

## **EXPLANATORY STATEMENT**

Issued by Authority of the Secretary of the Department of Agriculture, Fisheries and Forestry

*Export Control Act 2020*

*Export Control Legislation Amendment (2025 Measures No. 1) Rules 2025*

### **Legislative Authority**

The *Export Control Legislation Amendment (2025 Measures No. 1) Rules 2025* (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 sunset. 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 Amendment Rules amend the following instruments:

- *Export Control (Meat and Meat Products) Rules 2021* (Meat Rules);
- *Export Control (Wood and Woodchips) Rules 2021* (Wood Rules);
- *Export Control (Animals) Rules 2021* (Animals Rules); and
- *Export Control (Miscellaneous) Rules 2021* (Miscellaneous Rules).

The Amendment Rules amend the Meat Rules to ensure regulatory consistency by providing that the same requirements for the grant of a meat export licence must continue to be met

after grant of the licence and must also be considered at the time of renewing a meat export licence.

The Amendment Rules amend the Wood Rules for the purposes of:

- ensuring that wood and woodchips derived from trees harvested outside Australian territory are taken not to be prescribed goods;
- improving administrative processes by requiring the publication of the most recent scientific assessment of approved codes of practice on the department's website; and
- prescribing applicants for a wood export licence, and holders of wood export licences, as persons who are required to be fit and proper persons.

The Amendment Rules amend the Animals Rules for the purposes of:

- providing that certain kinds of goods are not prescribed goods, such that there is no administrative barrier to the operation of the *Biosecurity Act 2015* (the Biosecurity Act) in relation to live animals (other than livestock) and reproductive material that have been directed for export;
- ensuring regulatory consistency by providing that the same requirements for the grant of a livestock export licence must also be considered at the time of renewing a livestock export licence;
- ensuring there is a clear basis for the department to require property identification codes allocated by State or Territory regulatory authorities, in relation to establishments or premises where prescribed livestock are prepared for export; and
- requiring accredited veterinarians to keep additional specified records relating to export operations in an approved export program and provide these to the Secretary on written request.

The Amendment Rules amend the Miscellaneous Rules to prescribe an additional matter that must be considered when determining whether a person meets the fit and proper person test, relating to the provision of false or misleading information or documents given under the repealed *Export Control Act 1982* or the repealed Part 2 of the *Australian Meat and Live-Stock Industry Act 1997*.

## **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 Meat Rules, Wood Rules, Animals Rules and Miscellaneous 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**

The Amendment Rules amend the Meat Rules to provide that it is a condition of a meat export licence to continue to meet the requirements for the grant of the licence and the same requirements that must be met for the grant of a meat export licence must also be met for the renewal of a meat export licence.

The amendments to the Wood Rules have the effect that in addition to wood or woodchips that are to be exported in a consignment of not more than 2 tonnes or in a consignment that includes not more than 2 tonnes of wood or woodchips, wood or woodchips derived from trees harvested outside Australian territory are also taken not to be prescribed goods. The Amendment Rules also amend the Wood Rules to require the publication of scientific assessments of approved codes of practice, rather than requiring the publication of approved codes of practice, and to prescribe an applicant for a wood export licence and the holder of a wood export licence as kinds of persons that are required to be fit and proper persons.

The amendments to the Animals Rules have the effect that live animals (other than livestock) and animal reproductive material are not prescribed goods for the purposes of the Act if they are directed for export under the *Biosecurity Act 2015* (the Biosecurity Act), to ensure there is no administrative barrier to the operation of the Biosecurity Act in those circumstances. The amendments also have the effect that the requirements that must be met for the grant of a livestock export licence must also be met for the renewal of a livestock export licence. The Amendment Rules amend the Animals Rules to require accredited veterinarians to keep additional specified records and to give the Secretary, upon written request, a copy of specified records which the veterinarians are required to retain. The Amendment Rules also amend the Animals Rules to impose requirements relating to property identification codes of establishments or premises at which prescribed livestock are prepared for export.

The amendments to the Miscellaneous Rules require the Secretary, in determining whether a person is a fit and proper person, to have regard to whether the person or an associate of the person gave false or misleading information or documents to the Secretary, or to another person performing functions or duties or exercising powers under the repealed *Export Control Act 1982* or the repealed Part 2 of the *Australian Meat and Live-stock Industry Act 1997*.

## **Consultation**

The department undertook public consultation on the amendments between 29 January 2024 and 3 March 2024 through the department's 'Have Your Say' website. 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 in July 2024.

The Office of Impact Analysis has advised that a regulation impact statement is not required as the proposal would result in minor regulatory impact, as detailed in cases OBPR22-02503, OIA23-05145, OIA23-05425, OBPR22-02950, OBPR22-02826, OIA23-05535, OIA23-05607 and OIA23-06144.

## **Details/ Operation**

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

Part 1 of Schedule 1 to the Amendment Rules, which provides for amendments to the Meat Rules and the Wood Rules, commences on the day after registration. Part 2 of Schedule 1 to the Amendment Rules, which provides for amendments to the Animals Rules and the Miscellaneous Rules, commences on the 14<sup>th</sup> 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.

**Details of the *Export Control Legislation Amendment (2025 Measures No. 1) Rules 2025***

**Section 1 – Name**

This section provides that the name of the instrument is the *Export Control Legislation Amendment (2025 Measures No. 1) Rules 2025* (the Amendment Rules).

**Section 2 – Commencement**

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

Item 1 of the table provides that sections 1 to 4 and anything in the Amendment Rules not elsewhere covered by this table commence on the day after the Amendment Rules are registered.

Item 2 of the table provides that Part 1 of Schedule 1 to the Amendment Rules commences on the day after the Amendment Rules are registered.

Item 3 of the table provides that Part 2 of Schedule 2 to the Amendment Rules commences on the 14<sup>th</sup> day after the Amendment Rules are registered.

The note below the table provides that the table relates only to the provisions of the Amendment Rules as originally made. It would 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 amendments is not reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, 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*.

**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 (Meat and Meat Products) Rules 2021*, *Export Control (Wood and Woodchips) Rules 2021*, *Export Control (Animals) Rules 2021* and the *Export Control (Miscellaneous) Rules 2021*.

## **Schedule 1 – Amendments**

### **Part 1 – Amendments commencing day after registration**

#### *Export Control (Meat and Meat Products) Rules 2021*

##### **Item [1] – Subsection 6-2(1)**

Subsection 6-2(1) of the *Export Control (Meat and Meat Products) Rules 2021* (the Meat Rules) currently provides that for the purposes of paragraph 192(1)(b) of the *Export Control Act 2020* (the Act), the condition in subsection 6-2(2) is prescribed in relation to a meat export licence.

Item 1 amends subsection 6-2(1) of the Meat Rules. This item omits the words “the condition in subsection (2) of this section is prescribed in relation to a meat export licence” and substitutes the words “this section prescribes conditions that an export licence is subject to”.

This amendment is consequential to the amendment made by item 3 of this Schedule which inserts a new meat export licence condition.

##### **Item [2] – Subsection 6-2(1) (note)**

Item 2 omits the words “This condition also applies” and substitutes the words “The prescribed conditions also apply” in the note following subsection 6-2(1) of the Meat Rules. The new note explains that the prescribed conditions also apply in relation to a renewed meat export licence (see paragraph 197(1)(b) of the Act). This amendment is consequential to the amendment made by item 3 of this Schedule which inserts a new meat export licence condition.

##### **Item [3] – At the end of section 6-2**

Section 6-2 of the Meat Rules prescribes conditions of meat export licences for the purposes of paragraph 192(1)(b) of the Act.

Item 3 adds new subsection 6-2(3) at the end of section 6-2 of the Meat Rules. New subsection 6-2(3) provides that the holder of the meat export licence must continue to meet the requirements mentioned in subsection 191(2) of the Act for the grant of the licence.

This amendment has the effect that a meat export licence is subject to the condition that the requirements for the granting of a meat export licence mentioned in subsection 191(2) of the Act must continue to be met. This includes the requirements set out in paragraphs 191(2)(a) to (c) of the Act and the requirements set out in section 6-1 of the Meat Rules, which include that the person is competent to hold the licence and is of sound financial standing, and they have a quality assurance system accredited by the Australian meat standards classification body (currently AUS-MEAT Limited) in place.

##### **Item [4] – At the end of Part 3 of Chapter 6**

Part 3 of Chapter 6 of the Meat Rules provides for the renewal of meat export licences. Paragraph 196(2)(e) of the Act provides that the Secretary may refuse to renew an export

licence if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, that any other requirement prescribed by the rules is met.

Item 4 adds new section 6-3A at the end of Part 3 of Chapter 6 of the Meat Rules which is made for the purposes of paragraph 196(2)(e) of the Act. New section 6-3A provides that the following requirements are prescribed in relation to an application to renew a meat export licence:

- the holder of the licence is competent to hold the licence and is of sound financial standing;
- the holder of the licence has a quality assurance system accredited by the Australian meat standards classification body in place;
- the renewal of the licence would not, for any reason, be contrary to the interests of the meat and meat products industry.

These requirements mirror the requirements in section 6-1 of the Meat Rules which must be met for the initial grant of a meat export licence.

The effect of new section 6-3A is that the same requirements are considered at the time of an application for the grant of a meat export licence and at the time of an application for the renewal of a meat export licence. This removes the potential for regulatory inconsistency.

#### *Export Control (Wood and Woodchips) Rules 2021*

#### **Item [5] – Section 2-2**

Section 2-2 of the *Export Control (Wood and Woodchips) Rules 2021* (Wood Rules) provides, for the purposes of subsection 28(4) of the Act, the circumstances in which wood and woodchips are taken not to be prescribed wood or woodchips.

Section 2-2 currently provides that for the purposes of subsection 28(4) of the Act, wood and woodchips covered by subsection 2-1(1) of the Wood Rules are taken not to be prescribed wood or woodchips if the wood or woodchips are to be exported:

- in a consignment of not more than 2 tonnes; or
- in a consignment that includes not more than 2 tonnes of wood or woodchips.

Item 5 amends section 2-2 of the Wood Rules. This item omits all the words after “prescribed wood or woodchips” and substitutes:

if:

- (a) the wood or woodchips are to be exported in a consignment:
  - (i) of not more than 2 tonnes; or
  - (ii) that includes not more than 2 tonnes of wood or woodchip; or
- (b) the wood or woodchips are derived from trees harvested outside Australian territory.

This amendment has the effect that in addition to the current circumstances in which wood and woodchips are taken not to be prescribed wood or woodchips, wood or woodchips derived from trees harvested outside Australia are also taken not to be prescribed wood or woodchips.

The purpose of this amendment is to exclude wood and woodchips which have entered Australia from other countries from being prescribed goods. This may occur when wood is imported into Australia and turned into woodchips before being exported, or where wood and woodchips are transiting through Australia for another destination.

The intended purpose of the Wood Rules is to regulate wood or woodchips from Australian territory, not those derived from trees harvested outside Australian territory. As such, the effect of this amendment is that exporters of prescribed wood or woodchips derived from trees harvested outside Australia are no longer required to hold a wood export licence. Exporters will still be required to meet any applicable importing country requirements, as well as any other requirements in the Act or the *Export Control (Plants and Plant Products) Rules 2021* that apply to the goods.

### **Item [6] – Section 2-13**

Section 2-13 of the Wood Rules currently provides for the publication of approved codes of practice.

An “approved code of practice”, for a State, is defined in section 1-6 of the Wood Rules to mean a code of practice approved for that State under subsection 2-7(1) of the Wood Rules, or an amended code of practice for that State approved under subsection 2-9(2) or 2-10(2), or taken to be approved under subsection 2-11(2) of the Wood Rules. Subsection 2-1(2) of the Wood Rules provides that wood or woodchips are not prescribed goods if they are derived from trees sourced from a plantation in a State for which there is an approved code of practice. The Minister may approve a code of practice for a State by notifiable instrument (see section 2-7 of the Wood Rules). The requirement to hold a wood export licence in the Wood Rules does not apply to non-prescribed goods.

Item 6 repeals existing section 2-13 and substitutes new section 2-13 of the Wood Rules which provides for the publication of scientific assessments of approved codes of practice. New section 2-13 provides that the Secretary must ensure that the findings of the most recent scientific assessment of an approved code of practice for a State, prepared under the direction of the Secretary and based on the national plantation principles, are published on the department’s website.

The note following new section 2-13 explains that the requirement for the Minister to have regard to the findings in approving, or revoking the approval of, a code of practice, are in subsections 2-7(5) and 2-12(2) of the Wood Rules.

This amendment has the effect that it is no longer a requirement that the Secretary must ensure that an up-to-date copy of an approved code of practice for a State is published on the department’s website, as these are provided on the relevant State agency’s website. Instead, the Secretary must ensure that the findings of the most recent scientific assessment of an approved code of practice for a State, are published on the department’s website. An assessment report sets out the effectiveness of a code of practice in managing forestry operations in the relevant State and meeting the national plantation principles. It provides transparency on these matters such that it is not necessary to publish each code of practice on the department’s website, which may consist of multiple documents and pieces of state legislation. This amendment will also reduce administrative burden on the department and relevant State departments.



### **Item [7] – Subsection 6-1(1) (note)**

Item 7 amends the note following subsection 6-1(1) of the Wood Rules. This item omits the word “Note” and substitutes the words “Note 1” in the note. This amendment is consequential to the amendment made by item 8 of this Schedule, which adds another note.

### **Item [8] – Subsection 6-1(1) (after the note)**

This item inserts new note 2 following section 6-1(1) of the Wood Rules. New note 2 following subsection 6-1(1) refers the reader to paragraph 191(2)(a) of the Act and section 6-2A of the Wood Rules and explains that it is also a requirement for the grant of a wood export licence that the applicant is a fit and proper person.

This amendment is consequential to the amendment made by item 9 of this Schedule which inserts fit and proper person requirements.

### **Item [9] – After Part 2 of Chapter 6**

Subsection 373(1) of the Act provides that the rules may prescribe kinds of persons who are required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 (export licences) to be fit and proper persons. These kinds of persons can be prescribed by reference to a kind of export operations carried out, or to be carried out, by persons of that kind in accordance with an approved arrangement or under an export licence (as the case requires).

Item 9 inserts new Part 2A after Part 2 of Chapter 6 of the Wood Rules which provides for fit and proper person requirements.

New section 6-2A prescribes the kinds of persons who are required to be fit and proper persons for the purposes of a wood export licence. New section 6-2A provides, for the purposes of subsection 373(1) of the Act, that an applicant for a wood export licence and the holder of a wood export licence are kinds of persons that are required, for the purposes of Chapter 6 of the Act (export licences), to be fit and proper persons.

The note following new section 6-2A refers the reader to section 12-2 of the Wood Rules (inserted by item 10 of this Schedule) for the application of new section 6-2A.

This amendment would broaden the requirements for grant of a wood export licence to require the Secretary or delegate to have regard to the fit and proper person test. The fit and proper person test involves the Secretary or delegate deciding whether a person (including a company) is a fit and proper person for the purposes of exporting goods from Australian territory. This includes considerations such as an applicant’s history of compliance with specified Commonwealth, State or Territory legislation, their criminal and financial history (such as whether any Commonwealth debts are owed) or whether they have made a false or misleading statement in an application under the Act. The fit and proper person test enables the decision-maker to consider whether an applicant is trustworthy and demonstrates the personal integrity to be able to export agricultural goods from Australian territory.

The purpose of this amendment is to enhance the department’s ability to take into consideration the integrity of exporters before granting them a wood export licence and its ability to take administrative action against exporters, such as suspending or revoking their

wood export licence, if they make false declarations when applying for a licence or have otherwise ceased to be a fit and proper person.

### **Item [10] – At the end of Chapter 12**

This item inserts new section 12-2 at the end of Chapter 12 of the Wood Rules which provides transitional provisions relating to the Amendment Rules.

New section 12-2 provides that section 6-2A of the Wood Rules (as inserted by Schedule 1 to the Amendment Rules) applies in relation to the following:

- applications for, or in relation to, wood export licences:
  - made on or after 1 May 2025; or
  - made before, but not determined by, 1 May 2025; and
- other decisions in relation to wood export licences made on or after 1 May 2025.

New section 12-2 makes clear that new section 6-2A relating to fit and proper person requirements has prospective effect in relation to applications and relevant decisions made under the Act. It also provides for a delayed start to the fit and proper test until 1 May 2025 to allow time for applicants for, and holders of, wood export licences to prepare for the introduction of the new requirement.

### **Part 2 – Amendments commencing later**

#### *Export Control (Animals) Rules 2021*

### **Item [11] – Section 1-6**

Section 1-6 of the *Export Control (Animals) Rules 2021* (Animals Rules) provides the definitions of terms used in the Animals Rules.

Item 11 inserts the definition of ***property identification code*** in section 1-6 of the Animals Rules.

***Property identification code***, for a property, or a part of a property (however described), is defined to mean the identification code allocated to the property or part by the body responsible for stock identification in the State or Territory where the property is located.

This definition is used in new subsection 4-3(6), paragraph 6-24(3)(c) and paragraph 8-6(3)(e) inserted by this Schedule.

### **Item [12] – Subsection 2-1(1)**

Item 12 amends subsection 2-1(1) of the Animals Rules. This item omits the words “Act, the” and substitutes the words “Act, and subject to subsection (3) of this section, the” in subsection 2-1(1).

This amendment is consequential to new subsection 2-1(3) of the Animals Rules inserted by item 13 of this Schedule.

### **Item [13] – After subsection 2-1(2) (before the note)**

Section 2-1 of the Animals Rules provides that livestock, certain other live animals and animal reproductive material are prescribed goods for the purposes of subsection 28(1) of the *Export Control Act 2020* (the Act).

Item 13 inserts new subsection 2-1(3) after subsection 2-1(2) of the Animals Rules. New subsection 2-1(3) provides that goods covered by paragraph 2-1(1)(b) (certain live animals, other than livestock) or 2-1(1)(c) (animal reproductive material) are not prescribed for the purposes of subsection 28(1) of the Act if they are subject to a direction under paragraph 135(2)(b) of the *Biosecurity Act 2015* (the Biosecurity Act).

Goods that are subject to biosecurity control under the Biosecurity Act may be required to be exported from Australian territory if the level of biosecurity risk associated with the goods is unacceptable. Under subsection 135(1) of the Biosecurity Act, a biosecurity officer may require the goods to be exported from Australian territory. For the purposes of subsection 135(1), a biosecurity officer may direct a person in charge of the goods to arrange for the goods to be exported from Australian territory under paragraph 135(2)(b) of the Biosecurity Act.

The effect of new subsection 2-1(3) of the Animals Rules is that live animals (other than livestock) to which subsection 2-1(2) applies (that is, warm-blooded animals, and cold-blooded animals that require a government certificate to meet importing country requirements) and animal reproductive material that are subject to a direction under paragraph 135(2)(b) of the Biosecurity Act, are not prescribed goods under the Act.

Most live animals or reproductive material directed to be exported due to an unacceptable level of biosecurity risk cannot meet importing country requirements because they have not yet been released from biosecurity control and have not completed necessary residency, testing, treatments and examinations. As such, the conditions for export set out in the Animals Rules cannot be complied with and the live animals or reproductive material face a near certain risk of being euthanised or destroyed. This amendment ensures that there is no administrative barrier to the operation of the Biosecurity Act in relation to live animals and reproductive material that have been directed to be exported.

### **Item [14] – After subsection 4-3(6)**

Section 4-3 of the Animals Rules prescribes, for the purposes of paragraph 112(2)(f) of the Act, additional requirements that must be met for an establishment to be registered for operations to prepare prescribed livestock for export. These requirements are specific to operations for preparing prescribed livestock and are in addition to the requirements provided for in subsection 112(2) of the Act. The Secretary can only decide to register an establishment if satisfied that the requirements in section 4-3 are met.

Item 14 inserts new subsection 4-3(6A) after subsection 4-3(6) of the Animals Rules. New subsection 4-3(6A) provides that property identification codes must be allocated to the establishment, or the particular parts of the establishment, at which prescribed livestock are, or will be, prepared for export. “Property identification code” is defined in section 1-6 as amended by item 11 of this Schedule to mean the identification code allocated to the property

or part of the property by the body responsible for stock identification in the State or Territory where the property is located.

The effect of new subsection 4-3(6A), together with the new definition of “property identification code” inserted by item 11 of this Schedule, is that property identification codes must be allocated to an establishment by the body responsible for stock identification in the State or Territory where the property is located for it to be registered for operations to prepare prescribed livestock for export. The purpose of this amendment is to provide a clear basis to require an application for registration of an establishment to include the State or Territory allocated property identification code or codes for each part of a property where prescribed livestock are or will be prepared for export.

Further, existing provisions in the Act and Animals Rules mean that the requirement in new subsection 4-3(6A) must also be met for applications for renewals and variations of the registration of an establishment.

Paragraph 117(2)(g) of the Act provides, in effect, that the Secretary may refuse to renew a registration of an establishment for export operations if the Secretary is not satisfied of the requirements set out by the rules. Subsection 4-11(2) of the Animals Rules provides that for the purpose of paragraph 117(2)(g) of the Act, the requirements prescribed by section 4-3 of the Animals Rules are prescribed in relation to a registered establishment. This means that the application for renewal of an establishment must also meet the requirement under new subsection 4-3(6A) relating to property identification codes.

Subsection 120(3) of the Act provides that, upon application by the occupier of a registered establishment, the Secretary may make a variation or approve an alteration (with or without additional conditions) if the Secretary is satisfied that, if the decision is made, the requirements referred to in paragraphs 112(2)(b) to 112(2)(f) of the Act would continue to be met. As new subsection 4-3(6A) is made for the purpose of paragraph 112(2)(f) of the Act, this means that applications for variation of a registered establishment must also meet the requirement under new subsection 4-3(6A) relating to property identification codes.

#### **Item [15] – Paragraph 6-24(3)(c)**

Section 6-24 of the Animals Rules provides the pre-export conditions for sheep and goats to be exported to the Kingdom of Saudi Arabia. Subsection 6-24(3) sets out the record keeping requirements for vaccinations of sheep or goats exported to the Kingdom of Saudi Arabia. This includes the requirement under existing paragraph 6-24(3)(c) to keep a written record of the address and property identification code (being the identification code allocated to the property by the body responsible for stock identification in the State or Territory where the property is located) of the property from which the sheep or goats originated.

Item 15 repeals existing paragraph 6-24(3)(c) and substitutes new paragraph 6-24(3)(c). New paragraph 6-24(3)(c) provides that it is a requirement to keep a written record of the address, and the property identification code of the property or the part of the property, from which the sheep or goats originated. “Property identification code” is defined in section 1-6 as amended by item 11 of this Schedule to mean the identification code allocated to the property or part of the property by the body responsible for stock identification in the State or Territory where the property is located.

This is a technical amendment to incorporate the definition of the term “property identification code” inserted by item 11 of this Schedule, rather than defining the term within paragraph 6-24(3)(c) itself. Paragraph 6-24(3)(c) still has the same substantive effect. This amendment is consequential to the amendment to section 1-6 made by item 11 of this Schedule.

### **Item [16] – At the end of Part 3 of Chapter 6**

Section 196 of the Act provides for the renewal of export licences. Subsection 196(2) provides that the Secretary may refuse to renew the export licence if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the matters set out in paragraphs 196(2)(a) to (e). The matter set out in paragraph 196(2)(e) is that any other requirement prescribed by the rules is met.

Part 3 of Chapter 6 of the Animals Rules provides for the renewal of livestock export licences. Item 16 inserts new section 6-26A at the end of Part 3 of Chapter 6 of the Animals Rules which prescribes other requirements for the renewal of livestock export licences.

New subsection 6-26A(1) provides that new section 6-26A prescribes, for the purposes of paragraph 196(2)(e) of the Act, other requirements that must be met for the renewal of a livestock export licence.

The note following new subsection 6-26A(1) explains that the requirements provided by paragraphs 196(2)(a), (b), (c) and (d) of the Act must also be met. These requirements relate to the fit and proper person test, payment of Commonwealth liabilities, and compliance with the relevant requirements of the Act and conditions of the licence.

New subsection 6-26A(2) provides that the holder of the licence must be competent to hold the licence and must be of sound financial standing. This requirement mirrors the requirement in subsection 6-1(2) of the Animals Rules which must be met for the initial grant of a livestock export licence.

New subsection 6-26A(3) provides that the renewal of the licence must not, for any reason, be contrary to the interests of the livestock industry. This requirement mirrors the requirement in subsection 6-1(3) of the Animals Rules which must be met for the initial grant of a livestock export licence.

New subsection 6-26A(4) provides that if the holder of the licence:

- has been granted an exemption under Part 2 of Chapter 2 of the Act from the requirement that prescribed livestock be prepared for export in accordance with an approved arrangement; or
- intends to apply, or has applied for, such an exemption;

the holder must have an operations and governance manual for the holder’s livestock export business. This requirement mirrors the requirement in subsection 6-1(4) of the Animals Rules which must be met for the initial grant of a livestock export licence.

The first note following new subsection 6-26A(4) refers the reader to items 1 and 2 of the table in section 2-3 of the Animals Rules, and explains that it is a prescribed export condition that an approved arrangement held by the exporter that covers export operations to prepare prescribed livestock for export at a registered establishment or approved premises must be in force and not suspended in relation to those operations at the time they are carried out.

The second note following subsection 6-26A(4) explains that the Secretary may deal with an application for the renewal of an export licence for a kind of export operations in relation to livestock and an application for an exemption under Part 2 of Chapter 2 of the Act at the same time.

The third note following subsection 6-26A(4) explains that if the livestock export licence and the exemption are granted, the operations and governance manual must not be varied except as permitted by subsections 6-8(3) to (5), which deals with the variation of a livestock export licence holder's operations and governance manual.

New subsection 6-26A(5) provides that the operations and governance manual must set out the matters mentioned in subsection 6-1(5) of the Animals Rules (information about certain aspects of the livestock export business must be included in the operations and governance manual).

The effect of new section 6-26A is that the same requirements are considered at the time of an application for the grant of a livestock export licence and at the time of an application for the renewal of a livestock export licence. This removes the potential for regulatory inconsistency.

#### **Item [17] – At the end of subsection 8-6(3)**

Section 8-6 of the Animals Rules provides for the approval of notices of intention to export a consignment of prescribed livestock. Subsection 8-6(3) sets out the matters of which the Secretary is to be satisfied when deciding whether to approve a notice of intention to export the consignment.

Item 17 inserts new paragraph 8-6(3)(e) at the end of subsection 8-6(3) of the Animals Rules. New paragraph 8-6(3)(e) provides an additional matter to be considered by the Secretary, being that if the livestock is to be transported by air, the exporter must have given to the Secretary the property identification codes of each property, or part, at which the livestock were prepared for export. "Property identification code" is defined in section 1-6 as amended by item 11 of this Schedule to mean the identification code allocated to the property or part of the property by the body responsible for stock identification in the State or Territory where the property is located.

The effect of new paragraph 8-6(3)(e) is that the Secretary may approve a notice of intention to export a consignment of prescribed livestock to be exported by air if the Secretary (in addition to being satisfied of the matters set out in paragraphs 8-6(3)(a) to (d) of the Animals Rules), is satisfied that the exporter has given to the Secretary the property identification codes of each property, or part, at which the livestock were prepared for export. This includes both premises for pre-export quarantine or isolation that were required to be approved under section 8-5 of the Animals Rules and premises where prescribed livestock are prepared for export by air that were not required to be approved under section 8-5 of the Animals Rules.

### **Item [18] – Subsection 9-13(7)**

Section 9-13 of the Animals Rules provides the conditions of accreditation of accredited veterinarians. Subsection 9-13(7) sets out requirements relating to copies of documents that must be given to the Secretary on request.

Item 18 amends subsection 9-13(7) of the Animals Rules. This item omits the words “document that was given to the accredited veterinarian in connection with the export operations” and substitutes the words “record that the veterinarian is required to retain under section 9-26”.

This amendment has the effect that for an accredited veterinarian who has carried out export operations in an approved export program in relation to prescribed livestock, it is a condition of accreditation that the accredited veterinarian must, on written request by the Secretary, give the Secretary a copy of each record that the veterinarian is required to retain under section 9-26 and that is specified in or described in the request. The copy of each requested record must be given within 14 days after receiving the request or if a shorter period is specified in the request, within the specified period.

In addition to documents given to accredited veterinarians in connection with export operations, accredited veterinarians also generate documents as part of carrying out export operations. Records of these documents are required to be retained under section 9-26 of the Animals Rules as amended by item 22 of this Schedule. Requiring an accredited veterinarian to provide upon request a copy of any record which the accredited veterinarian is required to retain under section 9-26 instead of only those documents given to the accredited veterinarian, enhances the department’s ability to monitor and enforce compliance with an accredited veterinarian’s accreditation and responsibilities in carrying out export operations and the exporter’s compliance with legislative and regulatory requirements under the Act and Animals Rules. It is important that the department can obtain these records from the accredited veterinarian quickly and efficiently to be able to assess if animals have been prepared in accordance with the approved export program and be able to provide assurances to the trading partner if questions are asked to that effect.

### **Item [19] – Subsection 9-13(7) (note)**

Item 19 repeals the note following subsection 9-13(7) of the Animals Rules. This amendment is consequential to the amendment to subsection 9-13(7) made by item 18 of this Schedule, which refers to the requirement in section 9-26 to retain records in the provision itself such that the note is no longer required.

### **Item [20] – Subsection 9-26A(1A)**

Section 9-26 sets out requirements relating to records that an accredited veterinarian must keep if they are engaged to carry out export operations in an approved export program that relates to prescribed livestock.

Subsection 9-26(1A) of the Animals Rules currently provides that, in addition to the records mentioned in subsection 9-26(1), the accredited veterinarian must also keep a copy of all invoices received relating to the purchase of a drug or product for administration to prescribed livestock as mentioned in subparagraph 9-26(1)(a)(iv) of the Animals Rules.

Item 20 repeals subsection 9-26(1A) of the Animals Rules. This amendment is consequential to the amendment to section 9-26 of the Animals Rules made by item 22 of this Schedule, which incorporates the same substantive content as repealed subsection 9-26(1A) in new paragraph 9-26(3)(a) of the Animals Rules.

#### **Item [21] – Subsection 9-26(2)**

Subsection 9-26(2) currently requires the accredited veterinarian to retain each record referred to in subsection 9-26(1) and copies of invoices referred to in subsection 9-26(1A) of the Animals Rules, 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.

Item 21 amends subsection 9-26(2) of the Animals Rules. This item omits the words “, and copies of invoices referred to in subsection (1A) for at least 2 years after the prescribed livestock to which the record relates leave the registered establishment” and substitutes the words “for at least 2 years after the prescribed livestock to which the record relates leave the registered establishment or other premises”.

This amendment is consequential to the repeal of subsection 9-26(1A) of the Animals Rules made by item 20 of this Schedule.

#### **Item [22] – Subsection 9-26(3)**

Subsection 9-26(3) of the Animals Rules currently provides requirements relating to the keeping copies of documents.

Item 22 repeals subsection 9-26(3) of the Animals Rules (including the note following subsection 9-26(3)) and substitutes new subsections 9-26(3) to (5), which set out the requirements relating to records of invoices and other documents.

New subsection 9-26(3) provides that the accredited veterinarian must also keep records of the following:

- each invoice received relating to the purchase of a drug or product for administration to prescribed livestock as mentioned in subparagraph 9-26(1)(a)(iv) of the Animals Rules (paragraph 9-26(3)(a));
- each other document given to, or generated by, the veterinarian in connection with, or in the course of carrying out, the export operations (paragraph 9-26(3)(b)).

Paragraph 9-26(3)(a) preserves the effect of current subsection 9-26(1A) of the Animals Rules, which is repealed by item 20 of this Schedule.

Paragraph 9-26(3)(b) preserves the effect of current subsection 9-26(3) which provides, relevantly, that an accredited veterinarian who carries out export operations in an approved export program in relation to prescribed livestock must keep copies of documents given to them in connection with the export operations. New paragraph 9-26(3)(b) expands on this to also require accredited veterinarians to keep records of documents generated by the veterinarian in connection with, or in the course of carrying out, the export operations.



Requiring an accredited veterinarian to also keep records of documents generated by the accredited veterinarian instead of only those given to the accredited veterinarian, enhances the department's ability to monitor and enforce compliance with an accredited veterinarian's accreditation and responsibilities in carrying out export operations and the exporter's compliance with legislative and regulatory requirements under the Act and Animals Rules. This additional documentation can often be critical for demonstrating the accredited veterinarian or exporter's compliance under the export control regulatory framework.

Examples of documents generated by accredited veterinarians include declarations about their activities and bookings made with exporters via email. The date and time on these records and the information that accompanies the declaration or documents can be critical records for regulatory purposes.

New subsection 9-26(4) provides that the record of an invoice or other document mentioned in subsection 9-26(3) of the Animals Rules must include the original document or a copy of the document. This preserves the current effect of subsections 9-26(1A) relating to copies of invoices and subsection 9-26(3) relating to copies of documents given to the accredited veterinarian, while also clarifying that the accredited veterinarian can keep either the original document or a copy of the document.

New subsection 9-26(5) of the Animals Rules provides that the accredited veterinarian must retain each record referred to in subsection 9-26(4) of the Animals Rules for at least 2 years after the livestock leave the registered establishment or other premises where they were held and assembled for export. This preserves the current effect of subsection 9-26(3) which also provides that the records must be kept for at least 2 years after that time. The new provision refers to both registered establishments or "other premises" to cover records relating to livestock consignments transported by air, which may be prepared at premises that are not registered establishments.

The note following new subsection 9-26(5) refers the reader to section 316 of the Act and explains that an accredited veterinarian may commit an offence of strict liability if a requirement of section 9-26 of the Animals Rules is not complied with. This note is the same as the current note following subsection 9-26(3).

### **Item [23] – In the appropriate position in Chapter 12**

This item inserts new Part 9 in Chapter 12 of the Animals Rules providing for application and transitional provisions for amendments made by the Amendment Rules.

New section 12-39 provides that in Part 9 of Chapter 12, "amending Rules" means the Amendment Rules and "commencement day" means the day on which Part 2 of this Schedule commences.

New section 12-40 provides for application provisions.

New subsection 12-40(1) provides for the application of amendments to section 2-1 made by items 12 and 13 of this Schedule, which provide that certain live animals or animal reproductive material are not prescribed goods if they are subject to a direction under paragraph 135(2)(b) of the Biosecurity Act. New subsection 12-40(1) provides that the amendments of section 2-1 apply in relation to goods in respect of which a direction under

paragraph 135(2)(b) of the Biosecurity Act is made on or after the commencement day. This ensures the amendments have prospective effect.

New subsection 12-40(2) provides for the application of the amendment to section 4-3 made by item 14 of this Schedule, which requires that property identification codes must be allocated by the relevant State or Territory authority to a registered establishment at which prescribed livestock are prepared for export. New subsection 12-40(2) provides that the amendment of section 4-3 applies in relation to applications under section 111, 116 or 120 of the Act made on or after the commencement day. This ensures the amendments have prospective effect.

New subsection 12-40(3) provides for the application of new section 6-26A as inserted by item 16 of this Schedule, which provides for other requirements for renewal of a livestock export licence. New subsection 12-40(3) provides that section 6-26A applies in relation to applications under section 195 of the Act made on or after the commencement day. Section 195 of the Act provides for applications to renew an export licence. This provision ensures the amendments have prospective effect.

New subsection 12-40(4) provides for the application of the amendment to section 8-6 made by item 17 of this Schedule, which requires exporters to give property identification codes for each property or part at which the livestock were prepared for export, when giving a notice of intention to export, if the livestock is being transported by air. New subsection 12-40(4) provides that the amendment of section 8-6 applies in relation to notices of intention to export goods given under section 8-5 of the Animals Rules on or after the commencement day. This ensures the amendments have prospective effect.

New subsection 12-40(5) provides for the application of amendments to section 9-13 made by items 18 and 19 of this Schedule, which relate to the provision of records on written request that an accredited veterinarian is required to retain under section 9-26 of the Animals Rules. New subsection 12-40(5) provides that the amendments of section 9-13 apply in relation to accreditations under section 9-12 granted before, on or after the commencement day. This ensures that, while the amendments have prospective effect in relation to the provision of records, they apply to veterinarians with existing accreditations as well as those accredited on or after the commencement day.

New subsection 12-40(6) provides for the application of new paragraph 9-26(3)(b) as inserted by item 22 of this Schedule, which provides that an accredited veterinarian must keep records of each other document (that is, documents other than those covered by new paragraph 9-26(3)(a)) given to, or generated by, the veterinarian in connection with, or in the course of carrying out, the export operations. New subsection 12-40(6) provides that paragraph 9-26(3)(b) applies in relation to documents given to, or generated by, a veterinarian on or after the commencement day. This ensures that the amendments have prospective effect.

#### *Export Control (Miscellaneous) Rules 2021*

#### **Item [24] – After Part 3**

Section 372 of the Act provides for the fit and proper person test. Subsection 372(1) provides that section 372 applies for the purposes of determining whether a person is a fit and proper person for the purposes of any of the following provisions of the Act:

- sections 112, 117, 120, 123, 127 and 138 (decisions in relation to registered establishments);
- sections 151, 156, 165, 171 and 179 (decisions in relation to approved arrangements);
- sections 191, 196, 201, 205 and 212 (decisions in relation to export licences);
- any other provisions of the Act prescribed by the rules.

Subsection 372(2) sets out the matters the Secretary must have regard to in determining whether a person is a fit and proper person. This includes the matter set out in paragraph 372(2)(j), which is any other matter prescribed by the rules.

Item 24 inserts new Part 4 after Part 3 of the *Export Control (Miscellaneous) Rules 2021* (Miscellaneous Rules) which deals with the fit and proper person test. New section 4-1 is the only section in new Part 4 of the Miscellaneous Rules.

New subsection 4-1(1) provides that for the purposes of paragraph 372(2)(j) of the Act, new section 4-1 prescribes other matters the Secretary must have regard to in determining whether a person is a fit and proper person for the purposes of the provisions mentioned in, or prescribed under, subsection 372(1) of the Act.

New subsection 4-1(2) provides that a prescribed matter is whether the person or an associate of the person gave false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed *Export Control Act 1982* (repealed Export Control Act) or repealed Part 2 of the *Australian Meat and Live-Stock Industry Act 1997* (AMLI Act).

The first note following new subsection 4-1(2) of the Miscellaneous Rules explains that the old Export Control Act was repealed on 28 March 2021 by Schedule 1 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* (Export Control Consequential and Transitional Act).

The second note following new subsection 4-1(2) of the Miscellaneous Rules explains that Part 2 of the AMLI Act was repealed on 28 March 2021 by Schedule 2 to the Export Control Consequential and Transitional Act.

This amendment has the effect that, in deciding whether a person is a fit and proper person for the purposes of the Act or the rules, the Secretary must consider whether the person or an associate of the person gave false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed Export Control Act or repealed Part 2 of the AMLI Act.

The purpose of this amendment is to ensure that where a person provided false or misleading information or documents under the repealed export control related legislation, this is taken into account for future decisions in relation to the fit and proper person test. Allowing false or misleading information or documents provided under repealed export control related legislation to be taken into account could show patterns of behaviours in relation to a person (or an associate of the person) that may become apparent over time. This allows the department to take into account potentially multiple incidents that may be relevant to considering whether a person is a fit and proper person.

**Item [25] – At the end of Part 5**

This item adds new section 5-2 at the end of Part 5 of the Miscellaneous Rules providing for application and transitional provisions for amendments made by the Amendment Rules.

New section 5-2 provides that section 4-1, as inserted by item 24 of this Schedule, applies in relation to applications made that require a determination under section 372 of the Act on or after the day on which Part 2 of this Schedule commences. This clarifies that the amendment has prospective effect.

## Statement of Compatibility with Human Rights

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

*Export Control Legislation Amendment (2025 Measures No. 1) Rules 2025*

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 Legislation Amendment (2025 Measures No. 1) Rules 2025* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control (Meat and Meat Products) Rules 2021* (Meat Rules), *Export Control (Wood and Woodchips) Rules 2021* (Wood Rules), *Export Control (Animals) Rules 2021* (Animals Rules) and *Export Control (Miscellaneous) Rules 2021* (Miscellaneous Rules), collectively referred to as the Rules.

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

#### Amendments to the Meat Rules

The Legislative Instrument amends the Meat Rules to provide that it is a condition of a meat export licence to continue to meet the requirements for the grant of the licence, and that the same requirements that must be met for the grant of a meat export licence must also be met for the renewal of a meat export licence.

#### Amendments to the Wood Rules

The Legislative Instrument amends the Wood Rules to provide that wood or woodchips derived from trees harvested outside Australian territory are taken not to be prescribed goods, and improve administrative processes by changing requirements relating to approved codes of practice. The Legislative Instrument also amends the Wood Rules to insert matters relating to fit and proper persons.

Under subsection 373(1) of the Act, the rules may prescribe kinds of persons who are required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 of the Act (export licences), to be fit and proper persons (having regard to the matters referred to in section 372 of the Act). New Part 2A of the Wood Rules inserted by the Legislative Instrument prescribes kinds of persons for the purposes of subsection 373(1) of the Act. The kinds of persons required, for the purposes of Chapter 6 of the Act, to be fit and proper persons, are an applicant for a wood export licence and the holder of a wood export licence.

## Amendments to the Animals Rules

The Legislative Instrument amends the Animals Rules to include new requirements and ensure regulatory consistency. The new requirements inserted by the Legislative Instrument have the effect that live animals (other than livestock) and animal reproductive material are not prescribed goods for the purposes of the Act if they are directed for export under the *Biosecurity Act 2015* (the Biosecurity Act), to ensure there is no administrative barrier to the operation of the Biosecurity Act in those circumstances. The amendments also have the effect that the requirements that must be met for the grant of a livestock export licence must also be met for the renewal of a livestock export licence.

The Legislative Instrument amends the Animals Rules to require accredited veterinarians to keep additional specified records and to give the Secretary, upon written request, a copy of specified records which the veterinarians are required to retain. The Legislative Instrument also amends the Animals Rules to impose requirements relating to property identification codes of establishments or premises at which prescribed livestock are prepared for export.

## Amendments to the Miscellaneous Rules

Under paragraph 372(2)(j) of the Act, in determining whether a person is a fit and proper person, the Secretary must have regard to any other matter prescribed by the rules. The Legislative Instrument amends the Miscellaneous Rules to prescribe a matter for the purposes of paragraph 372(2)(j) of the Act. Specifically, the Secretary, in determining whether a person is a fit and proper person, is required to have regard to whether the person or an associate of the person gave false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed *Export Control Act 1982* (repealed Export Control Act) or the repealed Part 2 of the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act).

## **Human rights implications**

This Legislative Instrument may engage the following rights:

- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to freedom of association in Article 22 of the ICCPR;
- the right to work in Article 6 of the International Convention on Economic, Social and Cultural Rights (ICESCR).

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

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. 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.

Under the Act, certain persons are required to provide information or documents for the purposes of the Secretary determining whether the person is a fit and proper person. Accredited veterinarians carrying out export operations in approved export programs are also required to give records relating to those export operations to the Secretary if requested in writing to do so. Requiring persons to provide information or documents may incidentally require the provision of personal information. The collection, use, storage, and disclosure of personal information may engage the right to freedom from arbitrary or unlawful interference with privacy.

Participation in Australia's agricultural export markets is not a right; it is a privilege granted by the Australian Government to suitable persons. A person seeking the benefits of participating in those markets does so in the knowledge that the existence of certain prior conduct or associations may result in the rejection of an application, or suspension, variation or revocation of a registration or other approval (if prescribed by the rules).

A fit and proper person test can be used to consider a person's history of compliance with legislation and then deny an approval under the Export Control Act in a situation where the fit and proper person test applies. For example, if a person fails to meet the fit and proper person test, they may be denied an approval to register an establishment, or have suspended, revoked or altered the conditions on an existing approved arrangement. This ensures that persons or companies are suitable entities to be responsible for the appropriate management of relevant risks.

The amendments to the Miscellaneous Rules require the Secretary to have regard to certain matters relating to the repealed Export Control Act and repealed Part 2 of the AMLI Act (discussed above) in determining whether a person is a fit and proper person in relation to future decisions. Requiring the Secretary to take into account whether the person (or an associate of the person) has provided false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed Export Control Act or repealed Part 2 of the AMLI Act is important when considering whether a person is a fit and proper person because such a person might be involved in the export of a wide range of goods, with varying degrees of risk.

The amendments to the Wood Rules require the applicant for a wood export licence and the holder of a wood export licence to be fit and proper persons. Requiring these kinds of persons to be fit and proper persons ensures that the Secretary can apply the fit and proper person test. Persons are required to notify the Secretary if they have been convicted of certain specific offences or ordered to pay a pecuniary penalty in relation to certain specified contraventions. When determining whether a person is a fit and proper person, the Secretary may consider the nature of the offences, the interest of the industry or industries relating to the person's export business, and any other relevant matter. While these factors are considered by the Secretary when applying the fit and proper persons test, they may not automatically give rise to a negative finding. Rather, it will be up to the Secretary to consider whether a person is fit and proper after having regard to these matters. Enabling the Secretary to take into account a broad range of matters is important when considering whether an applicant for a wood export licence or the holder of a wood export licence is a fit and proper person.

The amendments to the Miscellaneous Rules and Wood Rules ensure the integrity of the regulatory framework is not compromised by limiting conduct that can be considered in this context. As the agricultural export sector is regularly changing and evolving, this is reasonable and proportionate and ensures that the current level of market access can be maintained and possibly even increased in future.

The amendments to the Animals Rules relate to a condition of accreditation that the accredited veterinarian must, on written request by the Secretary, give the Secretary a copy of each record that the veterinarian is required to retain under section 9-26 of the Animals Rules and that is specified in or described in the request, within 14 days of the request. The current Animals Rules already require the accredited veterinarian to give the Secretary a copy of documents given to them in connection with the export operations and, through amendments to section 9-13 and 9-26 of the Animals Rules, this is expanded to cover records of documents generated by accredited veterinarians as part of carrying out export operations. If an accredited veterinarian contravenes a condition of the accreditation, such as failing to provide records to the Secretary in accordance with a written request, the veterinarian's accreditation for the purposes of carrying out export operations in approved export programs may be suspended or revoked.

It is important that the department can obtain records relating to approved export programs from accredited veterinarians quickly and efficiently to be able to assess if animals have been prepared in accordance with the approved export program and be able to provide assurances to the trading partner if questions are asked to that effect.

Australia's access to markets and the ability to export agricultural goods depends on its trading reputation and the confidence of its trading partners. To the extent these requirements engage Article 17 of the ICCPR, any interference with privacy is not arbitrary as the requirement to provide information, including for the fit and proper person test, is necessary, reasonable and proportionate for the legitimate objective of ensuring that persons who are involved in exporting goods from Australian territory are trustworthy and demonstrate the required integrity necessary to uphold Australian law and protect our trading reputation. In addition, any information collected under the Act is protected from unauthorised disclosure by the information management provisions in Part 3 of Chapter 11 of the Act.

#### Right to freedom of association (Article 22 of the ICCPR)

Article 22(1) of the ICCPR protects the right to freedom of association with others. Article 22(2) permits limitations which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This right may be engaged by the requirement to be a fit and proper person which incorporates an assessment of a person's associates.

The amendments to the Wood Rules require the Secretary in determining whether a person is a fit and proper person, to have regard to certain matters set out in section 372 of the Act in relation to an associate of the person, such as whether they have been convicted of an offence, owe a debt to the Commonwealth, made false or misleading statements under the Act or have been refused an approval under the Act. The amendments to the Miscellaneous Rules require the Secretary in determining whether a person is a fit and proper person, to



have regard to certain matters relevant to the repealed Export Control Act or repealed Part 2 of the AMLI Act (discussed in detail above) in relation to an associate of the person.

Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. The amendments will require the Secretary to consider, as part of the fit and proper person test, whether an associate of the primary person has provided false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed Export Control Act or repealed Part 2 of the AMLI Act.

Allowing the Secretary to take matters relating to the person's associates into account when deciding whether a person is a 'fit and proper person' for the purposes of certain decisions will ensure Australia's agricultural exports are not compromised.

The fit and proper person test does not prevent or prohibit a person from holding any particular associations. Rather, holding certain associations where risks have been identified may mean that a person's circumstances are not compatible with participation in Australia's agricultural export markets, which are underpinned by trust. Consideration of a person's associations is necessary because associates may leverage their personal relationship with the primary person to engage in non-compliant export activities.

Importing country requirements relating to agricultural goods will often relate to the preservation of public health. This may pose a risk to public health and safety. Therefore, to the extent that the fit and proper person test limits the right to freedom of association, it is permissible under Article 22(2) as it is for the purpose of protecting public health.

#### Right to work (Article 6 of the ICESCR)

Article 6(1) of the ICESCR protects the right of everyone to the opportunity to gain the person's living by work that he or she freely chooses or accepts. The United Nations Committee on Economic, Social and Cultural Rights (the UNCESCR) has stated that the right to work also encompasses the right not to be unjustly deprived of work. This right may be subject only to such limitations "as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

The amendments to the Miscellaneous Rules or the Wood Rules may limit the right to work by further regulating the persons who can participate in the export supply chain for prescribed goods. This is because the amendments to the Miscellaneous Rules require the Secretary to consider whether a person (or an associate of the person) has provided false or misleading information or documents to the Secretary, or to another person, performing functions or duties or exercising powers under the repealed Export Control Act or repealed Part 2 of the AMLI Act. Further, the amendments to the Wood Rules require an applicant for a wood export licence and the holder of a wood export licence to be fit and proper persons.

The integrity of Australia's agricultural export framework is underpinned by appropriate regulatory controls, including who is permitted to perform certain roles within it and who should be granted with certain privileges. Consideration of such matters relating to the repealed Export Control Act and repealed Part 2 of the AMLI Act, and requiring the applicant

for a wood export licence and the holder of a wood export licence to be fit and proper persons, is necessary for the legitimate objective of ensuring that persons who are approved to export goods from Australia are persons who are trustworthy and have demonstrated the required attributes necessary to uphold Australia's trading reputation.

The amendments achieve this by ensuring that persons or companies exporting Australian goods are suitable entities to be responsible for the appropriate management of relevant risks. This will uphold the integrity of our agricultural export framework and ensure the integrity of goods proposed for export across the entire supply chain. The high standards required of the entities participating in the export process places certain limitations on the right to work, however it does so in a way that is not arbitrary, and is necessary and proportionate for our trading partners' continued confidence.

## **Conclusion**

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

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