

## EXPLANATORY STATEMENT

Issued by the authority of the Minister of Agriculture, Fisheries and Forestry

*Export Control (Orders) Regulations 1982*

*Export Control (Meat and Meat Products) Amendment Orders 2006 (No. 1)*

Section 3 of the *Export Control Act 1982* ('the Act') defines 'prescribed goods' to mean goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of the Act. Section 7 of the Act provides that the regulations may prohibit the export of prescribed goods from Australia absolutely or to a specified place or unless specified conditions or restrictions are complied with or to a specified place unless conditions or restrictions are complied with.

Subsection 25(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or for giving effect to the Act. The matters that the regulations may make provision for include:

- under paragraph 25(2)(f) of the Act, the prescribing of penalties not exceeding 50 penalty units for offences against the regulations; and
- under paragraph 25(2)(g) of the Act, subject to subsection 25(3) of the Act, empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

Subsection 25(3) of the Act states that an order shall not be made prescribing any penalty for an offence.

Regulation 3 of the *Export Control (Orders) Regulations 1982* ('the Regulations') provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

Regulation 4 of the Regulations provides that if an order provides that the order, or a provision of it, is a penal provision, a person who fails to comply with the order or provision is guilty of an offence against the Regulations punishable by a fine of 10 penalty units; or if the order or provision specifies that it is a penal provision of a particular level, a fine of the number of penalty units specified for a penal provision of that level set out in the table in regulation 4. Under section 4AA of the *Crimes Act 1914* a penalty unit means \$110.

The table in regulation 4 specifies five levels of penal provision from 1 to 5. A 'level 1' penalty provision attracts a penalty of 10 penalty units and the penalty increases by 10

penalty units for each succeeding level. The highest penalty is 50 penalty units for a 'level 5' penalty. Regulation 4 also provides that an offence created in an order is an offence of strict liability.

The *Export Control (Meat and Meat Products) Orders 2005* ('the Principal Orders') identify the conditions and restrictions on the export of meat and meat products for the purposes of section 7 of the Act. The Principal Orders also make provision for a range of matters that may be necessary to ensure the requirements of the Act are met including inspections, dispositions, audit, registration, approval of arrangements, issue of certificates and official marks.

The *Export Control (Meat and Meat Products) Amendment Orders 2005 (No.1)* inserted a new subclause 12.4 which placed an obligation on the occupier to notify the Secretary should a person who manages or controls be convicted of a serious offence. The Senate Committee on Regulations and Ordinances expressed concern about how this obligation could be satisfied by the occupier. Accordingly, the purpose of the *Export Control (Meat and Meat Products) Amendment Orders 2006 (No. 1)* ('the Amendment Orders') is to amend the existing requirements in the Principal Orders to clarify when a person who manages or controls the operations carried on at a registered establishment must notify the Secretary of being convicted of a serious offence. The Amendment Orders also clarify and recast the obligations imposed on an occupier.

The Australian Quarantine and Inspection Service did consult and provide advice to the key industry stakeholder (the Australian Meat Industry Council – AMIC) on the amendments. AMIC responded and no adverse comments were received.

The Amendment Orders are a legislative instrument for the purposes of the *Legislative Instrument Act 2003*.

Details of the Amendment Orders are set out below:

### **Order 1**

1. This order provides that the name of these amending Orders is the *Export Control (Meat and Meat Products) Amendment Orders 2006 (No. 1)*.

### **Order 2**

2. This order provides that these Orders commence on the day after they are registered.

### **Order 3**

3. This order provides that Schedule 1 amends the *Export Control (Meat and Meat Products) Orders 2005*.

## Schedule 1            Amendments

### [1]            Schedule 1, subclause 12.4

This item substitutes a new subclause 12.4 and inserts a new subclause 12.5.

The new subclause 12.4 requires a person, who manages or controls the operations carried on at a registered establishment, to notify the Secretary within 7 days of being convicted of a serious offence. The rationale for this item is to impose a new obligation directly on the person who manages or controls. If a person fails to comply with this new subclause, the person will be guilty of an offence against the *Export Control (Orders) Regulations 1982* (see regulation 4). The penalty is a level 1 penalty and is considered sufficient to encourage compliance in this situation.

The new subclause 12.5 requires the occupier inform the persons who manage or control, in writing:

- that if a person who manages or controls the operations is convicted of a serious offence, the person must give the Secretary written notice of the conviction within 7 days of the conviction (as required by subclause 12.4); and
- that if a person who manages or controls the operations fails to notify the Secretary within 7 days of being convicted of a serious offence the person is guilty of an offence that is a level 1 penal provision.

The effect of new subclause 12.5 is to place a positive obligation on the occupier to inform all persons who manage or control the operations carried on at the registered establishment of the requirements set out in subclause 12.4. If an occupier fails to inform the person who manages or controls of the obligation under subclause 12.4 and of the fact that the offence is a level 1 penal provision, no penalty is to apply. However the Secretary has the discretion to suspend or revoke the occupier's approved arrangement under clause 20.1 of Schedule 21 of the Principal Orders.

These revised notification obligations are significant in the context of the overall regulatory framework for the export of meat and meat products. They provide the Australian Quarantine and Inspection Service with the information it needs to satisfy the Secretary that a person who manages or controls the operations carried on at the establishment continues to be 'fit and proper'. The 'fit and proper' test is set out in section 4.05 of the *Export Control (Prescribed Goods – General) Order 2005*.

Section 4.05 of the *Export Control (Prescribed Goods – General) Order 2005* is incorporated by reference into the Principal Orders. Under subclauses 5.1 and 18.1 of Schedule 1 of the Principal Orders the Secretary may refuse to register

an establishment or may suspend or revoke the registration if an occupier or person who manages or controls the operations carried on at the establishment is not or ceases to be 'fit and proper'. In addition, under subclause 18.2 of Schedule 1 of the Principal Orders, the Secretary has the discretion to suspend or revoke the registration of an establishment if the occupier or a person in management or control at the establishment is convicted of an offence.