

## **EXPLANATORY STATEMENT**

Issued by Authority of the Secretary of the Department of Agriculture, Water and the Environment

*Export Control Act 2020*

*Export Control (Fees and Payments) Rules 2021*

### **Legislative Authority**

The *Export Control (Fees and Payments) Rules 2021* (the Fees Rules) are made by the Secretary of the Department of Agriculture, Water and the Environment (the Department) under section 432 of the *Export Control Act 2020* (the Act).

Section 432 of the Act relevantly provides that the Secretary may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 399 of the Act provides that the rules may prescribe fees that may be charged in relation to fee-bearing activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under the Act.

Paragraph 400(a) provides that the rules may prescribe the time when a specified cost-recovery charge is due and payable, and paragraph 400(b) provides that the rules may prescribe rules relating to the liability of a person's agent to pay cost-recovery charges on behalf of the person and the recovery of such cost-recovery charges from the person by the agent.

Section 401 provides that the rules may prescribe one or more persons who are liable to pay a specified cost-recovery charge. If the rules specify the time when a cost-recovery charge is due and payable, section 403 allows for the rules to also specify a late payment fee that is due and payable if a basic charge is not paid at or before the time.

Under section 289 of the Act, the Minister may, by legislative instrument, issue directions to the Secretary about the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 of the Act. Directions made by the Minister to the Secretary are legislative instruments but are not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act of the purposes of rules relating to fees and payments.

### **Purpose**

The purpose of the Fees Rules is to prescribe fees, cost-recovery charges and late payment fees, persons liable to pay fees or late payment penalties, liability of a person's agent to pay cost-recovery charges, and the time for payment of cost-recovery charges, in relation to functions carried out by, or on behalf of, the Commonwealth, under the Act.

## **Background**

The Act provides for a new legislative framework for the Australian Government to regulate the exportation of agricultural products from Australian territory. The Act replaces the legislative framework provided for by the *Export Control Act 1982*.

The Act and its subordinate legislation provide the basis for ensuring that exports such as meat, seafood, dairy, plants, non-prescribed goods and live animals meet the requirements of importing countries.

Many of the legislative instruments that support the legislative framework established by the *Export Control Act 1982* are due to sunset (cease to have effect) on 1 April 2021, in accordance with the requirements of the *Legislation Act 2003*. These instruments include the *Export Control (Fees) Order 2015*, which prescribes fees and cost-recovery charges that can be recovered under the legislative framework of the *Export Control Act 1982*.

The Fees Rules will prescribe fees and cost-recovery charges that reflect the activities carried out by, or on behalf of, the Commonwealth under the new legislative framework established by the Act.

The *Export Control (Consequential Amendments and Transitional Provisions) Act 2021* makes provision for transitional arrangements in relation to fees and charges under the old *Export Control (Fees) Order 2015*.

## **Impact and Effect**

The Fees Rules will assist the Department to appropriately recover fees and cost-recovery charges for activities carried out by, or on behalf of, the Commonwealth under the Act.

## **Consultation**

In accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Fees Rules have been informed by consultation with stakeholder groups including industry representatives and state and territory agencies. A public consultation draft of the Fees Rule was published on the Department's website from between 18 December 2020 and 17 January 2021.

The Office of Best Practice Regulation within the Department of the Prime Minister and Cabinet (PMC) was consulted in the development of the Act and the commodity specific rules. The Act established a new regulatory framework which is supported by a number of subordinate legislative instruments, that aims to improve Australia's agriculture export legislation (which is a key initiative to support the export of Australian goods and products).

A Regulatory Impact Statement *Improvements to agriculture export legislation* [OBPR ID: 19535] was previously developed under this framework, with stakeholders included in the consideration of commodity specific rules and the mandatory obligations on Australian businesses and the relevant industries. A copy of the Regulation Impact Statement was previously provided with the explanatory memorandum to the Export Control Bill 2019.

## **Details and Operation**

Details of the Fees Rules are set out in Attachment A.

The Fees Rules is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Fees Rules commence at the same time as section 3 of the Act commences. Section 3 of the Act commences on 3 am (by legal time in the Australian Capital 28 March 2021 (or at an earlier time if by Proclamation)).

## **Other**

The Fees Rules 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 Attachment B.

**ATTACHMENT A**  
**Details of the *Export Control (Fees and Payments) Rules 2021***

***Part 1—Preliminary***

**Division 1—Preliminary**

**1-1 Name**

Section 1-1 provides that the name of the instrument is the *Export Control (Fees and Payments) Rules 2021* (the Fees Rules).

**1-2 Commencement**

Section 1-2 provides for the Fees Rules to commence at the same time as section 3 of the *Export Control Act 2020* (the Act) commences.

Section 2 of the Act provides for section 3 of the Act to commence at a single time to be fixed by Proclamation. However, if section 3 of the Act does not commence before 3 am on 28 March 2021 (in the Australian Capital Territory), then it will commence at that time (item 2 of the table in section 2 of the Act).

There is a note below the table, that would provide the table relates only to the Fees Rules as originally made. It will not be amended to deal with later amendments of the Fees Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

**1-3 Authority**

Section 1-3 provides that the Fees Rules is made under the Act.

**1-4 Extension to certain external Territories**

Subsection 8(2) of the Act provides that rules may be made to extend the Act, or any provisions of the Act, to external Territories and other areas that are prescribed by the rules.

Subsection 1-4(1) extends the Fees Rules to Norfolk Island, the exclusive economic zone adjacent to Norfolk Island and the area that is on or in the continental shelf adjacent to Norfolk Island, and is not within the exclusive economic zone adjacent to Norfolk Island.

The note to subsection 1-4(1) alerts the reader that the Act and the *Export Control (Plant and Plants Products) Rules 2021* (Plant Rules) extends to the areas provided for by subsection 1-4(1).

Subsection 1-4(2) extends the Fees Rules to the Territory of Heard Islands and McDonald Islands, the exclusive economic zone adjacent to that Territory and the area that is on or in the continental shelf adjacent that Territory and is not within the exclusive economic zone adjacent that Territory.

The note to subsection 1-4(2) alerts the reader that the Act and the *Export Control (Fish and Fish Products) Rules 2021* (Fish Rules) extend to the areas provided for by subsection 1-4(2).

Note 1 to subsection 8(3) of the Act alerts the reader that a reference to the Act includes a reference to instruments made under the Act.

The effect of the extension to certain external Territories provided by section 1-4 is that fees may be charged and charges recovered, under the Fee Rules, in relation to relevant functions exercised under the Fish Rules and Plant Rules.

## **1-5 Simplified outline of this instrument**

Section 1-5 provides a simplified outline of the matters covered in the Fees Rules. The outline is not intended to be comprehensive and is included to assist readers. It is intended that readers will rely on the substantive provisions in the Fees Rules.

## Division 2—Interpretation

### 1-6 Definitions

Section 1-6 contains definitions of key terms which are used in the Fees Rules. The note at the start of this section lists some terms used in the Fees Rules which are defined in section 12 of the Act. Such terms will have the same meaning in the Fees Rules as they have in the Act.

The definitions in section 1-6 include: *Act, allocated authorised officer, assessment, audit, basic charge, departmental holiday, export document, meat inspection service, month, occupier, ordinary hours of duty, prescribed animal reproductive material, prescribed egg products, prescribed eggs, prescribed fish, prescribed fish products, prescribed live animals, prescribed livestock, prescribed meat, prescribed meat products, prescribed milk, prescribed milk products, prescribed organic goods, prescribed plant products, prescribed plants, and weekday.*

Key concepts that are defined in the Act are:

- **Approved auditor** - a person, or a person included in a class of persons, approved under subsection 273(1) of the Act; and includes a person included in a class of persons specified by rules made for the purposes of section 274.
- **Authorised officer** - (except as provided by section 324 of the Act) a person who is authorised under section 291 to be an authorised officer under the Act.
- **Cost-recovery charge** - a fee prescribed by rules made for the purposes of subsection 399(1) of the Act for a fee-bearing activity, or a charge imposed by the *Export Charges (Imposition—Customs) Act 2015*, the *Export Charges (Imposition—Excise) Act 2015*, or the *Export Charges (Imposition—General) Act 2015*, or a late payment fee relating to one of these fees or charges.
- **Fee-bearing activities** - has the meaning given by subsection 399(1) of the Act.
- **Government certificate** - a certificate (other than a tariff rate quota certificate) in relation to goods that are to be, or that have been, exported and that relates to matters in respect of which a country requires certification before goods of that kind may be imported into that country from Australian territory or from a part of an Australian territory, requirements of this Act that must be complied with before goods of that kind may be exported, or other matters concerning goods of that kind.
- **Registered establishment** - an establishment that is registered under Chapter 4 of the Act.

Other key concepts that are defined in section 1-6 of the Fees Rules are:

- **Allocated authorised officer** - a Commonwealth authorised officer who is allocated to a registered establishment to carry out meat inspection services.
- **Basic charge** - a fee prescribed by a provision in Part 2 of the Fees Rules; or a charge imposed by the *Export Charges (Imposition—Customs) Act 2015*, the *Export Charges (Imposition—Excise) Act 2015*, or the *Export Charges (Imposition—General) Act 2015*.
- **Export document** - a government certificate, an export permit, a tariff rate quota certificate, or any other document that is issued or certified under the Act or under an instrument made under the Act in relation to the export of goods but does not include:
  - An export licence

- An approved ESCAS (Exporter Supply Chain Assurance System) within the meaning of the *Export Control (Animals) Rules 2021*
- A pre-export approval within the meaning of the *Export Control (Animals) Rules 2021*
- An instrument of exemption given under subsection 56(1) of the Act.
- **Meat inspection service** - a meat inspection service within the meaning of any of the following:
  - *Export Control (Meat and Meat Products) Rules 2021*
  - *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021*
  - *Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021*
  - *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021*
- **Ordinary hours of duty** - the period that begins at 6:30am and ends at 6:30pm on a weekday.

## ***Part 2—Fees***

### **2-1 Purpose and application of this Part**

Subsection 2-1(1) provides that, for the purposes of subsection 399(1) of the Act, Part 2 of the Fees Rules prescribes fees that may be charged in relation to specified fee-bearing activities carried out by, or on behalf of, the Commonwealth in the performance of functions or exercise of powers under the Act.

Subsection 2-1(2) clarifies that each fee prescribed by Part 2 of the Fees Rules in relation to a fee-bearing activity is in addition to any other fee prescribed by Part 2 in relation to that fee-bearing activity.

A note following subsection 2-1(2) alerts the reader to section 2-14 of the Fees Rules, which provides that a fee is not payable in relation to a fee-bearing activity in certain circumstances.

### **2-2 Fees in relation to audits**

Section 2-2 prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to audits carried out under the Act by a Commonwealth authorised officer.

The type of audit is listed in column 1 of the table in subsection 2-2(1) and the fees that may be charged in relation to the audit is the amount listed in column 2 of the table.

Items 1 to 8 of the table in subsection 2-2(1) set the quarter hourly fees that may be charged for the corresponding audit of export operations or the performance of functions or exercise of powers.

Items 1 and 3 set out different quarter hourly fees depending on who conducts the audit. The higher fee is reflective of where the authorised officer is required to be a veterinarian to conduct the audit or to meet importing country requirements.

Item 8 sets out the quarter hourly fees that may be charged where an application has been made under subsection 65(1) of the Act. Subsection 65(1) provides that a person may apply to an issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported. Item 8 is intended to cover export operations in relation to goods that are not otherwise captured in items 1 to 7.

Item 9 allows for the recovery of the cost of consumable materials used in carrying out an activity in relation to an audit described in items 1 to 8.

Subsection 2-2(2) provides that, in circumstances where a registered establishment carries out export operations in relation to a kind of goods described in 2 or more items in the table in subsection 2-2(1), the highest fee associated with any item in that table will be imposed for the audit of those export operations.

The note to subsection 2-2(2) alerts the reader that additional fees, as set out in sections 2-7 to 2-10 of the Fees Rules, apply when audits are performed outside of ordinary hours of duty, or during a period for which a shift loading or overtime is payable.



## **2-3 Fees in relation to assessments and inspections**

Section 2-3 prescribes, for the purposes of subsection 399(1) of the Act, fees that may be charged in relation to assessments and inspections carried out by a Commonwealth authorised officer or a State or Territory authorised officer.

The type of assessment or inspection is listed in column 1 of the table in section 2-3 and the fees that may be charged in relation to the assessment or inspection is the amount listed in column 2 of the table.

Items 1 to 9 of the table in section 2-3 set the quarter hourly fees that may be charged, for the corresponding assessment or inspection.

Item 1 of the table in section 2-3 sets different quarter hourly fees for veterinarians providing assessments for prescribed livestock or other prescribed live animals for export, or prescribed animal reproductive material for export, depending on whether the assessment could have been provided by an external authorised officer or not. The higher fee is imposed where an assessment could have been undertaken by a State or Territory authorised officer or a third party authorised officer but is provided by a Commonwealth authorised officer. Item 1 also specifies the fee for an authorised officer who is not a veterinarian. The qualification of the authorised officer is relevant to the rate of overtime or shift loading (sections 2-8 and 2-9) that applies.

Item 2 sets out that different quarter hourly fees for assessments of prescribed plants or prescribed plant products for export will apply depending on whether the assessment could have been provided by a third party authorised officer but is provided by a Commonwealth authorised officer.

Item 3 sets out different quarter hourly fees that apply to inspections under Part 5 of Chapter 9 of the Plant Rules of a bulk vessel for the purpose of deciding whether to approve the bulk vessel, with a higher fee if the activity could have been carried out by a third party authorised officer.

Item 4 sets out different quarter hourly fees that apply to inspections under Part 6 of Chapter 9 of the Plant Rules of a container for the purpose of deciding whether to approve the container, with a higher fee if the activity could have been carried out by a third party authorised officer.

Items 5 to 8 set the quarter hourly fees that may be charged in respect of the provision of assessments in relation to the specified goods referred to in those items. Item 9 sets the quarter hourly fee for the assessment of prescribed goods in relation to which an application for a government certificate has been made under subsection 65(1) of the Act. Item 9 is intended to cover assessments of those goods that are not otherwise covered by items 1, 2 and 5 to 8.

Item 10 allows for the recovery of the cost of consumable materials used in carrying out an activity described in items 1 to 9.

The note to section 2-3 alerts the reader that additional fees, as set out in sections 2-7 to 2-10 of the Fees, apply when assessments carried out by a Commonwealth authorised officer are performed outside of ordinary hours of duty, or during a period for which a shift loading or overtime is payable.

#### **2-4 Fees in relation to meat inspection services**

Subsection 2-4(1) prescribes, for the purposes of subsection 399(1) of the Act, fees that may be charged on a monthly or part-monthly basis in relation to a meat inspection service in relation to meat or meat products for export, carried out by an allocated authorised officer.

The type of fee-bearing activity is listed in column 1 of the table in subsection 2-4(1) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Item 1 of the table in subsection 2-4(1) sets out that a different fee will apply if the meat inspection service is carried out by a veterinarian, or an allocated authorised officer who is not a veterinarian. In the case of an allocated authorised officer who is not a veterinarian, if the service could have been carried out by a State or Territory authorised officer or a third party authorised officer but is provided by an allocated authorised officer a higher fee will apply.

Subsection 2-4(2) provides that the prescribed fees do not apply to any month beginning after a specified date if an occupier of a registered establishment with an allocation of a meat inspection service notifies the Secretary that the occupier wishes to terminate the provision of the meat inspection services on that date, and the written notice is given within the time specified in the rules relating to the relevant meat inspection service.

Subsection 2-4(3) provides that, if the occupier notifies the Secretary that the meat inspection services are not required for a specified period (the shutdown period), and the notice is given within the time specified in the rules relating to the relevant meat inspection service, the prescribed fee is reduced proportionately for each month during which the shutdown period occurs.

#### **2-5 Fees in relation to applications for export documents**

Section 2-5 prescribes fees, for the purposes of subsection 399(1) of the Act, that may be charged in relation to consideration of applications for export documents.

The type of application for export documents is listed in column 1 of the table in section 2-5 and the fees that may be charged in relation to the application is the amount listed in column 2 of the table.

Fees differ, as specified in items 1 to 7 of the table in section 2-5, based on the goods the export document relates to and whether:

- The application for the document is made using the Department's electronic export documentation system or not (except for item 1); and
- The document is a replacement document or not.

Item 8 allows for the recovery of the cost of consumable materials used in relation to the consideration of an application for an export document described in items 1 to 7.

Note 1 to section 2-5 alerts the reader that consideration of an application for the issue of a tariff rate quota certificate in relation prescribed meat or prescribed meat products or prescribed milk or prescribed milk products is covered by item 3 or 4 of the table in section 2-5.

Note 2 to section 2-5 alerts the reader that additional fees, as set out in sections 2-7 to 2-10 of the Fees Rules, apply when consideration of applications for export documents is carried out by a Commonwealth authorised officer outside of ordinary hours of duty, or during a period for which a shift loading or overtime is payable.

## **2-6 Fees in relation to applications for exemption**

Section 2-6 prescribes the fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to an application made under section 53 of the Act for an exemption from one or more of the provisions of the Act in relation to relevant goods.

The type of application for exemption is listed in column 1 of the table in section 2-6 (other than an exemption under subsection 52(3) of the Act) and the fees that may be charged in relation to the application is the amount listed in column 2 of the table.

The note to section 2-6 alerts the reader that additional fees, as set out in sections 2-7 to 2-10 of the Fees Rules, apply when consideration of applications for exemption is undertaken by a Commonwealth authorised officer outside of ordinary hours of duty, or during a period for which a shift loading or overtime is payable.

## **2-7 Fees in relation to fee-bearing activities carried out in relation to prescribed livestock, etc. by a Commonwealth authorised officer outside ordinary hours of duty**

Section 2-7 prescribes the fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to fee-bearing activities, as provided for in sections 2-2, 2-3, 2-5 and 2-6 of the Fees Rules, carried out by a Commonwealth authorised officer in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material, outside ordinary hours of duty.

The note to subsection 2-7(1) indicates that *ordinary hours of duty* is defined in section 1-6 of the Fees Rules.

The type of fee-bearing activity is listed in column 1 of the table in subsection 2-7(2) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Items 1 to 4 of the table in subsection 2-7(2) prescribe different fees for activities carried out by a Commonwealth authorised officer, based on whether:

- The officer is a veterinarian;
- The activity is carried out outside ordinary hours of duty; and
- The activity is carried out on a Saturday, Sunday or a Departmental holiday.

The note to subsection 2-7(2) alerts the reader that the fees prescribed by subsection 2-7(2) are in addition to the fees prescribed by section 2-2, 2-3, 2-5 or 2-6 (as applicable).

**2-8 Fees in relation to fee-bearing activities carried out in relation to prescribed meat or prescribed meat products by a Commonwealth officer during period for which shift loading is payable**

Section 2-8 prescribes fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to fee-bearing activities, specified in sections 2-2, 2-3, 2-5 and 2-6 of the Fees Rules, carried out by a Commonwealth authorised officer in relation to prescribed meat or prescribed meat products during a period for which shift loading is payable.

The type of fee-bearing activity is listed in column 1 of the table in subsection 2-8(2) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Item 1 of the table in subsection 2-8(2) applies in relation to fee-bearing activities carried out by an authorised officer who is not a veterinarian. Item 2 of the table applies in relation to activities carried out by a Commonwealth authorised officer who is a veterinarian.

The note to subsection 2-8(2) alerts the reader that the fees prescribed by subsection 2-8(2) are in addition to the fees prescribed by section 2-2, 2-3, 2-5 or 2-6 (as applicable).

**2-9 Fees in relation to fee-bearing activities carried out in relation to prescribed meat or prescribed meat products during period for which overtime is payable**

Section 2-9 prescribes fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to fee-bearing activities, specified in sections 2-2, 2-3, 2-5 and 2-6 of the Fees Rules, carried out by a Commonwealth authorised officer in relation to meat or meat products during a period for which overtime is payable.

The type of fee-bearing activity is listed in column 1 of the table in subsection 2-9(2) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Items 1 and 2 of the table in subsection 2-9(2) apply in relation to a fee-bearing activity carried out by a Commonwealth authorised officer who is not a veterinarian during a period of, respectively, 4 or more hours, and a period of less than 4 hours.

Items 3 and 4 apply in relation to a fee-bearing activity carried out by a Commonwealth authorised officer who is a veterinarian during a period of, respectively, 3 or more hours, and a period of less than 3 hours.

The note to subsection 2-9(2) alerts the reader that the fees prescribed by subsection (2) are in addition to the fees prescribed by section 2-2, 2-3, 2-5 or 2-6 (as applicable).

**2-10 Fees in relation to fee-bearing activities carried out in relation to goods (other than prescribed livestock, etc. or prescribed meat or prescribed meat products) outside ordinary hours of duty**

Section 2-10 prescribes fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to fee-bearing activities, specified in sections 2-2, 2-3 or 2-6 of the Fees Rules, carried out in relation to certain goods (other than prescribed livestock, prescribed live animals, prescribed animal reproductive material, prescribed meat or prescribed meat products) during a period outside ordinary hours of duty.

The note to subsection 2-10(1) indicates that *ordinary hours of duty* is defined in section 1-6 of the Fees Rules.

The type of fee-bearing activity is listed in column 1 of the table in subsection 2-10(2) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Item 1 of the table in subsection 2-10(2) applies to a fee-bearing activity carried out on a weekday outside ordinary hours of duty. Item 2 applies to an activity carried out on a Saturday, Sunday or a departmental holiday.

The note in subsection 2-10(2) alerts the reader that the fees prescribed by subsection 2-10(2) are in addition to the fees prescribed by section 2-2, 2-3 or 2-6 (as applicable).

## **2-11 Fees in relation to activities carried out in dealing with applications to accredit a property, register an establishment or approved a proposed arrangement etc.**

Section 2-11 prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to activities carried out under the Act by a Commonwealth authorised officer in relation to applications to approve, renew or vary the registration of an accredited property, establishment or approved arrangement.

The type of activity is listed in column 1 of the table in subsection 2-11(1) and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Items 1 to 7 of the table in subsection 2-11(1) set the quarter hourly fees that may be charged for the activities carried out in relating to the applications.

Items 1 and 3 set out different quarter hourly fees depending on who conducts the activity. The higher fee is reflective of where the authorised officer is required to be a veterinarian to conduct the activity.

Item 8 allows for the recovery of the cost of consumable materials used in carrying out an activity in relation to an application described in items 1 to 7.

Subsection 2-11(2) provides that, in circumstances where an application in relation to a kind of goods described in 2 or more items in the table in subsection 2-11(1), the highest fee associated with any item in that table will be imposed for the activities relating to that application.

## **2-12 Fees in relation to activities carried out in relation to approved export programs**

Section 2-12 prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to activities carried out under section 313 of the Act by a Commonwealth authorised officer in relation to approved export programs.

Item 1 allows for the recovery of the reasonable costs incurred by a Commonwealth authorised officer in carrying out activities as directed by the Secretary under section 313 of the Act in relation to an approved export program.

### **2-13 Fees in relation to third party authorised officers—prescribed plants or prescribed plant products**

Section 2-13 prescribes fees that may be charged in relation to fee-bearing activities in relation to prescribed plant or prescribed plant products, carried out by third party authorised officers.

The type of fee-bearing activity is listed in column 1 of the table in section 2-13 and the fees that may be charged in relation to the activity is the amount listed in column 2 of the table.

Items 1 to 4 of the table in section 2-13 provide that the activities for which fees are prescribed are the following:

- Consideration of an application by a person to be a third-party authorised officer, or to vary the functions that they may perform or the powers that they may exercise;
- Training, and initial assessment of competence, of a person who has made an application to be a third-party authorised officer;
- Additional training, and assessment of competence, of a person who was found not to be competent after the initial assessment; or
- Making an instrument authorising a person to be a third-party authorised officer or varying such an instrument.

### **2-14 Exemptions from fees**

Section 2-14 provides for a number of exemptions from a requirement under the Fees Rules to pay the relevant fee for a fee-bearing activity.

The fee-bearing activities exempted in section 2-14 include activities related to the export of assistance animals (as defined in the *Disability Discrimination Act 1992*), export of goods by an organisation approved by the Secretary that provides aid or assistance in a foreign country, or a registered establishment that is a marine laboratory in certain circumstances.

### ***Part 3—Payment of cost-recovery charges***

#### **3-1 Time for payment of cost-recovery charge**

Section 3-1 provides that, for the purposes of paragraph 400(a) of the Act, a cost-recovery charge is due and payable when a demand for payment of the charge is made.

The note to section 3-1 alerts the reader to section 404 of the Act, which provides that a cost-recovery charge that is due and payable to the Commonwealth under the Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

#### **3-2 Person liable to pay basic charge**

Section 3-2 provides that, for the purposes of section 401 of the Act, the person mentioned in column 2 of the table in section 3-2, is liable to pay the basic charge that applies to the matter specified in column 1 of the table. The table in section 3-2 provides that different persons are liable to pay the basic charge, depending on whether the matter relates to the Fees Rules, the *Export Charges (Imposition-Customs) Regulations 2021* or the *Export Charges (Imposition-General) Regulations 2021*.

The first note after section 3-2 indicates that ***basic charge*** is defined in section 1-6 of the Fees Rules.

The second note after section 3-2 alerts the reader to section 3-4 of the Fees Rules which provides that an agent of a person who is liable to pay a basic charge under section 3-2 is jointly and severally liable with that person to pay the basic charge.

#### **3-3 Late payment fees**

Section 3-3 provides for the calculation of late payment fees and identifies the person who is liable to pay late payment fees.

Subsection 3-3(1) explains that section 3-3 is made for the purposes of section 403 of the Act. Subsection 3-3(2) provides that, in circumstances where a basic charge is not paid at or before the time the charge is due, a late payment fee will also be imposed in addition to the basic charge. The late payment fee is calculated according to the formula in subsection 3-3(3).

Subsection 3-3(4) makes clear that the person who was liable to pay the basic charge is liable to pay the late payment fee.

The note to subsection 3-3(4) alerts the reader to section 3-4 of the Fees Rules which provides that an agent of a person who is liable to pay a late payment fee under section 3-3 is jointly and severally liable with that person to pay the late payment fee.

#### **3-4 Liability of agent to pay cost-recovery charge**

Subsections 3-4(1) and (2) provide, for the purposes of paragraph 400(b) of the Act, that the agent of a person liable to pay a cost-recovery charge is jointly and severally liable with that person to pay the charge.

Subsection 3-4(3) also provides that where an agent of a person liable to pay a cost-recovery charge pays the charge on behalf of the person and, at the time the payment is made, the agent has not collected an amount equivalent to the charge from the person, the agent may recover such an amount from the person as a debt due to the agent.



*Part 4—Miscellaneous*

**4-1 Reviewable decision to take action section 406 of the Act**

Section 4-1 provides, for the purposes of subsection 381(2) of the Act, that a decision to take action in relation to a person under section 406 of the Act is a reviewable decision; and the person in relation to whom the action is to be taken is the relevant person for the reviewable decision.

The note to subsection 4-1(1) alerts the reader that if a debtor is liable to pay a cost-recovery charge that is due and payable, the Secretary may, under section 406 of the Act, refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under the Act until the cost-recovery charge has been paid.

**Statement of Compatibility with Human Rights**

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

**Export Control (Fees and Payments) Rules 2021**

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 (Fees and Payments) Rules 2021* (the Rules) are made under the *Export Control Act 2020* (the Act).

The Act provides the legislative framework for the Australian Government to regulate agricultural goods exported from Australian territory.

The purpose of the Rules is to allow the Department to appropriately recover fees and cost-recovery charges for activities carried out by, or on behalf of, the Commonwealth under the Act. The Rules prescribe fees, persons liable to pay fees or late payment fees, the payment of fees, and exemptions from fees.

**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.

**Andrew Edgar Francis Metcalfe AO**  
**Secretary of the Department of Agriculture, Water and the Environment**