

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water
Resources

Export Control Act 1982

Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016

Legislative Authority

The *Export Control Act 1982* (the Export Control Act) provides for the control of the export of certain goods and for related purposes.

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

Paragraph 25(2)(g) of the Act provides that the Governor-General may make regulations 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* (the Export Control Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Export Control Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Export Control Act.

The *Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016* (the Amendment Order) is made under regulation 3 of the Export Control Regulations.

Purpose

The purpose of this instrument is to amend the *Export Control (Plants and Plant Products) Order 2011* (the Export Control (Plants and Plant Products) Order) to take into account the repeal of the *Quarantine Act 1908* (the Quarantine Act) and the commencement of the *Biosecurity Act 2015* (the Biosecurity Act). This instrument amends references to the Quarantine Act that were no longer applicable upon the Biosecurity Act commencement and replaces these references with appropriate equivalent references to the Biosecurity Act.

Background

The Export Control Act provides for the control of the export of certain goods and for related purposes. The Export Control (Plants and Plant Products) Order regulates the export of prescribed grain, fresh fruits, fresh vegetables, hay and straw, and plants and plant products for which a phytosanitary or any other certificate is required by declaring those goods to be

prescribed goods under the Export Control Act and specifying the conditions and restrictions for their export.

The Agriculture Department undertakes biosecurity activities to assess and manage biosecurity risk associated with people, goods and conveyances entering or in Australian territory. The Biosecurity Act and related delegated legislation commenced operation on 16 June 2016. On the commencement of the Biosecurity Act, the Quarantine Act was replaced and repealed.

Impact and Effect

At the commencement of this Amendment Order, the Quarantine Act was repealed. This Amendment Order transitioned provisions from the Quarantine Act to the Biosecurity Act. The Amendment Order does not change the impact or effect on industry as the amendment reflects the equivalent powers under the Biosecurity Act and the *Biosecurity Regulation 2016*.

Consultation

Industry consultation was not appropriate for an amendment order of this nature as it is purely mechanical and administrative.

The department consulted with the Office of Parliamentary Counsel (OPC) in the drafting of the Amendment Order, and the OBPR advised on 31 March 2016 that the Biosecurity Regulation impact statement conducted for the Biosecurity Act (ID: 16609) was sufficient for the purposes of the Amendment Order and a further regulation impact statement would not be required.

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

The Amendment Order is compatible with the 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 the Attachment.

Details of the *Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016*

Section 1 – Name

This section provides that the name of this Order is the *Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016* (the Amendment Order).

Section 2 – Commencement

This section provides that the Amendment Order commences at the same time as section 3 of the *Biosecurity Act 2015* (the Biosecurity Act) commences. Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 – Authority

This section provides that the Amendment Order is made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Order is amended or repealed as set out in each Schedule concerned and has effect according to its terms.

Schedule 1 – Amendments

Item 1

Subclause 19.2 of Schedule 6 of the *Export Control (Plants and Plant Products) Order 2011* provides that re-export certificates must not be issued for products rejected under the *Quarantine Act 1908* (the Quarantine Act) for entry into Australia unless the products meet the requirements of the importing country.

Item 1 amends reference to the Quarantine Act that are not applicable when the Biosecurity Act commences and incorporates appropriate equivalent references to the Biosecurity Act and *Biosecurity Regulation 2016* (the Biosecurity Regulation).

The amended subclause provides that a re-export certificate must not be issued for goods that are required to be exported from Australian territory under the Biosecurity Act or the Biosecurity Regulation.

This item also replaces references to “products” with references to “goods” to reflect the correct language used under the Biosecurity Act and its associated legislative framework.

This item retains reference to the Quarantine Act to allow the subclause to cover products that were rejected under the Quarantine Act before its repeal on 16 June 2016.

Statement of Compatibility with Human Rights

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

Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016

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

The *Export Control (Plants and Plant Products) Amendment (Re-export Certificates) Order 2016* amends the *Export Control (Plants and Plant Products) Order 2011* to take into account the repeal of the *Quarantine Act 1908* and the commencement of the *Biosecurity Act 2015* (the Biosecurity Act). This instrument amends a reference to the Quarantine Act that is no longer applicable upon the commencement of the Biosecurity Act commences and replaces it with an appropriate equivalent reference to the Biosecurity Act.

The Amendment Order does not change the impact or effect on industry as the amendment reflects the equivalent powers under the Biosecurity Act and the *Biosecurity Regulation 2016*.

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.

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