

EXPLANATORY STATEMENT

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

Export Control (Orders) Regulations 1982

Export Control (Fish and Fish Products) Amendment Orders 2006 (No.2)

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* 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.

The *Export Control (Fish and Fish Products) Orders 2005* (the Principal Orders) regulate the export of fish and fish products. Part 6 of the Principal Orders provides for audits of operations for the preparation of fish and fish products for export as food, for the export of fish and fish products as food and for the issue of export permits for fish and fish products.

Order 60 of Part 6 provides that an audit may be conducted by an auditor who is an authorized officer or by an auditor approved by the Secretary. The Secretary appoints authorised officers under section 20 of the Act. An auditor is approved by the Secretary under clause 5 of Schedule 10 of the Principal Orders to perform an audit under Part 6. Order 63 of Part 6 provides that an audit may be unannounced.

Order 65 of Part 6 of the Principal Orders specifies that the occupier, exporter and approved export permit issuer must provide such assistance to an auditor as is reasonably necessary to enable the auditor to perform the audit of their operations. Failure to provide assistance may have serious consequences. For example, failure to provide assistance is a ground of suspension or revocation of an approved arrangement under paragraph 21.1 (d) of Schedule 2 and subclause 15.3 of Schedule 9 of the Principal Orders.

The purpose of the *Export Control (Fish and Fish Products) Amendment Orders 2006 (No. 2)* is to amend Part 6 of the Principal Orders to impose obligations on an auditor (whether he or she is an authorized officer or not) to produce his or her identity card for inspection before starting an unannounced audit, to produce his or her identity card for inspection on request in relation to other audits and to conduct an audit as expeditiously as possible in a way that causes as little interference as possible to the operations that are the subject to the audit. In addition, consequential amendments are made to Schedule 10 of the Principal Orders.

If an auditor does not comply with these new obligations, the options include, in the case of an auditor who is an authorized officer, revocation of his or her appointment as an authorized officer and in the case of an auditor who is approved by the Secretary, revocation of the approval under subclause 11.1 of Schedule 10 of the Principal Orders.

These amendments are in response to concerns expressed by the Standing Committee on Regulations and Ordinances arising from the serious consequences that may flow from a failure to provide assistance to an auditor.

No consultation has occurred as the amendments are of a minor or machinery nature and do not substantially alter existing arrangements.

The Amendment Orders are a legislative instrument for the purposes of the *Legislative Instruments 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 (Fish and Fish Products) Amendment Orders 2006 (No. 2)*.

Order 2

2. This order provides that these Orders commence on the day after they are registered on the Federal Register of Legislative Instruments.

Order 3

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

Schedule 1 Amendments

Item 1 inserts new suborders 63.2 and 63.3. Order 63 provides that an audit may be unannounced. New suborder 63.2 provides that if the audit is unannounced, the auditor must, before commencing the audit, produce his or her identity card for inspection. New suborder 63.3 provides that if notice has been given of the audit, the auditor must produce his or her identity card for inspection on request.

Item 2 inserts a new order 66A. This new order imposes an obligation on an auditor to conduct an audit as expeditiously as possible and in a way that causes as little interference as possible to the operations the subject of the audit.

Item 3 inserts new subclauses 5A.1 and 5A.2 in Schedule 10. New subclause 5A.1 empowers the Secretary to issue an identity card to an approved auditor in a form approved by the Secretary. New subclause 5A.2 makes it an offence for a person who has ceased to be an approved auditor to fail to return the identity card forthwith to the Secretary or a person nominated by the Secretary. Subclause 5A.2, which has the words 'penal provision' at its foot, takes on the character of a strict liability offence provision with a maximum penalty of 10 penalty units as a result of the operation of order 6 of the Principal Orders and regulation 4 of the Regulations. Under section 4AA of the *Crimes Act 1914* a penalty unit means \$110. An offence for failure to return an identity card has been created to deter misuse of the card. A maximum penalty of 10 penalty units is considered sufficient to encourage compliance for this purpose.

These new subclauses are inserted as a consequence of the amendments made by item 1 above as currently there is no requirement for auditors approved by the Secretary to be issued with an identity card. By comparison, section 21 of the Act empowers the Secretary to issue identity cards to authorized officers.