

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Export Control Act 1982

Export Control (Animals) Amendment (Approved Arrangements) Order 2015

Legislative Authority

The *Export Control Act 1982* (the Act) provides for the control of the export of certain goods and for related purposes carried out or provided under the Act. This includes the requirements for the preparation in Australia of prescribed goods that are to be exported.

Section 3 of the Act defines ‘prescribed goods’ to mean goods, or goods included in a class of goods, that are declared by the *Export Control (Orders) Regulations 1982* to be prescribed goods for the purposes of the Act.

Regulation 3 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.

Purpose

The purpose of the *Export Control (Animals) Amendment (Approved Arrangements) Order 2015* (Amendment Order) is to introduce approved arrangements to streamline the process for preparing and certifying live-stock exports in Australia, which includes:

- removing the need for a Notice of Intention (NOI) to be assessed and approved by implementing an approved arrangement which will act as a standing approval of the proposed export processes.
- removing the prohibition on exporters to first receive a NOI approval before sourcing live-stock for exports.
- removing the requirement to lodge applications for a permission to leave for loading for exports by sea (PLL). While a PLL will no longer be required, pre-export inspection of live-stock will continue to be mandatory.
- combining the application for an export permit and health certificate to into a single form.
- removing the requirement for an exporter to submit a consignment risk management plan (CRMP) and the Secretary to issue an approved export program (AEP). The information formerly in CRMPs and AEPs will now be in an exporter’s approved arrangement.

Exporters who prepare frequent air consignments of live-stock and have their premises inspected and approved for every individual consignment will have a new option under the Amendment Order. They may now use an annually registered premises to prepare the live-

stock for export, rather than being required to have a premises inspected and approved for every consignment.

This amendment does not change any of the ESCAS requirements for exporters of livestock.

Background

The Australian Government's election commitments for a competitive agriculture sector included improving the performance efficiency and reducing unnecessary red tape in export certification. Introducing approved arrangements for live-stock exports will streamline the export certification process, while better focusing effort and resource on areas of highest risk.

Implementing approved arrangements for live-stock exports is also consistent with the government's broader deregulation agenda, as well as reducing the regulatory burden for clients and ensuring a risk-based intervention model is in place for all regulatory activities.

Other export commodities such as meat, dairy, egg and fish exports already operate under approved arrangements. Implementing approved arrangements for live-stock exports will create a degree of consistency with other export commodities. This will allow the Department of Agriculture and Water Resources (the department) to leverage further efficiencies and improve the effectiveness of outcomes through shared experience, approaches, processes and systems.

The *Export Control (Animals) Order 2004* (the Animals Order) currently requires exporters of live-stock to lodge a NOI to export and a CRMP with the department 10 days prior to the date of the proposed export for assessment and consideration for approval.

The department's role is to assess the NOI and CRMP against the importing country's requirements and the Australian Standards for the Export of Live-stock (ASEL) and, if satisfied with the exporter's application, issue an AEP. The exporter then prepares the consignment in accordance with the AEP. The AEP largely confirms the exporter's CRMP.

Depending on the intended market, exporters will submit a range of supporting documentation, all of which must be assessed by the department. These include import permits, dispensations, treatment schedules, heat stress risk assessments, travel and load plans, disease freedom documentation and a number of declarations.

This assessment and approval process for documentation occurs on a consignment by consignment basis and is highly repetitive and duplicative for both industry and the department. Many consignments are similar in nature (same exporter, species, port of export, market) with exporters producing and submitting near identical paperwork for assessment each time. Exporters then receive almost identical advice from the department to allow them to export each consignment. The department also already holds information about how exporters will comply with ASEL because it is contained in their operations and governance manual which is a requirement for obtaining their export licence under the *Australian Meat and Live-Stock Industry (Export Licensing) Regulations 1998*.

The current process also requires exporters to wait for the department to have approved their NOI, CRMP and Exporter Supply Chain Assurance System (ESCAS) before they can begin sourcing animals for a consignment. The department must also issue an AEP before the

exporter can prepare their animals for export. These requirements can be cumbersome when an exporter needs to make a change to their NOI during the export preparation process. For example, if the exporter changes the export date because the ship is delayed, they must wait for a new AEP from the department even if the date change will not affect the live-stock preparation process.

Once the consignment is prepared, the exporter applies again for permission from the department to move the prepared consignment to the place of departure, and then, once loaded, applies again for an export permit and health certificate. If certification is issued, then the consignment can be legally exported.

The repeat assessment and multiple approval process on a consignment by consignment basis provides no additional assurance of an exporter's ability to meet or exceed importing country requirements or ASEL. It is duplicative and paperwork intensive and results in unnecessary administrative burden and costs for both the department and exporters. It can also result in tight and inflexible timeframes for consignment approvals.

In addition, this process essentially treats all exporters the same irrespective of their compliance history and therefore does not assist the department to focus its efforts and resources on areas or exporters of highest risk.

Impact and Effect

The Amendment Order will enable exporters of live-stock to apply to the department for approval of an arrangement for the preparation of all live-stock for export covered by the arrangement. The arrangement will be assessed by the department on a standalone basis and will apply to multiple consignments rather than a consignment by consignment basis. The arrangement will identify the classes and kinds of live-stock to be exported, the export markets and the transport mode (ie by sea or air).

Introducing approved arrangements will change the focus of the department in regulating live-stock exports, moving from the hands-on management of each consignment to a role assessing an exporter's business operations to consistently export live-stock in a compliant way.

The Amendment Order will reduce the regulatory burden on industry by reducing the amount of documents that will be required to be submitted to the department when seeking approval to export a consignment of livestock, once an exporter's arrangement has been approved. The amendments also incentivise compliant exporter performance as exporters who maintain a good compliance record will continue to be subject to less government intervention. This will allow exporters to focus less on the administrative requirements of the department and invest more time and resources on their own business, including areas of highest risk.

It will also reduce costs to the Australian Government and allow the department to direct resources to areas of highest risk. It will shift the focus of government regulation and change the department's role from one of continuous assessment to risk-based regulator. Approved arrangements will allow the department to impose regulatory interventions proportionate to each exporter's performance and history of compliance. It will cut red tape and reduce the department's costs associated with consignment by consignment document assessment and

inspections, while maintaining the necessary regulatory control points to ensure importing country requirements are met and animal welfare standards are maintained.

Approved arrangements will also allow the department to regulate live-stock exports under a system which is consistent with other export commodities, providing further opportunities to realise efficiencies through centralising common tasks and using established systems and processes. The approved arrangements will not reduce the government's regulatory responsibilities or reduce the standards and requirements that need to be met by exporters of live-stock.

Introducing approved arrangements for live-stock exports will not amend the requirement for exporters of live-stock for feeder/slaughter purposes to have an approved ESCAS that applies to each export. An ESCAS is an exporter's system to ensure international animal welfare standards are met or exceeded by their supply chain partners, from unloading in the destination country until the animal is slaughtered.

The Amendment Order separates ESCAS provisions from NOIs and brings them together into one division. The Secretary must continue to be satisfied that the exporter is in a position to comply with the approved ESCAS when deciding whether to grant a permit for the export of livestock. This continues the prominence of the ESCAS within the live-stock export regulatory framework and its policy intent remains.

Until 2017, exporters may export live-stock under current regulatory arrangements. From 1 January 2017, all exporters must have an approved arrangement to export live-stock, unless they have applied for, and been granted, an exemption from the department.

Consultation

Representatives, service providers and research and development bodies in the live-stock producer and export industries (Australian Livestock Exporters' Council, LiveCorp and Meat & Livestock Australia) have been consulted on the reform project to introduce approved arrangements for exports of live-stock through a roundtable process since November 2014. They have also been consulted on the Amendment Order since 1 October 2015. These bodies represent the interests of Australia's live-stock producers and exporters in the areas of live-stock management, health and welfare, supply chain efficiency and market access and development.

Live-stock exporters have been consulted on the policy design for approved arrangements for exports of live-stock since February 2015.

Animal welfare and protection organisations (RSPCA and Animals Australia) have been briefed on the reform project to introduce approved arrangements since September 2015 and provided with the Amendment Order for comment since October 2015.

The Office of Best Practice Regulation (OBPR) has been consulted and a Standard Form Regulation Impact Statement (RIS) has been prepared (RIS ID:18445).

Details of the Amendment Order are at [Attachment A](#).

The Amendment Order is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the *Export Control (Animals) Amendment (Approved Arrangements) Order 2015*

Section 1 – Name

The section provides that the name of the Amendment Order is the *Export Control (Animals) Amendment (Approved Arrangements) Order 2015*.

Section 2 – Commencement

This section provides for the Amendment Order to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Amendment Order is made under the *Export Control Act 1982*.

Section 4 – Schedule(s)

This section provides that each instrument specified in Schedule 1 is amended or repealed as set out in Schedule 1, and any other item in Schedule 1 has effect according to its terms.

Schedule 1 – Amendments

Export Control (Animals) Order 2004

Item 1 inserts two additional definitions. The first definition defines the term ‘approved arrangement’ as an arrangement for the preparation of live-stock that has been approved by the Secretary under Division 1A.2.

The second definition defines the term ‘registered premises’. This term is already defined in the *Export Control (Animals) Order 2004 (Animals Order)*. This, combined with item 5, has the effect of bringing forward this definition within the *Animals Order*.

Item 2 inserts new paragraph 1.05A which sets out the application of provisions within the *Export Control (Prescribed Goods—General) Order 2005 (the General Order)* to the *Animals Order*. Section 1.03 of the General Order provides for the General Order to be read together with other orders made under Section 3 of the Act unless the contrary intention applies.

This section makes it clear that only Parts 3, 13 and 16 and sections 4.05, 4.23, 4.31, 6.06, 6.07 and 17.05 of the General Order apply.

It also provides that other provisions of the General Order apply only so far as they relate to the provisions listed.

Item 3 inserts a new Part, Part 1A, after Part 1 to provide for the export of live-stock under approved arrangements.

Division 1A.1 – Conditional prohibition on live-stock exports

This Division places a conditional prohibition on live-stock exports.

Section 1A.01 Prohibition on live-stock exports

Subsection (1) sets the timetable for transitioning to approved arrangements. It provides that an export of live-stock can only go ahead if the conditions in subsection 2 are met or the export occurs before 1 January 2017 and is an export which can be under the provisions in Part 2 or Part 3. The effect of this provision is to allow a transitional period where exports can continue without an approved arrangement up to and including 31 December 2016. From 1 January 2017, all exports of live-stock will require an approved arrangement unless an exporter has an exemption granted under Part 3 of the General Order.

Subsection (2) outlines the conditions under which an export can occur. These include

- holding a licence under the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act);
- having an Exporter Supply Chain Assurance System (ESCAS) approval, unless the live-stock to be exported are for breeding purposes;
- having given a Notice of Intention (NOI) for the export;
- meeting requirements about where animals are assembled and prepared for export;
- holding an approved arrangement and preparing animals in accordance with that arrangement;
- having been granted an export permit; and
- complying with the terms of the export permit, ESCAS approval, approved arrangements and any condition on any of these.

Division 1A.2 – Approved arrangements for preparation of live-stock

This Division sets out the provisions for making application for, approving, varying, suspending and revoking approved arrangements for live-stock exports by sea and air.

Section 1A.02 - Application for approval of arrangement

This section allows an exporter who holds a licence under the AMLI Act to apply in writing for an approved arrangement that covers the preparation of all live-stock by the exporter.

Section 1A.03 - Assessment of application and Secretary's decision

This section allows the Secretary to evaluate the proposed arrangement through an audit and to request additional information, documents, or a demonstration of operations and procedures to be followed in the preparation of live-stock. It provides for the Secretary, with the applicants consent and at the applicants expense, to use an appropriately qualified person in any inspection, evaluation or demonstration.

Section 1A.04 - When the Secretary is taken to have refused application received after 2016

This section provides that, after 31 December 2016, should the Secretary not make a decision on an application within 60 days that the application is taken to be refused. The 60 day period commences either on the day that the application was received or the day it was varied by an

exporter and does not include a period between the department requesting further information and that information being provided by an applicant.

Section 1A.05 - When the Secretary may approve the arrangement

Subsection (1) sets out the criteria that the Secretary must be satisfied with for the approval of an arrangement for the preparation of live-stock for export.

Subsection (2) provides that an approved arrangement comes into effect either on the day specified in the approval or, where a date is not included in the approval, on the day that written notice of the approval is given to the applicant.

Section 1A.06 - Notice of decision not to approve an arrangement

This section requires that if the Secretary decides not to approve an arrangement the Secretary must advise the applicant in writing. The notice must set out the reasons for the decision and the applicant's right to apply for a reconsideration of a decision.

Section 1A.07 - Approval of arrangement may be subject to conditions

Subsection (1) allows the Secretary to apply conditions to the approval of an arrangement or to impose additional conditions on an approval.

Subsection (2) provides that any conditions must be applied for achieving the purposes of compliance with the criteria for approving an arrangement (see section 1A.05(1)(b), (c), (d) and (e)).

Subsection (3) requires written notice must be provided to the exporter of the conditions. The notice must include the reasons for the decision and the exporter's right to apply for reconsideration of the decision.

Section 1A.08 - Variation to be recorded

This section requires that a record must be made of each variation of an approved arrangement.

Section 1A.09 - Variation requiring notification and approval before implementation

Subsections (1) and (2) require that an exporter must apply to the Secretary for approval of a variation that has the potential to adversely affect compliance with, or the ability to assess compliance with the

- Animals Order;
- Australian Standards for the Export of live-stock (ASEL); and
- applicable importing country requirements.

It further provides that a variation must not be implemented until the Secretary has given written approval of the variation.

Subsection (3) allows the Secretary to request further information or documents for the purposes of deciding whether to approve a variation.

Subsection (4) provides that, after 31 December 2016, should the Secretary not make a decision on an application for a variation within 60 days that the application is taken to be refused. The 60 day period commences on the day that the application was received and does

not include a period between the department requesting further information and that information being provided by an applicant.

Section 1A.10 - Variation required by the Secretary

Subsection (1) provides that the Secretary can require an exporter to submit a variation of an approved arrangement if:

- circumstances relating to the preparation of live-stock for export change;
- the Secretary is not satisfied that acting in accordance with the arrangement will achieve the desired outcomes;
- the Secretary is not satisfied that the exporter will engage an accredited veterinarian;
- the Secretary is not satisfied that the exporter will act in accordance with the arrangement;
- an applicable importing country requirement changes; or
- ASEL changes.

Subsection (2) requires that a notice under subsection (1) must identify the variation required, specify the period in which the variation must be submitted, set out the reasons for requiring the variation and outline an exporters rights to apply for reconsideration of the decision.

Subsection (3) allows the Secretary to give an exporter a written notice approving a variation.

Subsection (4) requires an exporter who has received a notification to make a variation under subsection (1) must comply with that notification.

Subsection (5) allows the Secretary to amend or revoke a notice under subsection (1) by giving a further written notice.

Section 1A.11- When an arrangement includes a variation

This section provides that a variation forms part of an approved arrangements. However, if section 1A.09 or 1A.10 apply to the variation, it only becomes part of the approved arrangement when it is approved by the Secretary.

Section 1A.12- Grounds for suspension or revocation

Subsection (1) provides that the Secretary may by written notice suspend or revoke the approval of an arrangement if the Secretary reasonably believes that:

- the exporter has not complied the Animals Order, ASEL, an importing country requirement, an approved arrangement or a condition of the approval of the arrangement;
- acting in accordance with the arrangement is not a reliable or effective way of achieving the outcomes described in paragraphs 1A.05(1)(b) and (c);
- the exporter has made a statement that is false, misleading, or incomplete, or for which there is no sound basis;
- the exporter has failed to provide the assistance required to perform an audit; or
- the exporter has failed to make available to an authorised officer a document that the exporter is required to retain.

Subsection (2) provides that the Secretary may either suspend or revoke an arrangement either in full or in part.

Subsection (3) provides that a suspension or revocation takes effect either on the day specified in the approval or, where a date is not included, on the day that written notice is given to the applicant.

Section 1A.13- Notice of suspension or revocation

This section requires that where the Secretary suspends or revokes an arrangement they must provide a written notice which includes the reason for the suspension or revocation and the exporter's rights for reconsideration. If the approval is suspended the period of the suspension must also be set out in the written notice. The period of the suspension cannot exceed 12 months.

Section 1A.14 - Revocation of suspended arrangement

This section allows for the Secretary to revoke the approval of an arrangement that is suspended even if the period of suspension has not expired. The revocation can be on grounds that are the same as or similar to the grounds for the suspension.

Section 1A.15 - Termination

Subsection (1) provides for an exporter to terminate their approved arrangement in full or in part.

Subsection (2) provides that any notice of termination takes effect either on the day specified in the notice or, if no date is specified, seven days after the notice is received.

Section 1A.16 - Secretary may require exporter to take action

Subsections (1), (2) and (3) allows the Secretary to give a notice to an exporter when an approved arrangements is suspended or revoked, either in full or in part, to ensure compliance with the Animals Order, the ASEL or an importing country requirement. The notice can require the exporter to take action with respect to:

- any official marks held by the exporter;
- any export permits or health certificates issued or given for live-stock prepared for export by the exporter;
- any live-stock under the exporter's control; and
- any records kept under the approved arrangement or a condition of the approval of the arrangement.

Subsection (4) allows the Secretary to amend or revoke any notice by giving a further written notice to the exporter.

Section 1A.17 - Exporter must take action as required

This section requires an exporter to comply with any notice given under subsection 1A.16(2).

Section 1A.18 - When an approved arrangement ceases to have effect

This section provides that an approved arrangement, or part of an approved arrangement, ceases to have effect when:

- it is revoked or terminated;
- the person who applied for approval of the arrangement ceases to be an exporter; or
- it is suspended.

Division 1A.3 - Exporter supply chain assurance systems (ESCASs)

This Division replicates the existing requirements for exporters who are exporting animals for feeder or slaughter purposes to have an ESCAS approval. It brings together in one Division the existing requirements for live-stock exports by sea and air that appear in Division 2.4 and Part 3 of the current Animals Order. Together these provisions set out the processes for approvals, variations and revocations of an exporter ESCAS. There are no changes to the requirements to have an ESCAS or the operation of ESCAS through this amendment.

Section 1A.19 - Exporter supply chain assurance systems (ESCASs)

This section replicates the provisions of sections 2.42A and 3.04A of the existing Animals Order.

Subsections (1), (2) and (3) set out mandatory ESCAS requirements and allows an exporter to refer the Secretary to documents that have already been provided that describe a relevant ESCAS.

Subsection (4) provides that an ESCAS is not required for breeder livestock.

Section 1A.20 - Giving ESCASs to Secretary

This section replicates the ESCAS provisions of sections 2.43 and 3.05 of the existing Animals Order.

It specifies a timeframe within which any documents describing and evidencing an ESCAS are to be given to the Secretary, and to broaden the circumstances in which the Secretary is able to accept late documents under this provision.

Section 1A.21 - Approval of ESCASs

This section replicates the ESCAS requirements of sections 2.44 and 3.07 of the existing Animals Order.

Subsections (1), (2) and (3) allow for ESCAS approvals by the Secretary and sets out the considerations for an approval. It provides that the Secretary is able to require further information relating to an ESCAS or direct that an ESCAS be varied in a specified way.

Subsection (4) requires that the Secretary provide written notice of his or her decision whether or not to approve an ESCAS and, if the decision is a refusal, the reasons for the decision.

Subsections (5) and (6) provides that the Secretary may place conditions on an approval of an ESCAS. Without limiting the discretion of the Secretary, these subsections sets out specific matters that the Secretary may create conditions with respect to when making a decision to approve or not approve an ESCAS. These conditions are not restricted to ones regulating the relevant World Organisation for Animal Health (OIE) recommendations, but can relate to any other matter more generally that the Secretary considers appropriate.

Section 1A.22 - Effect of approval of ESCASs

This section replicates requirements of subsections 2.45(2A) and 3.08(3) of the existing Animals Order. This section provides that approval of an ESCAS for a proposed export does not oblige the Secretary to grant an export permit for the export.

Section 1A.23 - Variation and revocation of approved ESCASs

This section replicates the requirements of sections 2.46A and 3.09A of the existing Animals Order. The section relates to variation and revocation of approved ESCASs.

Subsection (1) allows the Secretary to vary an ESCAS, or the conditions on an ESCAS, either at the request of the exporter or by his own decision.

Subsection (2) imposes a requirement on an exporter to provide notification of any relevant change in any circumstance that relates to an approved ESCAS. Exporters are required to advise the Secretary as soon as practicable, but no later than five working days after becoming aware of the change. It requires an exporter to comply with any requirement of the Secretary that an approved ESCAS be varied in a specified manner.

Subsection (3) provides two further circumstances in which the Secretary may revoke or vary the approval of an ESCAS, and provides also that those circumstances do not restrict the circumstances in which the Secretary is able to revoke approval.

Subsection (4) is intended to permit the Secretary to vary conditions even after live-stock have landed in the importing country.

Division 1A.4 - Notices of intention to export (NOIs)

This Division replicates the existing requirements for lodging NOI. It brings together in one Division the existing requirements for live-stock exports by sea and air that appear in Division 2.4 and Part 3 of the existing Animals Order. It removes any requirement to prepare separate CRMPs. The requirements of CRMPs are incorporated into an exporter's approved arrangement.

Section 1A.24 - Notice of intention to export (NOI)

This section replicates the requirements of the provisions of sections 2.41 and 3.04 of the existing Animals Order. It sets out the requirements for a NOI. It seeks, to the extent possible, to harmonise the requirements for live-stock exports by sea and air.

The requirements differ from the existing provisions of the Animals Order in the following ways:

- extends the provision to nominate the importing country for exports to cover exports both by sea and by air. This is an existing requirement for exports by air but not by sea.
- extends the provision to nominate the address of the importer to cover exports both by sea and by air. This is an existing requirement for exports by sea but not by air.
- inserts a provision to nominate the name of the arrival port/airport in the importing country.
- removes the requirement to specify the container specifications and feed and water arrangements. These are an existing requirement for exports by air but not by sea. Container specifications and feed and water requirements will form part of an exporter's approved arrangement.
- extends the provision requiring an exporter to nominate the accredited veterinarian for all voyages by sea, not only for those that may have an AEP. This is an existing requirement for exports by air.
- removes the requirement to nominate the proposed transport in Australia and the locations from which live-stock are sourced for exports by sea. The requirement to

nominate these items do not currently apply to exports by air. This information will form part of the export plan of an exporter's approved arrangement.

Under the amendment, a NOI no longer requires a separate approval process, but subsection (5) has the effect of a NOI not being made unless all the information required is properly provided.

Section 1A.25 - Giving NOI to Secretary

This section replicates the requirements the relevant provisions of sections 2.43 and 3.05 of the existing Animals Order.

It requires that a NOI is given to the Secretary at least 10 working days before either:

- where importing country requires a quarantine period - the quarantine period commences; or
- in all other cases - the proposed export date.

However, subsection (2) allows the Secretary to vary these timeframes where it is reasonable to do so.

Section 1A.26 - What happens if circumstances change after NOI is given

This section replicates the relevant provisions of sections 2.46 and 3.09 of the existing Animals Order.

This section requires an exporter to inform the Secretary of any relevant change of circumstances after lodging a NOI. It allows the Secretary, when he or she becomes aware of any change relevant to the proposed export to give notice to an exporter requiring them to vary the NOI or to lodge a new NOI.

Section 1A.27 - Approval of premises for quarantine or isolation before export by air

This section replicates the relevant provisions of section 3.06 of the existing Animals Order.

This section provides for a NOI to also have the effect as an application for approval of the premises at which the animals are to be prepared for consignments that are sent by air to countries which require pre-export quarantine or isolation of animals. To approve a premises the Secretary may require additional information and inspection of the premises.

Subsection (1) also includes a new provision to allow for exporters not to have the premises approved if they are using a premises which has been registered under Division 2.2 of the Animals Order. This provides a mechanism for exporters who prepare frequent air consignments to have their premises registered annually rather than have them inspected and approved for every individual consignment.

Division 1A.5 - Information exporter must give operator of registered premises

This Division replicates the existing requirements of section 2.45(3) of the existing Animals Order concerning information to be given to the registered premises in which live-stock for export will be assembled for export.

Section 1A.28 - Information exporter must give operator of registered premises where live-stock are held and assembled for export

This section replicates the provisions of subsections 2.45(3)(a),(g),(h),(j) and (k) of the existing Animals Order and outlines the information that an exporter must give to a registered premise operator.

It no longer requires an exporter to provide information to a registered premises which is redundant (for example providing the registered premises operators with details about their own registered premises) or does not directly relate to a registered premises role in assembling live-stock for export (for example the details of the vessel to be used to ship the animals) which are contained in section 2.45(b), (c), (d), (e), (f), (i) and (m).

Division 1A.6 - Export permits and health certificates

This Division sets the relevant requirements relating to the grant of export permits and health certificates for exports. To a large part it replicates the provisions that appear in Division 2.5 and sections 3.14 – 3.17 of the existing Animals Order.

This Division removes the requirement to apply for a pre-export inspection and a PLL for exports by sea but still provides for a pre-export inspection to take place.

It also combines the application for an export permit and health certificate to into a single form and requires the exporter to submit these applications only when all animals are fully prepared for shipment. Bringing forward the point in the consignment process that the exporter lodges the application for an export permit allows the department to use the refusal of an export permit to stop a consignment at any stage if it does not meet requirements. This replaces the current system of multiple different applications and approval points.

Section 1A.29 - Application for export permit and health certificate

This section sets out the process for making an application for a health certificate and an export permit. The application for these two documents is now combined in a single process. Subsection (1) requires that the application can only be lodged after an exporter has completed preparing the live-stock in accordance with the approved arrangement.

Subsection (2) provides that the application must be made in writing on the form approved by the Secretary and accompanied by the declaration at subsection (3) and accompanied by supporting evidence.

Subsection (3) sets out the requirements of the declaration. This includes the exporter declaring that:

- they have complied with any requirements under any other Commonwealth law, or the law of a State or Territory;
- they have complied with the requirements of ASEL;
- they have complied with the approved ESCAS that applies to the export;
- they have complied with all importing country requirements;
- the live-stock have been prepared for export by the exporter in accordance with the approved arrangement for the exporter; and
- no relevant circumstances have changed in relation to the approved ESCAS that applies to the export.

Subsection (4) provides the Secretary with the power to obtain evidence about whether the exporter has complied with Commonwealth, State or Territory requirements from the relevant authority. It allows the Secretary to provide a copy of an exporter's declaration to the relevant authority.

Section 1A.30 - Grant of export permit

This section replicates the relevant provisions of sections 2.58, 2.59 and 3.06 of the existing Animals Order. It sets out the requirements for the grant of an export permit and the form that the export permit must take. It seeks, to harmonise the requirements for live-stock exports by sea and air.

Subsections (1) and (2) set out the criteria for granting an export permit. The requirements that the Secretary must be satisfied about differ from the existing provisions in the following ways:

- includes a requirement that the exporter has lodged an application for an export permit (see section 1A.29).
- includes a requirement that the live-stock been prepared in accordance with the approved arrangements and any conditions on its approval.
- extends the requirement that no relevant circumstance have changed since the live-stock were inspected to cover exports both by sea and by air. This is an existing requirement for exports by sea but not by air.
- includes the provision that ASEL standards have been complied with and will continue to be complied with.
- extends the requirements that animals are fit enough to undertake the proposed voyage and that the travel arrangements are suitable to cover exports both by sea and by air. This is an existing requirement for exports by air. Sea exports currently have similar, but lesser, requirement that exporters have complied with approved travel and load plans.
- removes the requirements relating to a PLL that was required for exports by sea but not by air. Exporters will no longer be required to obtain this permission with its function being superseded by the revised process for the application for the health certificate and export permit.
- removes the provisions relating to the lodging, approval and compliance with the NOI. This is an existing requirement for exports by sea but not by air.
- removes the requirement that an accredited veterinarian has declared that they have prepared animals in accordance with any AEP. This is an existing requirement for exports by sea but not by air. This declaration is superseded by the declaration of the exporter provided in section 1A.29.

Subsection (3) replicates the provision in 2.54(3B) and provides that the Secretary may be satisfied that the conditions in one or more of paragraphs (1)(f), (g) and (h) are met without inspecting each of the live-stock.

Subsection (4) replicates the provisions of sections 2.59(3) and 3.15(3). It sets out that an export permit must be in a form approved by the Secretary and contain the date on which it is granted as well as information on the live-stock in the consignment and from where and how it will depart Australia. The export permit is required to be signed by an authorised officer, include the officer's identity number and an official mark.

Subsection (5) replicates the provisions of sections 2.59(4) and 3.15(4). It allows the export permit to be combined into one document with the health certificate.

Subsection (6) replicates the provisions of sections 2.59(5) and 3.15(5). It makes it a condition of an export permit that the live-stock to which it applies leave Australia within 72 hours after it is granted, unless the Secretary approves otherwise.

Subsection (7) replicates the provisions of sections 2.59(6) and 3.15(6). It allows the Secretary to place other conditions as he or she sees fit on an export permit.

Section 1A.31 - Refusal to grant permit

Subsection (1) replicates the provisions of subsections 2.60(1) and 3.16(1) of the existing Animals Order. It provides that the Secretary may refuse to grant an export permit if there is reason to believe that the health or condition of the live-stock may deteriorate during export. The Secretary may also refuse an export permit if the live-stock may be dealt with other than in accordance with the approved ESCAS.

Subsection (2) allows the Secretary to refuse to grant an export permit if the declaration provided by the exporter under section 1A.29 is not accurate.

Subsection (3) replicates the provisions of subsections 2.60(2) and 3.16(2) of the existing Animals Order. It allows the Secretary to refuse to grant an export permit if there is reason to believe that the intended country of destination will not permit the live-stock to enter.

Subsections (4) and (5) replicates the provisions of subsections 2.60(3), 2.60(4), 3.16(3) and 3.16(4) of the existing Animals Order. It requires the Secretary to give the applicant written notice of the refusal and that the notice must set out the reasons for the refusal.

Section 1A.32 - Revocation of export permit

This section replicates the provisions of subsections 2.61 and 3.17 of the existing Animals Order. It provides the circumstances in which a Health Certificate can be refused. It adds the provision of false incomplete or misleading information to be the grounds for cancellation of a health permit.

Section 1A.33 - Health certificate

This section replicates the provisions of section 2.53 and 3.14 of the existing Animals Order.

Subsections (1) and (2) sets out the requirements for the grant of a health certificate. It includes that the animals must be inspected by an authorised officer at the place of the officers choosing.

Subsection (3) provides that an authorised officer may be satisfied that live-stock in a consignment to be exported meet the requirements without considering every animal in the consignment individually.

Subsection (4) sets out the form that the health certificate must take.

Section 1A.34 - Revocation of health certificate

This section allows for an authorised officer to revoke a health certificate that has been granted. Subsection (1) sets out that a health certificate may be revoked if there is reason to believe:

- a circumstance relevant to the issue of the certificate has changed; or
- the exporter who applied for the certificate has not complied with the conditions on their export licence or any requirements under the AMLI Act.

Subsection (2) and (3) require the authorised officer to give an exporter written notice of any decision to revoke a health certificate. The written notice must include the reasons for the revocation.

Subsection (4) clarifies that another health certificate may be issued in place of a health certificate that was revoked.

Item 4 is a consequential amendment to item 6. It repeals the heading of Division 2.1 and replaces it with one which reflects the transitional provisions in item 6 which prevents any live-stock exports by sea occurring under Part 2 after 31 December 2016.

Item 5 repeals the definition of a registered premises in this section. This is a consequential amendment to item 1 which inserts the definition of a registered premises in section 1.05.

Item 6 inserts transitional provisions into Part 2. During the period after 31 January 2016 and before 1 January 2017 allows exporters to export under either, but not both, Part 1A or Part 2 of the Order. This will facilitate an orderly transition of exporters from the existing provisions to approved arrangements.

However, once an exporter obtains an approved arrangement their exports will be regulated by Part 1A of the Amendment Order and can no longer be regulated by Part 2. Part 1A deals completely with exports of live-stock to which this part does not apply because of subsection (1) of this section. Part 1A regulates exports covered by paragraph (1)(a) or (c) of this section, and prohibits exports covered by paragraph (1)(b) of this section.

Subsection (2) provides for the provisions relating to registration of premises for holding and assembling live-stock for export to continue to operate.

Item 7 is a consequential amendment to item 6. It repeals the heading of Division 2.2 and replaces it with one which reflects that this Division continues to apply after 31 December 2016 despite transitional provisions in item 6.

Item 8 and 9 amends the heading and subsection (1) of section 2.07 to make it clear that the Secretary may approve an application and register a premises if the criteria in subsection (1) are met.

Items 10 and 12 removes the word ‘whether’ at the being of each subparagraph to reflect the revised formulation of the chapeau under item 9.

Item 11 is a consequential amendment to item 2. This inserts requirement in subparagraph 4.04(1)(i) of the General Order into the Animals Order. This retains the requirement for the operator of a registered premises to be a ‘fit and proper’ person. The definition of ‘fit and proper’ is found at section 4.05 of the General Order. Item 2 requires that section 4.05 of the General Order is read together with this Order.

Item 13 is a consequential amendment. It updates the reference in paragraph 2.10(1)(e) to include the requirement to provide information in section 1A.28.

Item 14 is a consequential amendment to item 6. It repeals the heading of Division 2.4 and replaces it with one which reflects the transitional provisions in item 6 which prevent any live-stock exports by sea occurring under Part 2 after 31 December 2016.

Item 15 corrects a previously incorrect reference. It adds the species of the live-stock to the things the Secretary may have regard to when considering to approve an ESCAS.

Item 16 is a consequential amendment to item 6. It repeals the heading of Division 2.5 and replaces it with one which reflects the transitional provisions in item 6 which prevent any live-stock exports by sea occurring under Part 2 after 31 December 2016.

Item 17 is a consequential amendment to item 6. It repeals the heading of Part 3 and replaces it with one which reflects the transitional provisions in item 6 which prevent any live-stock exports by sea occurring under Part 2 after 31 December 2016.

Items 18 and 19 inserts transitional provisions into Part 3. The period from 1 February 2016 to 31 December 2016 allows exporters to export under either, but not both, Part 1A or Part 2 of the Order. This will facilitate an orderly transition of exporters from the existing provisions to approved arrangements.

However, once an exporter obtains an approved arrangement there exports will be regulated by Part 1A of the Order and can no longer be regulated by Part 2. Part 1A deals completely with exports of live-stock to which this Part does not apply because of subsection (1) of this section. Part 1A regulates exports covered by paragraph (1)(a) or (c) of this section, and prohibits exports covered by paragraph (1)(b) of this section.

Item 20 inserts an exemption for exporters that are using a registered premises under Division 2.2 of the Animals Order. This provides a mechanism for exporters who prepare frequent air consignments not to continually have to have their premises inspected and approved by using an existing registered premises.

Item 21 alters who the Secretary may ask for further information from the applicant for a NOI to an exporter. In all practical circumstances these are the same person. This amendment will ensure consistent description is used throughout the Order.

Item 22 repeals the existing paragraph which requires an exporter to allow an officer to inspect the premises. It inserts in its place a requirement for an exporter to make an arrangement for an officer to inspect the premises. This reflects that in many cases an exporter is not the owner of the premises to be inspected (which is owned by a third party) and so is not in a position to allow an officer to make an inspection. Instead they need to make arrangements with the premises owner to allow the inspection to go ahead.

Item 23 corrects a previously incorrect reference. It adds the species of the live-stock to the things the Secretary may have regard to when considering to approve an ESCAS.

Item 24 inserts an approved arrangement into the definition of an export instrument. This will enable the approved arrangement to be Part of the documents considered in an audit. This item also corrects a drafting error by replacing the word ‘and’ with ‘or’ to make it clear that the approval of a NOI, the approval of a CRMP and the approval of an ESCAS are all separate approvals.

Item 25 inserts a provision which allows for an exporter to request an audit of their approved arrangement in addition to any audit scheduled by the department.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Export Control (Animals) Amendment (Approved Arrangements) Order 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument amends the *Export Control (Animals) Order 2004* (Animals Order) to introduce approved arrangements for live-stock exports.

It inserts a new part (Part 1A) into the Animals Order. This new part sets out the requirements for an approved arrangement and all of the process for a shipment of live-stock by air or sea under an approved arrangement.

There is a transitional period up to 31 December 2016 under which an export of live-stock can take place under an approved arrangement (Part 1A) or the existing procedures (contained within Parts 2 and 3). This instrument inserts provisions in Parts 2 and 3 to prevent exports of live-stock under those parts after 31 December 2016.

In addition to implementing approved arrangements the Amendment Order provides exporters who export live-stock by air which require pre-export quarantine or isolation with the option of using registered premises to prepare the live-stock for export, rather than requiring them to have a premises inspected and approved for every consignment. This amendment does not change any of the ESCAS requirements for exporters of livestock.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Barnaby Joyce MP
Minister for Agriculture and Water Resources