinarian must retain a copy of all invoices referred to in new subsection 9-26(1A) (as inserted by item 30 of this Schedule) for at least 2 years after the prescribed livestock to which the record relates leave the registered establishment where they were held and assembled for export. This amendment is consequential to new subsection 9-26(1A) (as inserted by item 30 of this Schedule).

“Registered establishment” is defined in section 12 of the Act to mean an establishment that is registered under Chapter 4 of the Act. Chapter 4 of the Act enables the Secretary to, on application by the occupier of an establishment, register the establishment for a kind of export operations in relation to a kind of prescribed goods.

Item [32] – At the end of Division 2 of Part 4 of Chapter 9

For prescribed livestock, it is a condition of export under section 2-3 of the Animals Rules for an exporter to hold an approved export program under Division 2 of Part 4 of Chapter 9 that applies to some or all of the export operations carried out in relation to the livestock.

Subsection 311(4) of the Act provides that the rules may make provision for and in relation to the following:

- matters relating to the approval of export programs;
- the implementation, variation, suspension and revocation of approved export programs;
- dealing with inconsistencies between approved export programs that relate to the same export operations.

Subsection 311(5) of the Act provides that the rules may also provide for certain directions to be given, and the publication of certain records and reports, in relation to approved export programs.

Part 4 of Chapter 9 of the Animals Rules is made for the purposes of subsections 311(4) and (5) of the Act and makes provision for and in relation to programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of prescribed livestock.

A person may apply under paragraph 9-33(1)(b) for the approval of an export program. The Secretary may approve an export program under subsection 311(1) of the Act.

Division 2 of Part 4 of Chapter 9 of the Animals Rules provides for exporters' approved export programs. Subdivisions A to D of Division 2 of Part 4 of Chapter 9 provide for the approval of an exporter's export program, variation of an approved export program, suspension of an approved export program and revocation of an approved export program respectively.

This item inserts new Subdivision E at the end of Division 2 of Part 4 of Chapter 9 which deals with providing copies of an approved export program.

New section 9-43A imposes an obligation on the holder of an approved export program to provide an accredited veterinarian with relevant parts of the approved export program.

New subsection 9-43A(1) provides that the holder of an approved export program must provide an accredited veterinarian with a copy of the parts of the approved export program relating to the program of export operations to be undertaken by the accredited veterinarian.

New section 9-43A also sets out the circumstances in which copies of the approved export program must be provided. New subsection 9-43A(2) provides that if an approved export program is varied under Subdivision B of Division 2 of Part 4 of Chapter 9, the holder of export program must provide an accredited veterinarian with a copy of the parts of the varied approved export program relating to the program of export operations to be undertaken by the accredited veterinarian.

New subsection 9-43A(3) provides that the holder of an approved export program must provide the copies of the relevant parts of the approved export program mentioned in subsections 9-43A(1) and (2) to the accredited veterinarian for each consignment of prescribed livestock to which the approved export program relates and before the accredited veterinarian undertakes the program of export operations in relation to the consignment.

New subsection 9-43A(4) provides that the holder of an approved export program must make a record of the provision of each copy to an accredited veterinarian in accordance with subsection 9-43A(1) or (2).

The note following subsection 9-43A(4) explains that exporters must retain each record made under subsection 9-43A(4) for at least 2 years and refers the reader to section 11-6 of the Animals Rules.

New section 9-43A has the effect that, as part of the implementation of an approved export program, an exporter must ensure that a copy of the relevant parts of the approved export program relating to the program of export operations to be undertaken by an accredited veterinarian is provided to the accredited veterinarian before operations are conducted by the accredited veterinarian, and must record the fact that they have done so.

The exporter must provide a copy of the relevant parts of the approved export program to the accredited veterinarian for each consignment, rather than providing a copy of the full approved export program to the accredited veterinarian. This is because exporters may only have one approved export program which may include multiple markets, and engage multiple accredited veterinarians for different consignments. The intention is that the exporter will provide the accredited veterinarian with a copy of the parts of the approved export program relating to the program of export operations to be undertaken by that accredited veterinarian for the purpose of ensuring the health and welfare of prescribed livestock.

Item [33] – At the end of Chapter 9

Section 300 of the Act provides that the rules may confer functions or powers on authorised officers, or a class of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of the Act. New Part 6 provides for functions and powers of authorised officers.

Subsection 288(2) of the Act provides for the subdelegation of the Secretary's powers or functions under the Act. Paragraph 288(4)(b) of the Act allows the rules to provide that specified functions or powers of the Secretary under the rules must not be subdelegated. Chapter 9 of the Animals Rules makes provision in relation to powers and officials.

This item inserts new section 9-52 and new Part 6 at the end of Chapter 9 of the Animals Rules.

New section 9-52 provides that, for the purposes of paragraph 288(4)(b) of the Act, the power of the Secretary under subsection 9-54(3) of the Animals Rules (as inserted by this item) must not be subdelegated under subsection 288(2) of the Act. The policy intention is that the Secretary's power under new subsection 9-54(3) will be exercisable by Senior Executive Service officers of the department, and those officers will not be permitted to subdelegate the power further. Given that the issuing of a notification by the Secretary under new subsection

9-54(3) (as inserted by this item) of the presence in Australia of a disease, infection or infestation is a pre-condition to the exercise by an authorised officer of the power to give an order in relation to prescribed livestock for export, under new subsection 9-54(1) (as inserted by this item), it is appropriate to limit the exercise of the power to issue a notification to Senior Executive Service (SES) officers. It is intended that the power to issue the notification will only be delegated to SES officers under subsection 288(1) of the Act who have appropriate qualifications and skills to assess the risks posed by a suspected disease, infection or infestation and who understand emergency exotic animal disease processes. It is intended that the power will likely be exercised by the Chief Veterinary Officer or the Deputy Chief Veterinary Officer but may also be exercised by a SES officer within the relevant part of the department with responsibility for live animal export.

New section 9-53 provides that for the purposes of section 300 of the Act, Part 6 of the Animal Rules confers functions and powers on authorised officers, or a class of authorised officers, for the purposes of achieving the objects of the Act in relation to livestock for export.

The note after new section 9-53 explains that an authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation and refers the reader to subsection 301(1) of the Act. The instruments of authorisation will be updated to confer this power on the relevant authorised officers.

New section 9-54 provides for the power to give orders in relation to prescribed livestock for export. New subsection 9-54(1) provides that an authorised officer may order the holder of a livestock export licence to not do any of the following in relation to prescribed livestock:

- move prescribed livestock to a landing place, port or other place for the purpose of being exported;
- unload a consignment of prescribed livestock at a landing place, port or other place for the purpose of being exported;
- load, or continue to load, a consignment of prescribed livestock onto any aircraft or vessel for export.

Item 34 inserted by this Schedule provides that a decision to give an order under this new subsection is a reviewable decision.

The note following new subsection 9-54(1) alerts the reader that the decision of an authorised officer to give an order under subsection 9-54(1) is a reviewable decision and directs the reader to section 11-1 of the Animals Rules. Section 11-1 deals with decisions in the Animals Rules which are reviewable decisions for the purposes of subsection 38(2) of the Act.

New subsection 9-54(2) provides that the order under subsection 9-54(1) may only be given if:

- the authorised officer has been notified by the Secretary under subsection 9-54(3) of the Animals Rules; and
- the authorised officer has reasonable grounds to suspect that the prescribed livestock will not be permitted to enter the intended overseas destination because of the disease, infection or infestation notified by the Secretary.

Australia is currently free of a number of diseases, infections or infestations that can cause a significant impact on livestock and other animals. If an exotic animal disease, such as Lumpy

Skin Disease (LSD) or Foot-and-Mouth Disease (FMD), is detected in Australia, this would have severe consequences for Australia's animal health and trade.

In circumstances where there is a suspected or confirmed case of an exotic animal disease in Australia, the department may be unable to approve the export of livestock through the issuing of an export permit or a government certificate, due to being unable to certify to Australia's national health status and the risk of an importing country rejecting the consignment.

If a disease were detected in Australia, emergency management arrangements would be activated, and state or territory governments would be responsible for instituting animal disease control action within that jurisdiction. This may include imposing restrictions on the movement of livestock. However, where such a disease is introduced into Australia, there may be a brief period of time between the suspected disease being detected and that suspected case being confirmed through positive test results. There may also be a period before the relevant state or territory agency action commences.

There is a potential risk that, during the brief period of time between suspicion and confirmation of the presence of a disease, exporters could continue to move consignments of livestock to a port or landing place and/or load livestock onto a vessel or aircraft or export. This could result in adverse outcomes including:

- The consignment needing to be unloaded from the vessel or aircraft if the department is unable to issue an export permit and government certificate for the livestock. This may present risks to Australia's biosecurity and also to ensuring the integrity of the livestock for further export, given the risk of exposure to infectious agents and infestations on the vessel.
- The consignment being directed to be held onboard or destroyed, due to the inability to manage the biosecurity risks associated with them. This could result in significant risks of adverse animal welfare outcomes.

To manage such potential risks, new section 9-54 may be used to stop the holder of a livestock export licence from moving, loading (or continuing to load) or unloading prescribed livestock, in a situation where there is a suspected or confirmed case of an exotic animal disease, infection or infestation. The amendment aims to enable a timely response to minimise these risks and impacts in the period immediately following the suspicion or confirmation of the presence of an exotic animal disease in Australia, prior to any national or state-based response commencing, or other legislative powers for control being utilised. While section 222 of the Act permits the Secretary to direct the holder of an export licence to stop moving or loading livestock, the notice requirements for the exercise of that power are not practicable where urgent action is required to manage the risk of an exotic animal disease in the circumstances covered by the amendment. The department will prepare clear policies and guidance materials to support decision making.

The power to give an order under new section 9-54 requires the authorised officer to have reasonable grounds to suspect that the prescribed livestock will not be permitted to enter the intended overseas destination because of the disease, infection or infestation notified by the Secretary. This will enable the authorised officer to consider all the relevant circumstances applicable to the particular consignment, including consideration of whether the consignment may be at risk of being affected by the exotic animal disease, or whether, even if there are no grounds for suspecting the presence of the disease in the particular consignment or the

geographical location, the power is still enlivened. This may be the case because some countries require Australia to be free of certain diseases, such as FMD, and there may therefore be reasonable grounds to suspect that the prescribed livestock will not be permitted to enter the intended overseas destination if the disease is suspected or confirmed elsewhere in Australia, even if the particular consignment of prescribed livestock is unlikely to be affected by the exotic animal disease.

Section 291 of the Act provides that the Secretary may, in writing, authorise a person, or each person in a class of persons, to be an authorised officer under the Act if, relevantly, the person, or each person in the class of persons, is an officer or employee of a Commonwealth body. Subsection 291(8) of the Act provides that the Secretary must not authorise a person to be an authorised person unless the Secretary is satisfied that the person satisfies the training and qualification requirements determined under subsection 291(9) of the Act, or the person will satisfy those training and qualification requirements before the person exercises any powers, or performs any functions, as an authorised officer.

Authorised Officers are appropriately skilled and qualified, and are able to make a decision that is appropriately knowledgeable, reasonable, informed and aware of the implications of the decision.

The department intends to develop policy and instructional materials to support consistent and appropriate decision-making under the new power provided for in subsection 9-54(1).

The factors which an authorised officer would need to consider when deciding whether to issue an order requiring the livestock export licence holder to stop the loading or movement of livestock include similar ones to those considered by an authorised officer when deciding whether to issue an export permit, such as whether the consignment has met the requirements of the export licence and whether importing country requirements are met (for example, whether the livestock within the consignment meet Australia's animal health status).

New subsection 9-54(3) provides that the Secretary may notify an authorised officer of the presence in Australian territory of a suspected disease, infection or infestation if:

- the Secretary reasonably suspects that the disease, infection or infestation is present in Australian territory; and
- the disease, infection or infestation is not endemic to Australia; and
- either:
 - the disease, infection or infestation is listed in Chapter 1.3 of the *Terrestrial Animal Health Code* published by the Office International des Epizooties (also known as the World Organisation for Animal Health), as existing from time to time; or
 - the Secretary reasonably believes that the disease, infection or infestation has the potential to cause significant harm to human, animal or plant health and could result in the export of prescribed livestock from Australian territory being adversely affected.

The note following new subsection 9-54(3) explains that the *Terrestrial Animal Health Code* could in 2023 be viewed on the website of the World Organisation for Animal Health and directs the reader to the website (<http://www.woah.org>).

The *Terrestrial Animal Health Code* is incorporated by reference in the form in which it exists from time to time. Subsection 14(2) of the *Legislation Act 2003* provides that unless

the contrary intention appears, the legislative instrument or notifiable instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. Under subparagraph 432(3)(f)(i) of the Act, despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any instrument or writing made by the World Organisation for Animal Health, as existing from time to time.

New subsection 9-54(4) provides that, before making an order under subsection 9-54(1), the authorised officer must, if reasonably practicable in the circumstances, give the holder of the livestock export licence particulars of the order. The purpose of this provision is to require the authorised officer to contact the livestock export licence holder to inform them of the particulars of the order before making the order, where it is reasonably practicable to do so.

New subsection 9-54(5) provides that if the authorised officer decides to give the order, the officer must, as soon as practicable after making the decision, notify the licence holder of the order.

New subsection 9-54(6) provides that if the authorised officer notifies the licence holder orally under subsection 9-54(5), the officer must, as soon as practicable after notifying the licence holder, also notify the licence holder in writing. The purpose of the provision is to enable an authorised officer to notify the holder of a livestock export licence orally of the giving of an order, but to require the notice to be confirmed in writing as soon as practicable after giving an oral notice.

New subsection 9-54(7) provides that an order made under section 9-54 takes effect when the notification of the order is given under subsection 9-54(5) and remains in effect for 72 hours unless revoked earlier. The 72 hour period of effect for an order given under section 9-54 is to cover the period immediately following the suspicion or confirmation of a significant exotic disease outbreak, while any national or state-based response commences, or other legislative powers for control are appropriate to be utilised, for example, the issuing of a direction under section 222 of the Act to direct the holder of an export licence to stop moving or loading livestock.

New subsection 9-54(8) provides that an authorised officer may, by written notice to the licence holder, revoke an order made under subsection 9-54(1) if the authorised officer is satisfied that the reason for the order no longer exists and there is no reason why the order should not be revoked. It may be appropriate to revoke a notice before the end of the 72 hour period of effect where the order is no longer required, for example, testing results confirm that the exotic animal disease is no longer suspected.

New subsection 9-54(9) provides that a failure to comply with subsection 9-54(4) or (6) does not invalidate an order given under section 9-54 of the Animals Rules.

The combined effect of subsection 9-54(4) and subsection 9-54(9) acknowledges that, given the urgent timeframes in which an order may need to be issued, it may not be possible in some circumstances to inform the livestock export licence holder of the particulars of the order before it is made. Similarly, the combined effect of subsection 9-54(6) and subsection 9-54(9) acknowledges that it may not always be possible in some urgent circumstances for

the authorised officer to also notify the licence holder in writing, as soon as practicable after notifying the licence holder orally of the issuing of the order.

It is important to note that an order issued under subsection 9-54(1) only remains in effect for 72 hours. After the end of that period of time, if any further action to restrict the movement of livestock is required, existing mechanisms under the Act will be used, such as the power under section 222 of the Act. A direction under section 222 of the Act must be given in writing.

Item [34] – Section 11-1 (at the end of the table)

Subsection 381(2) of the Act provides that the rules may provide that a decision made under a specified provision of the Act is a reviewable decision, and specify the relevant person for the reviewable decision.

Section 11-1 of the Animals Rules sets out, for the purposes of subsection 381(2) of the Act, the decisions made under the Animals Rules that are reviewable decisions and who the relevant person is for each reviewable decision.

This item inserts new table item 38 at the end of the table in section 11-1. New table item 38 has the effect that a decision under new subsection 9-54(1) to give an order to stop the movement of livestock (as inserted by item 33 of this Schedule) is a reviewable decision and the relevant person is the holder of the livestock export licence.

Item [35] – At the end of Chapter 12

This item adds New Part 8 at the end of Chapter 12 of the Animals Rules. New Part 8 of Chapter 12 provides for the application of the amendments made by the Amendment Rules.

New section 12-34 defines terms that are used in new Part 8 of Chapter 12 of the Animals Rules.

The term **amending Rules** is defined as the *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023*.

The term **commencement day** is defined as the day when the amending Rules commence.

New section 12-35 provides for an application provision in relation to the conditions of approved arrangements. New section 12-35 provides that sections 5-4A and 5-4B (as inserted by item 6 of this Schedule) apply in relation to approved arrangements granted before, on or after the commencement of the Amendment Rules.

New section 12-36 provides for an application provision in relation to the conditions of a livestock export licence. New section 12-36 provides that section 6-8A (as inserted by item 9 of this Schedule) applies in relation to livestock export licences granted before, on or after the commencement of the Amendment Rules.

This makes clear that the condition of a livestock export licence in section 6-8A (the holder of a livestock export licence must comply with an order given to the holder by an authorised officer in accordance with section 9-54 of the Animals Rules (as inserted by item 33 of this

Schedule)), is a condition that a holder of a livestock export licence must comply with, regardless of when the livestock export licence was granted to the holder.

New section 12-37 provides for an application provision in relation to the revocation of an approved ESCAS. New section 12-37 provides that section 6-42 (as amended by items 10-14 of this Schedule) applies in relation to notices of proposed revocation given on or after the commencement of the Amendment Rules.

New section 12-38 provides for an application provision in relation to the revocation of an approval of a notice of intention to export a consignment. New section 12-38 provides that sections 8-9 and 8-14 (as amended by item 16) apply in relation to statements made, or information or documents given to the Secretary, the Department or another person, before, on or after the commencement of the Amendment Rules.

Statement of Compatibility with Human Rights

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

Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023

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

Overview of the Legislative Instrument

The *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control (Animals) Rules 2021* (the Animals Rules).

The amendments made by the Legislative Instrument to the Animals Rules includes changes in regulatory requirements, clarification of requirements, editorial amendments and minor technical amendments.

Amendments to the Animals Rules

The Legislative Instrument amends the Animals Rules to impose additional requirements relating to applying for a new government certificate in certain circumstances where the original certificate was revoked, and approved arrangements under the Act. The Legislative Instrument also amends the Animals Rules to provide for holders of a government certificate to request a revocation and for holders of an approved arrangement to request a suspension, in certain circumstances. The Legislative Instrument further amends the Animals Rules to allow for flexibility relating to certain show cause notices given under the Animals Rules which allows the notice to specify a period longer than 14 days in which a person is requested to respond to the show cause notice.

Further, the Legislative Instrument amends the Animals Rules to enable the efficient response and management of the suspicion or detection of an exotic animal disease, infection or infestation.

In order to respond and efficiently manage diseases, infections or infestations, the instrument amends the Animals Rules to impose a new condition on a livestock export licence. This condition is that the holder of a livestock export licence must comply with an order given to the holder by an authorised officer in accordance with section 9-54 of the Animals Rules.

An order under section 9-54 is given by an authorised officer in relation to prescribed livestock (such as an order not to move prescribed livestock or not unload or load a consignment of prescribed livestock) in circumstances where the authorised officer is notified by the Secretary under subsection 9-54(3) of the presence in Australian territory of certain

diseases, infections or infestations and the authorised officer is satisfied that there are reasonable grounds to believe that the livestock will not be permitted to enter the intended overseas destination.

Assessment of Compatibility with Human rights

Article 17 of the International Covenant on Civil and Political Rights (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. 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.

The following amendments require a person to provide information or documents:

- New subsection 2-14A(2) – requirement to provide details of changes from information included in application for government certificate that was revoked

Requiring persons to provide information or documents may incidentally require the provision of personal information. The collection of this information is necessary for the legitimate objective of regulating the export of livestock, live animals, animal reproductive material and organic goods. The amendments to the Animals Rules streamline administrative processes relating to government certificates.

A person who provides information in an application 'opts in' to the regulatory system. A person who has opted in should expect that a certain amount of personal information about the way their business operates will need to be provided to the Secretary to gain the benefits of that system. The Amendment Rules do not permit the publication or disclosure of personal information without first being de-identified, so it does not engage the applicable rights or freedoms.

This Legislative Instrument does not otherwise 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.

Adam Phillip Fennessy PSM
Secretary of the Department of Agriculture, Fisheries and Forestry