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Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. /)¹

Statutory Rules 2004 No. /²

286

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian Meat and Live-stock Industry Act 1997*.

Dated 31 AUG 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

WARREN TRUSS
Minister for Agriculture, Fisheries and Forestry

1 Name of Regulations

These Regulations are the *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. /)*.

2 Commencement

These Regulations commence on the commencement of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004*.

3 Amendment of Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998

Schedule 1 amends the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998*.

Schedule 1 Amendments

(regulation 3)

[1] Before regulation 1

insert

Part 1 Preliminary

[2] Subregulation 3 (1), definition of *standards body*, note

omit

the Australian Livestock Export Corporation Ltd.

insert

the Department of Agriculture, Fisheries and Forestry.

[3] After regulation 3*insert***3A Meaning of *live-stock***

For the definition of *live-stock* in section 3 of the Act, buffalo, camelids and deer are prescribed.

[4] Paragraphs 5 (h), (i), (j) and (k)*substitute*

- (h) the Australian Lot Feeders' Association;
- (i) Meat and Livestock Australia Ltd.

[5] After regulation 5*insert***Part 2 Meat export licences****5A Application of Part 2**

This Part applies to a meat export licence.

[6] Regulation 6, heading*substitute***6 Application for meat export licence****[7] Subregulation 6 (1)***omit*

an export

insert

a meat export

[8] Paragraph 6 (1) (b), note

substitute

Note For the meaning of *person in management and control*, see subregulation 3 (1) and section 8 of the Act.

[9] Paragraph 6 (1) (c)

omit

[10] Paragraphs 6 (1) (d) and (e)

omit each mention of
or live-stock

[11] Paragraph 6 (1) (e), note

omit

S 85ZM (1)

insert

Subsection 85ZM (1)

[12] Paragraph 6 (3) (b)

omit

or live-stock

[13] Subregulation 6 (4), note

substitute

Note See section 55 of the Act.

[14] Paragraph 6 (6) (b)

omit each mention of
or live-stock

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- [15] Paragraph 6 (6) (c)**
omit
or live-stock
- [16] Subregulation 6 (7)**
after
payable
insert
under regulation 7
- [17] Subregulations 7 (1) and (3)**
omit
- [18] Subregulation 7 (4)**
omit
Also,
insert
However,
- [19] Subregulation 7 (4)**
omit
licence or a live-stock export licence,
insert
licence,
- [20] Paragraph 8 (a)**
omit each mention of
or live-stock

[21] Subregulations 9 (1) and (2)

omit

An export

insert

A meat export

[22] Subregulation 9 (2)

omit

or live-stock

[23] Subregulation 9 (3)

omit

[24] Subregulation 9 (4)

omit

An export

insert

A meat export

[25] Subregulation 9 (4), note

substitute

Note See section 16 of the Act and subregulation 10 (2).

[26] Subregulation 10 (2)

omit

an export

insert

a meat export

[27] Paragraphs 10 (2) (a), (2) (e) and (4) (c)

omit

or live-stock

[28] Subregulation 11 (1)

omit

a licence

insert

a meat export licence

[29] Subregulation 11 (2), note

substitute

Note For the application fee for a meat export licence, see regulation 7.

[30] Regulations 12, 13 and 14

substitute

Part 3 Live-stock export licences

12 Application of Part 3

This Part applies to a live-stock export licence.

13 Definition for Part 3

In this Part:

Australian Standards for the Export of Live-stock means the document of that name published by the Department, as in force on 1 December 2004.

Note A copy of the Australian Standards for the Export of Live-stock is available from the Department's website at <http://www.daff.gov.au/livestockexportstandards>.

14 Application for live-stock export licence

(1) For subsection 11 (1) of the Act, an application for a live-stock export licence must be in writing, in a form approved by the Secretary, and must set out:

- (a) the name, address and date of birth of the applicant; and
- (b) the name, address and date of birth of each person in management and control; and

Note For the meaning of *person in management and control*, see subregulation 3 (1) and section 8 of the Act.

- (c) the type of live-stock to be exported and the mode of transport to be used; and

Note The Secretary may grant a live-stock export licence to export a particular type of live-stock only or to export live-stock using a particular mode of transport only — see subsection 33 (3A) of the *Acts Interpretation Act 1901*.

- (d) whether the applicant, or any person in management and control of the live-stock export business or proposed live-stock export business, has been charged with an offence against a law of the Commonwealth or a State or Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000; and
- (e) subject to Part VIIC of the *Crimes Act 1914* — whether the applicant, or any person in management and control of the live-stock export business or proposed live-stock export business, has been convicted (within the meaning given by subsection 85ZM (1) of that Act) of an offence against a law of the Commonwealth or a State or Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000; and

Note Subsection 85ZM (1) of the *Crimes Act 1914* is as follows:

- (1) For the purposes of this Part, a person shall be taken to have been convicted of an offence if:
 - (a) the person has been convicted, whether summarily or on indictment, of the offence;
 - (b) the person has been charged with, and found guilty of, the offence but discharged without conviction; or
 - (c) the person has not been found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence.

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- (f) whether the applicant (being an individual or a body corporate) operates, or intends to operate, the business in partnership with another individual or body corporate; and
 - (g) if the applicant operates, or intends to operate, the business in partnership — the name and address of each partner or proposed partner.
- (2) If the applicant is a body corporate, the application must also set out:
- (a) its Australian Company Number (if applicable); and
 - (b) whether the applicant is a subsidiary of, or is under the direction or financial control of, a foreign corporation, authority or organisation that has direct or indirect control of the importation of live-stock into the country in which the foreign corporation, authority or organisation was incorporated or established and, if that is so, the name of the foreign corporation, authority or organisation.
- (3) An application must include a declaration, signed by the applicant (or, if the applicant is a body corporate, a director of the body corporate):
- (a) to the effect that the information in the application is true in every material detail; and
 - (b) that the person who signs the declaration knows that giving false or misleading information to the Secretary is an offence.
- Note* See section 55 of the Act.
- (4) An application must be accompanied by a copy of the following:
- (a) an operations and governance manual for the live-stock export business, or proposed live-stock export business, that sets out how the business will operate and be governed, including information about the following aspects of the business:
 - (i) how the operations of the business will comply with the Australian Standards for the Export of Live-stock;
 - (ii) the organisational structure of the business;
 - (iii) people management and staff training;

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- (iv) risk management;
 - (v) records management;
 - (vi) compliance strategy and review;
 - (b) a criminal history check, from the Australian Federal Police, for the applicant (if an individual) and for each person in management and control of the live-stock export business or proposed live-stock export business;
 - (c) if the applicant (whether an individual or a body corporate) operates, or intends to operate, the live-stock export business in partnership:
 - (i) the partnership agreement; and
 - (ii) an audited statement of the assets and liabilities of the partnership business, and an audited statement of the profit and loss account of the partnership business, for the previous financial year;
 - (d) an audited statement of the applicant's assets and liabilities, and an audited statement of the applicant's profit and loss account, for the previous financial year.
- (5) The application is not taken to have been made until the lodgement component of the application fee payable under regulation 15 is paid.

15 Application fee (Act s 11 (2))

- (1) The application fee for a live-stock export licence is made up of the following amounts:
- (a) a lodgement component of \$300, for the cost of processing the application;
 - (b) an external vetting agency component, notified to the applicant in accordance with subregulation (2), for the cost of an assessment by an external vetting agency of the integrity of the applicant, the integrity of each person in management and control, and the financial standing of the applicant;
 - (c) an assessment component, calculated at the rate of \$75 per half hour and specified in a written notice given to the applicant, for the cost of:
 - (i) assessing whether a licence may be granted; and

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- (ii) any inspection, evaluation or demonstration of the operations of the applicant's live-stock export business, as arranged by the Secretary and conducted or observed by an authorised officer or other appropriately qualified person nominated by the Secretary.
- (2) The Secretary must notify an applicant, either on the application form approved by the Secretary or by written notice when the application is lodged, of the following:
- (a) the amount of the external vetting agency component, being the amount that the external vetting agency will charge, under contract with the Department, to assess:
- (i) the integrity of the applicant and each person in management and control of the live-stock export business, or proposed live-stock export business, to which the application relates; and
- (ii) the financial standing of the applicant;
- (b) if the applicant is notified by written notice when the application is lodged — that the applicant must tell the Secretary, in writing, whether the applicant wishes to proceed with the application.
- Note* The Department intends to engage an external vetting agency prior to 1 December 2004, after a tendering process has been conducted.
- (3) The external vetting agency component and the assessment component are payable by the date, being a date after the application is lodged but before the licence is granted, specified in a written notice given to the applicant.

16 What the Secretary must have regard to (Act s 12 (2))

- (1) For subsection 12 (2) of the Act, the Secretary must have regard to the following matters when satisfying himself or herself about a matter mentioned in subsection 12 (1) of the Act:
- (a) whether the applicant, or any person in management and control of the live-stock export business or proposed live-stock export business to which the application relates, has ever been convicted of an offence against a law of the Commonwealth or a State or Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000;
 - (b) whether the applicant or a person in management and control of the business has been charged with an offence against a law of the Commonwealth or a State or Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000;
 - (c) if information in the application or in a document accompanying the application is false or misleading in a material detail — whether the applicant, or any person in management and control, knew, or should have known, that the information was false or misleading;
 - (d) the assets and liabilities, and financial performance, of the applicant in the previous financial year;
 - (e) whether the applicant or any person in management and control of the business owes, or has ever owed, the Commonwealth any amount by way of a fee, charge or levy payable under a law of the Commonwealth, or by way of penalty for failing to pay such a fee, charge or levy;
 - (f) whether the applicant or any person in management and control of the business has failed to comply with a condition of an export licence, or with an order made or direction given under the Act;
 - (g) whether the applicant or any person in management and control of the business has failed to comply with a condition of a licence of any other kind issued by the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory;

- (h) whether the applicant or any person in management and control of the business has ever been refused an export licence, and if so the reasons for the refusal;
- (i) whether the applicant or any person in management and control of the business has ever been refused a licence of any other kind by the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory, and if so the reasons for the refusal;
- (j) whether the applicant has demonstrated, including in the operations and governance manual accompanying the application, an ability to comply with the Australian Standards for the Export of Live-stock;
- (k) any assessment made by an external vetting agency (at the request of the Secretary) of the integrity of the applicant, the integrity of each person in management and control, and the financial standing of the applicant;
- (l) the results of any inspection, evaluation or demonstration of the operations of the applicant's business, as arranged by the Secretary and conducted or observed by an authorised officer or other appropriately qualified person nominated by the Secretary;
- (m) any other relevant matter known to the Secretary.

Note When satisfying himself, or herself, about a matter mentioned in subsection 12 (1) of the Act in relation to an application for a live-stock export licence, the Secretary may also have regard to the extent to which the applicant has complied with any requirements of or under the *Export Control Act 1982* — see subsection 12 (3) of the Act.

- (2) When having regard to the matters mentioned in subregulation (1), the Secretary may:
 - (a) ask the applicant, by notice in writing, to provide further information or documents as specified in the notice; and
 - (b) give the following material (including any personal information, within the meaning of the *Privacy Act 1988*, contained in the material) to an external vetting agency for the purpose of assessing the integrity of the applicant, the integrity of each person in management and control, and the financial standing of the applicant:
 - (i) the application;
 - (ii) the documents accompanying the application;

- (iii) any further information or documents provided by the applicant; and
- (c) arrange for an authorised officer to inspect and evaluate the premises, facilities, equipment and transport vehicles to be used in the operations of the applicant's business; and
- (d) arrange for an authorised officer to observe a demonstration of the operations, or part of the operations, of the applicant's business; and
- (e) arrange for an appropriately qualified person, as nominated by the Secretary, to participate in any inspection, evaluation or demonstration.

17 Approval of operations and governance manual

The grant of a live-stock export licence to a person is approval of the operations and governance manual submitted by the person with the application for the licence.

18 Further conditions to which licences are subject (Act s 15)

- (1) A live-stock export licence is subject to the conditions that the holder:
 - (a) must have an approved operations and governance manual for the licence; and
 - (b) must not export live-stock except in accordance with the Australian Standards for the Export of Live-stock; and
 - (c) must update the operations and governance manual, by variation of the licence under regulation 19, if there is a change to how the operations of the live-stock export business, to which the licence relates, comply with the Australian Standards for the Export of Live-stock.

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- (2) However, a live-stock export licence that was granted before 1 December 2004, and that has not been renewed or varied on or after 1 December 2004, is subject to the conditions that the holder:
- (a) must not export live-stock except in accordance with the quality assurance system that applied to the licence before 1 December 2004; and
 - (b) before 1 January 2005, must make an application under regulation 19 for variation of the licence to replace the quality assurance system with an operations and governance manual.
- (3) A live-stock export licence is subject to the conditions that the holder must:
- (a) permit an authorised officer, or other appropriately qualified person, nominated by the Secretary (the *auditor*) to audit the holder's operations and governance system; and
 - (b) provide any assistance reasonably required by such an auditor; and
 - (c) produce to such an auditor any records or documents reasonably required by the auditor; and
 - (d) comply with any reasonable request by such an auditor, or the Secretary, to take action to correct any deficiencies found by the auditor.
- (4) A live-stock export licence is subject to the condition that, if an event or circumstance of which the holder must inform the Secretary happens, the way in which the holder must inform the Secretary is by:
- (a) completing the form supplied as an application form under subregulation 14 (1), as far as that form relates to the event or circumstance; and
 - (b) making the declaration required by subregulation 14 (3).

Note The events and circumstances are prescribed in subregulation 20 (2).

- (5) In this regulation, a reference to an approved operations and governance manual for a licence includes a reference to a manual to which a change has been made, and a manual which has replaced the quality assurance system for the licence, if the change or replacement has been approved by way of variation of the licence under regulation 19.

19 Variation of licence

- (1) The holder of a live-stock export licence must apply to the Secretary for approval of any variation of the licence, including a variation in any of the following ways:
- (a) the holder wishes to change:
 - (i) the approved operations and governance manual for the licence; or
 - (ii) the type of live-stock exported under the licence; or
 - (iii) the mode of transport used to export the live-stock;
 - (b) the licence was granted before 1 December 2004 and the quality assurance system for the licence is to be replaced with an operations and governance manual;
 - (c) a person who has not been described to the Secretary, in the application for the licence, as a person in management and control of the live-stock export business to which the licence relates, is to begin being a person in management and control of the business;
 - (d) the holder proposes to operate the business in partnership with another individual or body corporate;
 - (e) the holder operates the business in partnership and the membership of the partnership is to change.
- (2) An application for variation must be made to the Secretary by:
- (a) completing the form supplied as an approved application form under subregulation 14 (1), as far as that form relates to the variation; and
 - (b) making the declaration required by subregulation 14 (3); and
 - (c) providing copies of any documents mentioned in subregulation 14 (4) that are relevant to the variation.

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- (3) In deciding whether to approve a variation of a licence, the Secretary must satisfy himself or herself about, and have regard to, those matters relevant to the variation that the Secretary would be required to be satisfied about, and have regard to, if the variation had been part of the application for the licence.
 - (4) The amounts mentioned in paragraphs 15 (1) (b) and (c) are payable by the holder for the cost of:
 - (a) an assessment by an external vetting agency of the integrity of the applicant, the integrity of each person in management and control, and the financial standing of the applicant, if conducted in relation to the application for variation; and
 - (b) assessing whether to approve the variation; and
 - (c) any inspection, evaluation or demonstration arranged by the Secretary, and conducted or observed by an authorised officer or other appropriately qualified person nominated by the Secretary, in relation to the application for variation.
 - (5) If the Secretary refuses to approve a variation of a licence, the Secretary must notify the holder in writing of the refusal.
 - (6) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary refusing to approve a variation of a licence.

20 Events of which licence holder must inform Secretary (Act s 16)

- (1) For section 16 of the Act, 7 days is prescribed.
- (2) For that section, the following events or circumstances in relation to a live-stock export licence are prescribed:
 - (a) the licence holder ceases to carry on the live-stock export business to which the licence relates;
 - (b) the licence holder, or a person in management and control of the business, is convicted of an offence against a law of the Commonwealth, a State or a Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000;

- (c) the licence holder receives notice that the licence holder is no longer regarded as an approved supplier of live-stock by a foreign government importing authority, instrumentality or organisation;
 - (d) a change of the licence holder's name.
- (3) If the licence holder is a body corporate, the following events or circumstances are also prescribed for that section:
- (a) a court order that it be wound up;
 - (b) a resolution is passed that it be wound up voluntarily.
- (4) If the licence holder is an individual, the following events or circumstances are also prescribed for that section:
- (a) he or she becomes bankrupt;
 - (b) he or she executes a deed of arrangement or a deed of assignment under Part X of the *Bankruptcy Act 1966*;
 - (c) if he or she operates the live-stock export business to which the licence relates in partnership, the partnership is dissolved.

21 Renewal of licence (Act s 22)

- (1) For subsection 22 (3) of the Act, an application for renewal of a live-stock export licence must be made in the same way as an application for a new licence.
- (2) For subsection 22 (4) of the Act, the application fee for renewal of a licence is the same as if the licence were being applied for for the first time.

Note For the application fee for a live-stock export licence, see regulation 15.

Part 4 Miscellaneous

25 **How things seized or samples taken are to be dealt with (Act s 34 (5))**

For subsection 34 (5) of the Act, a thing seized under paragraph 34 (2) (b) of the Act, or a sample taken under paragraph 34 (2) (c) of the Act:

- (a) must be labelled, tagged or marked in such a way as to make it identifiable; and
- (b) in the case of a sample — must be held under conditions that are unlikely to affect the result of any analysis of the sample; and
- (c) must be kept in the custody or control of an officer authorised by the Secretary for the purpose until it is despatched to an analyst appointed under subsection 53 (1) of the Act, or until it is destroyed or otherwise disposed of; and
- (d) may be analysed by an analyst appointed under subsection 53 (1) of the Act.

26 **What must be in notice of appointment of nominee (Act s 52 (3))**

For subsection 52 (3) of the Act, a notice under subsection 52 (2) of the Act appointing someone as a nominee must contain:

- (a) his or her full name and address; and
- (b) his or her date of birth; and
- (c) if he or she has not been described to the Secretary as a person in management and control of the business in the application for the relevant export licence:
 - (i) whether he or she has been charged with an offence against a law of the Commonwealth, a State or a Territory, for which the maximum penalty is a period of imprisonment or a fine of at least \$1 000; and

- (ii) subject to Part VIIC of the *Crimes Act 1914*— whether he or she has been convicted (within the meaning given by subsection 85ZM (1) of that Act) of such an offence.

27 Who can authorise sale or disposal of meat or live-stock (Act s 57 (3))

For subsection 57 (3) of the Act, the Secretary is prescribed.

Notes

1. These Regulations amend Statutory Rules 1998 No. 202, as amended by 1999 No. 177; 2003 No. 235.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

7 September