

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 2007 (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* 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 from Australia.

The purpose of the *Export Control (Fish and Fish Products) Amendment Orders 2007 (No. 1)* is to make various minor amendments to the Principal Orders. These minor amendments will largely update cross references and fix typographical errors that have been identified. An amendment will also be made to Schedule 2, clause 14.1 by removing paragraph 14(1) (d). This removes a particular requirement that the Secretary previously needed to be satisfied about before the Secretary approves the arrangement.

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 2007 (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 (Fish and Fish Products) Orders 2005*.

Schedule 1 Amendments

[1] Part 1, Division II, order 8, definition of “fish”

This item omits the definition and the note to the definition of “fish” from order 8. This item also substitutes a new definition of “fish” to give it the same meaning as section 3 of the *Export Control Act 1982*. It substitutes a new note which sets out the definition currently contained in section 3 of the *Export Control Act 1982*. The definition in section 3 of the *Export Control Act 1982* was inserted by the *Agriculture, Fisheries and Forestry Legislation Amendment (Export and Quarantine) Act 2006 (No. 94, 2006)*. The purpose of this amendment is to realign the definition of “fish” that is contained in order 8 with the definition of “fish” now contained in the *Export Control Act 1982*.

[2] Part 2, Division 1, paragraph 14 (b)

This item corrects a typographical error by removing the word ‘and’ at the end of the sentence and substitutes the semi colon with a full stop.

[3] Part 3, Division 1, order 31.1, note 2

This item substitutes a new Note 2. The effect of this item is to omit the term ‘and registered premises’. The purpose of this amendment is to remove a term that has been repealed and is no longer consistent with the *Export Control Act 1982*. The definition of ‘registered premises’ in the *Export Control Act 1982* was repealed by the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control and Quarantine) Act 2006 (No. 94, 2006)*. The removal of the definition of ‘registered premises’ from the

Export Control Act 1982 was a consequence of the adoption of the expression ‘registered establishment’.

[4] Part 3, Division II, paragraph 36.1 (e)

This item amends an incorrect cross-reference in paragraph 36.1 (e) by omitting the reference to paragraph 33.1 (b) and substituting it with paragraph 36.1 (b).

[5] Part 4, Division II, order 40, note 1

This item omits from Note 2 the words ‘and *registered premises*’. The purpose of this amendment is to remove a term that has been repealed and is no longer consistent with the *Export Control Act 1982*. The definition of ‘registered premises’ in the *Export Control Act 1982* was repealed by the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control and Quarantine) Act 2006 (No. 94, 2006)*. The removal of the definition of ‘registered premises’ from the *Export Control Act 1982* was a consequence of the adoption of the expression ‘registered establishment’.

[6] Schedule 2, Part 2, Division I, paragraphs 14.1 (c)

This item removes paragraph 14.1 (d) and amends paragraph 14.1 (c) by removing the word ‘and’ at the end of the paragraph and substituting the semi colon with a full stop.

The removal of paragraph 14.1 (d) has the effect of removing a requirement that the Secretary must be satisfied of before he or she can approve the arrangement. The effect of this removal is that persons designated in the approved arrangement as a person who may make a declaration referred to in paragraph 7.1 (g) or 7.1 (h) of Schedule 8 or paragraph 3.1 (a) of Schedule 9 are no longer required to be fit and proper persons.

This amendment is necessary to allow establishments to continue export operations immediately following staffing changes. Currently, when a staff member designated in the approved arrangement as a person who may make a declaration referred to in paragraph 7.1 (g) or 7.1 (h) of Schedule 8 or paragraph 3.1 (a) of Schedule 9 ceases employment with an establishment, that establishment may not be able to continue its export operations until a replacement staff member has been determined to be a fit and proper person. The effect of this can be an immediate stop to an establishment’s export operations for several weeks. The removal of paragraph 14.1 (d) will allow such staffing changes to not adversely affect an establishment’s continued export operations.

Paragraph 16.5 (d) of Schedule 9 requires that the Secretary be satisfied that an applicant be a fit and proper person prior to approval being granted to issue export permits. This requirement ensures that the integrity of Australia’s export certification system is maintained following the removal of paragraph 14.1(d) of Schedule 2.

[7] Schedule 4, Part 1, Division II, clause 15.1, note 3

This item amends Note 3 to clause 15.1 and replaces it with an updated web reference to the Australian Drinking Water Guidelines. The Australian Drinking Water Guidelines were updated in 2004 and this new web reference is to the revised guidelines.

[8] Schedule 4, Part 1, Division II, clause 17, heading

This item amends the heading to clause 17 by replacing the word ‘non potable’ with ‘non-potable’. The purpose of this amendment is to reflect a consistent use of the hyphen in ‘non-potable’ in the Principal Orders.

[9] Schedule 4, Part 1, Division II, clause 17.2

This item amends clause 17.2 by replacing the word ‘non potable’ with ‘non-potable’. The purpose of this amendment is to reflect a consistent use of the hyphen in ‘non-potable’ in the Principal Orders.

This item also amends a typographical error in clause 17.2 by removing the word ‘and’ after ‘establishment’s potable’.

[10] Schedule 5, Part 4, clause 31.2

This item amends a grammatical error in clause 31.2 by inserting ‘and’ after ‘labels,’ and before ‘other materials used:’

[11] Schedule 7, Part 2, Division I, paragraph 4.1 (e)

This item amends a grammatical error in paragraph 4.1 (e) by inserting ‘s’ to the end of ‘product’.

[12] Schedule 7, Part 2, Division V, paragraph 10.1 (b)

This item amends a typographical error in paragraph 10.1 (b) by removing the word ‘of’ between ‘exporter’ and ‘consignee’ and replacing it with ‘or’.

[13] Schedule 9, Part 1, Division IV, paragraph 13.4 (a)

This item clarifies paragraph 13.4 (a) by inserting the word ‘export’ in front of ‘permit’ to make it clear that the reference is only to an export permit.

[14] Schedule 10, Part 1, Division III, paragraph 11.1 (a)

This item amends a typographical error in paragraph 11.1 (a) by removing the first occurrence of the word ‘to’. The amendment clarifies the intended meaning of the clause.