# Volume 2: Export Legislation

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Introduction

Why are exports regulated?
In the 2010/2011 period, Australia's farm exports were valued at more than $29 billion (Australian Commodities 2010 ABARES). This statistic highlights the importance of farm exports to Australia, and the need to ensure they are appropriately managed. Management of agricultural exports is achieved through export regulation, which has benefits both internationally and domestically.

Export regulation helps to maintain and expand markets and trade opportunities for Australian agricultural produce. It also provides our international trading partners with a high degree of confidence in the quality and hygiene of our agricultural and food exports. In addition, regulation protects the agricultural and food export sector from damage to its reputation that could result in lost or reduced markets. For example, it protects markets and public health by preventing the export of contaminated produce. Finally, regulation protects honest traders in the export industry from disreputable competitors.

How are exports regulated?
Australia works with other nations through the World Trade Organization (WTO) and the Food and Agriculture Organisation (FAO) of the United Nations (UN) to facilitate trade while preventing the introduction and spread of pests and diseases. International agreements of particular importance are the WTO’s Agreement on the Application of Sanitary and Phytosanitary Measures, and the International Plant Protection Convention (IPPC). Australia regulates its exports to achieve the objectives above and to give effect to the principles, objectives and standards of international agreements.

Export regulation sets the rules and standards that are applied to all agricultural exporters. It gives authorised officers the legal power to perform duties that ensure every consignment of Australian produce satisfies the requirements of the country it is going to. Authorised officers must apply these rules consistently when performing their duties to ensure the fair and equitable treatment of all exporters. This will help to guarantee that decisions made under export regulation can withstand external scrutiny. Australian exports are regulated through legislation and subordinate legislation.

Components of Australia’s export regulation framework
In Australia, exports are regulated through legislation, regulations and orders (see Figure 1). The primary piece of legislation is the Export Control Act 1982 (the Act), made by parliament and administered by the Department of Agriculture, Fisheries and Forestry (DAFF). Regulations and orders are called subordinate legislation because they are made under the authority of an act of parliament. Whereas acts must be made by Parliament, regulations are made by the Governor General, and orders are made by a Minister. In summary, Australian exports are regulated by the following legislation and subordinate legislation:

- the Export Control Act 1982 (the Act) (made by Parliament)
• the Export Control (Orders) Regulations 1982 (the Regulations) (made by the Governor General)
• orders (made by the Minister).

The Act
The Act is the base authority for inspection and establishes the legal basis for control over the export of primary produce. It provides penalties for individuals and/or corporations proven to have breached the requirements of the Act. Under Australian law, fines and/or imprisonment apply where appropriate.

The Act provides that:

“the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for the carrying out or giving effect to the Act (The Act, subsection 25(1))”.

Regulations
The Regulations support the Act and allow the Minister to make orders where considered necessary under the Act, or as stated in Regulation 3 of the Regulations.

Orders
The Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act. There are twelve sets of orders relevant to the Act.

Orders relevant to the Australian plant exports include:

• Export Control (Prescribed Goods – General) Order 2005
• Export Control (Plants and Plant Products) Order 2011 (the Plant Order)
• Export Control (Fees) Orders 2001
Figure 1. The framework for Export Legislation
How legislation is interpreted

The following rules must be followed when reading and applying legislation:

- specific meanings as defined in the interpretation sections must be applied where relevant
- as far as possible, words should be given their ordinary meaning
- the grammatical and simple meaning of a word should be used unless the use of the word leads to a meaningless or inconsistent application
- individual words must be read within the context of the sentence, section and Act and must be read with the legislative purpose in mind
- if a person is unsure of the meaning of the word, and it is not in any of the applicable interpretation sections, they should look it up in the dictionary
- words written in legislation must be used and cannot be neglected or ignored.

When reading any legislation it is also important to remember that it has a particular structure. An Act is divided into consecutively numbered sections, which form the basic organising unit for the material it contains. Sections can be divided into sub-sections, paragraphs and sub-paragraphs. Similarly, regulations are divided into consecutively numbered regulations, and orders into consecutively numbered orders or sections.

If there are many sections to an act, these are commonly grouped into parts according to their subject matter. Where there are many distinct topic groupings within a part, the part is broken into a number of divisions. Both parts and divisions are given titles that outline the scope of the sections they contain. For example:

Part III, Division 1, Section 10 of the Act refers to the general powers of authorised officer in relation to premises.

The Act

- Part III—Enforcement
  - Division 1—General powers
    - Section 10 — General powers of authorised officers in relation to premises.

Again, regulations and orders follow a similar structure.

The Principle Legislation

Export Control Act 1982

The Act came into force on 1 January 1983 and creates a wide range of powers relating to export activities. Each provision in the Act creating a power also identifies who is responsible for exercising that power. Inspection powers are conferred by the Act and its associated subordinate legislation, namely the General Order and the Plant Order.
The Act establishes the broad framework under which goods for export are to be regulated. However, most of the legislative details are actually dealt with by the various commodity orders. This approach is more flexible and responsive because the amendment of subordinate legislation is made by the Minister for Agriculture, Fisheries and Forestry and can be made more quickly than an Act which is made by Parliament.

Key provisions of the Act provide the following:

- powers for making Regulations and Orders under the Act (Section 25)
- authority for inspection and product seizure where an offence is suspected
- powers to prescribe goods
- prohibit exports in specific circumstances
- apply penalties for export in breach of prescribed conditions
- provisions for exporters to provide reasonable assistance to inspectors
- penalties for obstructing export inspections
- penalties for contravention of official marks
- penalties for false trade descriptions and declarations
- power to delegate authority and to protect authorised officers
- issuance of certificates.

**Interpretation of terms used in the Act**

As a general rule, words used in the Act and in the subordinate legislation are used in their ordinary (dictionary) sense unless they have been given a special meaning for the purposes of the Act or the subordinate legislation.

Section 3 of the Act and where included, the sections headed ‘Interpretation’ in the Regulations and Orders, define words or terms that have been given a specific meaning as follows:

- Some words or terms are defined to mean something.
- Other words are defined to include something.
- ‘Means’ is intended to be exhaustive, while ‘includes’ is intended to enlarge the ordinary (dictionary) meaning of the word or term.

The interpretation section defines the meaning of words or terms used.

If a word or term has a special meaning for one particular section, the definition is located within that section.

**The Basic Structure of the Export Control Act 1982**

This section gives an insight into the basic structure of the Act by reference to its key provisions.
The key features of the Act are:

- **Prescribed Goods**
  The Act specifies that the subordinate legislation may identify goods to be controlled under the Act (‘prescribed goods’) and may prohibit the export of prescribed goods either absolutely or in accordance with conditions (Section 7).

- **Certification**
  The Act specifies that subordinate legislation may provide for the issue of certificates in relation to goods being exported from Australia to, for example, give assurances to an importing country that the goods meet its requirements (Section 23).

- **Approved Arrangements**
  The Act allows subordinate legislation to be made to empower the Secretary to enter into approved arrangements with exporters for the production of prescribed goods (Section 7(3A)(b)).

  **Note:** Approved arrangements made under the previous Plant Order can continue under the new Plant Order. However, no new approved arrangements can be made under the new Plant Order.

- **Authorised Officers**
  The Act empowers the Secretary to appoint persons (on appointment the persons become ‘authorised officers’) and sets out their obligations and powers, including their powers to inspect and seize prescribed goods (Section 20).

- **Offences**
  The Act provides for the application of penalties for offences under the Act and its subordinate legislation. For example, the Act makes it an offence to enter prescribed goods for export if the conditions specified in the subordinate legislation have not been complied with and applying a false trade description to prescribed goods (Section 7A and 15).

The Act is divided into five Parts. The contents page at the front of the Act provides details of the provisions that occur within each Part. Authorised officers should ensure that they are familiar with the following key sections in each Part.

**Parts and key sections of the Act**

**Part I – Preliminary**

This contains relevant definitions and other information such as date of commencement, binding of the Crown and application of the Criminal Code in relation to offences, extension of the law to Australian territories and does not exclude State and territory law.

**Section 3 – Interpretation**

Section 3 of the Act defines ‘prescribed goods’ to mean goods that are declared by the regulations to be prescribed goods for the purposes of the Act.
Section 3 also defines ‘regulations’ to include ‘orders’. This means that the prescription happens in each of the commodity orders e.g. the Export Control (Plants and Plant Products) Order 2011.

It is important to remember that the prescribing of goods is the key point which triggers the operation of all other powers, activities and controls under the Export Control Act 1982, the Export Control (Prescribed Goods – General) Order 2005 and each of the other commodity orders.

**Part II – Export and entry for export of prescribed goods**

This part includes information on:

- Notice of Intention to Export prescribed goods (NOI’s)
- Prohibition on the export of prescribed goods
- Entering for export of certain prescribed goods
- Export of prescribed goods

**Section 6 – Notice of intention (NOI) to export prescribed goods**

A person intending to export prescribed goods must, if required to do so by the regulations or orders, notify the Secretary or an authorised officer, in accordance with the relevant regulations which include orders that they intend to export the goods. The notice of intention to export must also include the inspection location. Failure to do so could incur a penalty of twelve months imprisonment.

For an example of a provision of the Plant Order setting out a requirement to provide a notice of intention to export prescribed goods (see part 4, section 14). It is important to understand that there are specific requirements in relation to such notices, and those requirements may differ depending on the type of goods involved.

The NOI is an official document certified by an authorised officer if the officer has reasonable grounds to believe that the Plant Order that apply to those goods have been complied with. Once the NOI has been certified by an authorised officer it becomes an export permit.

**Note**

Prior to the ECRP, NOI’s were in manual form as EX28, electronic as a Request for Permit (RFP) and for Approved Arrangement as EX222.

It is proposed that the manual NOI’s (both EX28 and EX222) will be replaced with a “Request for creation of RFP”. This will allow AQIS to create RFPs electronically on behalf of exporters. This proposal is subject to the implementation of new fee orders and charging guidelines.

**Section 7 – Prohibition on export of prescribed goods**
Section 7 of the Act stipulates that “the regulations may prohibit the export of prescribed goods from Australia absolutely or to a specified place or unless specified conditions or restrictions are complied with or to a specified place unless conditions or restrictions are complied with”.

This section provides that if goods are prescribed, regulations may be made that prohibit their export absolutely or prohibit their export subject to conditions or restrictions. This means that goods that are prescribed are able to be prohibited either absolutely or prohibited subject to conditions or restrictions.

Section 7A – Entering for export of certain prescribed goods
This section makes it an offence to enter prescribed goods for export:

- that are prohibited or falsely representing the entered goods as having complied with conditions and restrictions applicable to the goods; and
- that are prohibited for export to a particular place or falsely representing goods as having complied with restrictions and conditions applicable to the goods.

Section 8 – Export of Prescribed Goods
This section makes it an offence to export prescribed goods if the goods are prohibited from being exported by an export control order, or if conditions relating to the export have not been met. In addition, offences are created in relation to the preparation of goods for export.

This means that if a person exports or has in their possession and intends to export, prescribed goods, they are guilty of an offence if the:

- export of the prescribed goods is prohibited absolutely under the regulations or orders; or
- export contravenes, or the intended export would contravene, certain conditions or restrictions, and the regulations or orders prohibit export of the prescribed goods unless those conditions or restrictions are complied with.

A person convicted of this offence could incur a penalty of five years imprisonment.

Example: Under the Export Control (Plants and Plant Products) Order 2011, the export of split vetch is prohibited absolutely because it looks very similar to split lentils and contains a toxin called cyanoalanine which can harm non-ruminant animals.

Part III – Enforcement
Part III, Divisions 1-4 give authorised officers various powers to monitor compliance with the Act and orders made under the Act. Although the powers in Part III refer only to ‘this Act’, ‘this Act’ is defined in section 3 to include the Orders. This part details:

- general powers
- monitoring powers
- offence-related searches and seizures
- warrants granted by telephone or other electronic means
- stopping and searching aircraft, vehicles or ships
• general rules about registered premises, premises entered by consent and warrants
• offences.

Division 1, Section 10 – General powers of authorised officers in relation to premises

- search the premises and any thing on the premises
- inspect, examine and take samples of any thing on the premises
- take photographs (including video or audio recordings) or make sketches of the premises or any thing on the premises
- take extracts from, or make copies of, any document, book or record on the premises
- secure the premises or any thing on the premises.

Note
The particular premises referred to in Section 10 include:

- any registered premises;
- any other premises entered with the consent of the occupier; and
- any premises listed in particular warrants issued by a magistrate under Part III of the Act.

See ‘Authorised officer’ section below for further details relating to an authorised officer.

Part IV – Official marks and trade descriptions

This part relates to official marks, official marking devices and trade descriptions.

An official mark is a stamp, seal, label or mark that is declared by the regulations to be an official mark. The Export Control (Prescribed Goods – General) Order 2005 declares several official marks. An official marking device is a device capable of being used to apply an official mark that is declared by the regulations to be an official marking device.

The contravention of the provisions of the legislation relating to official marks or marking devices is an offence under this part of the Act.

In addition, this part makes it an offence to apply a false trade description to prescribed goods for export. A false trade description is a description of goods that is false or likely to mislead.

Section 15 – False Trade Descriptions

If a person applies a false trade description to prescribed goods intended or entered for export, they are guilty of an offence.

Penalty: Imprisonment for 5 years

Applying false trade descriptions to prescribed goods intended or entered for export may occur in many ways.

Examples:

• Packing navel oranges into cartons labelled as valencia oranges.
• Writing incorrect statements onto official documents e.g. stating that the goods have been treated if they have not been treated.
• Applying labels to goods stating inaccurate ingredients.
• Packing 10kgs of Broccoli into cartons labelled with 20kg net weight.

Part V – Miscellaneous

This part contains provisions including:

• detailing indictable offences. An indictable offence is one for which a person can be officially accused and brought to a court for trial. For example, offences against section 7A, 8, 14 or 15 of the Act are indictable offences and carry a penalty of up to 12 years of imprisonment whereas offences against section 9 imposes a fine of up to $5,000 (section 17)
• allowing the court to order forfeiture to the Commonwealth of prescribed goods and material covering them in cases where a person is accused of an offence against the Act. The confiscated goods are disposed of in the manner determined by the Secretary (section 18)
• allowing the Secretary to delegate his or her functions under the Act, regulations and the orders
• allowing the Secretary to appoint authorised officers
• permitting the issue of identity cards to authorised officers, and creating an offence of failing to return an identity card if a person ceases to be an authorised officer
• limiting the liability of authorised officers for acts done in good faith under the Act
• issuing of certificates by the Secretary or an authorised officer, as may be required by an importing country for prescribed goods
• prohibiting authorised officers from being supplied with goods or services from a registered establishment
• relating to the making of regulations by the Governor-General.

Section 20 – Authorised officers

Under Section 20 of the Act, the Secretary may, by instrument signed by the Secretary, appoint a person to be an authorised officer. Authorised officers have a number of powers both under the Act and under the various orders.

Note
The Secretary’s power under this Section has been delegated to designated departmental positions.

The Basis of Authority as an Authorised Officer

A person must first be appointed as an authorised officer to be able to exercise powers under the Act and subordinate legislation.
Currently, all government employees engaged under the Public Service Act 1999 within the Australian Quarantine and Inspection Service have been appointed as authorised officers.

**Section 21 – Identity Cards**

Section 21 of the Export Control Act 1982 contains the power for the Secretary (or the Secretary’s delegate) to issue identity cards to authorised officers.

An identity card must:

- have a recent photograph of the officer to whom it is issued
- contain the officer’s signature
- have a unique number assigned to that officer
- state that the officer is an officer appointed under the Act.

Section 11L of the Export Control Act 1982 requires that an authorised officer must produce their identity card on request when entering a premise without a warrant and in other situations when exercising their powers.

If an authorised officer cannot or does not comply with the request or show their identity card when specified, they cannot exercise any powers under the Act or its subordinate legislation.

A person who is no longer an authorised officer must return the card to the Secretary or the Secretary’s delegate as soon as practicable after ceasing. It is an offence to fail to return the card under Section 21(2).

**Powers and functions of authorised officers**

The Act and the orders give direct powers and functions to the Secretary and authorised officers.

Example of a power provided directly to the Secretary:

Section 11Q of the Act provides the Secretary with the power to require a person to give any information that relates to any prescribed goods that have been, or are proposed to be exported.

Example of a power provided directly to authorised officers:

Order 6.11 of the Export Control (Prescribed Goods – General) Order 2005 provides authorised officers with the power to inspect goods and retain them for the purposes of inspecting them if the authorised officer has reasonable grounds to believe that the prescribed goods are not fit for export.

An authorised officer derives his/her powers and functions from the specific provisions in the Act and subordinate legislation and must act within the limits of these provisions.

Activities that fall outside the scope of the relevant provisions can be challenged on the basis of their legal validity. It is therefore very important that authorised officers understand the source of their authority.
However, if an authorised officer acts in good faith in the performance of their duties, they are protected from civil proceedings under Section 22 of the Act.

**Direct Powers**

Once appointed an authorised officer can exercise the powers and functions specified in the Act, or orders that are directly granted to authorised officers (direct powers) such as Sections 10, 10H and 11P of the Act.

**Delegated powers**

In addition to the powers that are directly vested in them, the authorised officers may also have other powers under the Act or Orders that have been specifically delegated to them by the Secretary. These are called delegated powers.

A delegate

- must exercise the power delegated in their own right. This means that, for instance, if the power requires the Secretary to take into account certain things when making a decision then the authorised officer, as a delegate, must personally take account of those things before making the decision. The decision is the authorised officer’s decision and they are accountable for it by law.

- may be guided in their decision making by guidelines, policy or by the advice of others. However, they must not apply these guidelines, policy or advice without considering the merits of the particular decision in accordance with the relevant power they are exercising. In other words, they must not make decisions as a delegate by the inflexible application of policy or by simply doing what they are told to do. They must act under the powers in the legislation.

- cannot delegate their powers to anyone else. If an authorised officer cannot personally exercise the power that has been delegated to them because, for instance, of the volume of decisions that have to be made, then they should arrange for the powers that have been delegated to them to also be delegated to other authorised officers.

**Note**

If the Section does not grant the power directly to an authorised officer, then the power must be delegated before it can be exercised.

**Monitoring search and seizure Powers**

Section 10A of the Act permits an authorised officer at any time and with any necessary help to enter premises that form part of a registered establishment to find out whether the provisions of the Act and orders are being complied with. An authorised officer may enter any other premises with the consent of the occupier. If the relevant premises are an aircraft, vehicle or ship, an authorised officer may stop and detain the aircraft, vehicle or ship.

In addition to entering the premises, an authorised officer is also able to:

- search the premises and anything on the premises;
- inspect, examine and take samples of anything on the premises;
- take photographs, video or audio recordings of the premises or anything on the premises;
• make copies of any document, book or record on the premises; and
• secure the premises or anything on the premises.

If an authorised officer wishes to enter premises that are not part of a registered establishment, without obtaining the consent of the owner or occupier of those premises, the authorised officer will require a monitoring warrant under section 10B of the Act.

A magistrate will decide whether it is reasonably necessary that the authorised officer should have access to the premises for the purpose of finding out whether the provisions of the Act and Orders are being complied with. A warrant issued by a magistrate must:

• authorise the authorised officer named in the warrant to enter the premises with such force and with such help as is necessary and reasonable;
• state whether entry under the warrant is authorised at any time of the day or night or during specified hours of the day or night;
• specify the day on which the warrant ceases to have effect; and
• state the purpose for which the warrant is issued.

If an authorised officer has entered premises under section 10A or under a warrant issued under section 10B, the authorised officer may seize evidential material if the circumstances are serious and urgent. Ordinarily, seizure of evidential material is only permitted when it is authorised by a warrant under section 10E. An authorised officer is only able to seize evidential material without a warrant if the authorised officer suspects, on reasonable grounds, that:

• particular evidential material is in or on the premises;
• it is necessary to seize the evidential material in order to prevent it from being concealed, lost or destroyed; and
• it is necessary to do so without the authority of a warrant under section 10E because the circumstances are serious and urgent.

There are strict rules about how a warrant may be executed. Part III, Division 6, of the Act contains these rules. In addition to these rules there are numerous other requirements and conventions that need to be observed. In practice where entry to premises is required through a monitoring warrant or a search warrant, the matter is to be referred to the Investigations and Enforcement Program which has the skills, expertise, experience and interagency linkages to apply for and execute warrants appropriately.

As a general rule warrants are likely to be required where consent has or is likely to be refused, or it is not appropriate to seek consent because it could lead to the loss, destruction or concealment of evidence.

**Power to request documents**

Section 11P of the Act allows an authorised officer who has entered premises that form part of a registered establishment or has entered other premises under a warrant to require a person to give information to the officer and to produce any documents referred to by the officer. The authorised officer must produce his or her identity card before making a request.
under this section. If a person fails to comply with the requirement made by an authorised officer, he or she is guilty of an offence.

In addition, the Secretary is able to request production of information or documents by written notice given to a person. The Secretary's power is broader than the power of authorised officers because the power of authorised officers applies only to premises which have been entered (either registered establishments or entered under a warrant). A person who fails to comply with a notice of the Secretary under section 11Q is guilty of an offence and liable to imprisonment for 12 months.

An authorised officer can only operate within the scope allowed by the Act and its subordinate legislation. Activities that fall outside the scope of the Act can be challenged, may bring DAFF into disrepute and can result in legal proceedings being brought against the Commonwealth and/or the relevant authorised officer. However, if an authorised officer acts in good faith in the performance of their duties, they are protected from civil proceedings under Part V, Section 22 of the Act.

Subordinate legislation

The subordinate legislation, consisting of the Regulations and Orders, supports the Act and provides:

- specific requirements for exporters to comply with their international obligations, Australian requirements and those of the importing country authorities;
- requirements for authorised officers to comply with their defined powers; and
- fair and consistent application of the legislation.

The components of subordinate legislation are covered in the following section under separate headings.

Export Control (Orders) Regulations 1982

How the Regulations relate to the Act

The Export Control (Orders) Regulations 1982 (the Regulations) are made under the Act. The Governor-General may make Regulations under section 25 of the Act and under any other specific sections of the Act which provides for something to be prescribed.

The Regulations:

- Empowers the Minister to make orders on any matter in relation to which the Act allows regulations to be made.
  Although both Regulations and Orders are subordinate legislation, Orders are easier to make and change than Regulations and are, therefore more suitable in this instance for dealing with technical details that are likely to require frequent amendment.
- Prescribe penalties that apply to offences created by the various Orders.
  This provision is necessary because the commodity orders do not prescribe any penalty units for offences, instead a person must refer to the Regulations to find out what penalty applies to an offence in the Orders.
**Key Regulations of the Regulations**

As an authorised officer it is important to understand a number of key regulations, in particular:

**Regulation 2 – Interpretation**

The interpretation section defines the meaning of words or terms used. For example, “Prescribed goods” means: goods, or goods included in a class of goods that are declared by the regulations to be prescribed goods for the purposes of this Act.

**Regulation 3 – Orders**

The Minister may make orders not inconsistent with regulations made under the Act.

**Regulation 4 – Offences**

This regulation specifies penalty units. If an Order or provision made under the Regulations is subject to penal provision, a person who fails to comply is guilty of an offence against the Regulations punishable by:

- (a) a fine of 10 penalty units; or
- (b) a fine of the number of penalty units specified for that level of penal provision.

Example: Level 1 penal provision = 10 penalty units

**Note:** Under Section 4AA of the *Crimes Act* 1914, a “penalty unit” means $110 in a law of Commonwealth.

**Export Control Orders (12 sets of orders)**

Orders are established in line with changes in markets and industries, and in accordance with international trade agreements.

There are 12 sets of Orders, consisting of:

- The *Export Control (Prescribed Goods – General) Order 2005* outlines the general requirements relating to all prescribed goods and must be read in conjunction with the commodity-specific Orders.
- The *Export Control (Fees) Orders 2001* (Fees Orders) provides for the collection of fees and charges for certification services.
- The other ten sets of commodity Orders cover all ‘prescribed goods’ and provide specific requirements for specific commodity groups.

The *Export Control (Prescribed Goods – General) Order 2005* sets down general requirements and must be read as one with the *Export Control (Plants and Plant Products) Order 2011*. These Orders cover all prescribed goods and include:

- requirements for registration of establishments
- trade description requirements
- packaging requirements and export permits.
Export Control (Fees) Orders 2001 (Fees Orders) apply to all prescribed goods and set the level of charges for registration of establishments, inspection charges and fees for audit activities.

Commodity specific Orders set out another layer of detailed rules which build on the specifications contained in the General Order. The Order relevant to export plants and plant products is the Export Control (Plants and Plant Products) Order 2011 (Plant Order). This order:

- regulates the export of prescribed grain, hay and straw, fresh fruit, fresh vegetables and plants and plant products for which a phytosanitary or any other official certificate is required by an importing country declaring those goods to be prescribed goods under the Act and specifying the conditions and restrictions for their export.

Export Control (Prescribed Goods – General) Order 2005

How the General Order relates to the Act

The Export Control (Prescribed Goods – General) Order 2005 (General Order) is made under the Regulations. The Minister may make Orders under section 3 of the Regulations. Section 3 of the Act defines ‘prescribed goods’ to mean goods that are declared by the Regulations (includes in this context Orders) to be prescribed goods for the purposes of the Act. The Act allows for goods to be prohibited from export by being ‘prescribed’ in Regulations as set out in section 7(1) of the Act. Sections 7(2), 7(3), 7(3A) and 7(4) of the Act allow for the making of regulations that prohibit goods from export absolutely or unless specified conditions and restrictions are complied with. The prescribing of goods is the key point that triggers the operation of all other powers, activities and controls under the Act and the General Order.

The General Order provides for general matters relating to prescribed goods and is divided into 18 Parts.

The main purpose of the General Order is to address administrative matters that are common to most, if not all, prescribed goods such as:

- exemptions for prescribed goods
- exclusion of specific prescribed goods from the application of any Orders
- granting, variation, suspension and revocation of registration of establishments
- requirements for certain persons to be fit and proper and for certain amounts owing to the Commonwealth to be paid
- the power to enter into arrangements for certain amounts owing to the Commonwealth
- notification requirements
- export permits
- certificates for non-prescribed goods
- declaring of official marks
- sampling and analysis
- reconsideration and review of decisions
- services of authorised officers and other miscellaneous provisions.
Parts of the General Order

The purpose of the General Order is to prescribe matters required for carrying out the Act such as:

- ensuring transparency and consistency in decision making
- registering establishments engaged in the preparation of prescribed goods for export
- issuing of export permits and government certificates
- declaring official marks and marking devices
- transmission of information and documents.

Key Orders

As an authorised officer it is important to understand a number of key Orders, in particular:

**Part 1, Order 1.03 – Application of this Order**
Unless contrary intention appears, this Order is to be read as one with other Order made under the regulation 3 of the *Export Control (Orders) Regulations 1982*.

**Part 1, Order 1.05 – Interpretation**
The interpretation section defines the meaning of words or terms used.

**Part 2, Order 2.01 – Export Control Orders not to apply to certain exports**
This Order and any other Export Control Order do not apply to the following prescribed goods:

(a) Goods that are a ship’s stores for the use of the passengers and crew, or for the service of the ship, on voyage from Australia.
(b) Goods that are an aircraft’s stores for the use of passengers and crew, or for the service of the aircraft, on flight from Australia.
(c) Goods imported into Australia and held in bond.
(d) Goods imported into Australia and re-exported in the same covering and under the same trade description as the covering and trade description in or under which they were imported.
(e) Goods consigned to an external territory for consumption within the Territory.
(f) Goods consigned to a resources industry structure e.g. Oil rigs, that is installed within the Joint Petroleum Development Area (within the meaning given by the *Petroleum (Timor Sea Treaty) Act 2003*), for consumption on the structure
(g) Goods exported in a consignment of no more than:
   (i) 10 litres for liquid goods
   (ii) 10 kilograms for goods of any other kind.

**Part 3 – Exemptions**

Part 3 of the General Order sets out circumstances when the Secretary may decide to exempt prescribed goods from the requirements of specified orders.

The Secretary may delegate their power under these provisions to authorised officers. All exemption decisions are to be recorded by the delegate on the DAFF Exemptions Database.
The exercise of these exemption powers must be done strictly in accordance with the terms of the provisions in Part 3 of the General Order. The exemption power should not be used as a substitute for amending the legislation. If there is a widespread and ongoing need to excuse exporters from certain specific provisions of the Orders then consideration should be given to amending the Orders.

**Part 3, Order 3.01 – Granting of exemption**

The Secretary may exempt prescribed goods from provisions applied to the goods if:

(a) the goods are a commercial sample; and

   (i) in the case of goods that are liquid, their volume is no more than 50 litres; and
   (ii) in the case of goods that are liquid, their mass is no more than 60 kilograms; or

(b) the goods are for experimental purposes

(c) exceptional circumstances exist

(d) special commercial circumstances exist.

**Part 4 – Registered Establishments**

Part 4 of the General Order describes the processes and requirements for registration, alteration, revocation and suspension of establishments for conducting export operations.

When it is proposed to use an establishment for the preparation of prescribed goods for export, the occupier of the establishment must apply to the Secretary for registration.

Generally, prescribed goods have to be prepared or handled for export in registered premises. It is important to read and understand the definitions of 'premises', 'establishment' and 'registered premises' (section 3 of the Act and Order 1.05 of the General Order), as many of the powers that authorised officers can exercise without a warrant are contingent on them being exercised in registered premises.

This Part also lists what the Secretary can have in regards to deciding who is a fit and proper person to operate an export establishment. The conditions of registration, the registration period and the procedures for renewal of registration are also outlined in this Part.

Part 4 also addresses the change of ownership, alterations to premises, changes to goods handled, and fit and proper persons.

Division 4.4 describes the important changes which the Secretary must be notified of in relation to establishments. These include where:

- an occupier of a registered establishment ceases to be the occupier of the establishment
- there has been a change in management or control
- the occupier has been convicted of a serious offence
- the occupier becomes bankrupt
- the occupier executes a deed of arrangement or a deed of assignment under Part X of the Bankruptcy Act 1966
- if the occupier is a partnership, the partnership dissolves
there has been a change in the name or business address of the occupier.

All alterations and additions to registered establishments must be approved by the Secretary. Variations and additional export operations must not be carried out. However, applications can be made by occupiers of registered establishments to add export operations. Where the Secretary varies the registration of an establishment, a new certificate of registration must be issued to the occupier within 7 days.

Divisions 4.7 and 4.8 list the grounds for suspension and revocation of registration. Division 4.9 lists the grounds for suspension of operations.

Note
The technical requirements necessary for the goods to be handled in specific registered establishments are contained in each commodity order.

Division 4.2, Order 4.03 – Application for registration
The occupier of an establishment may apply in writing, in a form approved by the Secretary, for the registration of an establishment.

Note
Part 3, Order 11 of the Export Control (Plants and Plant Product) Order 2011 states:

‘Prescribed goods must be prepared and presented for inspection in a registered establishment.’

For the purpose of finding out whether any or all of the provisions of the Export Control Act 1982 are being complied with, or for the purpose of complying with a direction under subsection 9E(1), an authorised officer at any time and with any necessary help may enter any registered premise and exercise the powers set out in Section 10 of the Export Control Act 1982. (See section 10A)

Recap
Part III, Division 1, Section 10 of the Export Control Act 1982 provides that:

The powers an authorised officer may exercise under paragraphs 10A(1)(b) and 10D(1)(b) in relation to particular premises are:

(a) Search the premises and any thing on the premises.
(b) Inspect, examine and take samples of any thing on the premises.
(c) Take photographs (including video or audio recordings) or make sketches of the premises or any thing on the premises.
(d) Take extract from, or make copies of, any document, book or record on the premises.
(e) Secure the premises or any thing on the premises.

Division 4.3, Order 4.10 – Copy of certificate to be displayed
The current certificate of registration must be displayed prominently in the establishment.
Penalty – Level 1 penal provision

Division 4.7, Order 4.25 – Grounds for suspension
If the Secretary has reasonable grounds to believe that a provision of the Act or an Order is not being complied with in respect of:

- the condition of a registered establishment
- the carrying on of operations in a registered establishment, or
- the export of prescribed goods that have been prepared in a registered establishment.

The Secretary may, by notice in writing, suspend the registration of the establishment in respect of one or more of the export operations, either all or in part, for which the establishment is registered.

**Division 4.8, Order 4.29 – Grounds for revocation**

Revocation (cancellation) of registration may occur if the Secretary has reasonable grounds to believe that:

(a) a provision of the Act or an Order is not being complied with
(b) the equipment in the establishment is no longer adequate for carrying out operations in an efficient and hygienic manner
(c) prescribed goods other than those for which the establishment is registered are being prepared at the establishment; or
(d) operations are being carried out in the establishment in a manner that may affect the hygienic preparation of prescribed goods.
(e) The occupier of an establishment is not, or ceases to be a fit and proper person.

**Division 4.9, Order 4.31 – Suspension related to hygiene, inspection etc**

Suspension of export operations at a registered establishment may occur if an officer has reasonable grounds to believe that:

- Prescribed goods are being prepared in an unhygienic manner
- The proper inspection of prescribed goods is not possible.

**Part 5, Order 5.01 – Electronic communication systems**

Electronic information or documents transmitted for the purposes of a condition of the Act must be transmitted by means of the system EXDOC.

**Part 6 – Export permits and related matters**

An export permit is required before any prescribed goods can be exported. They generally apply to all destinations except Australia's external territories or where an exemption has been granted.

Export Permits consist of two parts – the Request for Permit and the issuance of export permit numbers.

Part 6 of the General Order defines what an application for an export permit is, and outlines the grounds upon which the Secretary may issue a permit. Permits can be varied by the Secretary after issue, and can be revoked if deemed not to comply with applicable conditions and restrictions.

Persons named as the exporter of prescribed goods in an application for an export permit are responsible for those goods. Authorised officers can carry out any inspection or examination of goods to:
• determine their condition
• verify the relevant conditions and restrictions in relation to those goods are being complied with
• inspect whether the goods are fit for export.

Authorised officers can also inspect goods where they have reasonable grounds to believe that the relevant Orders have not been complied with, or that the condition of the goods has changed.

Order 6.04 – Validity of permit
An export permit is valid for 28 days from the date of issue.

If the permit becomes invalid the person must reapply for a new permit and all conditions must again be met. If the conditions state that inspection is required, the product must be reinspected before a new permit can be issued.

Order 6.05 – Permit may be revoked if goods do not comply etc
If an authorised officer with reasonable grounds believes the orders were not complied with or the condition of the goods has changed to such an extent that they would not be passed for export then the goods can be rejected and the permit revoked.

Order 6.06 – Revoked permit to be surrendered
Order 6.06 provides for penalties if the exporter does not surrender a revoked permit.

Order 6.10 – Abandonment of intention to export
Order 6.10 of the General Order requires that if an exporter decides not to proceed with exporting goods that have been passed for export, the exporter shall notify the secretary or delegate in writing. These goods cannot be removed from the establishment until any applicable requirements of any Export Control Order have been complied with.

Order 6.11 – Inspection of suspect goods
If an officer believes on reasonable grounds that prescribed goods are not fit for export, the officer may inspect the goods in accordance with the relevant Order or retain the goods for the purpose of inspecting them.

Part 13 – Official marks and official marking devices
Part 13 of the General Order sets out the controls on official marks and official marking devices, and specifies the designs and dimensions of each official mark.

This part declares and describes a number of different official marks. The dimensions for each mark are specified in tables, and exceptions to those dimensions are also listed.

The part on official marks is detailed and should be looked at carefully by those responsible for prescribed goods that require their use.

Official marking devices must be securely stored when not in use and daily records must be made of their manufacture, receipt, use, defacement and destruction. Damaged, worn or otherwise unfit official marking devices must be given, as soon as practicable, to a departmental officer responsible for the control of marks and orders.
The following design is one example of an official mark:

![Official Mark]

**Part 14, Order 14.01 – How sampling and analysis are to be done**

Part 3, Section 10 of the Act provides for the taking of samples by an authorised officer. This may be done to ascertain that the conditions and restrictions provided under the Act are being complied with.

Part 14 of the General Order then describes how the samples are to be handled, identified, kept, analysed and the results made available to the exporter.

Sampling of prescribed goods for the purposes of an Order must be done in accordance with:

(a) a method specified in the Order

(b) if no method is specified:
   - an applicable method specified in the Food Standards Code
   - an applicable method specified by Standards Australia
   - any other appropriate, validated, scientifically based method that ensures accurate results will be obtained.

The occupier of an establishment must not fail to comply.

**Note**

It is important to refer to the appropriate Orders and instructional material specific to the product that requires sampling and/or analysis.

For example:

Schedule 6, Clause 6 of the *Export Control (Plants and Plant Products) Order 2011* states the required sampling rate in relation to prescribed grain and other prescribed goods being seeds, stockfeed and woodchips, for which a phytosanitary certificate is required.

**Part 14, Order 14.02 – Who can analyse samples**

Authorized officers, laboratories accredited by NATA or other laboratory approved by the Secretary may analyse, inspect or examine samples taken by an authorized officer.

**Export Control (Fees) Orders 2001**

**How the Fees Orders relate to the Act**

The Fees Orders are made under the Regulations.
The Fees Orders set fees for the performance of services provided under the Act and related commodity orders.

It is important to remember that the recording of time taken to provide services by authorised officers and collect fees is an important part of the correct administration of the Act and subordinate legislation.

To interpret the Fees Orders a person will need to read them in conjunction with the *Export Control Act 1982* and relevant commodity orders.

**Application to Plant Exports**

The Fees Order establishes laws concerning service fees and payments which include:
- types of services that attract fees e.g. inspection and certification; and
- fee rates applicable to services

Services provided by authorised officers must be fully cost recovered and Programs must regularly review fees to ensure that this happens. Consequently, these Orders have been amended regularly since their introduction in 2001.

DAFF has developed the following guidelines in relation to the collection of fees for services. These can be found on the DAFF website:

- Plant Exports Fees and Charges

**Note**

Not all services provided under the *Export Control Act 1982* are covered by fees set by the Fees Orders.

Other charging subordinate legislation includes:
- *Export Inspection (Establishment Registration Charges) Regulations 1985*
- *Export Inspection (Service Charge) Regulations 1985*

An authorised officer will be required to demand and collect fees for services provided. It is the responsibility of the authorised officer to demand and collect fees in line with the Fees Orders and is not permitted to demand or collect fees other than in accordance with the Fees Orders.

Varying charges or providing concessions:
- impacts on the program budget; and
- may result in clients taking legal action against the Commonwealth.

**Parts of the Fees Orders**

Below are Parts of the Fees Orders relevant to plants and plant products exports.

**Part 1 – Preliminary**
This part covers general information such as commencement of the Orders, application repeal, interpretation and additional inspection services and fees imposed separately.

**Part 2 – General Export fees**

Covers goods to which the Fees Orders relate to, imposition of fees for various services, documentation fees and fees for organic produce certification. It defines what needs to be done in case of shutdown, industrial action by authorised officers and other workers, allocation and termination of inspection services.

**Part 3 – Fees for grains, plants and plant products**

This part applies to performance of services for the following goods:

- Grains (prescribed or not)
- Plants
- Plant products

It prescribes fees for particular services (see Schedule 3) and fees for overtime. Fees imposed under this part are payable by the person for whom services are performed.

**Part 7 – Fees for horticulture products**

This part imposes fees for export related activities for horticulture products listed out in Part 7, suborder 34.2. In addition, orders 34A-D impose fees for particular services mentioned in Part 1 of Schedule 6, as well as for overtime, travel and documentation.

**Part 7A – Export documentation fees — general**

Fees are payable for issue of a document for export of the following products:

- Grain
- Processed fruit
- Processed vegetables
- Plants
- Other plant products

Fees are calculated according to Schedule 5 of the Fees Orders.

**Part 9 – Collection of fees**

This covers an explanation for due dates for payments of fees, such as annual inspection fees, documentation fees and what needs to be done in cases of non-payment of service fees and penalty fees. Order 48 imposes the procedure for the recovery of fees whereas order 49 provides that the Secretary may remit the whole or part of a fee or penalty.

**Part 10 – Miscellaneous**

This part explains circumstances under which fees do not apply. For example, under order 51, fees do not apply for organisations providing assistance to a foreign country and in addition, fees do not apply for replacement of certificates in particular circumstances (order 52). Review of decisions made by the Secretary under these orders must be in accordance with Part 16 of the General Order.

**Schedules 1**
The schedule describes fees rates imposed by Part 1AA of the Fees Orders on hourly, daily, weekly, monthly and annual basis.

Schedule 1C – Fees for issuing documents

Covers fees for issue of a government certificate by EXDOC or otherwise if an authorised officer has inspected an establishment where goods were prepared to verify operation compliance with importing country requirements. This relates only to goods for which an application under section 8.05 of the Export Control (Prescribed Goods – General) Order 2005 has been made.

Schedules 3 – Fees for particular services

Covers fees for the following:

- inspection of ship or container
- assessment of an application for registration or renewal of establishment
- inspection of grains or other products when a certificate is required, for export in bags, bulk, container systems unit and booking an inspection appointment.

Schedule 5 – Export documentation fees

For manual or electronic phytosanitary certificate, replacement of certificate except due to error caused by DAFF and any other certificate.

Schedule 6 – Fees imposed for horticulture products

Part 1 covers fees for services e.g. inspection of ship or container, inspection services, services relating to registration or renewal of the registration of an establishment.

Part 2 covers fees for documentation e.g. for issuing of Phytosanitary Certificate, Certificate as to Condition, Export Permit and Replacement Certificate.

Note

Fees for plants and plant products are being reviewed and new fees are expected to be in place by 1 January 2012.

Export Control (Plants and Plant Products) Order 2011

The Export Control (Plants and Plant Products) Order 2011 (the Plant Order) is made under regulation 3 of the Export Control (Orders) Regulations 1982. The Plant Order combines both the Export Control (Plants and Plant Products) Orders 2005 (hereafter, EC(PPP)O 2005) and Export Control (Hay and Straw) Orders 2005, both of which were repealed in 2011. The Plant Order applies to the export of the following prescribed goods:

- prescribed grain
- hay and straw
- fresh fruit
- fresh vegetables
- any other plants and plant products for which a phytosanitary certificate or any other official certificate is required by an importing country authority.
The Plant Order is less prescriptive and more outcomes focussed, allowing industry greater flexibility to adopt new and more efficient export and inspection technologies. Various elements within the previous EC(PPP)O 2005 and existing schedules have been transferred to the PEOM manual and instructional material such as Work Instructions. This material can be amended as required without the necessity to amend legislation. The purpose of the Plant Order is to:

- simplify the legislative framework for the export of plants and plant products from Australia
- facilitate, enhance and sustain Australia’s exports by providing systems which ensure compliance with the IPPC obligations, overseas country requirements and any other relevant standards that enhance safety or improve market access
- improve efficiency and effectiveness in delivery of export certification services along the export supply chain
- enable an effective transition to an improved export certification and inspection system thereby reducing the cost of the Department’s services to export industries.

Note
When conducting export functions it is important to use all relevant legislation in conjunction with one another and verify the importing country requirements. It is necessary to be familiar with some parts of:

- the *Export Control (Prescribed Goods - General) Order 2005*
- the *Export Control (Fees) Orders 2001*
- in the case of timber and timber products the following may also be relevant:
  - the *Export Control (Hardwood Wood Chips) Regulations 1996*
  - the *Export Control (Regional Forest Agreement) Regulations 1997*
  - the *Export Control (Unprocessed Wood) Regulations 1999*
- in the case of native plants or plant parts, the *Environment Protection and Biodiversity Conservation Act 1999* and instruments made under it may be relevant.

**Offences and Penalties**

Offences listed in the *Export Control Act 1982* apply to this Order, and attract penalties that include fines or imprisonment for up to five years.

Some offences in the *Criminal Code Act 1995*, such as bribing a Commonwealth public official or forging official documents, are also relevant to activities under this Order. Serious penalties apply to these offences as well.

In the Plant Order the words ‘Penal provision’ are set out at the foot of a provision of section and the provision specifies that it is a penal provision of a particular level.

**Example**

Failure to comply with certain Orders attracts penalties of different levels as defined in section 4(1) of the *Export Control (Orders) Regulations 1982*. The value of a penalty unit is $110 per unit as defined in section 4AA of the *Crimes Act 1914*.

**Parts of the Plants Order**

As an authorised officer it is important to understand a number of key sections,
This part consists of general information such as date of commencement, definitions, lists of prescribed goods to which the Plant Order applies and that the Secretary may determine specified tests and certificates required for prescribed goods to specific countries.

**Section 3 – Declaration of prescribed goods (section 3 of the Act)**

This section applies to the export of prescribed goods, which are:

- prescribed grain
- hay and straw
- fresh fruit and fresh vegetables
- any other plants and plant products where a phytosanitary certificate or some other official certificate is required by an importing country.

Definitions of these goods can be found in the section 5 “Interpretation”

**Section 4 – Section to be read with Prescribed Goods (General) Order**

This section is to be read with relevant parts of the *Export Control (Prescribed Goods – General) Order 2005* which provide for the following:

- certain general exemptions (Part 2)
- specific exemptions granted by the Secretary (Part 3)
- registration of registered establishments (Part 4)
- electronic transmission of documents (Part 5)
- export permits (Part 6)
- certificates (Part 8)
- official marks (Part 13)
- sampling and analysis (Part 14).

**Section 5 – Interpretation**

The interpretation section defines the meaning of words or terms used.

**Section 6 – Meaning of prescribed grain**

This section describes the meaning of prescribed grain, 14 in total, giving their botanical names and other relevant information such as whether each includes varieties, subspecies, synonyms and whole, hulled, milled or malted grain.

**Note:** To understand the full meaning of the term ‘Prescribed grain’ it is important to read and understand the description of each commodity in the interpretation section.

**Section 7 – The Secretary may determine required test and certificates**

This section allows the Secretary to decide that specified tests or certificates are needed for specified prescribed goods or for specified prescribed goods for export to specified countries. This may ensure that specified export commodities meet particular standards which may not be related to phytosanitary health, for example, to ensure that stock feed does not pose health risk to animals. Such requirements may be published in DAFF notices, guidelines, and manuals as well as on the DAFF website.

**Part 2 – Conditions on export of prescribed goods**
Prohibits the export of the prescribed goods unless the conditions or restrictions in the Plant Order are complied with, describes all the conditions that need to be met before a consignment of prescribed goods can be exported and a checklist of approvals before prescribed goods can be exported.

**Section 8 – No export unless this section is complied with**

This section prohibits the export of prescribed goods unless the conditions or restrictions specified in the Plant Order are complied with. In addition, the section prohibits the export of split vetch.

**Note:** Export of split vetch is prohibited absolutely because it looks very similar to split lentils and contains a toxin called cyanoalanine which can harm non-ruminant animals.

**Section 9 – Basic conditions for export of prescribed goods**

This section describes all conditions that must be met and all the approvals that must be in place before prescribed goods can be exported. Conditions relate to:

- preparation of prescribed goods in a registered establishment
- inspection of goods for export compliance
- compliance with trade description, packaging, containers and vessels
- lodgement of a notice of intention to export
- issuance by an authorised officer of an export permit and if required by an importing country, a phytosanitary certificate.

**Part 3: Registered establishments**

This part deals with requirements of registered establishments, preparation and inspection of prescribed goods in a registered establishment, transport of prescribed goods between establishments and related record keeping.

**Section 10 – Requirements for registered establishments**

Requirements for application for registration of an establishment and renewal of registration are detailed in Part 4 of the General Order. A person wishing to have premises registered must comply with Schedule 3. The registered establishment must also be operated according to Schedule 3. The schedule details structural, operational and hygiene requirements for establishments preparing prescribed goods. The operator of the registered establishment must keep records of cleaning and pest control for at least two years.

**Section 11 – Preparation and inspection of prescribed goods must take place in a registered establishment**

Prescribed goods may not be presented for inspection for export compliance (under Part 5) unless they were prepared in a registered establishment and are presented for inspection in a registered establishment.

**Section 12 – Transport of prescribed goods**
Prescribed goods must not be moved from one registered establishment to another unless under the authority by an authorised officer. If the goods have been moved to another registered establishment where an export permit is going to be issued, the authorised officer may issue a transfer certificate in a form approved by the Secretary.

Section 13 – Records of dates of packaging

Where prescribed goods originate from different registered establishments, the operator of the receiving establishment must keep records of packing dates and names of establishments where goods originated for a period of two years.

Part 4 – Notice of intention to export prescribed goods

A notice of intention to export prescribed goods is more like an application for an export permit. The application must be in an approved form; identify the exporter; specify tests and certificates that relate to the export of those goods and include enough information to enable identification of goods by an authorised officer. The notice of intention should be given to the authorised officer within ample time to allow inspection and issue of export permit and necessary certificates.

The exporter is responsible for goods, ensuring that they remain compliant for the entire duration from the time the goods are declared to be compliant to export.

The exporter or person responsible for the goods must provide

- certificates of analysis as approved by the Secretary (under section 7). Such analysis must be performed according to an approved method
- other certificates as required to meet importing countries requirements.

Part 5 – Inspection for export compliance

The authorised officer must inspect and be satisfied that the prescribed goods, their storage facilities and transport systems units are free from pests and contaminants. To do this the authorised officer must sample and inspect goods in accordance with Schedule 2. Once goods have been inspected and passed the authorised officer certifies them as being export compliant. The passed prescribed goods that are in a registered establishment are considered to remain as export compliant for a period specified by an authorised officer of not more than for 28 days. A shorter period may apply where this is specified by the importing country authority.

Should the authorised officer consider prescribed goods that have been passed should be re-inspected (according General Order, section 6.09) or that they are no longer export compliant under section 18, the goods must be represented for re-inspection. If an export permit has been issued, the Secretary can suspend it until re-inspection has been completed. The exporter must advise the authorised officer in writing that the goods are being re-submitted. The exporter must provide evidence that preparation or treatment or processing undertaken have resulted in goods being export compliant. The goods must be held in conditions where the security is maintained.

Fumigated prescribed goods must not be represented for inspection until safety precautions, for example airing periods, have been adhered to. If this information is not available the officer will follow the Secretary’s approval.

Part 6 – Packaging and trade descriptions
The part directs that materials used for packaging prescribed goods must be unused and clean. Alternatively, if the material is designed for multiple uses and is to be re-used it must be cleaned and reconditioned to the satisfaction of the authorised officer. Packaging and other materials must not compromise the integrity of the prescribed goods, must be strong to withstand handling and must be appropriate for the goods.

Trade descriptions applied to prescribed goods must be sufficient and accurate to identify the goods. The description must correctly describe the goods and contain sufficient details to facilitate clearance by the importing country.

**Part 7 – Exporting in packages**

This part directs that prescribed goods must not be enclosed in packages for export unless:

- goods have been passed as export compliant
- the authorised officer has agreed to use a method as approved by the Secretary allowing sampling and inspection for export compliance after packing.

Packages must be of the kind approved by the Secretary for the prescribed goods or that the authorised officer has approved that packages will protect the goods effectively during transport.

**Part 8 – Exporting in containers**

Prescribed goods must not be loaded into a container unless an authorised officer has issued an approval for the container. The authorised officer, after receiving the request for container approval from the exporter must inspect and pass a container according to Schedule 4. The container must satisfy the following conditions:

- the container or the cargo already loaded in the container will not infest or infect the goods with pests
- the container condition is not likely to result in infestation or infection of goods
- there is no material in the container that is likely to harbour pests or contaminate the goods

The authorised officer issues a container approval which is valid for 28 days from the date of issue.

If the authorised officer has reason to believe that the condition of the container has changed since the issue of a container approval, he/she can cancel the approval.

If a container approval is cancelled, the person to whom a container approval was given must surrender the approval and any copies of it to the authorised officer (Section 30). A breach of this section is attracts a level 4 penal provision which is punishable by 40 penalty units and may attract a fine of up to $4,400.

The authorised officer must seal a container that has been approved but is not being loaded immediately using a tamper-evident seal. The authorised officer must also apply an inspection sticker with his identification number in it.
The person responsible for prescribed goods must not load containers that have been sealed after inspection with prescribed goods unless the seal is intact. He/she must not remove or obliterate the inspection sticker. A breach of this section is subject to a level 2 penal provision and is punishable by 20 penalty units and a possible fine of up to $2,200.

**Part 9 – Exporting in bulk vessels**

Before a bulk vessel can be loaded with prescribed goods it must be inspected by a marine surveyor/s appointed by the shipowner or agent to survey the vessel. The marine surveyor may also be appointed as an authorised officer to perform phytosanitary inspections.

**Division 1 – Surveys of bulk vessels**

The ship owner must first obtain a declaration approved by the exporter of the goods that a marine surveyor has been appointed to survey the vessel before loading. This declaration must be provided to an authorised officer before he/she conducts inspection of the vessel.

A marine surveyor must inspect the vessel and certify that the holds or areas of the proposed vessel are suitable for carrying prescribed goods. The vessel must be in a condition that is not likely to contaminate, wet or impart odours to goods and that the areas of the vessel are suitable for carrying the goods. If these conditions are satisfied the marine surveyor can issue a certificate and provide the certificate and a copy of it to the vessel master. A breach of this section attracts a level 4 penal provision.

An authorised officer can only accept a marine surveyor’s certificate if the surveyor’s name appears on the declaration provided to the authorised officer by the ship owner (Part 9, Division 1, section 32).

**Division 2 – Vessel approvals**

Prescribed goods must not be loaded into bulk vessels for export unless a vessel approval has been issued by an authorised officer.

An application for vessel approval must contain details outlined in section 36.

An authorised officer should:

- receive an application for vessel approval
- receive a copy of the marine surveyor certificate
- inspect vessel according to Schedule 5 for:
  - pests
  - infestible residues that could harbour pests or disease
  - conditions that could allow cross-infestation
- issue a vessel approval if satisfied that:
  - cargo spaces and cargo already loaded into them is not likely to infect or infest the goods with pests
  - no material in the cargo spaces or other parts of the vessel is likely to harbour pests or diseases
- issue a vessel approval is valid for 28 days from the date of issue
- suspend a vessel approval if he/she believes the conditions of a vessel have changed
- cancel a vessel approval if upon inspection of the vessel that has been suspended, the authorised officer finds that the conditions of the vessel have actually changed.
If a vessel approval has been suspended or cancelled according to section 39, the approval must be surrendered together with any copy of the approval to the authorised officer. Failure to do this attracts a level 4 penal provision.

**Part 10 – Export permit**

The export of prescribed goods is prohibited unless an export permit has been issued. The authorised officer must only issue an export permit if prescribed goods have been inspected and passed according to Part 5. An export permit is valid for 28 days after the date it was issued. Requirements for export permits and all related matters are made in Part 6 of the General Order.

**Part 11 – Phytosanitary certificate and other certification**

A phytosanitary certificate is a government-to-government certificate that is issued in accordance with the IPPC obligations and if requested by an importing country authority. An export permit can be issued once an authorised officer is satisfied that all the conditions in the Plant Order have been complied with, including that the product:

- has been inspected
- has been tested using appropriate procedures
- is free from quarantine pests
- is free from injurious pests
- complies with the current phytosanitary requirements of the importing country.

If a phytosanitary certificate is required the exporter must provide details of all requirements at the time of submission of a notice of intention to export, such as, a declaration of where and when the prescribed goods may be inspected and any necessary certificates of analysis.

Where a phytosanitary certificate is required, inspection of prescribed goods must be done following Schedule 2. Then the issuing of phytosanitary certificate should be done according to Schedule 6.

Only an authorised officer can issue a phytosanitary certificate. If anyone else issues another document as a phytosanitary certificate it is an offence to which a level 5 penal provision applies.

When a Certificate as to condition is requested by the exporter the export permit should be taken to serve this purpose unless a separate certification is required to meet the importing country’s requirements.

**Part 12 – Miscellaneous**

The sections in this part relate to audits, notices, certificates and permits.

The subsections within section 45 provide that:

(a) the Secretary may require audits to be conducted for compliance with the Act and the Plant Order of the following:
- registered establishment operation including the authorised officer working in that establishment
- operations for export of prescribed goods
- operations for certification of prescribed goods
• the work of an authorised officer
(b) the Secretary may specify the scope of the audit
(c) the audit may be unannounced
(d) the auditor must give a copy of the audit report to the person being audited
(e) an audit must be carried out by a qualified person, meaning, one who is an employee
of an agency of government of the Commonwealth, state or territory, and one who the
Secretary is satisfied has requisite skills and experience to conduct audits objectively,
fairly and accurately.

The occupier of an establishment must provide assistance to the auditor as required to enable
the auditor to perform an audit of the establishment. Assistance includes and not limited to:
• providing information on request
• operating an equipment
• allowing the auditor to:
  o observe and interview employees, agents or contractors
  o observe any procedures
  o use equipment for the purpose of accessing, examining, testing, sampling,
  recording or reproducing any documents or other thing
  o bring equipment onto the premises at which the audit is conducted for the
  purposes of the audit.

The Secretary may determine electronic notification or certification (section 47). Alteration,
addition or deletion of any part of the certificate or permit is prohibited (subsection 48.1).
Only an authorised officer may alter details of a certificate or a permit if details mentioned in
the certificate have changed (subsection 48.2). A breach of any of these two subsections
attracts a level 2 penalty.

Part 13 – Repeal and Transition

The Export Control (Plants and plant Products) Orders 2005 and the Export Control (Hay and
Straw) Orders 2005 were incorporated in the Plant Order 2011 (section 49).

Section 50 provides that any instrument or approvals given under the repealed Orders remain
in force according to its tenor as if it was made under the Plant Order 2011.

Schedule 1 – Marine surveyors’ qualifications

This schedule sets out the qualifications that a marine surveyor must have to become
qualified to conduct ship inspection to certify that it is suitable to carry prescribed goods. The
marine surveyor must have a formal qualification such as Certificate of Competency as
Master Class 1 or its equivalent. A marine surveyor must also have inspected 10 bulk vessels
over a maximum period of two years. If a marine surveyor has been qualified for the past
three years but has not conducted at least three bulk vessel inspections during the past three
years he/she ceases to be qualified for the purpose of the Plant Order.

Schedule 2 – Inspection of prescribed goods

This Schedule imposes requirements for the inspection of prescribed goods for compliance in
accordance with section 17 of the Plant Order.
Part 1 – This part consists of preliminary information composed of clauses that define tolerance levels requirements and sampling requirements as directed by the Secretary.

Part 2 – Contains clauses that specify how sampling, inspection, rejection should be conducted and sets out requirements for screening and blending of prescribed goods in bulk. The sampling rate for bulk prescribed grain is 2.25 L of product per 33.33 t or equivalent.

Part 3 – Prescribed goods must be inspected for phytosanitary certification according to a method approved by the Secretary. Re-inspection of consignments is required if the 28 day period has elapsed since the original inspection and before export of goods.

Part 4 – sets out requirements for treatment of rejected prescribed goods. The type of treatment differs according to the reason for rejection of goods e.g. presence of live insect, rodents and contaminants. Clause 14 requires prescribed goods which have an insect infestation to be treated with an insecticide or fumigation. Treated goods must not be presented or re-presented for inspection until after the exposure, airing periods and safety precautions specified on the registered label, or approved by the Secretary have been observed.

Schedule 3 – Requirements for registered establishments

This Schedule sets out requirements for registered establishments and should be read in conjunction with Part 4 of the General Order which sets out the application and approval process, the fit and proper person test, conditions and length of registration as well as the process for renewing or changing a registration. This Schedule also sets out additional requirements that apply to registered establishments exporting plants and plant products and must be complied with under section 10 of the Plant Order. The occupier of a registered establishment is required to keep records of cleaning and pest control measures, receivals and loading to demonstrate that prescribed goods are kept in clean and hygienic conditions. Records must be kept for at least two years.

Schedule 4 – Container inspection for issue of container approval

The Schedule imposes requirements for inspections of containers that must be complied with in agreement with section 27 of the Plant Order. It sets out the two levels of inspection of empty containers, where containers can be inspected, inspection procedures where containers are inspected prior to transport and what to inspect for e.g. live insect, infestible residues and other contaminants.

Schedule 5 – Bulk vessel inspection for issue of vessel approval

This Schedule sets out the requirements for the inspection of parts of bulk vessels that must be complied in accordance with section 37. It outlines parts of the vessel that must be inspected, what to inspect for e.g. pests and contaminants, where the vessel can be inspected and how the vessel must be inspected.

Schedule 6 – Requirements relating to issuing of phytosanitary certificate

This Schedule imposes requirements on an authorised officer in relation to the issuing of phytosanitary certificates pursuant to section 43. Under the IPPC each country has a Plant Protection Authority responsible for issuing government-to-government certificates that attest to the phytosanitary health and cleanliness of each export consignment containing plants and plant products. In Australia, DAFF is the Plant Protection Authority responsible for issuing
phytosanitary certificates. Phytosanitary certificates can only be issued by an authorized officer and only after conditions set in section 43 have been complied with.

**Administrative law**

Inspection staff should be aware that a number of Acts exist that provide scope for the review of inspection decisions, documents or the public release of information. For these reasons, it is essential that inspection staff keep a record of decisions and documentation, particularly where officers have issued instructions for exporters to clean premises or rejected product. Such decisions should be recorded in writing on the appropriate forms with copies retained on file for record keeping purposes. The record should include all relevant information, including reasons.

There are some exemptions to the scope of documents that may be reviewed. If an officer is involved in a review of inspection decisions, documents or the public release of information, officers are advised to contact the Plant Export regional program manager.

**Resources and References**

- Introduction to DAFF Export Documentation volume, PEOM, for more information on completing NOI’s.
- Training guidelines
- Readers Guide
- *Export Control Act 1982*
- *Export Control (Orders) Regulations 1982*
- *Export Control (Prescribed Goods – General) Order 2005*
- *Export Control (Fees) Orders 2001*
- *Export Control (Plants and Plant Products) Order 2011*


**Relevant eLearning Training Modules**

- Plant Export Legislation

**Questions**

- You can contact your state supervisor or manager to clarify any aspects of this volume in the first instance.
- You can also direct a specific question or provide feedback to plantexporttraining@daff.gov.au