



Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004

No. 97, 2004

**An Act to amend the *Australian Meat and Live-stock
Industry Act 1997* and the *Export Control Act 1982*,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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***An Act to amend the *Australian Meat and Live-stock
Industry Act 1997* and the *Export Control Act 1982*,
and for related purposes***

[Assented to 29 June 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agriculture, Fisheries and Forestry
Legislation Amendment (Export Control) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2004
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 December 2004 (<i>Gazette</i> 2004, GN36)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Export of live-stock etc.

Part 1—Australian Code for the Export of Live-stock

Australian Meat and Live-stock Industry Act 1997

1 After Part 2

Insert:

Part 2A—Australian Code for the Export of Live-stock

57A Australian Code for the Export of Live-stock

- (1) The Minister may determine, in writing, principles relating to the export of live-stock from Australia.
- (2) The principles must be taken into account by persons exercising powers and performing functions under this Act.
- (3) The principles are to be known as the *Australian Code for the Export of Live-stock*.
- (4) Without limiting subsection (1), the principles may relate to any one or more of the following in relation to the export of live-stock from Australia:
 - (a) the planning of activities involved in the export;
 - (b) the source of the live-stock;
 - (c) the feeding of the live-stock until their arrival at their overseas destination;
 - (d) the treatment of the live-stock until their arrival at their overseas destination;
 - (e) the transport of the live-stock within Australia;
 - (f) the assembling of the live-stock before being loaded on to a vessel or aircraft for export from Australia;

Schedule 1 Export of live-stock etc.

Part 1 Australian Code for the Export of Live-stock

- (g) the loading of the live-stock onto a vessel or aircraft for export from Australia;
 - (h) the transport of the live-stock from Australia to their overseas destination;
 - (i) any other matter relating to any stage in the process from the planning of the export of the live-stock to their delivery at their overseas destination.
- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 2—Integration of export licence and permit systems etc.

Division 1—Australian Meat and Live-stock Industry Act 1997

2 Section 3

Insert:

associate of a person (the *subject person*) includes a reference to:

- (a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of:
 - (i) the subject person; or
 - (ii) any corporation of which the subject person is an officer or employee or in which the subject person holds shares; and
- (b) the spouse or de facto spouse of the subject person; and
- (c) any other person, not mentioned in paragraph (a) or (b), who is or was:
 - (i) directly or indirectly concerned in; or
 - (ii) in a position to control or influence the conduct of; a business or undertaking of:
 - (iii) the subject person; or
 - (iv) a corporation of which the subject person is an officer or employee, or in which the subject person holds shares; and
- (d) a corporation:
 - (i) of which the subject person, or any of the other persons mentioned in paragraphs (a), (b) and (c), is an officer or employee; or
 - (ii) in which the subject person, or any of those other persons, holds shares.

3 Section 9

Omit “, have regard to any broad policies”, substitute “in relation to the export of meat from Australia, have regard to any broad policies in relation to such exports that are”.

4 At the end of section 12

Add:

- (3) Without limiting subsection (2), for the purpose of satisfying himself or herself about the matters referred to in subsection (1) in relation to an application for a live-stock export licence, the Secretary may have regard to the extent to which the applicant has complied with any requirements of or under the *Export Control Act 1982*, including any conditions or restrictions:
 - (a) to which a licence or permission under that Act, to export prescribed goods that are live-stock, was subject; or
 - (b) that otherwise relate to the export of prescribed goods that are live-stock.

5 After paragraph 23(1)(e)

Insert:

- ; or (ea) if the licence is a licence to export live-stock and the holder was required to make a declaration of a kind mentioned in subsection 7(3B) of the *Export Control Act 1982* as a condition subject to which a licence or permission to export under that Act was granted—the holder made any such declaration falsely; or

6 After subsection 23(1)

Insert:

- (1A) Without limiting subsection (2), for the purpose of determining whether a circumstance mentioned in subsection (1) has occurred in relation to a live-stock export licence, the Secretary may have regard to the extent to which the holder has complied with any requirements of or under the *Export Control Act 1982*, including any conditions or restrictions:
 - (a) to which a licence or permission under that Act, to export prescribed goods that are live-stock, was subject; or
-

- (b) that otherwise relate to the export of prescribed goods that are live-stock.

7 After subsection 23(2)

Insert:

- (2A) If paragraph 25A(2)(b) applies, the Secretary may give a written notice to the holder of the licence mentioned in that paragraph.

8 Paragraph 23(3)(a)

Omit “state”, substitute “if subsection (1) applies—state”.

9 After paragraph 23(3)(a)

Insert:

- (aa) if subsection (2A) applies—state the grounds on which the Secretary gives the notice; and

10 Paragraph 24(1)(b)

Omit all the words after “is”, substitute:

satisfied:

- (i) if subsection 23(1) applies—of any of the matters mentioned in subsection 23(1); or
- (ii) if subsection 23(2A) applies—that he or she should take action in relation to the licence under any of paragraphs (c) to (g) of this subsection.

11 After section 25

Insert:

25A Secretary’s powers in relation to licensing of associates

(1) This section applies if:

(a) the Secretary:

- (i) refuses to grant a live-stock export licence to a person; or
- (ii) determines that a person’s live-stock export licence not be renewed; or
- (iii) suspends, further suspends or cancels a person’s live-stock export licence; and

Schedule 1 Export of live-stock etc.

Part 2 Integration of export licence and permit systems etc.

- (b) another person is an associate of the person.
- (2) If this section applies, the Secretary may do either or both of the following, on any one or more occasions:
 - (a) if the other person is or becomes an applicant for the grant of a live-stock export licence—refuse to grant the licence;
 - (b) if the other person is or becomes the holder of a live-stock export licence—give a written notice under subsection 23(2A) to the other person.
- (3) To avoid doubt, the Secretary may do as mentioned in subsection (2) whether or not the other person is still an associate at the time the Secretary does so.

12 Application

- (1) Subsection 25A(1) of the *Australian Meat and Live-stock Industry Act 1997* as amended by this Part applies whether the requirements of that subsection were satisfied before, or are satisfied at or after, the commencement of this Part.
- (2) However, this does not mean that the Secretary may exercise his or her power under subsection 25A(2) of that Act as so amended with effect from a time before the commencement of this Part.
- (3) In determining, for the purposes of the application of section 25A of that Act as so amended, whether a person is an associate of another person at a time after the commencement of this Part, anything done before the commencement of this Part may be taken into account.

Division 2—Export Control Act 1982

13 Section 3 (definition of *order*)

After “Minister”, insert “or Secretary”.

14 After subsection 7(3A)

Insert:

- (3B) If live-stock within the meaning of the *Australian Meat and Live-stock Industry Act 1997* are prescribed goods, then, without limiting the generality of subparagraph (3)(b)(ii), conditions imposed under that subparagraph may include a condition that the
-

person exporting the live-stock has, in accordance with the regulations, made the declaration mentioned in subsection (3C).

- (3C) The declaration is that the person has complied with:
- (a) any conditions to which a live-stock export licence under the *Australian Meat and Live-stock Industry Act 1997* was subject; and
 - (b) any requirements under that Act that otherwise relate to the export of live-stock.

15 At the end of section 7

Add:

- (5) Without limiting the generality of subparagraphs (3)(b)(ii), (iii) and (iv), if live-stock within the meaning of the *Australian Meat and Live-stock Industry Act 1997* are prescribed goods, the regulations may provide that, in relation to the grant, surrender, revocation or suspension of licences and permissions to export such prescribed goods, consideration may be given to the extent to which the applicant or the holder has complied with:
- (a) any conditions to which a live-stock export licence under the *Australian Meat and Live-stock Industry Act 1997* was subject; and
 - (b) any requirements under that Act that otherwise relate to the export of live-stock.

16 At the end of subsection 25(2)

Add:

- (h) subject to subsection (3), empowering the Secretary to make orders, not inconsistent with:
- (i) the regulations; or
 - (ii) any order of a kind mentioned in paragraph (g) made by the Minister;
- with respect to any matter, concerning prescribed goods that are animals, for or in relation to which provision may be made by the regulations.

Part 3—Accreditation of veterinarians for purposes of approved export programs

Export Control Act 1982

17 Section 3

Insert:

accredited veterinarian has the meaning given by subsection 9B(2).

18 Section 3

Insert:

approved export program has the meaning given by subsection 9A(2).

19 Section 3

Insert:

eligible animal reproductive material means prescribed goods consisting of animal reproductive material.

20 Section 3

Insert:

eligible live animals means prescribed goods consisting of live animals.

21 Section 3

Insert:

export activities, in relation to eligible live animals or eligible animal reproductive material, means:

- (a) the preparation of the eligible live animals, or the eligible animal reproductive material, for export and while being transported to their overseas destination; and

- (b) any other activity involving the eligible live animals, or the eligible animal reproductive material, occurring at any stage in the export process, from the planning of the export until the delivery of the eligible live animals or the eligible animal reproductive material at their overseas destination.

22 After Part II

Insert:

Part IIA—Accreditation of veterinarians for purposes of approved export programs in relation to eligible live animals etc.

Division 1—General

9A Approved export programs

- (1) The regulations may provide for the preparation, implementation, variation, suspension and cancellation of approved export programs (see subsection (2)).
- (2) An *approved export program* is a program of activities to be undertaken by an accredited veterinarian, or an authorised officer, for the purpose of ensuring the health and welfare of eligible live animals, or the health and condition of eligible animal reproductive material, in the course of export activities.
- (3) Without limiting subsection (2), the activities to be undertaken may take place within or outside Australia and may include:
 - (a) monitoring the health and welfare of the eligible live animals or the health and condition of the eligible animal reproductive material; and
 - (b) examining, testing or treating the eligible live animals or eligible animal reproductive material; and
 - (c) keeping records of the implementation of the program; and
 - (d) making declarations attesting to the completion of the requirements of the program; and
 - (e) otherwise reporting on the implementation of the program.

- (4) Without limiting subsection (1), the regulations may provide:
- (a) that the programs of activities may differ depending on any of the following:
 - (i) the country to which the eligible live animals or eligible animal reproductive material are to be exported;
 - (ii) the type of eligible live animals or eligible animal reproductive material involved;
 - (iii) any other matter; and
 - (b) for the giving of directions to an exporter in relation to the implementation of an approved export program in relation to the export, or a particular export, of eligible live animals or eligible animal reproductive material; and
 - (c) for the publishing by the Secretary of records and reports made by accredited veterinarians and authorised officers in relation to approved export programs.

9B Accreditation of veterinarians

- (1) The regulations may provide for the accreditation of veterinarians for the purposes of undertaking approved export programs or particular approved export programs.
- (2) The regulations may provide for the variation, suspension or revocation of the accreditation of veterinarians who have been accredited (*accredited veterinarians*) in accordance with the regulations.
- (3) The regulations may provide for the payment by veterinarians of fees for the making of applications for accreditation.

9C Costs of authorised officers

The regulations may provide for the payment by an exporter of the reasonable costs (including salary, transport and accommodation costs) of activities undertaken within or outside Australia by an authorised officer under section 9D or 9E in relation to an approved export program that applies to the export activities of the exporter.

9D Authorised officers to undertake certain approved export program activities

- (1) The Secretary may direct an authorised officer to undertake some or all of the activities in an approved export program, whether or not an authorised officer is required in accordance with the program itself to undertake the activities.
- (2) If the Secretary gives such a direction, he or she must, in writing, notify the exporter to whose export activities the approved export program relates.

9E Authorised officers to monitor and audit etc. approved export program activities

- (1) The Secretary may direct an authorised officer to monitor, review or audit, whether within or outside Australia:
 - (a) the undertaking by accredited veterinarians of the activities in approved export programs; and
 - (b) the activities of exporters in relation to approved export programs.
- (2) If:
 - (a) the Secretary gives a direction to an authorised officer under subsection (1); and
 - (b) the authorised officer identifies a deficiency in the undertaking by an accredited veterinarian of the activities in an approved export program;the authorised officer may, in writing, direct the accredited veterinarian to remedy the deficiency within such reasonable time as is specified in the direction.
- (3) The direction by the authorised officer must:
 - (a) identify the deficiency; and
 - (b) state that a failure to remedy the deficiency within the specified time is an offence under section 9H.

Division 2—Offences

Subdivision A—Veterinarians

9F Offence of undertaking approved export program without accreditation

- (1) If:
- (a) a veterinarian undertakes any activity in an approved export program; and
 - (b) the veterinarian is reckless as to whether the activity is in such a program; and
 - (c) the veterinarian is not:
 - (i) an accredited veterinarian; or
 - (ii) an authorised officer who has been directed under section 9D to undertake the activity;
- the veterinarian commits an offence.

Penalty: 50 penalty units.

- (2) Strict liability applies to paragraphs (1)(a) and (c).

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

9G Offence of contravening direction to keep records etc. in relation to approved export program

- (1) If:
- (a) under the regulations, an accredited veterinarian is required to keep records or provide reports in connection with an approved export program; and
 - (b) the accredited veterinarian contravenes the requirement;
- the accredited veterinarian commits an offence.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

9H Offence of failing to remedy deficiency in undertaking approved export program

- (1) If:
- (a) there is a deficiency in the undertaking by an accredited veterinarian of the activities in an approved export program; and
 - (b) under subsection 9E(2), an authorised officer directs the accredited veterinarian to remedy the deficiency; and
 - (c) the accredited veterinarian does not remedy the deficiency within the time specified in the direction;
- the accredited veterinarian commits an offence.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Subdivision B—Exporters etc.

9I Offence of not ensuring that an accredited veterinarian is engaged to undertake relevant activities in approved export program

- If:
- (a) a person undertakes export activities; and
 - (b) the person is reckless as to whether an approved export program applies to the export activities; and
 - (c) the person does not ensure that, at all times when the program applies, an accredited veterinarian is engaged to undertake the activities in the program, other than those that an authorised officer is required to undertake in accordance with:
 - (i) the program; or
 - (ii) a direction under section 9D;
- the person commits an offence.

Penalty: Imprisonment for 12 months.

9J Offence of contravening requirement about allowing accredited veterinarian etc. to accompany eligible live animals overseas

- (1) If:
- (a) under the regulations, a person is required to allow an accredited veterinarian or an authorised officer to accompany eligible live animals during their transport from Australia to their overseas destination in connection with an approved export program; and
 - (b) the person contravenes the requirement;
- the person commits an offence.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

9K Offence of obstructing or hindering an accredited veterinarian etc. undertaking approved export program

- (1) A person must not obstruct or hinder an accredited veterinarian, or an authorised officer, in the undertaking of any of the activities in an approved export program.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

9L Offence of contravening requirement to provide reasonable facilities and assistance to accredited veterinarian etc.

- (1) If:
- (a) an accredited veterinarian is engaged to undertake some or all of the activities in an approved export program in relation to export activities of a person; or
 - (b) under section 9D, the Secretary directs an authorised officer to undertake some or all of the activities in an approved export program in relation to export activities of a person;

the person must provide the accredited veterinarian or authorised officer with all reasonable facilities, and assistance, necessary to undertake the activities.

Penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Subdivision C—Extended geographical operation of offences

9M Extended geographical operation of offences

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against any of sections 9F to 9L.

23 Subsection 10A(1)

After “complied with”, insert “, or for the purpose of complying with a direction under subsection 9E(1)”.

24 Subsection 10B(2)

After “complied with”, insert “, or for the purpose of complying with a direction under subsection 9E(1)”.

Part 4—Report to Parliament on live-stock mortality

Australian Meat and Live-stock Industry Act 1997

25 At the end of Part 2

Add:

Division 5—Report to Parliament

57AA Report to Parliament

- (1) Within one month after the end of each reporting period (see subsection (5)), the Secretary must give the Minister a report in accordance with subsection (2).
 - (2) The report must contain the information set out in subsection (3) that has been provided to the Secretary during the reporting period in relation to the carriage of live-stock on any voyage to a port outside Australia (whether or not during the reporting period).
 - (3) The information is to be based on reporting by the master of the ship under the Marine Orders (see subsection (5)) and is to set out the following:
 - (a) the name of the exporter;
 - (b) the month and year in which the completion of the loading of the live-stock occurred;
 - (c) the port or ports at which the loading took place;
 - (d) the port or ports at which the live-stock were discharged;
 - (e) the month and year in which the completion of the discharge of the live-stock occurred at each port;
 - (f) duration of the voyage;
 - (g) the type or types of live-stock;
 - (h) the number of each type of live-stock loaded;
 - (i) the total mortality for each type of live-stock;
 - (j) the percentage mortality for each type of live-stock;
 - (k) any action taken by the Secretary in relation to the exporter as a result of the reporting by the master of the ship.
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(4) The Minister must arrange for a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the House after the report is given to the Minister.

(5) In this section:

Marine Orders means orders under subsection 425(1AA) of the *Navigation Act 1912*.

reporting period means:

- (a) the period of 6 months starting on 1 July or 1 January (whichever occurs first) after the commencement of this section; and
- (b) each subsequent period of 6 months.

[Minister's second reading speech made in—
House of Representatives on 2 June 2004
Senate on 16 June 2004]

(93/04)