



Inspector-General of Live Animal Exports Act 2019

No. 81, 2019

An Act to provide for the appointment of an Inspector-General of Live Animal Exports, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title.....	2
2 Commencement.....	2
3 Objects of this Act.....	2
4 Simplified outline of this Act.....	3
5 Definitions.....	3
6 Act binds the Crown.....	5
7 Application of this Act.....	5
Part 2—Establishment and functions and powers of the Inspector-General of Live Animal Exports	6
8 Simplified outline of this Part.....	6
9 Inspector-General of Live Animal Exports.....	6
10 Inspector-General may conduct reviews.....	6
11 Inspector-General may require information etc. for review.....	7
Part 3—Administrative provisions	9
12 Simplified outline of this Part.....	9
13 Appointment.....	9
14 Acting appointments.....	9
15 Term of office.....	10
16 Application of finance law.....	10
17 Remuneration.....	10
18 Leave of absence for full-time Inspector-General.....	11
19 Engaging in other paid work.....	11
20 Other terms and conditions.....	11
21 Resignation.....	11
22 Termination of appointment.....	12
Part 4—Information management	13
23 Simplified outline of this Part.....	13
24 Authorisation to use or disclose protected information in performing functions or exercising powers under this Act.....	13
25 Authorisation to use or disclose protected information for purposes of proceedings.....	13
26 Authorisation to use or disclose protected information for purposes of enforcement related activity.....	14
27 Authorisation to use or disclose protected information if required by another Australian law.....	14

28	Authorisation to disclose protected information to person to whom information relates, or to use or disclose protected information with consent	14
29	Authorisation to disclose protected information to person who provided information	15
30	Rules may authorise use or disclosure of protected information for other purposes	15
31	Unauthorised use or disclosure of protected information	15
Part 5—Compliance and enforcement		17
32	Simplified outline of this Part	17
33	Civil penalties under Part 4 of the Regulatory Powers Act	17
34	Civil penalty provision for false or misleading information	18
35	Civil penalty provision for false or misleading documents	19
Part 6—Miscellaneous		20
36	Simplified outline of this Part	20
37	Reporting misconduct by live-stock export officials	20
38	Privilege against self-incrimination	20
39	Protection from liability	21
40	Annual report	21
41	Rules	22



Inspector-General of Live Animal Exports Act 2019

No. 81, 2019

**An Act to provide for the appointment of an
Inspector-General of Live Animal Exports, and for
related purposes**

[Assented to 2 October 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Inspector-General of Live Animal Exports Act 2019*.

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
Provisions	Commencement	Date/Details
The whole of this Act	The day after this Act receives the Royal Assent.	3 October 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

The objects of this Act are:

- (a) to promote continual improvements in the regulatory practice, performance and culture of the Department in its role as the regulator of Australia's live-stock exports; and
- (b) to provide an additional layer of accountability and assurance over the regulation of Australia's live-stock exports; and

- (c) to ensure that live-stock export officials, in performing functions and exercising powers, consider the welfare of animals in Australia's live-stock exports.

4 Simplified outline of this Act

This Act establishes the office of the Inspector-General of Live Animal Exports, sets out the Inspector-General's functions and powers and deals with other matters relating to the role of the Inspector-General (including administrative matters and the management of information obtained under this Act).

The main function of the Inspector-General is to review the conduct of certain kinds of government officials (called live-stock export officials) in relation to the export of live-stock, and to publish a report on each review.

5 Definitions

In this Act:

Australian law means a law of the Commonwealth, or of a State or Territory.

Australian national means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under an Australian law.

Australian resident means:

- (a) an individual who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
- (b) a body corporate that has its principal place of business in Australia.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Section 5

enforcement body has the same meaning as in the *Privacy Act 1988*.

enforcement related activity has the same meaning as in the *Privacy Act 1988*.

foreign person or body means any of the following:

- (a) an individual who is not an Australian national or an Australian resident;
- (b) a body corporate that is not an Australian national or an Australian resident;
- (c) a body politic of a foreign country.

Inspector-General means the Inspector-General of Live Animal Exports referred to in section 9.

live-stock has the same meaning as in the *Australian Meat and Live-stock Industry Act 1997*.

live-stock export official means any of the following:

- (a) an authorised officer within the meaning of Part 2 of the *Australian Meat and Live-stock Industry Act 1997*;
- (b) an authorised officer within the meaning of the *Export Control Act 1982*;
- (c) an accredited veterinarian within the meaning of the *Export Control Act 1982*;
- (d) the Secretary or a delegate of the Secretary.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

protected information means information obtained under, or in accordance with, this Act.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

rules means rules made under section 41.

Secretary means the Secretary of the Department.

use, in relation to information, includes make a record of.

6 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
 - (a) prosecuted for an offence; or
 - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act.

7 Application of this Act

- (1) This Act applies both within and outside Australia.
- (2) However, sections 11, 31, 34 and 35 do not apply to a foreign person or body outside Australia.

Section 8

Part 2—Establishment and functions and powers of the Inspector-General of Live Animal Exports

8 Simplified outline of this Part

This Part establishes the office of the Inspector-General of Live Animal Exports and sets out the Inspector-General's functions and powers.

The Inspector-General may conduct reviews of the performance of functions, or exercise of powers, by certain kinds of government officials (called live-stock export officials) in relation to the export of live-stock.

The Inspector-General must publish a report on each review.

The Inspector-General may require a person to answer questions, give information or produce documents if the Inspector-General reasonably believes that the person has information or documents that are relevant to a review. A person who does not comply with such a requirement may be liable to a civil penalty.

9 Inspector-General of Live Animal Exports

There is to be an Inspector-General of Live Animal Exports.

10 Inspector-General may conduct reviews

- (1) The Inspector-General may review the performance of functions, or exercise of powers, by live-stock export officials in relation to the export of live-stock under the following:
 - (a) Part 2 of the *Australian Meat and Live-stock Industry Act 1997* or an instrument made for the purposes of that Part;

Section 11

(b) the *Export Control Act 1982* or an instrument made under that Act.

- (1A) In conducting a review under subsection (1), the Inspector-General must consider the welfare of animals in relation to Australia's live-stock exports.
- (2) Subsection (1) does not permit the Inspector-General to review only a single performance of a function, or a single exercise of a power, by a single live-stock export official.

Note: The Inspector-General's role is to provide accountability and assurance in relation to Australia's live-stock export regulatory systems through independent evaluation and verification of regulatory practices. The Inspector-General may review the performance of functions and exercise of powers by live-stock export officials (including the Secretary) and may make recommendations for overall system improvements.

Report on review

- (3) The Inspector-General must publish a report on each review the Inspector-General conducts under this section.

Rules may deal with reviews and reports

- (4) The rules may make provision for or in relation to:
- (a) the process to be followed in conducting a review under this section; and
 - (b) the content of reports of reviews conducted under this section.

11 Inspector-General may require information etc. for review

- (1) The Inspector-General may, by written notice given to a person who the Inspector-General reasonably believes has information or documents relevant to a review under section 10, require the person to:
- (a) answer questions, or give information in writing, about the relevant information or documents by the time specified in the notice; or

Section 11

- (b) produce the documents to the Inspector-General by the time specified in the notice.

Note: A person may commit an offence or be liable to a civil penalty if the person gives false or misleading information or produces false or misleading documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 34 and 35 of this Act).

- (2) The time specified in the notice must be at least 14 days after the notice is given.

Civil penalty provision

- (3) A person who is required to answer questions, give information in writing or produce documents under subsection (1) must comply with the requirement.

Note: This subsection is not subject to the privilege against self-incrimination (see section 38).

Civil penalty: 240 penalty units.

Copying documents produced

- (4) The Inspector-General:
- (a) may make copies of, or take extracts from, a document produced under subsection (1); and
 - (b) for that purpose, may remove the document from the place at which it was produced.

Part 3—Administrative provisions

12 Simplified outline of this Part

This Part deals with administrative matters relating to the office of the Inspector-General, including the appointment of the Inspector-General and the terms and conditions on which the Inspector-General holds office.

13 Appointment

- (1) The Inspector-General is to be appointed by the Minister by written instrument.

Note: The Inspector-General may be reappointed, subject to subsection 15(2) (see section 33AA of the *Acts Interpretation Act 1901*).

- (2) The Inspector-General may be appointed on a full-time or part-time basis.

14 Acting appointments

The Minister may, by written instrument, appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Inspector-General:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Section 15

15 Term of office

- (1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Inspector-General must not hold office for a total of more than 10 years.

16 Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Inspector-General is an official of the Department.

17 Remuneration

- (1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is prescribed under subsection (5).
- (2) The Inspector-General is to be paid the allowances that are prescribed under subsection (5).
- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of the Inspector-General of Live Animal Exports.

Note: The effect of this subsection is that remuneration or allowances of the Inspector-General of Live Animal Exports will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).
- (5) The Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

18 Leave of absence for full-time Inspector-General

- (1) If the Inspector-General is appointed on a full-time basis, the Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) If the Inspector-General is appointed on a full-time basis, the Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

19 Engaging in other paid work*Full-time Inspector-General*

- (1) If the Inspector-General is appointed on a full-time basis, the Inspector-General must not engage in paid work outside the duties of the Inspector-General's office without the Minister's approval.

Part-time Inspector-General

- (2) If the Inspector-General is appointed on a part-time basis, the Inspector-General must not engage in any paid work that conflicts or may conflict with the proper performance of the Inspector-General's duties.

20 Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

21 Resignation

- (1) The Inspector-General may resign the Inspector-General's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

Section 22

22 Termination of appointment

- (1) The Minister may terminate the appointment of the Inspector-General:
 - (a) for misbehaviour; or
 - (b) if the Inspector-General is unable to perform the duties of the Inspector-General's office because of physical or mental incapacity.

- (2) The Minister may terminate the appointment of the Inspector-General if:
 - (a) the Inspector-General:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with one or more of the Inspector-General's creditors; or
 - (iv) makes an assignment of the Inspector-General's remuneration for the benefit of one or more of the Inspector-General's creditors; or
 - (b) if the Inspector-General is appointed on a full-time basis—the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) if the Inspector-General is appointed on a full-time basis—the Inspector-General engages, except with the Minister's approval, in paid work outside the duties of the Inspector-General's office (see subsection 19(1)); or
 - (d) if the Inspector-General is appointed on a part-time basis—the Inspector-General engages in paid work that conflicts or may conflict with the proper performance of the Inspector-General's duties (see subsection 19(2)); or
 - (e) the Inspector-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Part 4—Information management

23 Simplified outline of this Part

Information (called protected information) may be obtained under, or in accordance with, this Act.

This Part sets out the circumstances in which that information may be used or disclosed.

A person who obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act may commit an offence if the person uses or discloses the information other than in certain circumstances.

24 Authorisation to use or disclose protected information in performing functions or exercising powers under this Act

A person who obtains protected information may use or disclose the information in performing functions or duties or exercising powers under this Act.

Note 1: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Note 2: Use, in relation to information, includes make a record of (see the definition of *use* in section 5).

25 Authorisation to use or disclose protected information for purposes of proceedings

A person who obtains protected information may disclose the information:

- (a) to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings; or
- (b) to a coronial inquiry, or in accordance with an order of a coroner, for the purposes of a coronial inquiry.

Section 26

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

26 Authorisation to use or disclose protected information for purposes of enforcement related activity

- (1) A person who obtains protected information may use the information, or disclose the information to an enforcement body, if the person reasonably believes that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities being conducted by, or on behalf of, that enforcement body.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (2) An enforcement body to which protected information is disclosed under subsection (1) may use or disclose the information for the purposes of conducting one or more enforcement related activities.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

27 Authorisation to use or disclose protected information if required by another Australian law

A person who obtains protected information may use or disclose the information if the use or disclosure is required under an Australian law other than this Act.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

28 Authorisation to disclose protected information to person to whom information relates, or to use or disclose protected information with consent

- (1) A person who obtains protected information may disclose the information to the person to whom the information relates.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (2) A person (the ***first person***) who obtains protected information may use or disclose the information for a purpose if the person to whom the information relates has expressly consented to the first person using or disclosing the information for that purpose.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

29 Authorisation to disclose protected information to person who provided information

A person who obtains protected information may disclose the information to the person who provided the information.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

30 Rules may authorise use or disclosure of protected information for other purposes

The rules may authorise a person who obtains protected information to use or disclose the information for purposes other than those referred to in sections 24 to 29.

Note: A disclosure that is authorised by rules made for the purposes of this section is an authorised disclosure for the purposes of the *Privacy Act 1988* and other laws (including the common law).

31 Unauthorised use or disclosure of protected information

Fault-based offence

- (1) A person commits an offence if:
- (a) the person obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act; and
 - (b) the person uses or discloses the information; and
 - (c) the use or disclosure is not authorised by a provision in this Part or by rules made for the purposes of section 30.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Section 31

Exception for use or disclosure in good faith

- (2) Subsection (1) does not apply to a person to the extent that the person uses or discloses protected information in good faith and in purported compliance with a provision in this Part or with rules made for the purposes of section 30.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Part 5—Compliance and enforcement

32 Simplified outline of this Part

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions of this Act.

If a person is required by the Inspector-General to provide information or documents, the person may be liable to a civil penalty if the person provides information or documents that are false or misleading.

33 Civil penalties under Part 4 of the Regulatory Powers Act

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Section 34

Application

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, applies both within and outside Australia.

34 Civil penalty provision for false or misleading information

- (1) A person is liable to a civil penalty if:
- (a) the person gives information (whether by giving an answer to a question or in writing) in compliance or purported compliance with subsection 11(3); and
 - (b) the person does so knowing that the information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading.

Civil penalty: 240 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (4) Subsection (1) does not apply if, before the information was given by a person to another person (the *official*) in compliance or purported compliance with subsection 11(3), the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1) of this section.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (5) For the purposes of subsection (4), it is sufficient if the following form of words is used:

“You may be liable to a civil penalty for giving false or misleading information”.

35 Civil penalty provision for false or misleading documents

- (1) A person is liable to a civil penalty if:
- (a) the person produces a document to another person; and
 - (b) the person does so knowing that the document is false or misleading; and
 - (c) the document is produced in compliance or purported compliance with subsection 11(3).

Civil penalty: 240 penalty units.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Part 6—Miscellaneous

36 Simplified outline of this Part

This Part contains miscellaneous provisions dealing with other matters, including additional duties of the Inspector-General, the privilege against self-incrimination, and protection for the Inspector-General and certain other people from civil proceedings.

37 Reporting misconduct by live-stock export officials

If the Inspector-General forms the opinion either before, during or after conducting a review:

- (a) that a live-stock export official has engaged in misconduct; and
- (b) that the evidence is of sufficient weight to justify the Inspector-General doing so;

the Inspector-General must report the evidence to:

- (c) if the live-stock export official is or was the Secretary—the Minister; or
- (d) otherwise—the Secretary.

38 Privilege against self-incrimination

Privilege does not apply in relation to section 11

- (1) A person is not excused from answering a question, giving information or producing a document under section 11 on the ground that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Use/derivative use immunity applies

- (2) However, in the case of an individual:

- (a) the answer or information given or the document produced; and
- (b) answering the question, giving the information or producing the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of answering the question, giving the information or producing the document;

are not admissible in evidence against the individual in any criminal or civil proceedings, except proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* or section 34 or 35 of this Act (false or misleading information or documents) in relation to answering the question, giving the information or producing the document.

Privilege not otherwise affected

- (3) Except as provided by subsection (1), nothing in this Act affects the right of an individual to refuse to answer a question, give information or produce a document on the ground that the answer, the information or the production of the document might tend to incriminate the individual or make the individual liable to a penalty.

39 Protection from liability

- (1) This section applies to the following persons (*protected persons*):
 - (a) the Inspector-General;
 - (b) a person acting under the Inspector-General's authority.
- (2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the performance or exercise, in good faith, of the protected person's functions, powers or duties under or in relation to this Act.

40 Annual report

- (1) The Inspector-General must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the activities of the Inspector-General during the financial year.

Section 41

- (2) The report prepared by the Inspector-General for a financial year:
 - (a) must include the number of reviews under section 10 started during the year and the number of reviews under that section completed during the year; and
 - (b) may include any other information relating to the Inspector-General's functions or role that the Inspector-General considers appropriate.

41 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
Senate on 31 July 2019
House of Representatives on 17 September 2019]*

(157/19)
