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Outline of the Export Control Act 2020

Improved agricultural export legislation



Introduction

Australia's agricultural export legislation underpins our reputation as a supplier of safe and reliable food and other products. It also assures our trading partners that Australian exports meet their requirements.

The Australian Government has introduced a new legal framework for agricultural exports, as part of a wider initiative to strengthen Australia's agricultural exports and market access. The new export legislation commenced on 28 March 2021. It comprises the *Export Control Act 2020* (the Act) as the centrepiece of the framework, and the Secretary of the Department of Agriculture, Water and the Environment's rules made under the Act (the rules), which set out the operational requirements that must be met to export specific goods from Australia (e.g. meat).

The new legislation consolidates and streamlines the export-related requirements that were previously included in more than 20 Acts made under the Act (the rules) including the *Export Control Act 1992* and the *Australian Meat and Live-stock Industry Act 1997* and 40 pieces of delegated legislation. The benefits of the new legislation include:

- more relevant, responsive and efficient processes for exporters, farmers and other primary producers
- stronger regulation, less duplication and consistency across commodities where possible
- streamlined regulatory requirements, such as those relating to authorised officers.

The new framework will continue to ensure:

- exported goods meet importing country requirements
- compliance with government and relevant industry standards
- traceability through the exports supply chain where required
- the integrity of goods and the accuracy of applied trade descriptions and official marks.

Australia's new legal framework for agricultural exports reflects the outcome of a comprehensive review of its agricultural export legislation and extensive consultations with stakeholders including farmers, other primary producers, exporters, trading partners, representatives from State and Territory governments and other government departments. This feedback has helped to ensure that the new agricultural export legislation is clear and fit for purpose – supporting growth and innovation, while maintaining the level of regulatory oversight trading partners expect.

This information sheet provides an overview of the Act.

Chapter 1: Preliminary

The Act seeks to ensure goods that are exported:

- meet importing country requirements
- comply with government or industry standards or requirements
- are traceable and maintain integrity
- contain accurate trade descriptions
- give effect to Australia's rights and obligations under international law.

The Act allows for the regulation of the whole of the supply chain, if necessary. It will apply inside and outside Australia, to all Australian persons and bodies, in a way that is consistent with general principles of international law. For example, if a condition on an export licence applies outside Australia, enforcement action for a breach of that condition will be taken in Australia.

The Act applies to regulate the export operations of foreign persons and bodies in Australia and, in limited circumstances, in the exclusive economic zone adjacent to Australia and on, or in, the Continental Shelf adjacent to Australia. The Act applies to an external Territory if the application of the legislation is extended to that Territory.

The Act provides a consolidated and comprehensive set of definitions to ensure that terminology is used consistently throughout the export regulatory control framework.

Chapter 2: Exporting goods

Part 1 – Goods

The Act sets out the goods that are prohibited absolutely from export (namely, split vetch). It also gives the Minister the power to temporarily prohibit the export of goods in emergency situations. The Act provides the Secretary with the power to prescribe which goods are prescribed goods and which may therefore be subject to the regulatory controls set out in the Act. The Act contains significant penalties for exporting prescribed goods that do not comply with the requirements of the legislation, or goods that are subject to an absolute or temporary prohibition on export. Goods that are not prescribed goods are referred to as non prescribed goods. The Act imposes limited regulatory control on the export of non prescribed goods, depending on importing country requirements. The Act also enables the rules to prescribe that particular goods are taken not to be prescribed goods in certain circumstances, where an importing country does not require it.

Part 2 – Exemptions

A person is able to apply for an exemption from all or part of the regulatory controls set out in the Act. The basis for seeking an exemption primarily replicates the procedures set out in the *Export Control Act 1982*. The Act also enables a person to seek an exemption in relation to prescribed goods that are to be exported to a particular country where the importing country does not require some or all of the provisions of the legislation to be complied with in relation to the goods.

The Act enables the rules to be made that prescribe the circumstances in which certain goods are not prescribed goods for the purposes of the legislation (i.e. goods that are excluded from regulatory control).

Part 3 – Government certificates

Australia's trading partners may require a government certificate to be issued in relation to goods before they will allow the goods into their country. The Act seeks to allow an issuing body (being the Secretary, a person or body covered by an approved arrangement that provides for the person or body to issue government certificates, or a specified person or body) to issue government certificates, which provides assurance to trading partners that the goods covered by the certificates meet their requirements. These provisions allow the issuing body to certify both prescribed goods and non prescribed goods for which the department has oversight.

Chapter 3: Accredited properties

The rules specify when prescribed goods for export must have been sourced from an accredited property. The Act enables the Secretary to accredit a property to carry out export operations in relation to a kind of prescribed goods or a kind of goods from which prescribed goods are derived (e.g. cows that will be slaughtered for beef), and may specify the places to which the goods can be exported. Accredited properties will generally relate to the production of goods for export, and will generally apply at the beginning of the supply chain. The Act enables the making of the rules to prescribe specific requirements for accredited properties for different goods, if deemed necessary. An accredited property will generally have less associated regulatory requirements than a registered establishment (see Chapter 4, below). Once the Secretary has accredited a property,

he or she can conduct audits and exercise a range of monitoring and enforcement powers. This ensures that the property is, and remains, fit for the purpose of carrying out the export operations for which it is accredited.

Chapter 4: Registered establishments

The rules specify when prescribed goods for export must have been sourced from a registered establishment. The Act enables the Secretary to register an establishment to carry out export operations in relation to a kind of prescribed goods, if deemed necessary. Registered establishments generally relate to the preparation of prescribed goods, and will generally apply at the end of a supply chain. Registration of establishments will be the primary way the department will ensure that goods prepared for export meet importing country requirements, fulfil international trade obligations, and meet legislative requirements about the preparation of goods for export. The Act enables the making of the rules to prescribe specific requirements for registered establishments for different goods. Registered establishments are subject to audits and a range of monitoring and enforcement powers.

Chapter 5: Approved arrangements

The rules specify when, for which goods, and for which export operations it is necessary to hold an approved arrangement. The Act enables the Secretary to approve an arrangement that provides for export operations to be carried out in relation to a kind of prescribed goods, if deemed necessary. Approved arrangements are agreements between the department and a person – the holder of the arrangement – about how the holder will meet legislative and importing country requirements. Approved arrangements will be able to apply to businesses that are engaged in the production or preparation of prescribed goods for export, to businesses that export prescribed goods, as well as to other businesses which perform functions on behalf of the department (such as the certification of goods), if applicable. The Act will also enable the making of the rules to prescribe specific requirements for approved arrangements for different goods. Approved arrangements are subject to audits and a range of monitoring and enforcement powers.

Chapter 6: Export licences

The rules specify when it is necessary for a person to hold a licence to export prescribed goods or conduct other export operations. The Act enables the Secretary to grant an export licence that authorises the holder to carry out a kind of export operations in relation to a kind of prescribed goods, if deemed necessary. Under the *Export Control Act 1982*, licences were used to authorise the export of certain classes of goods if the export was in accordance with the conditions or requirements of that licence. Under the provisions in the Act, licences may be applied to the export operations of any goods covered by the legislation at any point in the supply chain, if required. The Act enables the making of the rules to prescribe specific requirements for different goods in relation to the export of goods from Australia. Export licences are subject to audits and a range of monitoring and enforcement powers.

Chapter 7: Export permits

The Act enables the Secretary to issue export permits, which provide permission to export prescribed goods from Australia. The Secretary will only be able to issue a permit once they are satisfied that the goods meet legislative and importing country requirements. The Act enables the making of the rules to prescribe conditions for export permits for different goods. The Secretary may also issue a permit subject to additional conditions. Export permits are subject to audits and a range of monitoring and enforcement powers.

Chapter 8: Other matters relating to export

Part 1 – Notices of intention to export

The Act enables the making of the rules to specify when a notice of intention to export must be given to the Secretary by an exporter preparing goods for export. This will enable the department to determine inspection requirements.

Part 2 – Trade descriptions

Accurate and complete trade descriptions are an integral part of ensuring the integrity of Australia's exports. The Act prescribes significant penalties for altering or interfering with a trade description in certain circumstances, applying false trade descriptions to goods intended for export, and exporting goods with false trade descriptions.

Part 3 – Official marks

The Act seeks to establish official marks in order to provide trading partners with assurance as to the integrity of goods that are being exported. The Act prescribes significant penalties for applying false, misleading or deceptive official marks, or engaging in conduct that results in an official mark being altered to be misleading or deceptive.

Part 4 – Tariff rate quotas

The Act enables the making of the rules to make provision for, and in relation to, the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods. These provisions are similar to those contained in the existing legislation.

Chapter 9: Powers and officials

Part 1 – Audits

The department uses audits to verify whether agricultural goods are being produced, prepared and exported in accordance with relevant legislative and importing country requirements. The Act seeks to enable audits to be conducted by the department in relation to certain export operations. Audits will also be able to be used to ensure that a person who performs functions on behalf of the department, such as a third party authorised officer (see Part 4 of Chapter 9) or the holder of an approved arrangement, is complying with their obligations. Audits will be able to examine historical and ongoing compliance with the legislation and importing country requirements.

Part 2 – Assessment of goods

Under the *Export Control Act 1982*, the department used assessments to verify whether goods proposed for export comply with relevant legislative and importing country requirements. The Act allows the assessment of goods to be undertaken as required, including to assist with obtaining an export permit or a government certificate.

Part 3 – Powers of the Secretary

The Act allows the Secretary to delegate his or her powers or functions to senior officers in the department, or to authorised officers, to assist in the administration of the framework.

The Minister may direct the Secretary in relation to the Secretary's power to make the rules (see Part 6 of Chapter 11).

Part 4 – Authorised officers

Under the *Export Control Act 1982*, authorised officers assisted in providing assurance to trading partners of the effectiveness of export controls, and work to ensure consistency and quality within Australia's export chains. The Act seeks to generally replicate the provisions relating to authorised officers in the *Export Control Act 1982* to enable authorised officers to inspect goods, conduct audits, issue certificates and give directions on how exported goods must be handled.

The Act enables departmental officials, state and territory officials and third party (i.e. non government) authorised officers employed by a registered establishment or engaged on an individual basis to be authorised officers under the new legislation, where agreed by trading partners. The Act ensures that all authorised officers have consistent obligations to ensure their independence and impartiality in carrying out their duties.

Part 5 – Accredited veterinarians and approved export programs

Accredited veterinarians or authorised officers may carry out a number of functions to ensure the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material through approved programs of export operations.

Chapter 10: Compliance and enforcement

The Act seeks to apply the standard compliance and enforcement provisions in the *Regulatory Powers (Standard Provisions) Act 2014*. This provides the department with a greater range of compliance and enforcement powers than those that are available under the *Export Control Act 1982*. The department will be able to use a range of modern enforcement tools to deal with non-compliance, including criminal and civil penalties, infringement notices, enforceable undertakings, injunctions, and administrative sanctions such as suspension or revocation. These tools will allow the department to intervene and address non compliance and its underlying causes in a more targeted manner.

The Act provides for a 'fit and proper person' test that enables an assessment to be made about whether particular persons or companies involved in the export supply chain will, or are likely to, properly conduct their business. Whether an applicant is a fit and proper person could also be affected by the conduct and history of the applicant's associates.

Chapter 11: Miscellaneous

Part 1 – Matters relating to applications

The Act provides for standard and consolidated provisions for applications to accredit a property, register an establishment, approve an arrangement, or grant an export licence. The provisions also set out the powers that the Secretary is able to exercise when dealing with an application.

Part 1A – Alternative regulatory arrangements

The Act provides for a person to apply to implement an alternative regulatory arrangement in relation to a kind of export operations and a kind of prescribed goods. This reflects provisions which are in existing commodity orders.

Part 2 – Review of decisions

The Act establishes a two stage review process for applications for the review of the merits of a decision made under the legislation – firstly, internal review within the department, and secondly, review by the Administrative Appeals Tribunal. In general, administrative decisions that will be able to be made by the Secretary or authorised officers under the legislation will be subject to merits review, unless there are specific reasons to justify the exclusion of merits review.

Part 3 – Confidentiality of information

The Act will allow for the use and disclosure, in accordance with the *Privacy Act 1988*, of protected information, including where that information is relevant to the department's other regulatory functions, such as under the *Biosecurity Act 2015*. The Act prescribes significant penalties for persons who use or disclose the protected information other than as authorised under the Act.

Part 4 – Cost recovery

The Act replicates existing cost recovery arrangements, which allow the Commonwealth to recover costs for performing export services and undertaking export certification activities.

Part 5 – Records

The Act enables the making of the rules to make provision for requirements to retain records, which is essential to the exercise of many export control activities, including audits, monitoring and enforcement, and being able to trace goods back through the supply chain.

Part 6 – Miscellaneous

The Act includes other miscellaneous provisions that relate to export operations regulated by the Act, including, for example, the forfeiture and destruction of goods, compensation for damaged and destroyed goods or acquisition of property, and testing and sampling procedures. The Act will also enable the Secretary to make disallowable legislative instruments known as the rules.

Further information

Email: exportlegislation@agriculture.gov.au

Web: agriculture.gov.au/market-access-trade/improving-export-legislation