

## EXPLANATORY STATEMENT

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

*Export Control (Orders) Regulations 1982*

*Export Control (Meat and Meat Products) Amendment Orders 2008 (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.

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 (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 purpose of the *Export Control (Meat and Meat Products) Amendment Orders 2008 (No. 1)* ('the Amendment Orders') is to address the concerns raised by the Senate Standing Committee on Regulations and Ordinances (SCRO) about the operation of subclauses 12.4 and 12.5 of Schedule 1 of the Principal Orders. The concerns were identified by the SCRO after the making of the *Export Control (Meat and Meat Products) Amendment Orders 2006 (No. 1)*.

In relation to subclause 12.4 of Schedule 1 the SCRO noted that 'serious offence' is defined in clause 8 of Schedule 1 of the Principal Orders to include an offence that is punishable by a period of imprisonment. As a result, it is possible that a person who is sentenced to a period of imprisonment may have their capacity to notify the Secretary

within the 7 day period impeded. The Amendment Orders amend subclause 12.4 of Schedule 1 to allow for an exception from the 7 day rule in the case of imprisonment.

In relation to subclause 12.5 of Schedule 1 the SCRO noted that the intent of subclause 12.5 was ambiguous. The Amendment Orders amend subclause 12.5 of Schedule 1 to clarify the meaning of the provision.

The Office of Best Practice Regulation (OBPR) Preliminary Assessment was completed in relation to these amendments. The Preliminary Assessment indicated that the amendments are minor and machinery in nature and that further consultation was not required.

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 (Meat and Meat Products) Amendment Orders 2008 (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**

Item [1] amends subclause 12.4 of Schedule 1 by omitting ‘the person must give the Secretary written notice of the conviction within 7 days after the date on which the conviction occurs’ and inserting new paragraphs (a) and (b).

Subclause 12.4 provides that a person who manages or controls the operations carried on at a registered establishment must give the Secretary written notice of a conviction of a serious offence. The new paragraph (a) provides that if the person has not been sentenced to a term of imprisonment or has been sentenced to a term of imprisonment that is to be served only on failure to comply with another order of the court, written notice must be given within 7 days after the date of the conviction. The new paragraph (b) provides that if the person has been sentenced to a term of imprisonment, that is not conditional on complying with another order of the court, written notice must be given as soon as practicable after the date of the conviction.

The insertion of paragraphs (a) and (b) address the concern raised by the SCRO by providing a different notification requirement where a person has been sentenced to imprisonment on conviction of a serious offence.

Item [2] amends subclause 12.5 of Schedule 1 by making grammatical and structural changes and inserts a new subclause 12.6 and 12.7 into the Schedule.

The effect of the amendments to subclause 12.5 of Schedule 1 is to clarify that subject to subclause 12.7, the occupier of a registered establishment must give to a person who manages or controls the operations carried out at the establishment a written notice that complies with subclause 12.6 as soon as practicable after the commencement of these Amendment Orders or the appointment of the person to manage or control the operations, whichever later happens.

Subclause 12.6 provides that the notice must either set out the terms of subclause 12.4 of Schedule 1 or have a copy of subclause 12.4 of Schedule 1 attached. In either situation the penalty provision and the note to subclause 12.4 must be included.

Subclause 12.7 provides that any notice given in compliance with subclause 12.5 prior to the commencement of these Amendment Orders is valid and the new subclause 12.5 does not require the occupier to give the person another notice under that subclause.

The effect of these amendments is to remove ambiguity and therefore address the concern raised by the SCRO. The amendments make it clear that the obligation under subclause 12.5 arises as soon as practicable after either the commencement of the Amendment Orders or the appointment of the person to manage or control the operations, whichever later happens.