

## **REPLACEMENT EXPLANATORY STATEMENT**

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

*Export Control Act 2020*

*Export Control (Plants and Plant Products) Rules 2021*

### **Legislative Authority**

The *Export Control Act 2020* (the Act) sets out the overarching legislative framework for the regulation of exported goods, including food and agricultural products, from Australian territory, and enables the Secretary of the Department of Agriculture, Water and the Environment (the Secretary) to make rules that detail the requirements and establish conditions relating to the export of certain goods. The Act provides provisions for the application of the Act and how the Act interacts with State and Territory laws.

The *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules) prohibit the export of prescribed plants and plant products from Australian territory, or from a part of Australian territory (which includes Norfolk Island and certain areas adjacent to Norfolk Island), unless prescribed export conditions are adhered to. These conditions ensure the importing country requirements are satisfied, reflect industry standards, and meet Australia's international obligations. Prescribed plants and plant products are regulated by the Plant Rules.

The Plant Rules are made by the Secretary under section 432 of the Act. Section 432 of the Act 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.

Under section 289 of the Act, the Minister may give 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 disallowance or sunset. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act for the purposes of rules relating to plants and plant products.

### **Purpose**

The purpose of the Plant Rules is to ensure Australian territory exported plants and plant products satisfy requirements to enable and maintain overseas market access. The Plant Rules include measures to ensure exported plants and plant products comply with export requirements, are described accurately and are traceable. The Plant Rules also include measures to ensure the integrity of plants and plant products exported from Australia.

By setting out key requirements for the export of plants and plant products in the Plant Rules, and having those Rules made by the Secretary, the regulatory framework can be kept fit for purpose if importing country requirements change. Many changes are technical matters, concerning the way that goods are to be produced, prepared, or exported. Having the capacity to change the Plant Rules quickly is crucial to ensuring that Australian producers, processors

and exporters do not experience disruption in market access and can continue to export goods that meet requirements. This is particularly important because one non-compliant export of goods can have significant consequences for other exports, including restrictions on, or the closure of, market access.

The Plant Rules, in conjunction with the Act, set out the requirements that are particular to the export of plants and plant products from Australian territory. The operation of the provisions in the Act, in conjunction with the Plant Rules and the *Regulatory Powers (Standard Provisions) Act 2014*, have also been extended to Norfolk Island and certain areas adjacent to Norfolk Island. Wherever possible, the Plant Rules have been made consistent with other commodity specific export rules that share the same requirements, to ensure consistency in the new framework for stakeholders and regulators that deal in multiple commodities. This will allow for a streamlined approach to regulating the different commodities that will be prescribed and make the framework more accessible to stakeholders.

## **Background**

In 2015 the then Department of Agriculture (now the Department of Agriculture, Water and the Environment (the Department)) conducted a comprehensive review of the export of agricultural products through the *Agricultural Export Regulation Review* (the Review). The Review found most stakeholders accepted the current level of regulation and understood the need for it to be maintained to protect market access and Australia's reputation. However, it also recognised that there was scope for improvement, including increasing flexibility and opportunities for government-industry cooperation, reducing complexity and duplication, and strengthening compliance and enforcement arrangements.

Based on these findings, two regulatory options were considered:

- option one: maintain the existing regulatory arrangements
- option two: consolidate and improve the legislative framework.

On considering the findings of the Review, the Australian Government agreed to improve the legislative framework to address the issues identified by the Review. As part of that process, existing export-related requirements were streamlined and consolidated into an improved legislative framework comprising of the Act and commodity specific rules, which will support the Act. These improvements reduce duplication as well as make it easier to understand and comply with export requirements.

The improvements to the legislative framework are not intended to make significant changes to export policy or the current baseline of regulation. It is intended to provide a more consistent and clear framework that is flexible and responsive to emerging issues.

## **Impact and Effect**

The Plant Rules in conjunction with the Act impose regulatory controls on plants and plant products that are to be exported from Australian territory so that these products meet trade requirements. These controls maintain and strengthen the existing regulatory controls and oversight for the export of goods.

Chapter 1 deals with formal and preliminary matters and sets out the special meanings of words and phrases used in the Rules.

Chapter 2 deals with matters relating to exporting goods. These include defining prescribed goods prohibiting the export of certain goods and applying for exemptions. Chapter 2 also provides requirements for the issue of government certificates, including the specific requirements for phytosanitary certificates and phytosanitary certificates for re-export.

Chapter 3 deals with matters relating to accredited properties. These include:

- requirements for accreditation;
- conditions of accreditation;
- application for accreditation and renewal, variation, suspension and revocation of accreditation;
- obligations of managers of accredited properties.

Chapter 4 deals with matters relating to registered establishments. These include:

- requirements for registration;
- conditions of registration;
- application for registration and renewal, variation, suspension and revocation of registration;
- obligations of occupiers of registered establishments.

Chapter 7 deals with matters relating to export permits. These include conditions for the issue and the period of effect of an export permit, and application for an export permit, as well as the variation, suspension and revocation of an export permit.

Chapter 8 provides for other matters relating to export including notices of intention to export, trade descriptions and official marks.

Chapter 9 deals with matters relating to powers and officials. This includes provisions for the conduct of audits and carrying out assessments of goods. Chapter 9 also provides for powers and functions of authorised officers, decisions that may be made by the operation of a computer program and matters relating to bulk vessel approvals and container approvals.

Chapter 10 provides for compliance and enforcement in relation to samples taken in exercising monitoring or investigation powers and dealing with things seized in exercising investigation powers.

Chapter 11 deals with miscellaneous matters such as record-keeping, storage of samples, compensation for the damage or destruction of goods, relevant Commonwealth liabilities and information on qualified marine surveyors and marine surveyor's certificates.

Chapter 12 provides a scheme of transitional and savings provisions that will preserve the rights and liabilities under the former Orders (the old *Export Control (Plants and Plant Products) Orders 2011*, the old *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* and the old *Export Control (Prescribed Goods—General) Order 2005*). The provisions also allow for eligibility of plants or plant products that commenced under the former Orders to continue, where applicable, under the Plant Rules.

## **Consultation**

In accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Plant Rules have been informed by consultation with stakeholder groups including industry representatives and state and territory regulatory agencies responsible for the administration and regulation of plant establishments.

A consultation draft of the Plant Rules was published on the Department website from 18 May 2020 to 26 June 2020. During this time, the Department consulted with stakeholders through three information sessions. Four written submissions were received and considered in further developing these rules.

An exposure draft of the Plant Rules was released on 7 September 2020 as part of a package of revised commodity specific rules for 60 days of public consultation to ensure Australia's compliance with international obligations under the World Trade Organization's Sanitary and Phytosanitary Agreement. Three submissions were received during this time and were broadly supportive.

Feedback obtained from all consultation rounds was considered in the development of the Plant Rules.

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 subsequent Plant 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 Plant Rules are set out in Attachment A.

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

The Plant Rules commence at the same time as section 3 of the Act commences.

The Plant Rules incorporates the *Accredited Properties (Prescribed Plants and Plant Products) List* as existing from time to time at the commencement of the Plant Rules. In 2021, this list was available on the Department website ([www.agriculture.gov.au](http://www.agriculture.gov.au)).

## **Other**

The Plant 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.

**Details of the Export Control (Plants and Plant Products) Rules 2021**

**CHAPTER 1—PRELIMINARY**

***Part 1—Preliminary***

**1-1 Name**

Section 1-1 provides that the name of the instrument is the *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules).

**1-2 Commencement**

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

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).

**1-3 Authority**

Section 1-3 provides that the Plant Rules are made under the Act.

**1-4 Extension of the Act to Norfolk Island**

Subsection 8(2) of the Act allows the rules to extend the Act, or any provisions of the Act, to an external Territory, the whole or a part of the exclusive economic zone adjacent to an external Territory, or the whole or a part of the area on or in the continental shelf adjacent to an external Territory, that are prescribed by the rules.

Subsection 1-4(1) is made for the purposes of subsection 8(2) of the Act and extends the Act and the Plant Rules, and the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) as it applies in relation to the Act and the Plant Rules to:

- Norfolk Island; and
- 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.

This ensures goods exported from Norfolk Island meet the requirements of the Act and importing country requirements where required.

The note following subsection 1-4(1) explains that a reference to *Australian territory* in a provision of the Act or the Plant Rules includes a reference to Norfolk Island, the area referred to in paragraph 1-4(1)(b) and the waters above the area referred to in paragraph 1-4(1)(c) of the Plant Rules. The note also refers the reader to paragraphs 14(d) to (f) of the Act for the meaning of *Australian territory*.

Subsection 1-4(2) clarifies that, to avoid doubt, the reference in subsection 1-4(1) to the Act does not include a reference to legislative instruments made under that Act.

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

Section 1-5 provides a simplified outline of the matters covered in the Plant Rules and details the structure. 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 Plant Rules.

Chapters in the Plant Rules have the same name and number as the corresponding Chapters in the Act. Gaps in the Chapter numbering in the Plant Rules are because some Chapters of the Act are not relevant to the export of plants and plant products.

## ***Part 2—Interpretation***

### **1-6 Definitions**

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

Some key concepts for the regulatory framework established by the Plant Rules are *prescribed plants* and *prescribed plant products*. These are key concepts because they broadly set the scope of what can be regulated by the Plant Rules. These terms are defined as plants and plant products that are prescribed goods under Division 1 of Part 1 of Chapter 2 of the Plant Rules.

The *Accredited Properties (Prescribed Plants and Plant Products) List* is defined as the list prepared by the Secretary or an authorised SES employee in the Department and published on the Department's website, as that list exists from time to time.

Other key concepts for the Plant Rules that are defined in section 1-6 are *accredited property*, which means a property that is accredited (under Chapter 3 of the Act) for a kind of export operations in relation to prescribed plants or plant products, and *relevant importing country authority*, which means the authority or body that is responsible for regulating the importation of plants or plant products into that country from Australian territory.

The purpose of the definition of *phytosanitary certificate* and *phytosanitary certificate for re-export* is to be clear they are government certificates in relation to plants and plant products issued in accordance with Article V of the *International Plant Protection Convention* (IPPC). The IPPC is defined in section 12 of the Act and is a plant health treaty for which Australia is a signatory. The IPPC aims to protect the world's plant resources from the spread and introduction of pests, and promote safe trade. The IPPC introduced

International Standards for Phytosanitary Measures (ISPMs) as its main tool to achieve its goal, and help protect biodiversity and the environment. In 2020, the IPPC could be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Phytosanitary certificates are issued by the Australian Government for the benefit of the government of the importing country, testifying to the plant health status of the certified product. The certificate guarantees that Australian plants or plant products have been inspected or tested using appropriate procedures. The phytosanitary certificate is evidence plants and plant products for export:

- are considered to be free from quarantine pests and practically free from other injurious pests;
- comply with the current phytosanitary requirements of the importing country.

A phytosanitary certificate for re-export is required if a person intends to export plants or plant products from Australia which were imported into Australia from another country. There must be a phytosanitary certificate from the originating country (or certified copy).

The purpose of the definitions of **resources industry structure** and **installed** is to provide certainty around the kinds of structures (for example, oil rigs and similar off-shore structures) that are covered by the Plant Rules. Goods consigned to a **resource industry structure** that is **installed** in an area are not required to comply with prescribed export control conditions (see paragraph 2-2(4)(f) of the Plant Rules). The definition of **resources industry structure** means a resources industry fixed structure (as defined in the *Sea Installations Act 1987*) and a resources industry mobile unit (as defined in the *Sea Installations Act 1987*) that is not a vessel. This definition of **resources industry structure** includes a fixed structure (including a pipeline) or a moveable or floatable structure (that is not a vessel) that is used off-shore wholly or principally for exploring or exploiting natural mineral resources.

### 1-7 Meaning of **prescribed grain**

Section 1-7 provides a definition for **prescribed grain**. Subsection 1-7(1) provides that **prescribed grain** means any of the following:

- barley (being whole grain of *Hordeum vulgare* (whether 2-row or 6-row), but not including hulled, milled or malted grain of that kind);
- canola (being whole seed of *Brassica napus* var; *napus* cv; “Canola”);
- chickpeas (being seed (whole or split) of *Cicer arietinum*);
- dried field peas (being dried seeds of the species *Pisum sativum* that are angular or spherical in shape, and not of the varieties known as processing peas, vegetables peas, garden peas or peas in pod);
- faba beans (being seed (whole or split) of *Vicia faba*);
- lentils (being seed (whole or split) of *Lens culinaris*);



- lupins (being seed (whole or split) of *Lupinus angustifolius* or *Lupinus albus*);
- mung beans (being whole seeds of the species *Vigna radiata* or *Vigna mungo*, including varieties and synonyms);
- oats (being grain (whole or clipped) of *Avena sativa* or *Avena strigose*, but not including rolled, crushed, milled, hulled or kiln-dried grain of that kind);
- sorghum (being whole unmilled seed of *Sorghum bicolor*);
- soybeans (being whole unmilled seed of *Glycine max*);
- wheat (being whole unmilled grain of *Triticum aestivum*, *Triticum durum* or *Triticum tauschii*);
- whole vetch (being seed (whole or broken) of *Vicia sativa*, but not including split seed of *Vicia sativa*).

The note following subsection 1-7(1) clarifies that for the purposes of paragraph 1-7(1)(m), split vetch that is split seed of *Vicia sativa* is prohibited from export absolutely and refers the reader to section 23 of the Act.

Subsection 1-7(2) provides that a reference to a species of plant in subsection 1-7(1) includes every cultivated subspecies, variety and cultivar of the species and every cross of which a plant of the species is a parent, unless the paragraph in subsection 1-7(1) limits the reference to a particular subspecies, cultivar or cross.

### **1-8 Meaning of *small horticultural products registered establishment***

Under the Export Charges (Imposition—General) Regulations 2021 and Export Charges (Imposition—Customs) Regulations 2021, some horticulture exporters may be eligible for a reduced registered establishment charge if they are eligible to be registered as a ‘***small horticultural products registered establishment***’. To be eligible, the occupier must:

- only use the establishment to produce and prepare for export eligible horticultural products;
- be the grower of the relevant horticultural products;
- not occupy any other registered establishment;
- ensure the total amount produced and prepared for export at the registered establishment does not exceed the amount allowed.

Subsection 1-8(1) provides that a registered establishment is a ***small horticultural products registered establishment*** for a financial year if the requirements in section 1-8 are met in relation to the establishment in the financial year.

Subsection 1-8(2) provides that the registered establishment must be used in the financial year only for carrying out export operations in relation to one or more kinds of horticultural products (the *relevant horticultural products*) referred to in column 1 of the table in subsection 1-8(8).

Subsection 1-8(3) provides that the occupier of the registered establishment in the financial year must be the grower of the relevant horticultural products.

The note following subsection 1-8(3) explains that the relevant horticultural products may be grown at the registered establishment or at another establishment or property.

Subsection 1-8(4) clarifies that a person is a grower of relevant horticultural products if the person has a right to, or interest in, the horticultural products, or they contribute labour and capital to the production and preparation of the horticultural products.

Subsection 1-8(5) provides that the occupier of the registered establishment must not be the occupier of another registered establishment in the financial year.

Subsection 1-8(6) provides the total amount of a kind of horticultural product referred to in column 1 of any of the items 1 to 13 of the table in subsection 1-8(8) must not exceed the total amount referred to in column 2 of the item relating to that kind of horticultural product in a financial year.

Subsection 1-8(7) provides the total amount of all other kinds of horticultural products referred to in column 1 of item 14 of the table in subsection 1-8(8) must not exceed the total amount referred to in column 2 in a financial year. This is a cumulative total of five tonnes for all other kinds of horticultural products. For example, if there are three tonnes of blueberries (i.e. berries of the genus *Vaccinium*) and two tonnes of star fruit produced in a financial year, the total of five tonnes would allow the registered establishment to retain the status as a small horticultural registered establishment. However, if there are five tonnes of blueberries and five tonnes of star fruit produced in a financial year, the status as a small horticultural registered establishment is lost.

The table at subsection 1-8(8) sets out the kinds of horticultural products for the purposes of subsection 1-8(2), and the total amounts that can be produced for each kind of product in a financial year for the purposes of subsections 1-8(6) and (7). The kinds of horticultural products are listed in column 1 of the table and the total amount (in tonnes) is listed in column 2.

Subsection 1-8(9) provides definitions of terms used in the table in subsection 1-8(8).

## CHAPTER 2—EXPORTING GOODS

### *Part 1—Goods*

#### **Division 1—Prescribed goods**

Division 1 of Part 1 of Chapter 2 of the Plant Rules sets out which kinds of goods will be ***prescribed goods*** for the purposes of the Act. Prescribed goods are subject to the regulatory controls imposed by the Act, including the requirement to comply with the prescribed export conditions.

#### **2-1 Plants and plant products that are prescribed goods**

Subsection 28(1) of the Act allows the Secretary to prescribe kinds of goods for the purposes of the Act. A kind of good prescribed by the rules made for the purposes of subsection 28(1) of the Act are ***prescribed goods***. The Act regulates the export of ***prescribed goods***.

Subsection 2-1(1) prescribes certain plants or plant products that are intended to be exported are prescribed goods for the purposes of subsection 28(1) of the Act. This means the following goods (other than narcotic goods within the meaning of the *Customs Act 1901*):

- prescribed grain;
- hay and straw;
- fresh fruit;
- fresh vegetables,

will be subject to the regulatory controls in the Act and the Plant Rules, including the requirement to comply with prescribed export conditions. This general rule is, however, subject to the circumstances set out in section 2-2, which details the plants and plant products that are taken not to be prescribed goods.

The first note following subsection 2-1(1) explains that plants and plant products covered by subsection 2-1(1) are taken not to be prescribed goods for the purposes of the Act in the circumstances prescribed by section 2-2. The note also refers the reader to section 12 of the Act for the definition of the term ***prescribed goods***.

The second note following subsection 2-1(1) refers the reader to section 1-7 of the Plant Rules for the definition of ***prescribed grain***.

Subsection 2-1(2) provides that plants or plant products not listed in subsection 2-1(1), or plants or plant products that are narcotic goods within the meaning of the *Customs Act 1901*, are prescribed goods for the purposes of subsection 28(1) of the Act where:

- the goods are intended to be exported to a particular country (the ***importing country***); and

- a phytosanitary certificate or a phytosanitary certificate for re-export is required to meet an importing country requirement.

In such circumstances the goods will be considered prescribed goods (and subject to the Act and the Plant Rules) for the purposes of importing to that country, but will not be prescribed goods when exported to another country that does not have the same importing requirements.

The note following subsection 2-1(2) explains that plants or plant products that are narcotic goods within the meaning of the *Customs Act 1901* are non-prescribed plants or plant products for the purposes of the Plant Rules. The goods may be prescribed for the purposes of subsection 28(1) of the Act by other rules made under section 432 of the Act (for example, rules relating to organic goods or wood). However, these goods will still be considered non-prescribed plants or plant products for the purposes of the Plant Rules. The note also explains that the term ***non-prescribed plants or plant products*** is defined in section 1-6 of the Plant Rules.

The purpose of subsection 2-1(2) is to remove barriers to trade where there is minimal risk to food safety and human and animal health, while ensuring the phytosanitary requirements of importing countries are met. This provides flexibility to increase or decrease the level of regulation for the export of plants or plant products where there are changes in importing country requirements. This also allows for the regulation of plants and plant products for export to focus on exports that attract the most risk.

## **2-2 Plants and plant products that are taken not to be prescribed goods**

Subsection 28(4) of the Act allows the rules to prescribe that a kind of goods is taken not to be prescribed goods for the purposes of the Act in specified circumstances.

Section 2-2 is made for the purposes of subsection 28(4) of the Act. It sets out the circumstances where plants and plant products that are prescribed under subsection 2-1(1) or (2) are taken not to be prescribed goods for the purposes of the Act.

The note following subsection 2-2(1) explains that plants and plant products that are taken not to be prescribed goods for the purposes of the Act under section 2-2 are non-prescribed goods. The note refers the reader to section 12 of the Act for the definition of ***prescribed goods*** and ***non-prescribed goods***.

The note further explains that if a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to plants or plant products that are non-prescribed goods is required to meet an importing country requirement, an application may be made for the certificate under Division 3 of Part 3 of Chapter 2 of the Act.

Additionally, the note also refers the reader to Division 2 of Part 3 of Chapter 2 of the Plant Rules for when a phytosanitary certificate, or phytosanitary certificate for re-export, may be issued.

Subsection 2-2(2) provides that plants or plant products intended to be exported from Norfolk Island and certain areas adjacent to Norfolk Island prescribed by paragraph 1-4(1)(b) or (c) of the Plant Rules are taken not to be prescribed goods for the purposes of the Act.

Subsection 2-2(3) provides that hay and straw, fresh fruit and fresh vegetables are taken not to be prescribed goods for the purposes of the Act if they are intended for export to New Zealand and a phytosanitary certificate, or phytosanitary certificate for re-export, is not required to meet importing country requirements. This subsection gives effect to the Trans-Tasman Mutual Recognition Arrangement that came into force between Australia and New Zealand in May 1998. The arrangement seeks to minimise regulatory barriers to the export of goods to New Zealand. This arrangement does not extend to prescribed grain, or any plant or plant products for which phytosanitary certificates, or phytosanitary certificates for re-export are required by New Zealand.

Subsection 2-2(4) provides for circumstances when plants and plant products are not prescribed goods for the purposes of subsection 28(4) of the Act. It is not necessary for the goods in these circumstances to be subject to the regulatory controls in the Act, as they are:

- intended to be consumed in transit (paragraphs 2-2(4)(a) and (b)) on a flight or voyage; or
- being transited through Australia (paragraphs 2-2(4)(c) and (d)); or
- not imported into another country (paragraphs 2-2(4)(e) and (f)) but to an external Territory or a *resources industry structure*; or
- in any other case, exported in a consignment of less than 10 litres in liquid volume or 10 kilograms in weight (paragraph 2-2(4)(g)).

Requiring the plants or plant products in these circumstances to meet the requirements of the Plant Rules would be redundant and excessively burdensome as the goods are:

- intended to be consumed and not enter another country; or
- intended to be re-exported in the same condition in which they enter Australia; or
- of a low volume.

The first note following subsection 2-2(4) explains that plants and plant products covered by subsections 2-2(2) or (4) of the Plant Rules are taken not to be prescribed goods for the purposes of the Act even if a phytosanitary certificate, or a phytosanitary certificate for re-export, is required to meet importing country requirements.

The second note following subsection 2-2(4) explains that for the purposes of paragraph 2-2(4)(f), a resource industry structure that is not installed is taken to be a vessel in accordance with the *Sea Installations Act 1997*.

## **Division 2—Prohibited export and prescribed export conditions**

Division 2 of Part 1 of Chapter 2 of the Plant Rules sets out specific requirements that must be complied with when exporting prescribed plants or plant products (prescribed export conditions).

## **2-3 Purpose and application of this Division**

Subsections 2-3(1) and (2) provide Division 2 of Part 1 of Chapter 2 of the Plant Rules is made for the purposes of section 29 of the Act and that it applies to prescribed plants or plant products.

The first note following subsection 2-3(2) refers the reader to Division 1 of Part 1 of Chapter 2 of the Plant Rules for what goods are prescribed plants and plant products.

The second note following subsection 2-3(2) notifies the reader that, under section 2-2 of the Plant Rules, plants and plant products are taken not be prescribed goods in specified circumstances.

Subsection 2-3(3) provides that a provision of Division 2 does not apply to prescribed plants or plant products which are to be exported in circumstances referred to in subsection 52(1) or (3) of the Act (e.g. a commercial sample) and for which an exemption from that provision is in force in relation to the prescribed plants or plant products.

This acknowledges that Part 2 of Chapter 2 of the Act allows certain persons to apply for and be granted an exemption from one or more provisions of the Act in the circumstances listed in section 52. For instance, a person may be granted an exemption from having to comply with one or more of the prescribed export conditions in relation to the export of prescribed plants or plant products for experimental purposes.

## **2-4 Export of prescribed plants or plant products is prohibited unless prescribed conditions are complied with**

Section 29(1)(a) of the Act allows the rules to prohibit the export of prescribed goods from Australian territory or from a part of Australian territory unless the conditions prescribed by the rules are complied with.

Section 2-4 outlines the prescribed export conditions for plants or plant products that are covered by the Accredited Properties (Prescribed Plants and Plant Products) List and prescribed export conditions for plants or plant products that must be carried out at a registered establishment.

Subsection 2-4(1) lists the prescribed export conditions that must be complied with for the export of prescribed plants or plant products from Australian territory. The export of prescribed plants or plant products is prohibited unless these conditions are met. These conditions are necessary to enable and maintain market access for goods exported from Australian territory and to ensure compliance with importing country requirements. The prescribed export conditions maintain the integrity of our exports; Australia's international obligations; and Australia's positive relationships with trading partners and reputation as a reliable exporter of safe and high-quality products.

The prescribed export conditions that apply to the export of prescribed plants or plant products are that:

- if the plants or plant products are covered by the Accredited Properties (Prescribed Plants and Plant Products) List in relation to an importing country and a kind of export operations, and the plants or plant products are not imported plants or plant products and are intended to be exported to that importing country—then operations must be carried out at a property that is accredited for export operations and the importing country, and that the accreditation is not suspended in relation to those operations;
- the operations to prepare the plants or plant products for export (other than operations to which subsection 2-4(3) applies) must be carried out at an establishment that is registered for those operations in relation to the plants or plant products, and that the registration is not suspended in relation to those operations;
- if the plants or plant products are intended to be transported in or on a bulk vessel, a bulk vessel approval, covering the cargo spaces of the vessel into or onto which it is intended to load the plants or plant products, must be in force for the bulk vessel, and not suspended, when the plants or plant products are loaded into or onto the vessel;
- for each consignment of plants or plant products to be exported, a person prescribed by section 8-1 of the Plant Rules (the exporter of the consignment) has given the Secretary, at the time prescribed by section 8-3 of the Plant Rules (as soon as reasonably practicable) a notice of intention to export the consignment; and
- at the time of the export, the exporter holds an export permit for the plants or plant products that is in force and not suspended.

For each export of prescribed plants or plant products, all prescribed export conditions must be complied with.

The first note following subsection 2-4(1) explains that a trade description must be applied to prescribed plants or plant products that are intended to be exported from Australian territory and refers the reader to section 8-6 of the Plant Rules for information on applying trade descriptions.

The second note following subsection 2-4(1) alerts the reader that a person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).

Subsection 2-4(2) provides that for the purposes of table item 1 in subsection 2-4(1), plants or plant products are covered by the Accredited Properties (Prescribed Plants and Plant Products) List in relation to an importing country and a kind of export operations if:

- the plants or plant products are listed in that List in relation to that importing country and export operations of that kind; and
- the plants or plant products are not covered by an exception in that List in relation to that importing country and export operations of that kind.

Subsection 2-4(3) applies in relation to the following:

- operations to prepare the plants or plant products for export that were carried out at an accredited property;
- if the plants or plant products are imported, operations to prepare the plants or plant products for export that were carried out outside Australian territory before the plants or plant products were imported into Australian territory.

The effect of subsection 2-4(3) is that table item 2 of the prescribed export condition in subsection 2-4(1) does not apply to such operations.

### ***Part 2—Exemptions***

Part 2 of Chapter 2 of the Plant Rules sets out matters relating to exemptions from one or more provisions in the Act in relation to prescribed plants or plant products.

Under the Act, an exemption from one or more requirements of the Act (including prescribed export conditions) may be granted following an individual application in certain circumstances, rather than in relation to all plants or plant products of a particular kind or exported to a particular country. This is to enable a reduced level of regulatory oversight in circumstances where there is minimal risk to food safety and human and animal health, while ensuring importing country requirements are met.

### **2-5 Application of this Part**

Section 2-5 provides that Part 2 of Chapter 2 of the Plant Rules applies only in relation to prescribed plants or plant products, which are called *relevant goods* in this Part.

The first note following section 2-5 draws the reader's attention to Division 1 of Part 1 of Chapter 2 of the Plant Rules, which sets out what are prescribed plants or plant products.

The second note following section 2-5 notifies the reader to the fact that, under section 2-2 of the Plant Rules, plants and plant products are taken not to be prescribed goods (see section 12 of the Act) in the specified circumstances.

### **2-6 Period for making application for exemption**

Subparagraph 53(3)(f)(i) of the Act allows the rules to prescribe the period within which an application for an exemption from one or more provisions of the Act may be made.

Section 2-6 is made for the purposes of subparagraph 53(3)(f)(i) of the Act and prescribes the timeframe in which an application for exemption for one or more provisions in the Act must be made in relation to relevant goods. This period is 120 days ending on the day that is 10 business days before the proposed date of export of the relevant goods (if operations to prepare the relevant goods for export have started), or the proposed date to start carrying out those operations. The timeframe is to ensure the Secretary has a reasonable amount of time to assess applications for exemption prior to the export of the prescribed plants or plant products.



The notes following section 2-6 notify the reader that subparagraph 53(3)(f)(ii) of the Act allows the Secretary to allow a different period in which the application may be made in an individual case and explain that an application for an exemption must comply with the requirements in subsection 53(3) of the Act.

### **2-7 Conditions of exemption—matters to which Secretary must have regard**

Section 55 of the Act allows the Secretary to impose conditions on an exemption. When deciding whether to impose a condition on an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 55(2)).

Section 2-7 is made for the purposes of subsection 55(2) of the Act and requires the Secretary, in deciding whether it is necessary to impose conditions on an exemption that relates to prescribed plants or plant products, to consider whether imposing the condition would ensure that one or more objects of the Act are met in relation to the goods.

This requirement is intended to ensure that exemptions are approved in circumstances where the objectives of the Act are met and goods exported from Australia are of the highest standard, maintaining Australia's reputation as a reliable trading partner.

### **2-8 Period of effect of exemption**

Paragraph 57(b) of the Act allows the rules to prescribe the period that an exemption remains in force unless it is revoked earlier.

Section 2-8 is made for the purposes of paragraph 57(b) of the Act and provides the period of effect of an exemption that relates to prescribed plants or plant products is that it remains in force indefinitely or for the period specified in the instrument of exemption. The Secretary will have the discretion to determine the appropriate period. It may be appropriate that some exemptions remain in force for different periods. This will provide the necessary flexibility to deal with changing circumstances for regulating prescribed goods.

The note following section 2-8 explains that, under paragraph 57(a) of the Act, an exemption takes effect on the date specified in the instrument of exemption.

### **2-9 Variation of conditions of exemptions—matters to which Secretary must have regard**

Section 58 of the Act allows the Secretary to vary the conditions imposed on an exemption that is in force. When deciding whether it is necessary to vary a condition on an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 58(3)).

Section 2-9 is made for the purposes of subsection 58(3) of the Act and requires the Secretary, in deciding whether it is necessary to vary conditions on an exemption that relates to prescribed plants or plant products, to consider whether varying a condition would ensure the objectives of the Act are met in relation to the goods.

This requirement is intended to ensure that exemptions are only approved in circumstances where one or more of the objects of the Act will be met.

### ***Part 3—Government certificates***

Part 3 of Chapter 2 of the Act provides for government certificates to be issued for goods that are to be exported or have been exported. Part 3 of Chapter 2 of the Plant Rules sets out specific requirements relating to the issue of government certificates for plants and plant products that are to be, or have been, exported.

A government certificate is an official document containing details about the product being exported. The purpose of the government certificate is to confirm to importing country authorities that the plants or plant products have met specified requirements of that country. Government certificates may be issued electronically, providing an efficient means of facilitating trade.

#### **Division 1—General**

##### **2-10 Government certificate may be issued in relation to prescribed plants or plant products**

Section 62 of the Act allows the Plant Rules to make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported.

Section 2-10 is made for the purposes of subsections 62(1) and (2) of the Act and provides that a government certificate may be issued for prescribed plants or plant products that will be, or have been, exported.

The first note following section 2-10 explains that the issuing body for the certificate is the Secretary (see paragraph 63(1)(b) of the Act).

The second note following section 2-10 refers the reader to subsections 11-5(1) and (2) of the Plant Rules, which require an exporter who applies for a government certificate for prescribed plants and plant products to retain certain records for at least 2 years.

##### **2-11 Phytosanitary certificate, or phytosanitary certificate for re-export, may be issued in relation to non-prescribed plants or plant products**

Section 62 of the Act allows the Plant Rules to make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported.

Section 2-11 is made for the purposes of subsections 62(1) and (2) of the Act, and provides that a phytosanitary certificate, or a phytosanitary certificate for re-export, may be issued in relation to non-prescribed plants or plant products that are to be, or have been, exported.

The first note following section 2-11 explains that the issuing body for the certificate is the Secretary (see paragraph 63(1)(b) of the Act).

The second note following section 2-11 refers the reader to subsections 11-5(3) and (4) of the Plant Rules which require a person to whom a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products is issued must retain certain records for at least 2 years.

## **Division 2—Phytosanitary certificates and phytosanitary certificates for re-export**

The phytosanitary certificate is evidence from Australia to the National Plant Protection Organisation of the importing country that plants and plant products for export:

- are considered free from quarantine pests and practically free from other injurious pests; and
- comply with the current phytosanitary requirements of the importing country.

Phytosanitary certificates for re-export may be issued if a person intends to export products that were imported into Australia from another country and the destination country requires phytosanitary certification.

### **2-12 When phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to prescribed plants or plant products may be issued**

Section 62 of the Act allows the Plant Rules to make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported. Section 2-12 is made for the purposes of subsections 62(1) and (2) of the Act.

Subsection 2-12(1) provides that a phytosanitary certificate may be issued in relation to prescribed plants or plant products that are to be exported if there is an export permit in force and not suspended, and subject to subsection 2-12(4), an assessment of the plants or plant products has been carried out.

Subsection 2-12(2) provides that a phytosanitary certificate may be issued in relation to prescribed plants or plant products that have been exported if there was an export permit in force and not suspended at the time of export, and subject to subsection 2-12(4), an assessment of the plants or plant products had been carried out before the goods were exported.

The note following subsection 2-12(2) refers the reader to section 20 of the Act, which provides for when goods are exported for the purposes of the Act.

Subsection 2-12(3) provides that a phytosanitary certificate for re-export in relation to imported prescribed plants or plant products may be issued if the products that are to be, or that have been, exported meet the following requirements:

- the plants or plant products consist of imported plants or plant products only;
- an export permit for the plants or plant products is in force and is not suspended;
- subject to subsection 2-12(4), an assessment of the plants or plant products has been carried out;
- a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to the plants or plant products is required to meet importing country requirements;

- the plants or plant products are accompanied by the original phytosanitary certificate issued by the country of origin of the plants or plant products, or a certified copy of the original phytosanitary certificate; and
- the plants or plant products have not been exposed to infestation by pests or contamination that could result in any of the matters stated in the original phytosanitary being incorrect.

The note following subsection 2-12(3) refers the reader to paragraphs 2-2(4)(c) and (d) of the Plant Rules, which provides that plants or plant products which have been imported into Australian territory are taken not to be prescribed goods for the purposes of the Act in certain circumstances.

Subsection 2-12(4) provides that paragraphs 2-12(1)(b), 2-12(2)(b) and 2-12(3)(c) do not apply in relation to plant-based oils.

The note following subsection 2-12(4) provides that examples of plant-based oils include olive oil and canola oil.

### **2-13 When phytosanitary certificate, or phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products ceases to be in force**

Paragraph 72(4)(c) of the Act allows the Plant Rules to prescribe circumstances where a government certificate in relation to a kind of goods ceases to be in force.

Section 2-13 is made for the purposes of paragraph 74(4)(c) of the Act and provides that a phytosanitary certificate, or phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products that have not been exported ceases to be in force if the validity period for the goods has ended. *Validity period* is defined in section 1-6 of the Plant Rules as having the meaning given by subsection 9-12(2) of the Plant Rules. This ensures the phytosanitary certificates are only effective in relation to goods with a validity period that has not ended.

## **Division 3—Issue of government certificates**

### **2-14 Changes that require applicant to give additional or corrected information to issuing body**

Paragraph 63(1)(a) of the Act allows the rules to prescribe an issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported. Where no person or body is prescribed by the rules (such as in the Plant Rules) in relation to goods of that kind, the issuing body for a government certificate is the Secretary (paragraph 63(1)(b) of the Act). The issuing body for the purpose of the Plant Rules is the Secretary. Under the IPPC, only the National Plant Protection Organisation of a signatory country may issue phytosanitary certification. Australia is a signatory country of the IPPC and has made arrangements which allows the Secretary to issue phytosanitary certification. This authority may not be granted to another entity or organisation.

Section 65 of the Act allows a person to apply for a government certificate in relation to a kind of goods that are to be, or that have been, exported and requires an applicant to provide certain information.

Section 66 of the Act requires an applicant for a government certificate to provide certain additional or corrected information to the issuing body if the applicant becomes aware that information included in the application (or other document provided to the issuing body) was incorrect or incomplete (paragraph 66(1)(a)), or if a change prescribed by the rules occurs (paragraph 66(1)(b)).

Subsection 2-14(1) provides that section 2-14 applies in relation to an application to an issuing body under section 65 of the Act for a government certificate in relation to plants or plant products.

Subsection 2-14(2) is made for the purposes of paragraph 66(1)(b) of the Act and has the effect that an applicant for a government certificate must provide the issuing body with relevant additional or corrected information where there are reasonable grounds to suspect that:

- the integrity of the prescribed plants or plant products cannot be ensured;
- an importing country requirement relating to plants or plant products will not be, or is not likely to be, met prior to the import of the products into the importing country;
- for prescribed plants or plant products only – a prescribed export condition relating to plants or plant products has not been complied with in circumstances where the condition should have been complied with.

The purpose of this provision is to place an obligation on the applicant for a government certificate to monitor the goods (to the extent it is reasonable to do so) to ensure the government certificate will accurately reflect the status of the goods and circumstances when the certificate was issued, and to inform the issuing body when the relevant circumstances or status change. This ensures government certificates are provided where the goods are supplied in compliance with the Act and the Plant Rules, maintaining Australia's reputation as a reliable trading partner.

The note following subsection 2-14(2) refers the reader to subsection 66(2) of the Act, which provides that if a change prescribed by section 2-14 occurs, the applicant must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to the issuing body's consideration of the application. The note further explains that the issuing body is the Secretary (see paragraph 63(1)(b) of the Act).

## **2-15 Circumstances for refusing to issue government certificate**

Section 67 of the Act requires the issuing body (currently the Secretary in the Plant Rules), on receiving an application for a government certificate in relation to a kind of goods, to decide to either issue the certificate or refuse to issue the certificate. The issuing body may refuse to issue the certificate if one or more of the grounds in subsection 67(3) are met.

Paragraph 67(3)(g) allows the rules to prescribe additional grounds to refuse to issue a government certificate.

Section 2-15 sets out, for the purposes of paragraph 67(3)(g), additional circumstances for an issuing body to refuse to issue a government certificate in relation to all plants or plant products. These additional circumstances are where the integrity of the goods cannot be ensured, or a condition, pest or contaminant is present in Australian territory that would likely affect the acceptability of the goods into the importing country. These additional grounds ensure that government certificates are not issued for goods that could cause harm to Australia's trade reputation.

The note following section 2-15 explains that paragraphs 67(3)(a) to (f) of the Act set out other grounds for refusal to issue a government certificate.

#### **Division 4—Other matters**

##### **2-16 Changes that require holder of government certificate to give additional or corrected information to issuing body**

Subsection 74(2) of the Act requires the holder of a government certificate to provide certain additional or corrected information to the issuing body if the holder becomes aware that information included in their application (or other document provided to the issuing body) was incorrect or incomplete (paragraph 74(1)(a)), or if a change prescribed by the rules occurs (paragraph 74(1)(b)).

Subsection 2-16(1) provides that section 2-16 applies in relation to plants or plant products in relation to which a government certificate is in force.

Subsection 2-16(2) is made for the purposes of paragraph 74(1)(b) of the Act and has the effect that the holder of the government certificate must provide the issuing body with relevant additional or corrected information where there are reasonable grounds to suspect that:

- the integrity of the plants or plant products cannot be ensured;
- an importing country requirement relating to plants or plant products will not be, or is not likely to be, met prior to the import of the products into the importing country;
- in relation to prescribed plants or plant products only, a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

The purpose of this provision is to place an obligation on the holder of the government certificate to monitor the goods (to the extent it is reasonable to do so) to ensure the government certificate continues to accurately reflect the status of the goods and circumstances when the certificate was issued, and to inform the issuing body when the relevant circumstances or status change. This will allow the issuing body to consider whether one or more of the grounds to revoke the government certificate (under section 75 of the Act) are met in light of the changed circumstances, and ensures government certificates are only provided where the goods are supplied in compliance with the Act and the Plant Rules, maintaining Australia's reputation as a reliable trading partner.

The note following subsection 2-16(2) refers the reader to subsection 74(2) of the Act which provides if a change prescribed by subsection 2-16(2) occurs, the holder of the government certificate must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to assessing the matters referred to in paragraphs 74(2)(a) to (c) of the Act. The note further explains that the issuing body is the Secretary (see paragraph 63(1)(b) of the Act).

## CHAPTER 3—ACCREDITED PROPERTIES

### *Part 1—Requirements for accreditation*

Chapter 3 sets out matters relating to accredited properties. Accredited properties are points of production (including farms, orchards and vineyards) or preparation (such as packhouses) in the export supply chain. The properties are required to be accredited under the Act to produce or prepare goods to ensure the goods will meet specific import requirements of an importing country authority. These importing country requirements are typically set out in bilaterally negotiated protocol agreements between Australia's NPPO and the NPPO of the importing or receiving country.

The Secretary may, on application by the manager of a property, accredit the property for export operations in relation to prescribed goods. Prescribed plants or plant products are required to be produced and prepared at an accredited property when the plant or plant products are listed in the *Accredited Properties (Prescribed Plants and Plant Products) List* in relation to that importing country and export operations of that kind prescribed plants or plant products (section 2-4).

### **3-1 Other requirements for accreditation**

Section 79 of the Act provides that, on receiving an application under section 78 of the Act to accredit a property, the Secretary must decide whether to accredit the property, or to refuse to accredit the property. Subsection 79(2) sets out requirements of which the Secretary must be satisfied before deciding to accredit a property, having regard to any matter the Secretary considers relevant. Paragraph 79(2)(b) of the Act allows other requirements to be prescribed by the rules.

Section 3-1 is made for the purposes of paragraph 79(2)(b) of the Act and prescribes other requirements that must be met for a property to be accredited for a kind of export operations in relation to a kind of prescribed plants or plant products.

The note following subsection 3-1(1) refers the reader to paragraph 84(2)(a) of the Act and explains the requirements under section 3-1 also apply to an application to renew the accreditation of a property.

Subsection 3-1(2) requires a management system to be in place in relation to the export operations and the plants or plant products for the property and the management system must ensure:

- relevant importing country requirements relating to the export operations and the plant or plant products are met;
- pest and contaminant control measures that are appropriate for, and meet importing country requirements relating to, the export operations and the plants or plant products are in place;
- personnel who are carrying out the export operations undertake training that is appropriate for the kind of export operations and plants or plant products, and that meet importing country requirements;



- the property is kept in a hygienic condition appropriate for the kind of export operations and the plants or plant products;
- the plants and plant products can be tracked through the *relevant property* where the export operations are carried out. This includes from where the products were transferred to the relevant property, while the products are at the relevant property, and to the accredited property or registered establishment to which the products are transferred.

The requirement for plants and plant products to be tracked is to achieve ‘one step forward’ and ‘one step back’ traceability of the plants or plant products while they are at the establishment. That is the requirement to know where the goods have come from, where they are in the property and where they have been transferred to.

Appropriate training could include, for example, inductions and briefings for on-farm pickers regarding the accreditation and importing country requirements for specific blocks or online training for crop monitors on farms.

The purpose of these requirements is to facilitate managers seeking accreditation of properties to tailor the management system of their property to meet the expectations for different kinds of export operations, plants and plant products and importing country requirements for consideration by the Secretary.

This provides a responsive regulatory framework that can accommodate evolving industry practices and innovation, and minimise regulatory burden where it is not proportionate or appropriate to the kind of operations being undertaken or products being prepared at the facility.

## ***Part 2—Conditions of accreditation***

### **3-2 Purpose of this Part**

Section 80 of the Act sets out the conditions that apply to the accreditation of a property. This includes the conditions prescribed by the Plant Rules made for the purposes of paragraph 80(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of accreditation) of the Act.

Section 3-2 provides that Part 2 of Chapter 3 of the Plant Rules prescribes, for the purposes of paragraph 80(1)(b) of the Act, conditions of the accreditation of a property for a kind of export operations in relation to a kind of prescribed plants or plant products. The conditions prescribed in the Plant Rules relate to certain matters covered by the accreditation of the property.

The first note following section 3-2 explains that the conditions under Part 2 of Chapter 3 of the Plant Rules also apply in relation to the renewed accreditation of the property as required by section 3-8.

The second note following section 3-2 alerts the reader that section 106 of the Act provides the manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation of the property is contravened.

The third note following section 3-2 explains that the manager of an accredited property must retain certain records for at least 2 years (section 11-6 of the Plant Rules).

### **3-3 Management system must be implemented**

Subsection 3-3(1) provides that the management system required by section 3-1 must be implemented.

Subsection 3-3(2) provides that a variation to a management system must not be implemented unless approved by the Secretary under subsection 87(2) or made by the Secretary under subsection 90(1) of the Act and notice of the approval or variation respectively has been given to the manager of the accredited property under section 88 or section 91 of the Act. This ensures the accredited property meets the required standards to ensure the integrity of the prescribed plants or plant products and that the prescribed plants and plant products will continue to meet relevant importing country requirements.

Subsection 87(2) of the Act provides that, on receiving an application under section 87 for a variation of accreditation, or approval of alteration, of a property, the Secretary must decide to make the variation or give the approval, or to refuse to make the variation or give the approval. Section 88 of the Act requires the Secretary to give the manager of the property written notice of the variation or approval, if such a variation is made or approval is given. Subsection 90(1) of the Act allows the Secretary to make variations in relation to the accreditation of a property. Section 91 of the Act requires the Secretary to give the manager of the property written notice of the variation, if a variation is made under subsection 90(1).

### **3-4 Integrity**

Section 3-4 provides that the integrity of prescribed plants or plant products in relation to which export operations are carried out at an accredited property must be ensured while the plants or plant products are at the property. The purpose is to ensure the conditions or status (such as the phytosanitary status and product security) of prescribed plants or plant products that will be exported is maintained through the export supply chain. The condition ensures that phytosanitary attestations that may be made by the Secretary on a phytosanitary certificate relating to the plants or plant products will be accurate and reliable. This is important to maintain Australia's trade reputation and market access.

### **3-5 Application of trade description**

The purpose of section 3-5 is to clarify the minimum information to be included in a trade description applied to prescribed goods produced or prepared at an accredited property. If a trade description is applied at the accredited property, the trade description must contain the information in paragraph 8-6(1)(d) of the Plant Rules, which includes the name and address (or identification number) of the exporter, manufacturer or producer of the plants or plant products.

The note following section 3-5 explains that the trade description must also comply with section 8-7 and subsection 8-8(2) of the Plant Rules.

### **3-6 Requirements for packages for export**

The purpose of section 3-6 is to describe the packaging requirements of an accredited property that prescribed plants or plant products are packed into packages for export. These requirements ensure that, if prescribed plants or plant products are packed into packages for export, they are packaged correctly, and have their integrity maintained from the accredited property, to the final overseas destination. Packaging requirements are not intended to apply to packaging that is not for export purposes, such as bins and lugs used to move prescribed plants or plant products between a domestic farm and packhouse. *Package for export* is defined under section 1-6 of the Plant Rules.

Subsection 3-6(1) prescribes that section 3-6 applies in relation to an accredited property where prescribed plants or plant products are packed into packages for export.

Subsection 3-6(2) requires packages to either be cleaned and reconditioned before each use (if they are intended to be used more than once), or in any other case, to be unused and clean.

Subsection 3-6(3) requires packages to be appropriate for the plants or plant products to be packed and used in a manner to ensure the integrity of packaged plants or plant products.

Subsection 3-6(4) provides that packages must be sufficiently strong to withstand handling ordinarily occurring before and during transport, including transport to their final overseas destination.

### ***Part 3—Renewal of accreditation***

#### **3-7 Period within which application to renew accreditation must be made**

Section 83 of the Act deals with applications to renew the accreditation of a property. Subsection 83(4) of the Act provides that an application for renewal of accreditation must be made within the period prescribed by the rules (paragraph 83(4)(a)), or a longer period allowed by the Secretary (paragraph 83(4)(b)).

Section 3-7 is made for the purposes of subsection 83(4)(a) of the Act and prescribes the timeframe in which an application to renew the accreditation of a property must be made. This timeframe is 60 days starting on the day that is 180 days before the expiry date for the accreditation. In other words, the application must be submitted when the accreditation is between 180 days and 120 days from expiring. The period specified allows the Secretary sufficient time to consider the application before a decision is made.

The first note following section 3-7 provides an example of how the timeframe works in practice, specifically that if the accreditation of a property expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

The second note following section 3-7 refers the reader to subsection 83(1) of the Act which provides an application to renew the accreditation of a property only needs to be made if there is an expiry date for the accreditation.

The third note following section 3-7 refers the reader to paragraph 84(2)(a) of the Act which provides that the Secretary may decide not to renew the accreditation of the property if the requirements prescribed by Part 1 of Chapter 3 of the Plant Rules are not continuing to be met in relation to the property.

### **3-8 Conditions of renewed accreditation**

Section 85 of the Act sets out the conditions that apply to the renewed accreditation of a property. This includes the conditions prescribed by the rules made for the purposes of paragraph 85(b) of the Act (other than any of those conditions that the Secretary decides are not to be conditions of accreditation).

Section 3-8 prescribes, for the purposes of paragraph 85(b) of the Act, the conditions prescribed by Part 2 of Chapter 3 of the Plant Rules.

### ***Part 4—Variation of accreditation***

#### **3-9 Alterations of property that must be approved**

Section 87 of the Act relates to applications by a manager of an accredited property for variation of accreditation or approval of alteration of property. Paragraph 87(1)(b) of the Act provides that the manager of an accredited property may apply to the Secretary for approval of a variation of the accreditation so that it covers:

- an alteration of the property, being an alteration of a kind prescribed by the rules (subparagraph 87(1)(b)(i)); or
- the carrying out of export operations on an additional part of the property, or on another property, in the circumstances prescribed by the rules (subparagraph 87(1)(b)(ii)).

Subsection 3-9(1) prescribes, for the purposes of subparagraph 87(1)(b)(i) of the Act, an alteration of an accredited property, other than an alteration that does not, or is not likely to, make the property unhygienic, or result in a contravention of a condition of the accreditation of the property. An alteration that does not, or is not likely to, make the property unhygienic, or result in a contravention of a condition of the accreditation may include, for example:

- where upgrades are made to the administrative processes and new technological systems are implemented on the property in relation to the property's business activities;
- the manager of the property purchases a new labelling machine to improve the efficiency and accuracy of their business operations; or
- where general maintenance is undertaken at the property, such as repainting or rewiring of buildings.

Alterations of property of this nature are not intended to require approval by the Secretary prior to being implemented or undertaken by the manager of the accredited property.

Subsection 3-9(2) prescribes, for the purposes of subparagraph 87(1)(b)(ii) of the Act, a circumstance is that the manager of the accredited property wishes to carry out export operations in relation to prescribed plants or plant products on an additional part of the property, or on another property, that is not covered by the accreditation of the property. In these circumstances a manager must apply to the Secretary for a variation under section 87 of the Act and be granted approval by the Secretary, prior to carrying out export operations on an additional part of the property, or on another property.

### **3-10 Other reasons for Secretary to make variation in relation to accreditation**

Subsection 90(2) of the Act provides that the Secretary may make a variation in relation to the accreditation of a property, or set an earlier expiry date for the accreditation, if the Secretary reasonably believes that certain reasons exist. Paragraph 90(2)(d) of the Act allows the rules to prescribe any other reason for why the accreditation of a property needs to be varied.

Section 3-10 prescribes, for the purposes of paragraph 90(2)(d) of the Act, reasons for making a variation in relation to, or setting an earlier expiry date for, the accreditation of a property. These reasons are:

- importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met, or are not likely to be met;
- the manager of the property has contravened a requirement of the Act in relation to the accreditation;
- a different person has become, or is to become, the manager of the property;
- the variation is necessary to take account of an event or other matter notified under section 109 of the Act;
- the management system required by section 3-1 of the Plant Rules is no longer appropriate in relation to the kind of export operations or the kind of prescribed plants or plant products covered by the accreditation;
- the property is, or becomes, a registered establishment.

Examples of circumstances that could change the appropriateness of a management system after it has been approved include changing risks in the export supply chain or in relation to importing country requirements or changing pest or contaminant pressures in a region of Australia, particularly due to environmental conditions.

Varying the accreditation in circumstances where the property is, or becomes, a registered establishment is designed to streamline regulatory functions and facilitate variations to accreditation where the export operation is covered by the registration. For example, if a property is accredited for export operations to produce and prepare goods, but then expands

operations to become registered to prepare goods, the Secretary could vary the accreditation to remove the accreditation relating to the preparation of goods to remove unnecessary duplication of regulatory controls. The accreditation to produce goods would remain.

### ***Part 5—Suspension of accreditation***

#### **Division 1—Suspension requested by manager**

##### **3-11 Circumstances in which manager may request suspension of accreditation**

Subsection 92(1) of the Act provides the manager of an accredited property may request the Secretary to suspend the accreditation of the property in relation to a kind of export operations and a kind of prescribed goods and, if applicable, a place to which goods may be exported. Subsection 92(2) of the Act provides the request under subsection 92(1) may be made only in circumstances prescribed by the rules.

Section 3-11 prescribes, for the purposes of subsection 92(2) of the Act, the circumstances in which the manager of an accredited property may request to suspend the accreditation. These circumstances are:

- a circumstance has arisen which prevents, or will prevent, a kind of export operations being carried out at the property; or
- the manager considers it will not be possible or practicable for a kind of export operations to be carried out for any other reason.

#### **Division 2—Suspension by Secretary**

##### **3-12 Other grounds for suspension of accreditation**

Under subsection 94(1) of the Act, the Secretary may suspend the accreditation of a property in relation to one or more kinds of export operations and one or more kinds of prescribed goods and, if applicable, one or more places to which goods may be exported. Paragraph 94(1)(h) of the Act allows the rules to prescribe additional grounds for suspending the accreditation of a property.

Section 3-12 provides, for the purposes of paragraph 94(1)(h) of the Act, additional grounds where the Secretary can suspend the accreditation of a property are where:

- importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met or are not likely to be met;
- the Secretary receives notice under subsection 109(1) of the Act (person ceasing to be the manager of the property); or otherwise becomes aware that the person in whose name the property is accredited has ceased to be the manager of the property, and

another person has become the manager of the property.

## ***Part 6—Revocation of accreditation***

### **Division 1—Revocation requested by manager**

#### **3-13 Information to be included in request to revoke accreditation**

Subsection 101(1) of the Act allows the manager of an accredited property (including a property in relation to which a suspension is in effect) to request the Secretary to revoke the accreditation of the property. Subsection 101(2) of the Act requires the application to be in writing and to include the information prescribed by the rules.

Section 3-13 prescribes, for the purposes of paragraph 101(2)(b) of the Act, that the manager must include the reasons for the request to revoke accreditation. This will provide the Secretary with clarity on the reasons for the application.

### **Division 2—Revocation by Secretary**

#### **3-14 Other grounds for revocation of accreditation**

Subsection 102(1) of the Act allows the Secretary to revoke the accreditation of a property (including a property in relation to which a suspension is in effect). Paragraph 102(1)(h) allows the Rules to prescribe additional grounds where the Secretary may revoke the accreditation of a property.

Section 3-14 prescribes, for the purposes of paragraph 102(1)(h) of the Act, additional grounds where the Secretary may revoke accreditation of a property. These additional grounds are:

- importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met, or are not likely to be met;
- where the Secretary receives notice under subsection 109(1) of the Act (person ceasing to be the manager of the property); or otherwise becomes aware that the person in whose name the property is accredited has ceased to be the manager of the property, whether or not another person has become the manager of the property; and
- the property is, or becomes, a registered establishment.

## ***Part 7—Obligations of managers of accredited properties etc.***

### **3-15 Events of which Secretary must be notified**

Subsection 108(1) of the Act provides that the manager of an accredited property must notify the Secretary, in writing, as soon as practicable after an event or circumstance prescribed by the rules occurs.

Section 3-15 prescribes, for the purposes of subsection 108(1) of the Act, events where the manager of an accredited property must notify the Secretary. These are:

- if there is a change in the manager's business structure;
- if the manager is an individual, the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
- if the manager is a corporation, the corporation enters into administration (within the meaning of section 435C of the *Corporations Act 2001*), or is to be wound up (whether by court or voluntarily);
- there is a change to the trading name, business address or contact details of the manager;
- a condition of the accreditation is contravened.

The example following section 3-15 provides that for the purposes of paragraph 3-15(a) of the Plant Rules, a change in a person who manages or controls export operations carried out at the accredited property, or a change in the membership of the partnership if the manager is a partnership, would be a change in the manager's business structure.

The note following section 3-15 alerts the reader to section 109 of the Act, which requires a person who ceases to be the manager of an accredited property to notify the Secretary, in writing, as soon as practicable after the cessation.

### ***Part 8—Matters relating to applications***

#### **3-16 Application of this Part**

Section 3-16 provides that Part 8 of Chapter 3 of the Plant Rules applies in relation to applications made under the following:

- section 78 of the Act to accredit a property for a kind of export operations in relation to a kind of prescribed plants or plant products;
- section 83 of the Act to renew the accreditation of a property for a kind of export operations in relation to a kind of prescribed plants or plant products;
- section 87 of the Act to do any of the following in relation to the accreditation of the property:
  - vary any aspect of the accreditation or the particulars relating to the accreditation;
  - approve a variation of the accreditation; or
  - vary the conditions of the accreditation.



### **3-17 Initial consideration period**

Section 379 of the Act details matters relating to dealing with applications made under the Act. Subsection 379(3) allows the rules to prescribe the period in which an application must be considered by the Secretary. If the Secretary does not make a decision on the application within the prescribed consideration period, the application is taken to have been refused.

Section 3-17 prescribes, for the purposes of subsection 379(3) of the Act, the initial consideration period for an application of 120 days. The initial consideration period may be extended in accordance with subsection 379(5) of the Act.

The period of 120 days is appropriate having regard to the matters the Secretary may consider in granting or refusing an application.

The note following section 3-17 explains that, under subsection 379(4) of the Act, the consideration period starts on the day after the day the Secretary receives the application.

### **3-18 Period within which request relating to application must be complied with**

Subsection 379(9) of the Act allows the Secretary to make a number of requests in relation to a relevant application, including requesting additional information or requesting consent to enter premises. Paragraph 379(10)(b) allows the rules to prescribe a maximum period within which the request must be complied with.

Section 3-18 prescribes, for the purposes of paragraph 379(10)(b) of the Act, a period of 6 months within which a request from the Secretary in relation to an application to accredit a property must be complied with. The initial consideration period may be extended under section 379 of the Act. The maximum period prescribed by this section is appropriate as it permits sufficient time to comply with matters provided in subsection 379(9) of the Act. The period provides certainty for industry.

## **CHAPTER 4—REGISTERED ESTABLISHMENTS**

Chapter 4 sets out matters relating to registered establishments. The purpose of registering an establishment is to ensure that:

- the facilities available are fit for the purpose of export operations that will be undertaken at the facility, such as preparing, handling, storing, treating, loading or assessing (such as inspecting) product for export;
- appropriate hygiene standards and the necessary measures to manage pests and contaminants are maintained to ensure goods for export that are processed and prepared have maintained, and will maintain their integrity; accurately reflect trade descriptions; and meet other requirements applicable to a given commodity; and
- the goods comply, or will comply, with importing country requirements.

The Secretary may, on application by the occupier of an establishment, register the establishment for export operations in relation to prescribed plants or plant products. The registration of the establishment is subject to certain conditions.

It is a prescribed export condition that operations to prepare prescribed plants or plant products for export must be carried out at an establishment registered for those operations in relation to plants or plant products (section 2-4 of the Plant Rules). Prescribed plants and plant products that are required or permitted to be assessed by an assessor under section 9-5 must be assessed at an establishment that is registered to carry out export operations in relation to the plants or plant products (section 9-8).

### ***Part 1—Requirements for registration***

#### **Division 1—Requirements relating to construction, equipment and facilities**

##### **4-1 Purpose of this Division**

Subsection 112(1) of the Act provides that, on receiving an application under section 111 to register an establishment, the Secretary must decide to register the establishment, or to refuse to register the establishment. Subsection 112(2) sets out the requirements of which the Secretary must be satisfied before deciding to register an establishment, having regard to any matter the Secretary considers relevant. Paragraphs 112(2)(c) and (f) allow additional matters and requirements (respectively) to be prescribed by the rules.

Section 4-1 provides that Division 1 of Part 1 of Chapter 4 of the Plant Rules is made for the purposes of paragraphs 112(2)(c) and (f) of the Act and prescribes additional requirements relating to construction, equipment and facilities that must be met for an establishment to be registered for export operations in relation to a kind of prescribed plants or plant products for export.

This means that the requirements prescribed in Division 1 of Part 1 of Chapter 4 of the Plant Rules (sections 4-1 to 4-2) are requirements that the Secretary must be satisfied are met prior to registering an establishment for export operations in relation to a kind of prescribed plants or plant products (for the purposes of paragraphs 112(2)(c) and (f) of the Act).

The first note following section 4-1 explains the requirements in Division 1 also apply to an application to renew the registration of an establishment under section 4-15 of the Plant Rules.

The second note following section 4-1 explains that other requirements under paragraphs 112(2)(a), (b), (c), and (e) of the Act and Division 2 of Part 1 of Chapter 4 of the Plant Rules must also be met before the Secretary decides to register an establishment.

## **4-2 General requirements**

Section 4-2 prescribes the general requirements that must be met before registering an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products for export. This allows the Secretary to be satisfied that the operations will be carried out in a way that will ensure that the requirements of the Act are met. Regardless of whether the products are intended for domestic consumption or export, producers can operate a system of processing at registered establishments.

The purpose is to accommodate the broad diversity of plants or plant products that are prepared at registered establishments and exported from Australia. This supports Australian businesses by keeping the cost of doing business to a minimum while setting expectations on facilities to ensure that Australian exports meet legislative and importing country requirements, and Australia's trade reputation and market access are maintained.

Subsection 4-2(1) provides that section 4-2 applies in relation to all establishments.

Subsection 4-2(2) requires an establishment to have the buildings, equipment, facilities and services necessary to ensure export operations in relation to prescribed plants or plant products can be carried out in a way that will ensure compliance with the Act. The buildings, equipment, facilities and services that are necessary for an establishment vary depending on the nature of the plant or plant products being prepared for export, and the kind of export operations that are being undertaken at the facility. For example, an establishment that undertakes phytosanitary treatments of plants and plant products will have necessary equipment and facilities that are different to other establishments not undertaking those operations.

Subsection 4-2(3) requires that an establishment must have handwashing and toilet facilities. This is necessary to ensure the health and welfare of employees and visitors within the registered establishment (such as assessors and auditors) and the hygiene of plants and plant products. This ensures only those establishments that operate safely and hygienically are eligible for registration. These requirements must continue to be met once the establishment is registered.

Subsection 4-2(4) prescribes that an establishment and its equipment and facilities must be designed and constructed to:

- provide areas with adequate lighting and ventilation that are suitable for assessments of prescribed plants or plant products;
- facilitate effecting cleaning;

- minimise the possibility of infestation or contamination of prescribed plants and plant products during export operations;
- provide for the disposal of all waste material (including liquids and solids) in an appropriate and hygienic manner;
- facilitate safe and effective treatment of prescribed plants and plant products; and
- allow samples of prescribed plants or plant products to be taken.

The note following subsection 4-2(4) refers the reader to Division 2 of Part 6 of Chapter 11 of the Act and Part 2 of Chapter 11 of the Plant Rules for information in relation to samples.

Subsection 4-2(5) requires an establishment and its equipment and facilities to be designed and constructed to allow testing and analysis of samples to be carried out. For example, where a facility is seeking to be registered for export operations to prepare hay and straw, and undertake testing and analysis of samples for Annual Rye Grass Toxicity (ARGT) on site, the facilities and equipment must be designed and constructed to allow these operations to occur.

Subsection 4-2(6) requires an establishment and its equipment and facilities to be designed and constructed to allow screening of prescribed grain (described in paragraph 4-9(1)(a) or (b)) to be carried out. Screening activities allow for the removal of contaminants from prescribed grain and other cereal grains, oilseeds, pulses and nuts during the preparation of plants and plant products for export.

## **Division 2—Other requirements**

### **4-3 Purpose of this Division**

Subsection 112(1) of the Act provides that, on receiving an application under section 111 to register an establishment, the Secretary must decide to register the establishment, or to refuse to register the establishment. Subsection 112(2) sets out the requirements of which the Secretary must be satisfied before deciding to register an establishment, having regard to any matter the Secretary considers relevant. Paragraph 112(2)(f) allows additional requirements to be prescribed by the rules.

Section 4-3 provides that Division 2 of Part 1 of Chapter 4 of the Plant Rules (sections 4-3 to 4-4) is made for the purposes of paragraphs 112(2)(f) of the Act and prescribes other requirements that must be met for an establishment to be registered for a kind of export operations in relation to a kind of prescribed plants or plant products for export. For example, these may be requirements that must be met for an establishment to be registered to prepare fresh fruit and fresh vegetables for export.

This means that the requirements prescribed in sections 4-3 and 4-4 are requirements that the Secretary must be satisfied of prior to registering an establishment for the kind of export operations in relation to a kind of prescribed plants or plant products for export (for the purposes of paragraph 112(2)(f) of the Act).

The first note following section 4-3 explains that the requirements in Division 2 also apply to an application to renew the registration of an establishment (see section 4-15).

The second note following section 4-3 explains that other requirements under subsection 112(2) of the Act and Division 1 of Part 1 of Chapter 4 of the Plant Rules must also be met before the Secretary decides to register an establishment.

The third note following section 4-3 explains that section 1-8 of the Plant Rules sets out the requirements that must be met for a registered establishment to be a small horticultural products registered establishment for a financial year. The section 1-8 requirements are relevant for the Secretary to assess annual charges for a registered establishment under the Export Charges (Imposition—General) Regulations 2021 and Export Charges (Imposition—Customs) Regulations 2021.

#### **4-4 Management system**

Section 4-4 prescribes the management system requirements that must be met for an establishment to become registered specific to the Plant Rules.

Subsection 4-4(1) provides that section 4-4 applies in relation to all establishments.

The note following subsection 4-4(1) explains that other provisions of Division 2 of Part 1 of Chapter 4 of the Plant Rules may also apply in relation to an establishment.

Subsection 4-4(2) provides that there must be a management system in place in relation to the export operations and the plants or plant products for which the establishment is to be registered.

It is the responsibility of the occupier to maintain the establishment in a hygienic condition and have documented systems to manage hygiene, pest control and waste, and to present goods and transport units that are fit for export.

Subsection 4-4(3) prescribes the general requirements of the management system. The management system must ensure the following:

- importing country requirements relating to the export operations and the plants or plant products are met;
- the establishment is kept clean and in a hygienic condition appropriate for the export operations and the plants or plant products;
- pest and contaminant control measures that are appropriate for the export operations and the plants or plant products, and meet importing country requirements, are in place;
- toxic substances are stored appropriately so the plants or plant products, or areas where export operations are carried out, will not become contaminated;
- waste is appropriately treated and disposed of so plants or plant products will not become infested by pests or contaminated;

- personnel who carry out the export operations undertake training that is appropriate for the kind of export operation and the plants or plant products, and meets importing country requirements;
- the plants and plant products can be tracked from the premises from which they were transferred to the establishment, while they are at the establishment, and to the premises to which they are transferred from the establishment (in order to achieve ‘one step forward’ and ‘one step back’ traceability);
- if the export operations are, or include, operations to treat the plants or plant products, the treatment is safe and effective, meets importing country requirements, and the use of any applied chemical is lawful.

For example, establishments seeking to be registered for export operations to prepare hay and straw for export must have appropriate management systems for receipt, processing, and testing of hay and straw that may be contaminated with Annual Rye Grass Toxicity (ARGT). The management system would need to control possible cross contamination between hay and straw products received and processed at the facility, and ensure product that is contaminated with ARGT is not entered for export.

An example of appropriate training would be personnel at registered establishments undertaking specific phytosanitary treatment export operations being onboarded and trained to undertake the treatment safely and effectively.

The purpose of these requirements is to facilitate occupiers of establishments tailoring the management system of their establishment to meet the expectations for different kinds of export operation, plants and plant products and importing country requirements for consideration by the Secretary.

This provides a responsive regulatory framework that can accommodate evolving industry practices and innovation, and minimise regulatory burden where it is not proportionate or appropriate to the kind of operations being undertaken or products being produced or prepared at the property.

The purpose of these requirements is also to ensure that the integrity of the prescribed goods, the condition of establishments that prepare plants and plant products for export, and facilities for assessment of plants and plant products for export are appropriate. The purpose of placing these expectations on registered establishments is to ensure Australia’s trade reputation and market access is maintained.

## ***Part 2—Conditions of registration***

### **4-5 Purpose of this Part**

Section 113 of the Act sets out the conditions that apply to the registration of an establishment. This includes the conditions prescribed by the rules made for the purposes of paragraph 113(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of the registration).

Section 4-5 provides that Part 2 of Chapter 4 of the Plant Rules prescribes, for the purposes of paragraph 113(1)(b) of the Act, conditions for the registration of an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products.

The first note following section 4-5 explains that the conditions in Part 2 also apply in relation to the registration of an establishment that has been renewed, as per paragraph 118(b) of the Act.

The second note following section 4-5 alerts the reader that section 144 of the Act provides for offence and civil penalty provisions for the contravention of conditions of registration. Failure to comply with the provisions of Part 2 may result in contravention of section 144 of the Act.

The third note following section 4-5 explains that the occupier of a registered establishment must retain certain records for at least 2 years (section 11-7 of the Plant Rules).

#### **4-6 Construction, equipment and facilities**

Section 4-6 provides that requirements for the registration of an establishment for operations to prepare prescribed plants or plant products for export prescribed by Division 1 of Part 1 of Chapter 4 of the Plant Rules must continue to be met after the establishment is registered.

This is to prevent registered establishments from meeting the requirements of Division 1 of Part 1 of Chapter 4 to gain registration and later altering their building facilities and amenities in a way that results in the requirements no longer being met, or not maintaining necessary facilities, equipment and amenities once approval has been granted. It is important for businesses to continue to operate out of establishments with appropriate facilities and equipment to ensure the health and safety of workers, auditors and assessors, and to maintain the integrity of the export goods.

The note following section 4-6 explains that alterations of a registered establishment (including additions, but not including alterations prescribed by section 4-16) must not be made unless they have been approved under subsection 120(2) of the Act and the occupier has been given notice of approval under section 121 of the Act.

#### **4-7 Management system must be implemented**

Subsection 4-7(1) provides the management system required by section 4-4 must be implemented.

Subsection 120(2) of the Act provides that, on receiving an application under section 120 for a variation of registration, or approval of alteration of an establishment, the Secretary must decide to make the variation or give the approval, or to refuse to make the variation or refuse to give the approval. Section 121 requires the Secretary to give the occupier of the establishment written notice of the variation or approval if the Secretary makes a variation or approves an alteration under paragraph 120(2)(a). Subsection 123(1) provides that the Secretary may make certain variations in relation to the registration of an establishment. Section 124 requires the Secretary to give the occupier of the establishment written notice of the variation, if the Secretary makes a variation under subsection 123(1).

Subsection 4-7(2) provides that a variation of the management system must not be implemented unless approved under subsections 120(2) (application by occupier for variation) or 123(1) (Secretary may make variation) of the Act and the occupier has received notice of the variation under section 121 or 124 of the Act respectively.

This ensures the establishment meets the required standards to ensure the integrity of the prescribed plants or plant products and that prescribed plants and plant products will continue to meet relevant importing country requirements.

#### **4-8 Integrity**

Section 4-8 requires that the integrity of prescribed plants or plant products prepared at a registered establishment must be ensured while they are at the establishment. The purpose is to ensure the condition or status (such as the phytosanitary status and product security) of prescribed plants or plant products that will be exported is maintained throughout the export supply chain. The condition ensures that phytosanitary attestations that may be made by the Secretary on a phytosanitary certificate relating to the plants or plant products will be accurate and reliable. This is important to maintain Australia's trade reputation and market access.

#### **4-9 Conditions relating to prescribed grain etc.**

Subsection 4-9(1) provides that section 4-9 applies in relation to an establishment registered to prepare for export:

- prescribed grain; and
- cereal grains, pulses, oil seeds or nuts that are not prescribed grain and in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.

The note following subsection 4-9(1) refers the reader to section 1-7 of the Plant Rules for the definition of *prescribed grain*.

Subsection 4-9(2) provides that if screening of the plants or plant products is carried out at the establishment, it must be carried out in a way that is appropriate to manage the risk of contamination by large contaminants and ensure any large contaminants are removed from the products.

Subsection 4-9(3) provides that plants or plant products that failed an assessment (under Part 2 of Chapter 9 of the Act) must not be blended with other plants or plant products if the reason for the failed assessment was because of:

- infestation by pests; or
- the presence of an animal carcase; or
- in the case of mung beans (paragraph 1-7(1)(h)), the presence of animal waste.



Subsection 4-9(4) clarifies that subsection 4-9(3) does not prevent the blending of the prescribed plants or plant products that may have failed an assessment due to the presence of contaminants other than those referred to in paragraph 4-9(3)(b) (the presence of an animal carcase) or 4-9(3)(c) (for mung beans, the presence of animal waste). Blending may be utilised as a method to treat prescribed plants and plant products that have failed assessment to reduce contaminants (including dead insect pests or eggs) to below an applicable tolerance level (section 9-15) prior to reassessment (section 9-11). Blending practices pose a risk to food safety and Australia's trade reputation where the contaminant is an animal carcase, or animal waste for mung beans.

#### **4-10 Application of trade description**

Section 4-10 provides that if a trade description is applied at a registered establishment to prescribed plants or plant products, the trade description must include the information provided by subsection 8-6(1) of the Plant Rules (other than any information that is included in a trade description already applied to the plants or plant products). This includes, but is not limited to, the kinds of plants or plant products in the consignment and the country of origin.

The note following section 4-10 notifies the reader to requirements the trade description must comply with in section 8-7 and subsection 8-8(2) of the Plant Rules.

#### **4-11 Requirements for packages for export**

Subsection 4-11(1) provides that section 4-11 applies in relation to a registered establishment where prescribed plants or plant products are packed into packages for export (as defined in section 1-6).

These requirements ensure that if prescribed plants or plant products are packed into packages for export, they are packaged correctly, will meet the requirements of the importing country authority, and will have their integrity maintained from the accredited property, to the final overseas destination. Packaging requirements are not intended to apply to packaging that is not for export purposes, for example, that may be designed to move product between establishments domestically (see the definition of *package for export* in section 1-6).

Subsection 4-11(2) provides that, where packages are intended to be used more than once and have been used previously, they must be cleaned and reconditioned before each subsequent use. In any other case, the packages must be unused and clean.

Subsections 4-11(3) and (4) require packages to be appropriate and used in a manner to ensure the integrity of packaged plants or plant products and be sufficiently strong to withstand handling ordinarily occurring before and during transport, including to their final overseas destination.

Subsection 4-11(5) requires the packages to meet relevant importing country requirements. This ensures that Australia's trade reputation and market access is maintained.

#### **4-12 Prescribed plants or plant products to be exported in bulk vessel**

The purpose of section 4-12 is to outline the requirements of an establishment when loading prescribed plants and plant products into or onto bulk vessels for export. Subsection 4-12(1) provides that prescribed plants or plant products at a registered establishment that are to be exported must not be loaded into or onto the bulk vessel unless a bulk vessel approval is in force and covers the cargo spaces into or onto which the prescribed plants or plant products are to be loaded.

The note following subsection 4-12(1) refers the reader to Part 5 of Chapter 9 of the Plant Rules in relation to bulk vessel approvals.

Subsection 4-12(2) provides that if a bulk vessel approval has been suspended under subsection 9-27(1) of the Plant Rules, the prescribed plants or plant products must not be loaded, or must not continue to be loaded, into or onto the vessel. It is intended that if prescribed goods are in the process of being loaded onto the vessel, further loading must stop until the suspension has been revoked (section 9-28).

#### **4-13 Prescribed plants or plant products to be exported in containers**

Subsection 4-13(1) provides that prescribed plants or plant products at a registered establishment that are to be exported in a container must not be loaded into the container unless a container approval is in force for the container.

The note following subsection 4-13(1) refers the reader to Part 6 of Chapter 9 of the Plant Rules in relation to container approvals.

In some circumstances, a tamper evident seal will have been previously applied to an approved container by an authorised officer (section 9-32). If this has occurred, subsection 4-13(2) requires the tamper evident seal to be left intact until immediately before the prescribed goods are loaded into the container. The purpose of this is to ensure the condition of the container does not change prior to loading and the integrity of prescribed plants or plant products to be loaded will be maintained.

### ***Part 3—Renewal of registration***

#### **4-14 Period within which application to renew registration must be made**

Section 116 of the Act deals with applications to renew the registration of an establishment. Subsection 116(4) provides that an application for renewal must be made within the period prescribed by the rules (paragraph 116(4)(a)), or a longer period allowed by the Secretary (paragraph 116(4)(b)).

Section 4-14 prescribes, for the purposes of paragraph 116(4)(a) of the Act, the timeframe in which an application to renew the registration of an establishment for operations to prepare prescribed plants or plant products for export must be made. This timeframe is 60 days starting on the day that is 180 days before the expiry date for the registration. This means the application must be submitted in a 60-day window, which ends 120 days before the accreditation expires. The period specified allows the Secretary sufficient time to consider the application before a decision is made.

The first note following section 4-14 provides an example of the timeframe, that if the registration of an establishment expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

The second note following section 4-14 explains that, under subsection 116(1) of the Act, an application for renewal of the registration of an establishment will only need to be made if there is an expiry date for the registration.

#### **4-15 Requirements for renewal of registration**

Subsection 117(1) of the Act provides that, on receiving an application under section 116 to renew the registration of an establishment, the Secretary must decide to renew the registration or to refuse to renew the registration. Subsection 117(2) of the Act provides that the Secretary may refuse to renew a registration of a registered establishment if the Secretary is not satisfied with one or more of the listed matters or requirements, having regard to any matter the Secretary considers relevant. Paragraphs 117(2)(e) and (g) respectively allow additional matters and requirements to be prescribed by the rules.

Subsections 4-15(1) and (2) are made for the purposes of paragraph 117(2)(g) of the Act and prescribe additional requirements, such that the Secretary may refuse to renew a registration if the Secretary is not satisfied that:

- the requirements relating to construction, equipment and facilities under Division 1 of Part 1 of Chapter 4 of the Plant Rules have been met in relation to an establishment that is registered to prepare prescribed plants or plant products;
- the requirements prescribed by section 4-4 of the Plant Rules have been met in relation to an establishment that is registered to prepare prescribed plants or plant products for export.

The note following subsection 4-15(2) refers the reader to paragraphs 117(2)(a) to (e) of the Act for other requirements considered by the Secretary when deciding whether to refuse to renew the registration of an establishment.

#### ***Part 4—Variation of registration***

#### **4-16 Alterations for which approval is not required**

Subsection 122(1) of the Act provides that certain alterations of a registered establishment must not be made unless approved by the Secretary and notice has been given to the occupier. Subsection 122(2) of the Act allows the rules to prescribe alterations to a registered establishment that do not require approval.

Section 4-18 is made for the purposes of subsection 122(2) of the Act and prescribes alterations to a registered establishment that do not require approval are alterations that do not affect:

- the implementation of the management system; or

- compliance with other conditions of registration.

For example, alterations that may not affect the implementation of the management system of an establishment or affect compliance with other conditions of registration could include:

- where general maintenance is undertaken at the establishment, such as repainting or rewiring of buildings.
- new labelling equipment is purchased and installed to improve the efficiency and accuracy of the establishment's business operations.
- movement of machinery and equipment that is designed to be mobile equipment and be packed away, stored or moved at an establishment to facilitate normal operations and cleaning.

It is not intended that alterations of this nature should require approval by the Secretary prior to being implemented by the occupier of the registered establishment.

#### **4-17 Other reasons for the Secretary to vary registration**

Section 123 of the Act allows the Secretary to make certain variations in relation to the registration of an establishment. Paragraph 123(2)(h) allows the rules to prescribe other reasons the Secretary may make a variation to the registration of an establishment, or set an earlier expiry date for the registration.

Section 4-17 is made for the purposes of paragraph 123(2)(h) of the Act and prescribes additional reasons for the Secretary to vary the registration of an establishment, or set an earlier expiry date for the registration. These additional reasons are:

- in relation to any registered establishment:
  - the management system required by section 4-4 is no longer appropriate; or
  - the occupier of the establishment, or a person who manages or controls export operations at the establishment:
    - failed to provide facilities and assistance to an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out; or
    - failed to comply with a request made by an assessor for the purpose of enabling an assessment or prescribed plants or plant products to be carried out; or
    - failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment;
- if the establishment is registered for export operations in relation to prescribed plants or plant products for human consumption, the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling.

Examples that could change the appropriateness of a management system after it has been approved include changing risks in the export supply chain or in relation to importing country requirements, or changing pest or contaminant pressures in a region of Australia, particularly due to environmental conditions.

## ***Part 5—Suspension of registration***

### **Division 1—Suspension requested by occupier**

#### **4-18 Circumstances in which occupier may request suspension of registration**

Subsection 125(1) of the Act provides that the occupier of a registered establishment may request the Secretary to suspend the registration of the establishment in relation to a kind of export operations and a kind of prescribed goods and, if applicable, a place to which goods may be exported, in circumstances prescribed by the rules. Subsection 125(2) of the Act allows a request to be made under subsection 125(1) only in the circumstances prescribed by the rules.

Section 4-18 prescribes, for the purposes of subsection 125(2) of the Act, the circumstances in which the occupier of a registered establishment may request suspension of the registration. These are where:

- a circumstance has arisen that prevents, or will prevent, a kind of export operations being carried out at the establishment;
- the occupier considers it will not be possible or practicable for a kind of export operations to be carried out at the establishment for any other reason.

### **Division 2—Suspension by Secretary**

#### **4-19 Other grounds for suspension of registration**

Subsection 127(1) of the Act provides that the Secretary may suspend the registration of an establishment in relation to one or more kinds of export operations and one or more kinds of prescribed goods and, if applicable, one or more places to which goods may be exported if the Secretary reasonably believes any of the grounds in paragraphs 127(1)(a) to (k) exist. Paragraph 127(1)(k) allows the rules to prescribe additional grounds for suspension of registration.

Section 4-19 prescribes, for the purposes of paragraph 127(1)(k) of the Act, additional grounds where the Secretary may suspend the registration of an establishment. These are:

- the occupier of the establishment, or a person who manages or controls export operations at the establishment:
  - failed to provide facilities and assistance for an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out; or

- failed to comply with a request made by an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out; or
- failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment.
- if the registration of the establishment covers export operations in relation to prescribed plants or plant products for human consumption, the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling.

## ***Part 6—Revocation of registration***

### **Division 1—Revocation requested by occupier**

#### **4-20 Information to be included in request to revoke registration**

Subsection 137(1) of the Act provides that the occupier of a registered establishment may request the Secretary to revoke the registration of the establishment. Paragraph 137(2)(b) of the Act allows the rules to prescribe information (if any) which must be included in a request under subsection 137(1) to revoke the registration of an establishment.

Section 4-22 prescribes, for the purposes of paragraph 137(2)(b) of the Act that an occupier must include the reasons for the request to revoke the registration. This requirement will provide the Secretary with clarity on the reasons for the application, and whether any action must be taken to manage risks to Australia’s trade reputation or market access that may arise in relation to the registered establishment and its export activities.

### **Division 2—Revocation by Secretary**

#### **4-21 Other grounds for revocation of registration**

Subsection 138(1) of the Act provides that the Secretary may revoke the registration of an establishment if the Secretary reasonably believes any of the grounds listed in paragraphs 138(1)(a) to (k) exist. Paragraph 138(1)(k) allows the rules to prescribe other grounds for revoking the registration of an establishment.

Section 4-21 prescribes, for the purposes of paragraph 138(1)(k) of the Act, additional grounds when the Secretary may revoke registration of a registered establishment. These are:

- the occupier of the establishment, or a person who manages or controls export operations at the establishment:
  - failed to provide facilities and assistance for an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out; or

- failed to comply with a request made by an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out; or
- failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment.
- if the registration of the establishment covers export operations in relation to prescribed plants or plant products for human consumption, the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling.

***Part 7—Obligations of occupiers of registered establishments***

**4-22 Changes in relation to registered establishment that was being treated as small horticultural products registered establishment for a financial year**

Section 145 of the Act provides the occupier of a registered establishment must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing the requirements of the Act or importing country requirements in relation to a matter covered by the registration of the establishment have been, are being, or will be complied with.

Paragraph 145(1)(b) of the Act allows the rules to prescribe changes where the occupier of a registered establishment must give the Secretary additional or corrected information.

Section 4-22 is made for the purposes of paragraph 145(1)(b) of the Act and prescribes changes in relation to a registered establishment that, before the change, was being treated as a small horticultural products registered establishment for a financial year. These are where, in the financial year, the occupier of the establishment:

- ceases to be the grower of the relevant horticultural products covered by the registration;
- becomes the occupier of another registered establishment;
- starts to carry out operations to prepare goods for export other than horticultural products referred to in column 1 of the table in subsection 1-8(8) of the Plant Rules.

The note following section 4-22 explains that if a change prescribed by section 4-22 occurs, the occupier must give the Secretary information in relation to the change. The note also alerts the reader to the fact that the occupier may be liable to a civil penalty if they do not give the information to the Secretary (subsection 145(3) of the Act).

Notification of these changes allows the Secretary to ensure appropriate annual charges will be applied in relation to the registered establishment for a financial year under the Export Charges (Imposition—General) Regulations 2021 and Export Charges (Imposition—Customs) Regulations 2021.

## ***Part 8—Matters relating to applications***

### **4-23 Application of this Part**

Section 4-23 provides that Part 8 of Chapter 4 of the Plant Rules applies in relation to applications made under the following:

- section 111 of the Act to register an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products;
- section 116 of the Act to renew the registration of an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products;
- section 120 of the Act to do the following in relation to a registered establishment for a kind of export operations in relation to a kind of prescribed plants or plant products:
  - vary the registration, or the particulars relating to registration, of an establishment;
  - approve an alteration of an establishment; or
  - vary the conditions of the registration of an establishment.

### **4-24 Initial consideration period**

Section 379 of the Act details the matters relating to dealing with applications made under the Act. Subsection 379(3) allows the rules to prescribe the period in which an application must be considered by the Secretary (consideration period). If the Secretary does not make a decision on the application within the prescribed consideration period, the application is taken to have been refused.

Section 4-24 is made for the purposes of subsection 379(3) of the Act and prescribes an initial consideration period of 120 days. The initial consideration period may be extended in accordance with subsection 379(5) of the Act.

The period of 120 days is appropriate, having regard to the matters the Secretary must consider in granting or refusing an application. The variations to registrations, particularly where additional export operations are being requested or management systems varied, may be highly technical in nature. For example, where the occupier of a registered establishment that has been registered to process and pack fresh fruit and fresh vegetables for export is applying to vary to registration to add export operations to undertake phytosanitary treatments, such as irradiation treatment, at the establishment.

The note following section 4-24 explains that under subsection 379(4) of the Act, the consideration period for an application starts on the day after the day the Secretary receives the application.



#### **4-25 Period within which request relating to application must be complied with**

Subsection 379(9) of the Act allows the Secretary to make a number of requests in relation to a relevant application, including requesting additional information or requesting consent to enter premises. Paragraph 379(10)(b) of the Act allows the rules to prescribe a maximum period within which the request must be complied with.

Section 4-25 prescribes, for the purposes of paragraph 379(10)(b) of the Act, a period of 6 months within which a request from the Secretary in relation to an application to register an establishment must be complied with. The initial consideration period can be extended under section 379 of the Act. The period prescribed by this section is appropriate as it permits sufficient time to comply with matters provided in subsection 379(9) of the Act. The period provides certainty for industry.

## CHAPTER 7—EXPORT PERMITS

An export permit is a document that confirms the eligibility of goods for export and facilitates the exit of these goods from Australia. A person may apply to the Secretary for an export permit for prescribed plants or plant products. The export permit must be issued in writing and will be in effect for a particular period. Conditions may be attached to the export permit. The permit may be varied, suspended or revoked.

The prescribed export conditions in section 2-4 of the Plant Rules require the exporter of prescribed plants or plant products to hold an export permit covering the export. The export permit must be in force, and not suspended, at the time the plants or plant products are exported.

### *Part 1—Issue of export permit*

#### **7-1 Conditions of export permit**

Paragraph 227(1)(a) of the Act allows the rules to prescribe conditions of an export permit. Subsection 227(2) of the Act provides that such rules may prescribe conditions, and the Secretary may impose conditions, that are required to be complied with before or after the export of the goods to which the export permit relates.

Subsection 7-1(1) is made for the purposes of paragraph 227(1)(a) and subsection 227(2) of the Act and provides that section 7-1 prescribes conditions of an export permit for prescribed plants or plant products.

The first note following subsection 7-1(1) explains that an export permit is also subject to any additional conditions specified in a written notice given to the holder of the permit under paragraph 227(1)(b) of the Act.

The second note following subsection 7-1(1) alerts the reader to subsections 227(4) and (5) of the Act, which provide that the holder of an export permit that is in force may commit an offence or be liable to a civil penalty if a condition of the export permit is contravened.

Subsection 7-1(2) requires the holder of the export permit to ensure the integrity of the prescribed plants or plant products and the plants or plant products meet relevant importing country requirements until the plants or plant products are exported.

The note following subsection 7-2(2) refers the reader to section 20 of the Act for when goods are exported for the purposes of the Act.

Subsection 7-1(3) requires the holder of the export permit to advise the Secretary in writing if they intend to export prescribed plants or plant products to an importing country that is not covered by the export permit and inform the Secretary of the new importing country to which they intend to export the plants or plant products.

## **7-2 Period of effect of export permit**

Section 228 of the Act sets the period of effect of an export permit. An export permit takes effect when it is issued (paragraph 228(a) of the Act) and remains in force as prescribed by the rules, unless it is revoked earlier under section 233 of the Act (paragraph 228(b)).

Section 7-2 prescribes, for the purposes of paragraph 228(b) of the Act, the period of effect of an export permit for prescribed plants and plant products. If a validity period for the plants or plant products applies, the period of effect of an export permit is until the end of the validity period. In any other case, the period of effect of an export permit is 28 days starting on the day the permit is issued.

The prescribed period is reasonable and appropriate as export permits for plants and plant products are often made in relation to perishable items and any phytosanitary attestation that may be required by an importing country and issued by the Secretary in relation to plants or plant products being exported to the importing country can only be made for a finite period of time. Validity periods may be extended by the Secretary if they have not expired (section 9-13) or may be modified if an assessor decides that a new validity period for plants or plant products reassessed under Part 2 of Chapter 9 of the Act applies (subsection 9-12(4)).

The first note following section 7-2 refers the reader to paragraph 228(a) of the Act, which provides that an export permit takes effect when it is issued.

The second note following section 7-2 refers the reader to section 9-12 of the Plant Rules in relation to the application of validity periods.

The third note following section 7-2 explains that under section 11-4 of the Plant Rules, an export permit (other than an export permit that was issued by electronic means) must be retained in a secure place when it is not being used.

### ***Part 2—Variation, suspension and revocation of export permit***

## **7-3 Circumstances for varying export permit or conditions of export permit**

Subsection 229(1) of the Act provides that the Secretary may vary an export permit, or any conditions of an export permit specified under paragraph 227(1)(b) of the Act (including by imposing new conditions), only if they reasonably believe circumstances prescribed by the rules exist (paragraph 229(1)(a)), or the variation is necessary to correct a minor or technical error (paragraph 229(1)(b)).

Section 7-3 prescribes, for the purposes of paragraph 229(1)(a) of the Act, circumstances under which an export permit, or the conditions of an export permit, for prescribed plants or plant products can be varied. These are where:

- the integrity of the plants or plant products cannot be ensured;
- information specified in the export permit has changed since the permit was issued;
- it is no longer intended to export the plants or plant products to an importing country covered by the export permit;

- importing country requirements relating to the plants or plant products have changed since the export permit was issued;
- the requirements of the Act have not been complied with, or are not likely to be complied with, before the goods are imported into the importing country;
- an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country; and
- a condition, pest or contaminant that is likely to affect the acceptability of the goods to the importing country covered by, or to be covered by, the export permit is present in Australian territory.

These circumstances have the potential to adversely affect Australia's trading reputation and access to importing country markets. The consequences may be serious and may affect a number of permit holders and Australia's export industries for plants and plant products. It is essential that action can be taken by the Secretary in the prescribed circumstances to mitigate these consequences by varying export permits to facilitate the export of Australia's plant and plant products subject to the requirements of alternate destination countries or additional conditions being met.

#### **7-4 Period of effect of varied export permit**

Section 230 of the Act sets the period of effect of a varied export permit. A varied export permit takes effect when it is issued (paragraph 230(a)) and remains in force as prescribed by the rules, unless it is revoked earlier under section 233 of the Act (paragraph 230(b)).

Section 7-4 prescribes, for the purposes of paragraph 230(b) of the Act, that an approved varied export permit for prescribed plants or plant products remains in force (unless it is revoked under section 233 of the Act):

- if a validity period applies, until the end of the validity period; or
- in any other case, for the remainder of the period for which the export permit as originally issued was in force under paragraph 7-2(b) of the Plant Rules.

A period of 28 days is appropriate because varied export permits often relate to perishable items and any phytosanitary attestation that may be required by an importing country and issued by the Secretary in relation to a plants or plant products being exported to the importing country can only be made for a finite period of time. Validity periods may be extended by the Secretary if they have not expired (section 9-13) or may be modified if an assessor decides that a new validity period for plants or plant products reassessed under Part 2 of Chapter 9 of the Act applies (subsection 9-12(4)). A variation does not affect the original period of effect for a permit.

The first note following section 7-4 refers the reader to paragraph 230(a) of the Act, which provides that an export permit takes effect when it is issued.

The second note following section 7-4 refers the reader to section 9-12 of the Plant Rules in relation to the application of validity periods.

The third note following section 7-4 explains that under section 11-4 of the Plant Rules, an export permit (other than an export permit that was issued by electronic means) must be retained in a secure place when it is not being used.

### **7-5 Circumstances in which export permit may be suspended**

Subsection 231(1) of the Act provides that the Secretary may suspend an export permit if the Secretary reasonably believes that circumstances prescribed by the rules exist.

Section 7-5 prescribes the circumstances in which the Secretary may suspend an export permit for prescribed plants or plant products under subsection 231(1) of the Act. The prescribed circumstances are the same as the circumstances for revoking a permit listed in paragraph 233(1)(a) to (f) of the Act and section 7-6 of the Plant Rules. This includes where the Secretary reasonably believes that:

- the integrity of the goods cannot be ensured;
- a condition of the permit has been, or is being, contravened;
- the requirements of the Act have not been complied with, or are not likely to be complied with, before the goods are imported into the importing country;
- an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country;
- the holder of the permit made a false, misleading or incomplete statement in an application for the permit, or gave false, misleading or incomplete information to the Secretary or another person performing functions or exercising powers under the Act or a prescribed agriculture law;
- the holder of the permit has contravened a requirement of the Act; or
- the additional circumstances set out below in section 7-6 of the Plant Rules.

These circumstances have the potential to adversely affect Australia's trading reputation and access to importing country markets. The consequences may be serious and may affect a number of permit holders and Australia's export industries for plants and plant products. It is essential that action can be taken by the Secretary in the prescribed circumstances to mitigate these consequences by suspending export permits.

### **7-6 Other circumstances in which export permit may be revoked**

Section 233 of the Act allows the Secretary to revoke an export permit if the Secretary reasonably believes that one or more of the circumstances listed in subsection 233(1) exist. Paragraph 233(1)(g) allows the rules to prescribe additional circumstances.

Section 7-6 prescribes, for the purposes of paragraph 233(1)(g) of the Act, other circumstances for revoking an export permit for prescribed plants or plant products. These additional circumstances are:

- the plants or plant products are no longer intended to be exported using that export permit;
- a person, other than the holder of the export permit, has given the Secretary, or another person performing functions or exercising powers under the Act, information or a document in relation to the plants or plant products that is false, misleading or incomplete; and
- a condition, pest or contaminant that is likely to affect the acceptability of the goods to the importing country covered by, or to be covered by, the export permit is present in Australian territory.

It is appropriate for the export permit to be revoked if it is no longer being used for the export of plants or plant products. The other prescribed circumstances may have serious consequences and may affect several permit holders and Australia's export industries for plants and plant products, so it is essential that action can be taken by the Secretary to respond to mitigate these consequences, by revoking export permits .

### *Part 3—Other matters*

#### **7-7 Other circumstances in which the Secretary may require assessment of prescribed plants or plant products**

Subsection 7-7(1) provides that section 7-7 applies in relation to prescribed plants or plant products for which an export permit is in force.

Subsection 234(2) of the Act provides the Secretary may require an assessment of the goods to be carried out under Part 2 of Chapter 9 of the Act (assessment of goods) if they reasonably believe a listed circumstance exists. Paragraph 234(2)(e) allows the rules to prescribe additional circumstances where the Secretary may require an assessment of the goods to be carried out.

Subsection 7-7(2) prescribes, for the purposes of 234(2)(e) of the Act, an additional circumstance where the Secretary may require an assessment of the prescribed plants or plant products is if the holder of the export permit, or another person, gave false or misleading information in relation the plants or plant products to the Secretary or another person performing functions or exercising powers under the Act.

#### **7-8 Changes that require additional or corrected information to be given to the Secretary**

Section 235 of the Act requires the holder of an export permit to give the Secretary additional or corrected information in certain circumstances, including if a change prescribed by the rules occurs (paragraph 235(1)(b)).

Section 7-8 prescribes, for the purposes of paragraph 235(1)(b) of the Act, changes that require the holder of an export permit to provide the Secretary with additional or corrected information in relation to prescribed plants or plant products for which an export permit is in force. These changes are where there are reasonable grounds to suspect that:

- the integrity of the plants or plant products cannot be ensured;
- an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country; or
- a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

This requirement only applies in relation to prescribed plants and plant products for which an export permit is in force.

The purpose of this provision is to place an obligation on the exporter to ensure the permit continues to accurately reflect the circumstances for the issue of the permit. The consequences may be serious and may affect several permit holders and Australia's export industries for plants and plant products, so it is essential that additional or corrected information is provided. This ensures export permits are only issued where the goods are supplied in compliance with the Act and the Plant Rules, maintaining and enhancing Australia's reputation as a reliable trading partner.

#### ***Part 4—Applications for export permits***

##### **7-9 Changes that require additional or corrected information to be given to the Secretary**

Section 240 of the Act requires an applicant for an export permit to give the Secretary additional or corrected information in certain circumstances, including if a change prescribed by the rules occurs (paragraph 240(1)(b)).

Section 7-9 prescribes, for the purposes of paragraph 240(1)(b) of the Act, changes that require the applicant for an export permit to provide the Secretary with additional or corrected information in relation to prescribed plants or plant products for which an application for an export permit has been made. These changes are where there are reasonable grounds to suspect that:

- the integrity of the plants or plant products cannot be ensured;
- an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country; or
- a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

The purpose of this provision is to place an obligation on the exporter to ensure the permit continues to accurately reflect the circumstances for the issue of the permit. The consequences may be serious and may affect several permit holders, so it is essential that additional or corrected information is provided. This ensures export permits are only issued where the goods are supplied in compliance with the Act and the Plant Rules, maintaining and enhancing Australia's reputation as a reliable trading partner.

### **7-10 Other powers of the Secretary in considering applications**

Subsection 7-10(1) provides that section 7-10 applies in relation to prescribed goods that are to be transported in a bulk vessel or a container.

Section 241 of the Act provides that the Secretary may do anything the Secretary considers necessary in relation to an application for an export permit. Paragraph 241(g) of the Act allows the rules to prescribe any other thing the Secretary may do if considered necessary in relation to an application for an export permit.

Subsection 7-10(2) prescribes, for the purposes of paragraph 241(g) of the Act, that the Secretary may:

- request the applicant for an export permit for the plants or plant products to arrange for an authorised officer to carry out an additional inspection of a bulk vessel or container; or
- arrange for an authorised officer to carry out an additional inspection of the bulk vessel or container.



## **CHAPTER 8—OTHER MATTERS RELATING TO EXPORT**

### ***Part 1—Notices of intention to export***

Part 1 of Chapter 8 of the Plant Rules deals with matters relating to notices of intention to export. A notice of intention to export serves to inform the Secretary and other relevant persons about a person's intention to export prescribed goods, allowing the prescribed goods to be assessed (if required) prior to an export permit being granted. The prescribed export conditions in section 2-4 of the Plant Rules include a requirement for a notice of intention to export for each consignment of, or including, prescribed plants or plant products.

#### **8-1 Person who must give notice of intention to export**

Section 243 of the Act details general requirements of a notice of intention to export a consignment of prescribed goods. A notice of intention to export a consignment of prescribed goods must meet the requirements in subsection 243(1). Paragraph 243(1)(e) of the Act allows the rules to prescribe the person who must give the notice of intention to export.

Section 8-1 prescribes, for the purposes of paragraph 243(1)(e) of the Act, that the exporter of a consignment of, or including, prescribed plants or plant products must give the notice of intention to export the consignment.

The purpose is to ensure the exporter of the prescribed plants or plant products does not have another person submit a notice of intention to export on their behalf.

#### **8-2 Persons to whom notice of intention to export must be given**

Paragraph 243(1)(f) of the Act allows the rules to prescribe the person to whom the notice of intention to export must be given.

Section 8-2 prescribes, for the purposes of paragraph 243(1)(f) of the Act, that the notice of intention to export a consignment of, or including, prescribed plants or plant products to be provided to the Secretary and to an assessor (on request by an assessor).

Giving written notice to the Secretary and the assessor ensures the necessary information is provided in relation to the prescribed plants and plant products for assessment (Part 2 of Chapter 9 of the Act) prior to the assessment being undertaken (if required) and an export permit being issued.

#### **8-3 When notice of intention to export must be given**

Paragraph 243(1)(g) of the Act allows the rules to prescribe when the notice of intention to export a consignment of, or including, prescribed goods must be given.

Subsection 8-3(1) prescribes, for the purposes of paragraph 243(1)(g) of the Act, that a notice of intention to export a consignment of, or including, prescribed plants or plant products must be given to the Secretary as soon as reasonably practicable before the date the consignment is proposed to be exported.

Subsection 8-3(2) provides that if an assessment of the prescribed plants or plant products in the consignment is required under Part 2 of Chapter 9 of the Act, the notice of intention to export must be given at a time that will ensure there is sufficient time for the assessment to be carried out.

This allows the Secretary time to consider the notice before the prescribed goods are exported. It also allows any assessment to be carried out and information provided to the Secretary for consideration.

The note following subsection 8-3(2) explains that it is a prescribed export condition in relation to the export of prescribed plants or plant products that a person prescribed by section 8-1 must have given the Secretary, at the time prescribed by section 8-3, a notice of intention to export a consignment of, or including the prescribed plants or plant products (see section 2-4).

#### **8-4 Additional or corrected information**

Subsection 244(1) of the Act provides a person who has given a notice of intention to export a consignment of prescribed goods must, as soon as practicable, give the Secretary additional or corrected information in certain circumstances. Paragraph 244(1)(b) of the Act allows the rules to prescribe changes that require a person to give the Secretary additional or corrected information.

Section 8-4 prescribes, for the purposes of paragraph 244(1)(b) of the Act, a person who has given a notice of intention to export a consignment of prescribed plants or plant products to provide the Secretary with additional or corrected information if there are reasonable grounds to suspect that the integrity of the prescribed goods cannot be ensured. This is to ensure appropriate consideration can be given by the Secretary in relation to the preparation or assessment of prescribed plants or plant products, and the ability to meet relevant importing country requirements if the condition of the consignment has changed. This could include a change in the phytosanitary status of prescribed plants or plant products.

#### ***Part 2—Trade descriptions***

The aim of setting requirements relating to trade descriptions for Australia's plant and plant product exports is to ensure that:

- the identity of prescribed goods can be ascertained, and assurance can be provided of the integrity of the prescribed goods to importing countries;
- prescribed plants and plant products intended for export meet requirements to have an accurate trade description that clearly distinguishes the plant or plant product from other similar plants and plant products;
- prescribed plants and plant products intended for export meet importing country requirements necessary to maintain market eligibility; and
- prescribed goods intended for export are traceable, can be recalled if required.

## **8-5 Purpose of this Part**

Section 248 of the Act allows the rules to make provision for and in relation to trade descriptions for prescribed goods that are intended to be exported.

Section 8-5 provides that Part 2 of Chapter 8 of the Plant Rules is made for purposes of section 248 of the Act, and makes provision for, and in relation to, trade descriptions for prescribed plants and plant products that are intended to be exported.

This ensures trade descriptions include relevant information and are used in a way that will ensure the identity of prescribed plants or plant products can be ascertained and not confused with any other goods. The term *trade description* is defined in section 246 of the Act.

The note following section 8-5 alerts the reader that a person who engages in conduct that contravenes a provision in Part 1 of Chapter 8 of the Plant Rules may commit an offence or be liable to a civil penalty under section 249 of the Act.

## **8-6 Trade description must be applied to prescribed plants or plant products that are intended to be exported**

Section 8-6 requires that the exporter of prescribed plants or plant products must ensure a trade description is applied to the plants or plant products before they are exported. The trade description must include:

- the kind of plants or plant products in the consignment to be exported;
- the net weight or number of units of the plants or plant products in the consignment to be exported;
- the registration number of the registered establishment where operations to prepare the plants or plant products were carried out, or where an assessment of the goods was carried out;
- the name and address, or the identification number, of the exporter, manufacturer or producer of the plants or plant products;
- if the plants or plant products are imported plants or plant products, the country of origin of the goods; and
- any other information necessary to meet relevant importing country requirements relating to the plants or plant products.

The first note following subsection 8-6(1) refers the reader to section 246 of the Act for the meaning of *trade description*.

The second note following subsection 8-6(1) refers the reader to section 247 of the Act for when a trade description is *applied*. This includes when the trade description is applied to, or stated in, any document relating to the goods (paragraph 247(d) of the Act). For example, this would cover export documents including a notice of intention to export or export permit that may be submitted or generated in relation to the prescribed plants or plant products.

The third note following subsection 8-6(1) explains that the trade description must also comply with section 8-7 and subsection 8-8(2) of the Plant Rules. The note also refers the reader to section 3-5 of the Plant Rules (application of trade description at an accredited property) and section 4-10 of the Plant Rules (application of trade description at registered establishment).

Subsection 8-6(2) provides, for the purposes of paragraph 8-6(1)(e) (where the plants or plant products are imported plants or plant products), if export operations that changed the nature of the prescribed plants or plant products were carried out in a country outside Australian territory, that other country is taken to be the country of origin of the plants or plant products.

### **8-7 General requirements for trade descriptions**

The purpose of section 8-7 is to set out the general requirements for trade descriptions applied to prescribed plants or plant products.

Subsection 8-7(1) provides that trade descriptions that are applied to prescribed plants or plant products must be accurate and unambiguous, legible, prominent, conspicuous and not obscured in any way, and to the extent practicable, be securely attached (unless the trade description is stated in any document relating to the plants or plant products, as provided for in paragraph 247(d) of the Act) and tamper evident (to the extent practicable).

Subsection 8-7(2) requires information or pictures that are applied to prescribed plants or plant products, in addition to the trade description, to not be inconsistent with the information required to be included in trade descriptions under section 8-6 of the Plant Rules.

This helps to ensure the prescribed plants or plant products meet importing country requirements necessary to maintain market eligibility, are traceable, and can be recalled if required.

### **8-8 Trade descriptions in language other than English**

Subsection 8-8(1) provides that section 8-8 applies in relation to a trade description that is applied to prescribed plants or plant products in a language (the *foreign language*) other than English.

Subsection 8-8(2) provides that the foreign language part of the trade description must not be inconsistent with the English part of the trade description.

Subsection 8-8(3) requires certain persons, on request by the Secretary, to make available in writing an English translation of the foreign language part of the trade description. Those persons are the manager of an accredited property or the occupier of the registered establishment where the trade description was applied, or the exporter of the prescribed plants or plant products.

Subsection 8-8(4) requires the translation of the foreign part of the trade description into English to be done by an appropriately qualified person who is not an employee of, and is independent of, the person who has been asked to make the translation available. This is necessary to independently verify that the foreign language part of the trade description is consistent with the English part of the trade description.

### ***Part 3—Official marks***

Official marks are market labels, tags or other seals applied to products exported from Australia. Each type of label has specific mark dimensions. There are strict conditions set out to comply with export requirements. Official marks indicate compliance with the Act and help to ensure products are not rejected when exported, which may result in large costs for business and the economy. Official marks are relied on by governments of importing countries as an assurance of the authenticity of a document or the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

#### **Division 1—Marks that are official marks**

##### **8-9 Purpose of this Division**

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act.

Section 8-9 provides Division 1 of Part 3 of Chapter 8 of the Plant Rules is made for the purposes of subsection 255(1) of the Act and specifies the marks that are official marks for plants or plant products intended to be exported. An official mark is a mark that is applied to goods to confirm or secure the identity, condition or status of the goods or contribute to certification of the goods.

##### **8-10 Tolerances for dimensions of official marks**

Section 8-10 details the tolerances (or margins of error) for the dimensions of official marks, or a part of such a mark that are specified in Division 1 of Part 3 of Chapter 8 of the Plant Rules. This is to ensure consistency in the dimensions of official marks.

For dimensions of up to 10 millimetres, the tolerance is plus or minus 1 millimetre. For dimensions of more than 10 millimetres, the tolerance is plus or minus 2 millimetres.

##### **8-11 Official mark—foreign country identification**

Subsection 8-11(1) provides a representation of the design of a ‘foreign country identification’ official mark. This kind of official mark must have the relevant foreign country identification mark inserted in where the letter ‘A’ is in the representation and have the dimensions provided by subsection 8-11(3).

Subsection 8-11(2) provides that a ***foreign country identification mark*** is a mark that is required to be applied to plants or plant products that are to be imported into that country, as determined by the relevant importing country authority.

The note following subsection 8-11(2) refers the reader to the Manual of Importing Country Requirements (MICO<sub>R</sub>) for guidance on foreign country identification marks. In 2021, this manual is available on the Department’s website (<https://www.awe.gov.au>). Access to the document may require a password.

Subsection 8-11(3) provides the acceptable dimensions of a foreign country identification official mark. These dimension requirements relate to the diameter of the circle (50 millimetres), the minimum height of the letters in the word ‘Australia’ (6 millimetres) and the dimensions of the foreign country identification mark to be inserted into the official mark (as specified by the relevant foreign country).

The note following subsection 8-11(3) refers the reader to the Manual of Importing Country Requirements (MICoR) for guidance on the requirements for the dimensions of a foreign country identification mark. The definition of *MICoR* in section 1-6 of the Plant Rules alerts the reader that, in 2021, this manual could be viewed on the Department’s website (<http://www.awe.gov.au>) but access to the document may require a password.

### **8-12 Official mark—tamper-indicative metal strap seal**

Section 8-12 provides that a tamper indicative metal strap seal is an official mark if it meets requirements of this section. The requirements are:

- the seal must be a tamper-indicative strap seal that can be secured in a loop by inserting one end of the seal into or through a protected locking mechanism on the other end;
- the seal must comply with ISO 17712:2013 *Freight containers—Mechanical seals*, as that document exists at the commencement of the Plant Rules. This international standard establishes uniform procedures for the classification, acceptance, and withdrawal of mechanical freight container seals and is a single source of information on mechanical seals. ISO 17712:2013 is incorporated as in force at the commencement of the Plant Rules and is available for a fee from the International Organization for Standardization ([www.iso.org](http://www.iso.org)). Alternatively, the standard may be viewed by arrangement with the Department. The standard is an appropriate requirement as certain countries have compliance with the standard as a requirement to maintain market access. The manufacture and supply of tamper-indicative metal straps are tightly controlled by the Department. The control of tamper-indicative metal straps combined with the requirement to meet international standards provides appropriate assurance to trading partners and facilitates trade;
- the seal must also bear the words ‘Australian Government’ and bear a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department.

The purpose of mechanical seals, as part of the security system, is to determine whether a freight container has been tampered with, for example, whether there has been unauthorised access to the container.

### **8-13 Official mark—bolt seal**

Section 8-13 provides that a bolt seal is an official mark if it meets the requirements of this section. A bolt seal is a tamper-evident locking device that requires a tool to be removed. The purpose of the bolt seal is to determine whether the container has been tampered with.

The requirements of the section are:

- the seal must be a high security bolt seal;
- the seal must comply with ISO 17712:2013 *Freight containers—Mechanical seals*, as that document exists at the commencement of the Plant Rules. This international standard establishes uniform procedures for the classification, acceptance, and withdrawal of mechanical freight container seals and is a single source of information on mechanical seals. ISO 17712:2013 is incorporated as in force at the commencement of the Plant Rules and is available for a fee from the International Organization for Standardization ([www.iso.org](http://www.iso.org)). Alternatively, the standard may be viewed by arrangement with the Department. The standard is an appropriate requirement as certain countries have compliance with the standard as a requirement to maintain market access. The manufacture and supply of bolt seals are tightly controlled by the Department. The control of bolt seals combined with the requirement to meet international standards provides appropriate assurance to trading partners and facilitates trade;
- the seal must also bear the words ‘Australian Government’ and bear a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department;
- the seal must also be coated with green or blue plastic.

A bolt seal is required to be applied to a unit of cargo handling equipment into which the plants or plant products have been loaded under section 8-21 of the Plant Rules.

#### **8-14 Official mark—Australia approved**

Subsection 8-14(1) provides a representation of the design of an ‘Australia approved’ official mark. The mark must include the registration number of the registered establishment where the operations to prepare the prescribed plants or plant products for export were carried out in the space marked ‘A’ in the representation, and must meet the dimensions set out in subsection 8-14(2).

Subsection 8-14(2) provides the acceptable dimensions of the ‘Australia Approved’ official mark. These dimensions relate to the width and height of the oval mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in subsection 8-14(2) unless the mark is to be applied to a small plant or plant product (in which case, the dimensions may be those set out in column 3 of the table in subsection 8-14(2)).

The ‘Australia Approved’ official mark signifies that prescribed plants or plant products intended for export have been inspected and passed as fit for purpose.

#### **8-15 Official mark—approved for export**

Subsection 8-15(1) provides a representation of the design of an ‘approved for export’ official mark. The mark must meet the dimensions set out in subsection 8-15(2).

Subsection 8-15(2) provides the acceptable dimensions of the ‘approved for export’ official mark depending on whether the official mark is of normal or small size. These dimensions relate to the diameter of the outer circle, the diameter of the inner circle, the minimum height of the letters between the inner and outer circles and the minimum height of the letters in the inner circle. The required dimensions are those set out in column 2 of the table in subsection 8-15(2) unless the mark is to be applied to a small package or small tag (in which case, the dimensions may be those set out in column 3 of the table in subsection 8-15(2)).

### **8-16 Official mark—carton seal**

Section 8-16 provides a representation of the design for a seal applied to a carton (a ‘carton seal’) that is an official mark.

The ‘carton seal’ mark must meet the specifications in paragraphs 8-16(1)(a) to (c). This includes being printed in black (except for the Coat of Arms, which must be printed in red) on a white or security background, including the substitutions set out in subsection 8-16(3) and meeting the dimensions specified in subsection 8-16(2).

Subsection 8-16(2) provides the required dimensions of the ‘carton seal’ official mark. These dimensions relate to the width (not less than 45 millimetres and not more than 75 millimetres) and height of the mark (not less than 125 millimetres and not more than 160 millimetres).

Subsection 8-16(3) sets out the information to be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark. The registration number of the establishment where operations to prepare the prescribed plants or plant products for export were carried out must be included where ‘A’ is in the representation. A number, or a combination of letters and numbers, associated with the manufacturer of a mark must be included where ‘B’ is in the representation. A number, or a combination of letters and numbers, that are unique to each official mark must be included where ‘C’ is in the representation. This information is necessary to ensure the identification and traceability of the exported consignment of the plants or plant products.

### **8-17 Official mark—carton seal: plants or plant products opened for assessment and resealed**

Section 8-17 provides a representation of the design of a carton seal applied to a carton after it has been opened, assessed and re-sealed.

The mark must meet the specifications set out in paragraphs 8-17(1)(a) to (c). These include being printed in green (except for the Coat of Arms which must be printed in red) on a white or security background, including the substitutions set out in subsection 8-17(3) and meeting the dimensions specified in subsection 8-17(2).

Subsection 8-17(2) provides the acceptable dimensions of the ‘opened and resealed carton seal’ official mark. These dimensions relate to the width (not less than 45 millimetres and not more than 75 millimetres) and height of the mark (not less than 125 millimetres and not more than 160 millimetres).

Subsection 8-17(3) sets out the information to be substituted at ‘A’ and ‘B’ in the design of the opened and resealed carton seal official mark. A number, or a combination of letters and



numbers, associated with the manufacturer of a mark must be included where ‘A’ is in the representation. A number, or a combination of letters and numbers, that are unique to each official mark must be included where ‘B’ is in the representation. This information is necessary to ensure the identification and traceability of the exported consignment of the plants or plant products.

### **8-18 Official mark—Australian Government**

Section 8-18 provides a representation of the design of an ‘Australian Government’ official mark. The mark must contain a number identifying the person that used the mark where ‘XXXX’ is included in the representation.

### **8-19 Official mark—European Union**

Subsection 8-19(1) provides a representation of the design of a ‘European Union’ official mark. This kind of official mark must be in the design indicated in subsection 8-19(1) and contain the letter ‘E’.

The mark must meet the specifications set out in paragraphs 8-19(2)(a) to (c). These include the acceptable dimensions of the ‘European Union’ official mark depending on whether it is computer-generated or is to be of a normal or small size. These dimensions relate to the width and height of the mark and the height of the letter ‘E’ in the mark.

## **Division 2—General rules relating to official marks**

### **8-20 Purpose of this Division**

Subsection 255(2) of the Act allows the rules to make provision for and in relation to:

- the persons or classes of persons, who may manufacture, possess, apply, alter or interfere with an official mark;
- the methods of applying official marks;
- the circumstances in which an official mark may, or must not, be applied;
- security of official marks;
- removal or defacement of official marks;
- making records in relation to official marks; and
- any other matter relating to official marks.

Section 8-20 provides that Division 2 of Part 3 of Chapter 8 of the Plant Rules is made for the purposes of subsection 255(2) of the Act and makes provision for and in relation to certain matters relating to the official marks specified in Division 1 of Part 3 of Chapter 8 of the Plant Rules for plants or plant products that are intended to be exported.

This is to ensure that official marks are not misused, are only manufactured and possessed by approved persons or classes of persons, only applied to eligible goods, and meet importing country requirements such that Australia's trade reputation and market access can be maintained.

The note following section 8-20 alerts the reader that a person may commit an offence or be subject to a civil penalty liability under the Act if they engage in conduct that contravenes a provision in Division 2 (see section 258 of the Act) or other provisions in Division 3 of Part 3 of Chapter 8 of the Act.

### **8-21 Interpretation**

Section 8-21 sets out when an official mark is *applied* to plants or plant products. This is fundamental to managing conduct in relation to that official mark.

Subsection 8-21(1) provides that, for the purposes of the Plant Rules, an official mark is *applied* to plants or plant products if the official mark is:

- applied directly to the plants or plant products, their packaging or any covering containing the plants or plant products; or
- applied to anything attached to the plants or plant products, their packaging or any covering containing the plants or plant products; or
- inserted into anything in which the plants or plant products are packaged or any covering containing the plants or plant products.

Subsection 8-21(2) provides that, for the purposes of the Plant Rules and without limiting subsection 8-21(1):

- a bolt seal is *applied* to plants or plant products if the bolt seal is applied to a unit of cargo handling equipment into which the plants or plant products have been loaded; and
- the official mark specified in section 8-18 (Australian Government) is *applied* to plants or plant products if the official mark is applied to a government certificate that has been issued in relation to the plants or plant products.

Subsection 8-21(3) specifies that a reference in Division 2 of Part 3 of Chapter 8 of the Plant Rules to a particular official mark is a reference to an official mark provided for in Division 1 of Part 3 of Chapter 8 of the Plant Rules.

### **8-22 Persons who may manufacture official marks for plants or plant products**

Section 8-22 specifies who may manufacture a kind of official mark for plants or plant products. A person may manufacture a kind of official mark for plants or plant products only if the Secretary has given the person a written approval to manufacture that kind of official mark. Limiting who may manufacture official marks is necessary to ensure the integrity of the system for manufacturing official marks and to mitigate fraudulent export practices that could pose a risk to Australia's trade reputation and market access.

### **8-23 Persons who may possess official marks that have not been applied to plants or plant products**

Section 8-23 specifies who may possess official marks that have not been applied to plants or plant products. Limiting who can possess official marks ensures they are accounted for and only applied by nominated personnel.

The persons who may possess a kind of official mark for plants or plant products are:

- persons permitted by section 8-22 to manufacture official marks of that kind;
- authorised officers;
- persons who are officers or employees of the Department, and to whom the Secretary has given a written approval to possess the official mark, and the possession is in accordance with that approval;
- persons acting in accordance with a direction given by an authorised officer; or
- a person who has been given a written approval by the Secretary to possess the official mark at a specified accredited property or registered establishment and in relation to specified plants or plant products, and the possession is in accordance with that approval.

### **8-24 Persons who may apply official marks to plants or plant products**

Section 8-24 specifies who may apply official marks to prescribed plants or plant products. Limiting who can apply official marks ensures official marks are used in accordance with the Act and Plant Rules and only applied to products passed as fit for purpose.

The persons who may apply official marks to plants or plant products are:

- authorised officers;
- persons who are officers or employees of the Department, and to whom the Secretary has given a written approval to apply the official mark, and the application of the official mark is in accordance with that approval;
- persons acting in accordance with a direction given by an authorised officer; or
- a person who has been given a written approval by the Secretary to apply the official mark to the plants or plant products, and the application of the official mark is in accordance with that approval.

### **8-25 Alteration of and interference with official marks**

Section 8-25 details who may alter or interfere with an official mark, and in what circumstances, regardless of whether it has been applied to plants or plant products.

An official mark can only be altered or interfered with if the alteration or interference is required or permitted by Part 3 of Chapter 8 of the Plant Rules or by the Secretary. This is necessary to ensure official marks can be relied upon by the governments of importing countries as an assurance about the authenticity of a document or the origin, integrity and compliance of goods with importing country requirement.

The note following section 8-25 alerts the reader to sections 261 and 262 of the Act that a person may commit an offence or be liable to a civil penalty if the person engages in conduct and the conduct has the result that an official mark applied to certain plants or plant products or documents is altered so as to be false, misleading or deceptive.

### **8-26 Official marks must be legible and securely attached**

Section 8-26 requires official marks applied to plants or plant products to be legible and securely attached. This enables the official mark to be identified when it is being used on plants and plant products and provides assurance of the authenticity of the official marks to trading partners.

### **8-27 Security of official marks**

Section 8-27 requires a person who is in possession of an official mark that has not been applied to any plants or plant products, as permitted by section 8-23, must ensure that the official mark is stored securely. This ensures that all official marks can be accounted for when not in use and reduces the risk of possible non-compliant applications of official marks.

### **8-28 Removal or defacement of official marks**

Section 8-28 sets out requirements relating to the removal or defacement of official marks that have been applied to plants or plant products.

Subsection 8-28(1) provides if an official mark (other than an Australia Approved official mark) has been applied to a package in which plants or plant products are packed, the official mark must be removed or defaced if it is no longer intended to export the plants or plant products or to export the goods in that package.

Subsection 8-28(2) requires a foreign country identification official mark or a European Union official mark to be removed or defaced if the circumstances in which that mark may be applied to plants or plant products, as specified by the relevant importing country authority no longer exist.

Subsection 8-28(3) sets out who may remove or deface an official mark in accordance with a requirement in subsections 8-28(1) or (2). This is limited to:

- an authorised officer, or a person acting in accordance with a direction from an authorised officer; or
- the exporter of the plants or plant products; or
- if the official mark was applied to the plants or plant products at an accredited property, the manager of the accredited property; or

- if the official mark was applied to the plants or plant products at a registered establishment, the occupier of the registered establishment; or
- a person who has been given a written approval by the Secretary to remove or deface the official mark, and who is acting in accordance with that approval.

The note following section 8-28 alerts the reader to section 258 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty if the person contravenes a provision in Division 2 of Part 3 of Chapter 8 of the Plant Rules.

### **8-29 Records of official marks manufactured**

Section 8-29 requires a person who is permitted under section 8-22 to manufacture official marks to be applied to plants or plant products to make a daily written record detailing each kind and number of official marks manufactured on that day.

They must also make a written record stating each day a consignment of official marks is sent to a person permitted to possess official marks under section 8-23, each type of official mark included in the consignment and how the consignment of official marks is transported. This ensures official marks are accounted for and are used in accordance with the Act and the Plant Rules.

The note following section 8-29 explains that under section 11-8 of the Plant Rules the person must retain each record for at least 2 years.

### **8-30 Records of official marks applied, removed, defaced, destroyed or returned**

Subsection 8-30(1) requires the person permitted to possess official marks under section 8-23 to make a written record of official marks applied to, or removed from, plants or plant products, and official marks defaced, destroyed or returned by the person.

The note following subsection 8-30(1) explains that under section 11-8 of the Plant Rules the person must retain each record for at least 2 years.

Subsection 8-30(2) provides that the requirement to make records does not apply in relation to the Australian Government official mark referred to in section 8-18.

## **Division 3—Official marking devices**

An official marking device is defined in section 257 of the Act as a device that is capable of being used to apply an official mark, but does not include a device prescribed by the rules.

### **8-31 Purpose of this Division**

Subsection 257(2) of the Act allows the rules to make provision for and in relation to the following:

- the persons, or classes of persons, who may manufacture or possess an official marking device;

- the use of official marking devices;
- security of official marking devices;
- damaged official marking devices;
- destruction of official marking devices;
- making records of official marking devices; and
- any other matter relating to official marking devices.

Section 8-31 provides that Division 3 of Part 3 of Chapter 8 of the Plant Rules is made for the purposes of subsection 257(2) of the Act and makes provision for and in relation to official marking devices that are capable of being used to apply official marks in Division 1 of Part 3 of Chapter 8 of the Plant Rules to plants or plant products that are intended to be exported. These requirements are necessary to ensure the security of official marking devices, preserve the integrity of official marks applied to plants or plant products and maintain Australia's trade reputation and market access.

The note following section 8-31 alerts the reader to section 258 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty if the person contravenes a provision in Division 3 of Part 3 of Chapter 8 of the Plant Rules.

### **8-32 Persons who may manufacture or possess official marking devices**

Section 8-32 specifies who can manufacture or possess official marking devices for applying official marks. These are:

- an authorised officer or a person acting under the direction of an authorised officer; or
- a person who has been given a written approval by the Secretary to manufacture or possess the official marking device and the manufacture or possession is in accordance with that approval.

These restrictions ensure the security of the devices and preserve the integrity of official marks.

### **8-33 Security of official marking devices**

Section 8-33 requires a person permitted to possess an official marking device under section 8-32 to store it securely when it is not being used. This is to avoid unauthorised use of the official marking device.

### **8-34 Damaged official marking devices**

Section 8-34 requires a person in possession of an official marking device as permitted by section 8-32 who becomes aware the device is damaged or destroyed, worn or otherwise unfit for applying an official mark to plants or plant products, to notify the Secretary in writing as soon as practicable after becoming aware of that fact. This is to ensure the ability to apply official marks is not compromised in any way.

### **8-35 Records of official marking devices manufactured**

Section 8-35 requires a person who is permitted by section 8-32 to manufacture official marking devices to make a daily written record stating:

- each kind of official marking device manufactured by the person on that day;
- the number of each kind of official marking device manufactured by the person on that day; and
- the serial number of each official marking device manufactured by the person on that day.

A written record must also be made stating each day official marking devices were sent by the person and how they were transported each day. The records provide evidence the manufacturer of official marking devices is satisfying regulatory requirements.

The note following section 8-35 explains that under section 11-9 of the Plant Rules a person who is required to make a record under this section must retain the record for at least 2 years.

### **8-36 Records of official marking devices used, destroyed or returned**

Section 8-36 requires a person permitted to possess an official marking device under section 8-32 to make a written record of official marking devices that have been:

- used by the person to apply official marks to plants of plant products; or
- destroyed or returned by the person.

The note following section 8-36 explains that under section 11-9 of the Plant Rules a person who is required to make a record under this section must retain the record for at least 2 years.

## **CHAPTER 9—POWERS AND OFFICIALS**

### ***Part 1—Audits***

Part 1 of Chapter 9 of the Plant Rules deals with matters relating to audits of export operations relating to plants or plant products.

Audits help retain wide access to overseas export markets by providing a mechanism to ensure compliance with export requirements and importing country requirements and provide assurance to trading partners. Under sections 266 and 267 of the Act, the Secretary may require an audit to be conducted of export operations carried out in certain circumstances, or in relation to the performance of functions under the Act. An audit under section 266 may be conducted by an authorised officer or an approved auditor, while an audit under section 267 may be conducted by a Commonwealth authorised officer or a person prescribed by the rules made for the purposes of subsection 267(3). Audits conducted in relation to plants and plant products will be conducted by authorised officers.

### **Division 1—General**

#### **9-1 References to audit in this Part**

Section 9-1 provides that a reference in Part 1 of Chapter 9 of the Plant Rules to an audit is a reference to the following audits under Part 1 of Chapter 9 of the Act:

- an audit of export operations carried out in relation to plants or plant products. For example, the export operations of registered establishments and accredited properties, as well as export operations relating to the issue of government certificates;
- an audit in relation to the performance of functions or the exercise of powers under the Act in relation to plants or plant products by a person referred to in subparagraph 267(1)(a)(i) or (v) of the Act. These persons are third party authorised officers or any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs functions or exercises powers under the Act;
- an audit in relation to compliance by a person referred to in subparagraph 267(1)(a)(i) of the Act. This person is a third party authorised officer with the conditions applying to the performance of functions or the exercise of powers under the Act in relation to plants or plant products.

#### **9-2 Other circumstances in which audit of export operations may be required**

Subsection 266(1) of the Act provides that the Secretary may require an audit to be conducted in certain circumstances. Paragraph 266(1)(g) of the Act allows the Secretary to require an audit to be conducted of export operations carried out in any other circumstances prescribed by the rules.

Subsection 9-2(1) is made for the purposes of paragraph 266(1)(g) of the Act, and provides that the Secretary may require an audit to be conducted of export operations carried out in relation to prescribed plants or plant products in relation to which an exemption is in force under Part 2 of Chapter 2 of the Act.



Subsection 266(2) of the Act provides that an audit under subsection 266(1) of the Act must relate to one or more of the matters listed. Paragraph 266(2)(f) allows the rules to prescribe any other matter relating to the operation of the Act which an audit must relate to.

Subsection 9-2(2) is made for the purposes of paragraph 266(2)(f) of the Act and provides that an audit of export operations carried out in relation to prescribed plants or plant products in relation to an exemption which is in force under Part 2 of Chapter 2 of the Act must relate to one or more of the following:

- whether it is appropriate for the exemption to remain in force;
- whether the conditions (if any) of the exemption are being, have been or are likely to be complied with;
- whether the conditions (if any) of the exemption need to be varied under section 58 of the Act.

## **Division 2—Conduct of audit etc.**

### **9-3 Purpose of this Division**

Section 270 of the Act sets out matters relating to the conduct of an audit under the Act. Subsection 270(4) of the Act allows the rules to make provision for and in relation to other matters relating to the conduct of audits, and the processes to be followed once an audit has been completed. Subsection 270(5) provides a non-exhaustive list of matters for which the rules may make provision for under subsection 270(4).

Section 9-3 provides that Division 2 of Part 1 of Chapter 9 of the Plant Rules is made for the purposes of subsections 270(4) and (5) of the Act and provides for and in relation to matters relating to the conduct of an audit, processes for dealing with non-compliance with requirements to which the audit relates and audit reports.

Audits ensure requirements are being met and export conditions are being complied with on an ongoing basis. This provides assurance to trading partners that import requirements are being met.

### **9-4 Audit reports**

Section 9-4 sets out the requirements relating to audit reports, including how audit reports are to be provided, what they must entail and what they may also include.

Audits ensure relevant requirements are being met and conditions are being complied with on an ongoing basis. Audits provide assurance to trading partners that their import requirements are being met. The audit report ensures sufficient information is provided to enable an assessment of compliance with requirements.

Subsection 9-4(1) requires an audit report to be made in writing after the audit is completed or ends.

Subsection 9-4(2) specifies that an audit report must include the name of the auditor, the day the audit commenced, the day the audit was completed or ended, a description of the export operations or matters referred to in subsection 267(1) of the Act to which the audit relates, and a description of the nature and scope of the audit.

Subsection 9-4(3) requires the audit report to also contain the auditor's opinions regarding whether the audit was satisfactorily completed or whether the audit was ended before it could be satisfactorily completed, whether the requirements to which the audit relates are being, or have been complied with, and the reasons for the auditor's opinion.

Subsection 9-4(4) requires all instances of non-compliance with the requirements to which the audit relates to be included in the audit report. The report must describe each instance of non-compliance and must state the reasons for the auditor's opinion.

Subsection 9-4(5) specifies that the audit report may identify any risks of potential non-compliance and include recommendations for actions to be taken to:

- address issues of non-compliance with a requirement to which the audit relates;
- ensure that any non-compliance does not recur;
- address risks of potential non-compliance; and
- assess the effectiveness of actions taken in response to recommendations.

Subsection 9-4(6) requires the audit report to be given to the relevant person for the audit within 10 business days after the audit is completed or ends.

The note following section 9-4 refers the reader to section 269 of the Act for who is the **relevant person** for an audit.

## ***Part 2—Assessments***

An assessment of goods may be carried out for the purpose of deciding whether to issue a government certificate (paragraph 68(c) of the Act) or an export permit (paragraph 241(c) of the Act). The purpose of the assessment is to verify that:

- the requirements of the Act have been or will be complied with before the plants or plant products are imported into the importing country; or
- importing country requirements have been, or will be, met before the plants or plant products are imported into the importing country; or
- a matter stated, or to be stated, in a government certificate in relation to the plants or plant products is true and correct.

Assessments may be carried out by an authorised officer or an approved assessor. It is intended that assessments in relation to plants and plant products will be conducted by an authorised officer.

## Division 1—General

### 9-5 Circumstances in which assessment may be required or permitted

Subsection 277(1) of the Act provides that an assessment of goods may be carried out under Part 2 of Chapter 9 of the Act only if the assessment is required or permitted to be carried out under this Act. Subsection 277(2) allows the rules to prescribe circumstances in which the Secretary may require or permit an assessment of plants or plant products to be carried out under Part 2 of Chapter 9 of the Act.

Section 9-5 prescribes, for the purposes of subsection 277(2) of the Act, circumstances in which the Secretary may require or permit an assessment of goods to be carried out under Part 2 of Chapter 9 of the Act. This is where:

- a notice of intention to export a consignment of, or including, the plants or plant products has been given; or
- a government certificate is in force in relation to the plants or plant products; or
- a person informs an assessor that the person intends to export the plants or plant products and request an assessment of the plants or plant products to be carried out.

The first note following section 9-5 explains that the Secretary may also require an assessment of plants or plant products to be carried out if:

- an application has been made for a government certificate in relation to the plants or plant products (paragraph 68(c) of the Act); or
- in the case of prescribed plants or plant products, an application has been made for an export permit, or to vary an export permit for the plants or plant products (paragraph 241(c) of the Act).

The second note following section 9-5 refers the reader to section 12 of the Act for the definition of *assessor*. The note also explains that for an assessment of plants or plant products, an assessor is an authorised officer.

### 9-6 Relevant person for assessment

Section 278 of the Act details the *relevant person* for an assessment of goods under Part 2 of Chapter 9 of the Act. Paragraph 278(e) allows the rules to prescribe the relevant person for an assessment of goods in any other circumstances prescribed by the rules.

Section 9-6 prescribes, for the purposes of paragraph 278(e) of the Act, the *relevant person*:

- for an assessment at a registered establishment of prescribed plants or plant products in relation to which an application for a government certificate or an export permit has not been made is the occupier of the registered establishment or the exporter of the plants or plant products;

- for an assessment of plants or plant products that is carried out in response to a request referred to in paragraph 9-5(c) of the Plant Rules is the person who requested the assessment.

This makes it clear who may be affected by the conduct and outcome of an assessment and who may be required to provide relevant information or assistance to the person conducting the assessment, or meet other requirements related to the assessment.

## **Division 2—Carrying out assessment etc.**

### **9-7 Purpose of this Division**

Section 279 of the Act details the process for carrying out an assessment of goods. Subsection 279(1) provides the rules may make provision for and in relation to the carrying out of an assessment of plants or plant products and the process to be followed after an assessment has been completed.

Section 9-7 provides that Division 2 of Part 2 of Chapter 9 of the Plant Rules is made for the purposes of section 279 of the Act and makes provision for and in relation to carrying out assessments of plants or plant products, the process to be followed after an assessment, records of assessments and other matters relating to assessments of plants or plant products. This will provide certainty to the assessor and the relevant person on the processes.

### **9-8 Assessments of prescribed plants or plant products**

Section 9-8 provides that an assessment of prescribed plants or plant products must be carried out at an establishment that is registered to carry out export operations in relation to the plants or plant products. This ensures the assessment of prescribed plants or plant products is carried out at an appropriate establishment.

The note following section 9-8 explains that an assessment of non-prescribed plants or plant products may be carried out at any establishment.

### **9-9 Circumstances when bulk vessel approval or container approval must be provided to assessor**

Subsection 9-9(1) provides if an assessment of prescribed plants or plant products that are to be transported in or on a bulk vessel is being carried out and the bulk vessel is present at the assessment, the relevant person for the assessment must give a bulk vessel approval, covering the cargo spaces of the vessel into or onto which the plants or plant products have been, are being, or are to be loaded, to the assessor.

The first note following subsection 9-9(1) explains that the prescribed plants or plant products must not be loaded into or onto the bulk vessel unless a bulk vessel approval, covering the cargo spaces of the vessel into or onto which the prescribed plants or plant products are to be loaded, is in force for the bulk vessel (see section 4-12 of the Plant Rules).

The second note following subsection 9-9(1) refers the reader to section 278 of the Act and section 9-6 of the Plant Rules for the *relevant person* for an assessment.

Subsection 9-9(2) provides if an assessment of prescribed plants or plant products that are to be transported in a container is being carried out and the container is present at the assessment, the relevant person for the assessment must give a container approval for the container to the assessor.

The first note following subsection 9-9(2) explains that prescribed plants or plant products must not be loaded into a container unless a container approval is in force for the container (see section 4-13 of the Plant Rules).

The second note following subsection 9-9(2) refers the reader to section 278 of the Act and section 9-6 of the Plant Rules for the *relevant person* for an assessment.

These requirements ensure that the assessor has relevant information to ensure that the integrity of prescribed plants and plant products loaded or to be loaded will be maintained by the conveyance.

### **9-10 Criteria for deciding whether plants or plant products pass assessment**

Subsection 277(3) of the Act provides that the purpose of carrying out an assessment of goods under Part 2 of Chapter 9 of the Act is to verify one or more of the following:

- that the requirements of the Act in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country;
- that the importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country;
- that a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.

Subsection 9-10(1) provides that an assessor may decide that plants or plant products pass an assessment in relation to a matter referred to in subsection 277(3) of the Act if the assessor verifies that matter in relation to the plants or plant products. This establishes a clear process for decision-making and promotes consistency among assessors.

The note following subsection 9-10(1) refers the reader to subsection 9-12(1) that the assessor may decide that a validity period for the plants or plant products applies.

Subsection 9-10(2) provides that an assessor must not decide that plants and plant products pass an assessment unless:

- for an assessment of prescribed plants or plant products, the assessment was carried out in accordance with section 9-8 and the relevant person for the assessment complied with the applicable requirements (if any) in section 9-9; and
- the flowpath for the plants or plant products has been passed (see subsection 9-10(3)); and

- the assessor reasonably believes that the plants or plant products contain no pests or contaminants above the applicable tolerance level and the integrity of the plants or plant products can be ensured; and
- for an assessment or prescribed plants or plant products that are packed, or are intended to be packed, into packages for export, the packages for export meet the requirements in subsections 4-13(2) to (5).

Subsection 9-10(3) provides that an assessor must not pass a flowpath unless the assessor reasonably believes the flowpath contains no pests or contaminants above applicable tolerance levels and the integrity of the plants and plant products can be ensured. Section 1-6 of the Plant Rules defines the *flowpath* for plants or plant products to include the places, and any bins or other receptacles or elements of a transport system, at an establishment that are used to store or carry the plants or plant products.

The purpose of the provisions is to enable the assessor to verify and satisfy themselves of the necessary factors in relation to the plants and plant products, through a range of appropriate and defensible methods. This could include visual inspection of plants and plant products; consideration of a production system for the processing and preparation of the plants and plant products; by requesting and considering information and documents; or by taking, testing and analysing samples (section 410 of the Act). The assessor may exercise the range of powers under section 280 of the Act in carrying out an assessment of goods.

The note following subsection 9-10(3) refers the reader to section 9-15 for applicable tolerance levels for pests and contaminants.

The criteria under section 9-10 apply to carrying out assessments of both prescribed and non-prescribed plants or plant products, unless the criteria specifically refers to prescribed plants or plant products.

### **9-11 Reassessment after failed assessment**

Section 9-11 outlines the process for a reassessment of plants or plant products when they have failed an assessment.

Subsection 9-11(1) provides that if plants or plant products fail an assessment (*failed assessment*), they must not be presented for another assessment unless the reason for failing the assessment has been rectified. This ensures assessors do not conduct reassessments where issues have not been addressed. This reduces the costs involved, supports better export outcomes and practices, and ensures the reassessment is justified.

Subsection 9-11(2) provides that if the reason for the failed assessment was because pests or contaminants above the applicable tolerance level were detected on the plants or plant products or in or on the flowpath, the relevant person for the failed assessment must ensure the plants or plant products or the flowpath (depending on where the pests or contaminants were detected) are treated. The method of treatment must be effective to reduce the pests or contaminants to no higher than the applicable tolerance level and meet importing country requirements relating to the plants or plant products.

Subsection 9-11(3) requires the exporter of the plants or plant products to agree to the method of treatment to be used under subsection 9-11(2) if they are not the relevant person for the failed assessment. The exporter is the person who is responsible for the consignment meeting requirements under the Act and meeting importing country requirements. The exporter needs to determine the best course of action in relation to the consignment. For example, there may be different treatment options in relation to a pest or contaminant and the exporter will need to decide which one they wish to adopt. If exporters determine they do not wish to treat the consignment, they may seek to export the consignment to another country or to sell into the domestic market.

The note following subsection 9-11(3) explains that the relevant person for the failed assessment may be the occupier of the registered establishment where operations to prepare the plants or plant products for export were carried out.

## **9-12 Validity period for plants or plant products**

Subsection 9-12(1) provides that if plants or plant products pass an assessment, an assessor may decide that a validity period applies, if they consider it appropriate to do so, having regard to either the kind of plants or plant products and the importing country, or the export operations carried out in relation to the kind of plants or plant products, or both.

Subsection 9-12(2) sets out, subject to subsection 9-12(4), that the *validity period* for the plants or plant products that applies is:

- 28 days, starting on the day the plants or plant products passed the assessment;
- if the Secretary has approved a different validity period under subsection 9-12(3), the approved period; or
- if the validity period is extended under section 9-13, the extended period.

The note following subsection 9-12(2) refers the reader to section 7-2 of the Plant Rules and explains that an export permit for prescribed plants or plant products for which a validity period applies remains in force until the end of the validity period.

Subsection 9-12(3) provides that the Secretary may approve, in writing, a validity period for either or both:

- a kind of plants or plant products for export to an importing country;
- a kind of plants or plant products in relation to which a specified kind of export operations have been carried out.

For example, importing countries may request a shorter validity period, or the Secretary may approve a longer validity period, if export operations can be undertaken at registered establishments in relation to plants or plant products in a manner that ensures the integrity of the plants or plant products can be preserved for longer periods.

Subsection 9-12(4) specifies that the validity period ends if the Secretary requires another assessment of the plants or plant products to be carried out, and the assessor decides that a new validity period applies.

The note following subsection 9-12(4) explains that if a new validity period for the plants or plant products does not apply, the previous validity period for the plants or plant products continues to apply.

### **9-13 Relevant person for assessment may apply to extend validity period for plants or plant products**

Subsection 9-13(1) provides that section 9-13 applies in relation to an assessment of plants or plant products if a validity period applies and has not ended.

The note following subsection 9-13(1) refers the reader to paragraph 9-14(2)(b) of the Plant Rules which provides that the validity period must be stated in the assessment record.

Subsection 9-13(2) provides the relevant person for an assessment may apply to the Secretary to extend the validity period.

The note following subsection 9-13(2) refers the reader to section 278 of the Act and section 9-6 of the Plant Rules for the *relevant person* for an assessment.

Subsection 9-13(3) provides that an application by a relevant person to extend the validity period must be in writing and be made no later than one business day before the validity period is to end. This period is appropriate to enable the Secretary to consider the application and make a decision in relation to the application.

Subsections 9-13(4) provides that the Secretary, on receiving an application, may extend, or further extend the validity period.

Subsection 9-13(5) provides if the Secretary extends the validity period, they must give the relevant person for the assessment a written notice stating the new validity period.

Subsection 9-13(6) provides if the Secretary decides not to extend the validity period, they must give the relevant person for the assessment a written notice of the decision. The notice must include the reasons for the decision.

The validity period may be extended, for example, if there has been a justified delay to the export of a consignment such as if the goods did not reach the export conveyance or could not fit on a departing conveyance.

The power to extend a validity period provides a flexible mechanism to accommodate and respond to reasonable commercial and logistical delays that arise in the export supply chain. It allows extensions to validity periods where the Secretary can be assured that there is minimal risk to Australia's trade reputation or market access.



## **9-14 Record of assessment**

Subsection 9-14(1) provides that as soon as practicable after an assessor completes an assessment of plants or plant products, they must make a written record of the assessment.

Subsection 9-14(2) provides that the assessment record must:

- state whether the plants or plant products passed or failed the assessment; and
- if the plants or plant products passed the assessment and a validity period applies, state the validity period; and
- if the Secretary has approved, in writing, a form for the assessment record, it must include any other information required by the form and be accompanied by any documents required by the form; and
- if the Secretary has approved, in writing, a manner for giving the assessment record, be given in the approved manner.

## **9-15 Applicable tolerance levels for pests and contaminants**

The purpose of section 9-15 is to detail the applicable tolerance levels for pests and contaminants in plants and plant products. Tolerance levels for pests and contaminants in relation to plants and plant products exported from Australia facilitates the maintenance of Australia's trade reputation and market access. The tolerance levels set standards and expectations in relation to consignments or plants and plant product exports from Australia.

Subsection 9-15(1) provides the applicable tolerance level for a kind of pest in relation to a kind of plant or plant product for export to an importing country is nil or, if the Secretary has approved under subsection 9-16(1) a tolerance level for that kind of pest in relation to that kind of plant or plant product and that importing country, the approved tolerance level.

The note following subsection 9-15(1) refers the reader to section 1-6 of the Plant Rules for the definition of the term *pest*.

Subsection 9-15(2) provides the applicable tolerance level for animal carcasses or animal waste in relation to a kind of plant or plant product for export to an importing country is nil or, if the Secretary has approved under subsection 9-16(2) a tolerance level for animal carcasses or animal waste in relation to that kind of plant or plant product and that importing country, the approved tolerance level.

Subsection 9-15(3) provides the applicable tolerance level (if any) for a kind of contaminant (other than animal carcasses or animal waste) in relation to a kind of plant or plant product for export to an importing country is the tolerance level approved by the Secretary under subsection 9-16(3) for that kind of contaminant in relation to that kind of plant or plant product and that importing country.

The note following subsection 9-15(3) refers the reader to section 1-6 of the Plant Rules for the definition of the term *contaminant*.

## 9-16 Approval of higher tolerance levels for pests and contaminants

The purpose of section 9-16 is to provide the Secretary with the ability to:

- approve higher tolerance levels; or
- in the case of contaminants (other than animal carcasses or animal waste) – to set tolerances.

This provides the Secretary with the flexibility to respond to the fast-paced nature of Australia's export industries for plants and plant products; changes in importing country requirements; and pest pressures or contaminant risks that may arise within Australia's export industries for plants and plant products. This means the Secretary can respond to new or emerging risks posed to the health of consumers overseas by a pest or contaminant in plants or plant products from Australia.

Subsection 9-16(1) provides that the Secretary may approve, in writing, a tolerance level higher than nil for a kind of pest in relation to a kind of plant or plant product for export to an importing country if the pest is:

- not injurious to that kind of plant or plant product; or
- not a quarantine pest for the importing country; or
- a quarantine pest for the importing country and the higher tolerance level is consistent with importing country requirements.

The note following subsection 9-16(1) refers the reader to section 1-6 of the Plant Rules for the definition of the term *pest*.

Subsection 9-16(2) provides that the Secretary may approve, in writing, a tolerance level higher than nil for animal carcasses or animal waste (or both) in relation to a kind of plant or plant product for export to an importing country if the higher tolerance level is consistent with the importing country requirements.

Subsection 9-16(3) provides if the Secretary is satisfied that a kind of contaminant (other than animal carcasses or animal waste) could affect the integrity of a kind of plant or plant product for export to an importing country, they may approve, in writing, the tolerance level for that kind of contaminant in relation to that kind of plant or plant product and that importing country.

The noted following subsection 9-16(3) refers the reader to section 1-6 of the Plant Rules for the definition of the term *contaminant*.

### *Part 3—Powers of the Secretary*

#### **9-17 Decisions that may be made by operation of computer program**

Subsection 286(1) of the Act allows the Secretary to arrange for the use, under the Secretary's control, of computer programs for making certain decisions under the Act. Subsection 286(2) allows the rules to prescribe the kinds of decisions that may be made by the operation of a computer program, the persons or bodies that may use such a computer program, and the conditions of that use.

Subsection 9-17(1) prescribes, for the purposes of paragraph 286(2)(a) of the Act, the following decisions that may be made by a computer program (an ***authorised computer program***) under an arrangement made under subsection 286(1) of the Act in relation to plants or plant products:

- a decision under paragraph 67(1)(a) of the Act to issue a government certificate;
- a decision under paragraph 225(1)(a) of the Act to issue an export permit for prescribed plants or plant products.

Enabling the Secretary to prescribe decisions that may be made by computer programs will provide flexibility in relation to the use of computer programs as there are changes in technology. Allowing computer programs to make certain decisions will also provide administrative efficiency. An advantage of allowing a computer program to issue government certificates and export permits is that decisions are made more efficiently, are not limited to being made during business hours, and are more accurate and consistent.

It is appropriate to enable a computer program to issue a government certificate because the decision under paragraph 67(1)(a) of the Act is based on objective criteria and would not require the computer program to weigh up discretionary factors. Only a decision to issue a certificate is prescribed for the purposes of the Plant Rules, and any decision to refuse to issue, including the consideration of any discretionary factors, would be made by a human decision maker.

It is appropriate to enable a computer program to issue an export permit as the decision under paragraph 225(1)(a) is based on objective criteria and does not require the computer program to weigh up discretionary factors. Only a decision to issue an export permit is prescribed for the purposes of the Plant Rules and any decision to refuse to issue a permit, including the consideration of any discretionary factors, would be made by a human decision maker.

Under subsection 286(3) of the Act, the Secretary is required to take all reasonable steps to ensure decisions made by a computer program under the arrangement are correct. If the Secretary is satisfied that the decision made by the operation of the computer program is incorrect, the Secretary may make a decision in substitution for that made by the computer program (subsection 286(5)).

Paragraph 286(2)(b) of the Act allows the rules to prescribe the persons or bodies that may use computer programs under an arrangement in subsection 286(1).

Subsection 9-17(2) is made for the purposes of paragraph 286(2)(b) of the Act and details who may use an authorised computer program for a decision referred to in subsection 9-17(1) if the Secretary has given them a unique identifier to access the computer program. These persons are:

- the manager of an accredited property where export operations in relation to plants or plant products are carried out;
- the occupier of a registered establishment where operations to prepare plants or plant products for export are carried out;
- a person who manages or controls operations at a registered establishment where operations to prepare plants or plant products for export are carried out;
- an exporter of plants or plant products, or an agent of the exporter;
- an authorised officer;
- an APS employee in the Department;
- a person performing services for the Department under a contract.

This ensures access to the computer program is only by those who require access to perform their functions.

Paragraph 286(2)(c) of the Act allows the rules to prescribe the conditions of the use of computer programs under an arrangement in subsection 286(1).

Subsection 9-17(3) is made for the purposes of paragraph 286(2)(c) of the Act and sets the conditions for use of the computer program by the persons listed under subsection 9-17(2). It provides that a person who has access to and uses the authorised computer program must be satisfied on reasonable grounds that the information entered into the computer program is true and correct and is accurately entered. This is to avoid, as far as practicable, incorrect or incomplete information being entered into the computer program which may result in an incorrect decision.

### **9-18 Functions and powers that must not be subdelegated**

Subsection 288(1) of the Act provides the Secretary may, in writing, delegate any of their powers under the Act to an SES employee, or an acting SES employee, in the Department. Subsection 288(2) allows an SES employee or an acting SES employee in the Department to subdelegate the function or power. Subsection 288(4) of the Act allows the rules to provide that specified functions or powers of the Secretary under the rules must not be delegated or must not be subdelegated.

Section 9-18 provides, for the purposes of paragraph 288(4)(b) of the Act, the functions and powers of the Secretary that must not be subdelegated under subsection 288(2) of the Act:

- the power under paragraph 9-14(2)(c) to approve a form for an assessment record;
- the power under paragraph 9-14(2)(d) to approve a manner for giving an assessment record;
- the power under paragraph 9-22(3)(b) to consider whether an anchorage is suitable for an inspection of a bulk vessel;
- the power under paragraph 9-24(2)(b) to approve a form for a bulk vessel inspection record;
- the power under subsection 9-24(5) to approve a manner for giving a bulk vessel inspection record;
- the power under paragraph 9-33(2)(b) to approve a form for a container inspection record; or
- the power under subsection 9-33(5) to approve a manner for giving a container inspection record.

The purpose is to ensure consistency and harmonise, as far as practicable, the approval of forms, considerations and the manner of giving certain documents. This is intended to ensure that decision-making powers under the Act are carried out efficiently and effectively in an operational environment and that responsibility for powers with more serious implications remain at a senior level.

#### ***Part 4—Authorised officers***

Authorised officers are individuals who are trained and qualified, assessed by the Secretary and appointed under the Act. An authorised officer is able to perform a range of export functions on behalf of the Secretary. Authorised officers play an important role in ensuring that biosecurity risks are managed, and the safe and trusted export of a variety of plant and plant products from Australia, which helps maintain and grow Australia's reputation as a trusted exporter of goods.

#### **9-19 Third party authorised officers**

Subsection 291(3) of the Act provides that a person who is not an officer or employee of a Commonwealth body or a State or Territory body may apply to the Secretary to be a third party authorised officer. Subsection 291(7) provides that the Secretary may, in writing, authorise a person to be a third party authorised officer. Paragraph 291(7)(c) allows the Secretary to authorise a third party authorised officer if any other requirement prescribed by the rules is, or has been met.

Subsection 9-19(1) is made for the purposes of paragraph 291(7)(c) of the Act and sets out an additional requirement that a person be a fit and proper person to be a third party authorised officer for the purpose of performing functions and exercising powers in relation to prescribed plants or plant products (having regard to the matters referred to in section 372 of the Act).

This provides the Secretary with flexibility to effectively respond to changes in industry and market requirements to provide appropriate third party authorised officers. Third party authorised officers may have access to business premises where commercially sensitive operations are conducted. The third party authorised officers make decisions under the Act on behalf of the Secretary, which makes it essential that they are trustworthy and undertake their roles in good faith and with honesty, impartiality and integrity. For these reasons, an individual is required to be a fit and proper person to be authorised to perform functions and exercise powers in relation to prescribed goods.

Section 372 of the Act enables the Secretary to apply a fit and proper person test. The fit and proper person test is necessary to ensure that persons who are approved to export goods from Australia or to exercise functions under the Act are trustworthy and demonstrate the required integrity to uphold Australia's trading reputation.

Subsections 9-19(2) to 9-19(4) are made for the purposes of section 372 of the Act and prescribe the provisions to which the fit and proper person test applies in relation to third party authorised officers.

Subsection 372(1) of the Act sets out which provisions in the Act require the Secretary to comply with the requirements of section 372 when determining whether a person is a fit and proper person. Paragraph 372(1)(d) allows the rules to provide additional provisions of the Act for which the requirements in section 372 will apply (which includes instruments made under the Act, such as provisions of the Plant Rules).

Subsection 9-19(2) is made for the purposes of paragraph 372(1)(d) of the Act and prescribes subsection 9-19(1) as a provision to which the fit and proper person test applies. This means the fit and proper person requirements in section 372 of the Act apply in relation to a third party authorised officer. This is necessary to ensure that a prospective third party authorised officer is of a suitable character to perform functions or exercise powers under the Act.

Paragraph 372(2)(e) of the Act requires the Secretary to have regard to whether certain applications by a person, or an associate of the person, have been refused, when determining whether the person is a fit and proper person. Subparagraph 372(2)(e)(v) allows the rules to prescribe any other provision of the Act to be considered for this purpose.

Subsection 9-19(3) is made for the purposes of subparagraph 372(2)(e)(v) of the Act and prescribes subsection 291(3) of the Act (application by a person to be a third party authorised officer for the purpose of performing functions and exercising powers in relation to plants and plant products). This means that in determining whether the applicant is a fit and proper person, the Secretary must have regard to whether the person or an associate of the person (having regard to subsection 472(4) of the Act and section 9-19(4) of the Plant Rules) has made an application to be a third party authorised officer that has been refused. It is expected that the Secretary will consider the reasons for refusing an application to be a third party authorised officer in determining whether an applicant is a fit and proper person.

Paragraph 372(4)(b) of the Act allows the rules to prescribe a person to whom the requirements under subsection 372(2) of the Act, which determine whether a person is a fit and proper person, will apply without reference to an associate of the person.

Subsection 9-19(4) is made for the purposes of paragraph 372(4)(b) of the Act and prescribes a person who is a third party authorised officer who may perform functions and exercise powers in relation to plants or plant products. This means the requirements in subsection 372(2) of the Act regarding the mandatory considerations when determining whether a third party authorised officer is a fit and proper person refers only to the third party authorised officer and not to an associate.

Section 374 of the Act relates to the notification that a person has been convicted of an offence or ordered to pay a pecuniary penalty. Paragraph 374(1)(g) provides that section 374 applies to any other person prescribed by the rules, and who carries out export operations, or performs functions or duties or exercises powers under the Act.

Subsection 9-19(5) is made for the purposes of paragraph 374(1)(g) of the Act and prescribes a third party authorised officer who may perform functions and exercise powers in relation to plants and plant products. This means that such a person is required to notify the Secretary of any conviction of offence or order to pay a pecuniary penalty for a contravention of Australian law involving fraud or dishonesty for that person (under subsection 374(4) of the Act) or an associate (under subsection 374(5) of the Act). Failure to comply with this requirement is a contravention of a civil penalty provision under subsection 374(6) of the Act.

## **9-20 Functions and powers of authorised officers—bulk vessel approvals and container approvals**

Section 300 of the Act provides the rules may confer functions or powers on authorised officers, or a class of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of the Act.

Section 9-20 is made for the purposes of section 300 of the Act and prescribes that:

- Part 5 of Chapter 9 of the Plant Rules (bulk vessel approvals) includes provisions that confer functions and powers on authorised officers in relation to bulk vessel approvals; and
- Part 6 of Chapter 9 of the Plant Rules (container approvals) confers functions and powers on authorised officers in relation to container approvals.

These powers and functions are necessary or convenient for the purposes of achieving the objects of the Act in relation to prescribed plants or plant products for export.

The note following subsection 9-20(2) explains that an authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation (see subsection 301(1) of the Act).

## **9-21 Directions to deal with non-compliance with the Act etc.**

Subsection 305(1) of the Act specifies the person to whom an authorised officer may give a direction under the Act to deal with non-compliance, and the grounds for which the direction may be given. Item 8 of the table in subsection 305(1) allows the rules to prescribe additional persons and grounds for direction to those prescribed persons.

Section 9-21 is made for the purpose of table item 8 in subsection 305(1) of the Act and specifies additional persons in relation to plants or plant products who may be given a direction by an authorised officer to deal with non-compliance. Persons that may be given directions to deal with non-compliance are listed in column 1 of the table and the grounds for giving directions are in column 2 of the table.

The additional persons to whom an authorised officer may give a direction are applicants and holders of government certificates for plants or plant products.

The relevant grounds for giving a direction to such persons generally relate to:

- the plants or plant products not complying, or not likely to comply, with the Act;
- the plants or plant products not meeting, or not likely to meet, importing country requirements; or
- where a matter to be stated in the government certificate is not true and correct.

Issuing directions for non-compliance is essential to enable authorised officers to deal with situations relating to plants or plant products that may affect Australia's trading reputation or may not meet importing country requirements.

### ***Part 5—Bulk vessel approvals***

Empty bulk vessels for loading prescribed goods for export must be inspected by an authorised officer that is appropriately trained and competent and has been appointed by the Secretary for the purpose of inspecting bulk vessels. The purpose of the bulk vessel inspection is to ensure there are no pests or contaminants in the cargo spaces that could infest or contaminate the prescribed plants or plant products. The inspection assists in ensuring that the integrity of the prescribed plants or plant products that will be loaded into or onto the cargo spaces will be maintained, including while on its journey to the final destination country.

## **9-22 Authorised officer may approve bulk vessel**

The purpose of section 9-22 is to set out the process for authorised officers to inspect and decide whether to approve a bulk vessel. This includes areas that must be inspected or need not be inspected and the location where the inspection of the bulk vessel may be undertaken. This is to ensure bulk vessels do not contain pests or contaminants that would affect the integrity of the prescribed plants or plant products. This also ensures that locations for bulk vessel inspections are safe and protected.

Subsection 9-22(1) provides that an authorised officer may approve a bulk vessel.



The first note following subsection 9-22(1) refers the reader to subsection 301(1) of the Act and explains that an authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation.

The second note following subsection 9-22(1) refers the reader to section 9-23 for circumstances where an authorised officer must not approve a bulk vessel.

Subsection 9-22(2) provides, for the purpose of deciding whether to approve a bulk vessel, an authorised officer must inspect:

- each cargo space of the vessel into or onto which prescribed plants or plant products are to be loaded; and
- each other area of the vessel that could contain pests or contaminants that could affect the integrity of prescribed plants or plant products loaded into or onto the vessel; and
- materials and other cargo in or on the vessel, or to be loaded into or onto the vessel, that could contain pests or contaminants, or affect the integrity of prescribed plants or plant products loaded into or onto the vessel.

Subsection 9-22(3) provides that an inspection may be carried out at any wharf, or any other anchorage that the Secretary considers is suitable for the inspection.

Subsection 9-22(4) provides that an authorised officer need not inspect wet stores or refrigerated cold stores in or on the bulk vessel unless an authorised officer reasonably believes that these areas may have become infested by pests. In addition, an authorised officer need not inspect areas in or on the vessel where stores are handled or food is prepared unless substantial pest infestation, or pests suspected to be *Trogoderma* spp., were detected in the course of inspecting dry stores in or on the vessel.

Subsection 9-22(5) provides that, in addition to carrying out an inspection under subsection 9-22(2), an authorised officer may do any other thing they consider necessary for the purpose of deciding whether to approve the bulk vessel, including:

- requesting a person who an authorised officer reasonably believes has relevant information or documents to answer questions, provide information in writing or produce documents; and
- requesting a person who an authorised officer considers may be able to provide facilities or assistance to them in carrying out an inspection, to provide those facilities or that assistance.

### **9-23 Requirements for approval of bulk vessel**

The purpose of section 9-23 is to detail the general requirements in relation to approving a bulk vessel.

Subsection 9-23(1) provides that an authorised officer must not approve a bulk vessel unless:

- an authorised officer is reasonably satisfied the following requirements are met in relation to the cargo spaces of the vessel into or onto which prescribed plants or plant products are intended to be loaded:
  - there are no pests in or on the cargo spaces that are likely to infest the plants or plant products;
  - there are no contaminants or other material in or on the cargo spaces that could contaminate the plants or plant products, or that are likely to harbour pests that could infest the plants or plant products;
  - the cargo spaces are not in a condition that could affect the integrity of the plants or plant products; and
- an authorised officer is reasonably satisfied that other areas of the vessel are not in a condition that is likely to result in the infestation or contamination of any plants, or plant products in or on the vessel; or could affect the integrity of the plants or plant products in or on the vessel; and
- if the bulk vessel is intended to be used to transport prescribed plants or plant products to which subsection 9-23(2) applies, a marine surveyor's certificate is in force for the vessel that covers the cargo spaces of the vessel into or onto which the plants or plant products are intended to be loaded.

The first note following subsection 9-23(1) refers the reader to section 1-6 of the Plant Rules for the definition of the term *marine surveyor's certificate*.

The second note following subsection 9-23(1) refers the reader to section 11-16 of the Plant Rules which sets out the requirements for issuing a marine surveyor's certificate for a bulk vessel.

The third note following subsection 9-23(1) provides examples of conditions that could result in infestation or contamination of plants or plant products in or on a vessel, which include a damaged hold or damaged hatch cover for a hold.

Subsection 9-23(2) applies to the following prescribed plants or plant products for which a marine surveyor's certificate is required:

- prescribed grain;
- prescribed plants or plant products for consumption;
- cereal grains, pulses, oil seeds or nuts that are not prescribed grain and in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.

The note following subsection 9-23(2) refers the reader to section 1-6 of the Plant Rules for definition of the terms *prescribed grain* and *prescribed plants or plant products for consumption*.

Subsection 9-23(3) provides that an authorised officer must not approve a bulk vessel if *Trogoderma* spp. (for example Khapra beetle) is detected in or on the vessel. The Khapra beetle is the number one plant priority pest for grains. This is a highly invasive pest that poses a major threat to Australia's grain industry as it destroys grain quality, making it unfit for human or animal consumption. If Khapra beetle enters Australia it would have significant economic consequences though revenue losses arising from damaged grain in storage and exports, and potentially loss of trade and market access for Australian grain exports.

Subsection 9-23(4) requires an authorised officer to notify the Secretary and a person responsible for the bulk vessel as soon as possible if *Trogoderma* spp. is detected in or on the bulk vessel. This ensures appropriate Commonwealth, and State and Territory government biosecurity responses can be undertaken in relation to a detection of *Trogoderma* spp. in Australia.

#### **9-24 Bulk vessel inspection record**

The purpose of section 9-24 is to require a written record of an inspection of a bulk vessel and associated approvals.

Subsection 9-24(1) provides that, as soon as practicable after an authorised officer completes an inspection of a bulk vessel, they must make a written record of the inspection (an *inspection record*).

Subsection 9-24(2) provides that the inspection record must state whether the vessel is approved or not approved. If the Secretary has approved, in writing, a form for the inspection record, the record must also include the information and be accompanied by any documents required by the form.

Subsection 9-24(3) provides that if the bulk vessel is approved, the inspection record must also specify the cargo spaces of the vessel that are covered by the approval and the kinds of prescribed plants or plant products for which the bulk vessel is approved.

Subsection 9-24(4) provides that if the bulk vessel is not approved, the inspection record must set out the reasons for the decision not to approve the bulk vessel.

Subsection 9-24(5) provides that if the Secretary has approved, in writing, a manner for giving the inspection record, the inspection record must be given in the approved manner.

#### **9-25 Period of effect of bulk vessel approval**

Section 9-25 provides that a bulk vessel approval takes effect on the day the vessel is approved and remains in force (unless it is revoked under section 9-29) for 28 days or if that period is extended under subsection 9-26(3), the extended period. This timeframe is reasonable as bulk vessels are loaded shortly after they are approved.

## **9-26 Extension of period of effect of bulk vessel approval**

Subsection 9-26(1) provides that a person responsible for a bulk vessel for which a bulk vessel approval is in force may apply to the Secretary, in writing, to extend the period of effect of the approval for a specified period.

Subsection 9-26(2) provides the application under subsection 9-26(1) must be made no later than one business day before end of the period of effect of the bulk vessel approval.

Subsections 9-26(3) provides that if the Secretary receives an application to extend the period of effect of the approval of a bulk vessel under subsection 9-26(1), the Secretary may extend the period of effect of the bulk vessel approval for a period of whatever length the Secretary considers appropriate.

Subsection 9-26(4) provides that the Secretary may extend the period of effect of a bulk vessel approval more than once.

Subsection 9-26(5) provides that if the Secretary extends the period of effect of a bulk vessel approval, the Secretary must give the applicant a written notice stating the extended period of effect of the approval.

Subsection 9-26(6) provides that if the Secretary decides not to extend the period of effect of a bulk vessel approval, they must notify the applicant for the extension, in writing, of the decision. The notice must include the reasons for the decision.

## **9-27 Suspension of bulk vessel approval**

The purpose of section 9-27 is to provide grounds for suspension of a bulk vessel approval, the requirements for a notice of suspension, the period of suspension and the advice to be given to the Secretary.

Subsection 9-27(1) provides the Secretary may suspend a bulk vessel approval if:

- the Secretary reasonably believes the marine surveyor's certificate was not issued by a qualified marine surveyor or was obtained fraudulently; or
- the Secretary reasonably believes the requirements under paragraphs 9-23(1)(a) or (b) relating to pests and contaminants are not continuing to be met; or
- *Trogoderma* spp. is detected in or on the vessel.

This ensures that bulk vessel approvals are provided for vessels that do not contain pests or contaminants that would affect the integrity of the prescribed plants or plant products.

Subsection 9-27(2) provides, for the purposes of deciding whether to suspend a bulk vessel approval, the Secretary may:

- carry out an inspection of the bulk vessel;

- request a person who the Secretary reasonably believes has information or documents that are relevant to the decision, to answer questions, provide information in writing or produce the documents;
- request a person who the Secretary considers may be able to provide facilities or assistance to them in carrying out an inspection of the vessel, to provide those facilities or assistance.

Subsection 9-27(3) provides that if the Secretary suspends a bulk vessel approval, they must, as soon as practicable after suspending the approval, notify the following persons of the suspension and the reasons for the suspension:

- a person responsible for the bulk vessel;
- if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk vessel, the occupier of the establishment or another person who manages or controls export operations at the establishment.

Subsection 9-27(4) provides that if the Secretary notifies a person orally of a decision to suspend the bulk vessel approval under subsection 9-27(3), they must as soon as practicable after notifying the person, also notify the person in writing.

Subsection 9-27(5) provides that the suspension of a bulk vessel approval takes effect when notification of the suspension is given under subsection 9-27(3) and remains in effect unless revoked under section 9-28 or if the bulk vessel approval is revoked under section 9-29.

Subsection 9-27(6) provides that if, as delegate of the Secretary, an authorised officer suspends a bulk vessel approval under subsection 9-27(1), they must, as soon as practicable after suspending the approval and in addition to the requirement in subsection 9-27(3), give written notice to the Secretary.

## **9-28 Revocation of suspension of bulk vessel approval**

Section 9-28 provides that if a bulk vessel approval is suspended under subsection 9-27(1) and the Secretary is satisfied that there is no reason why the suspension should not be revoked, the Secretary may revoke the suspension by written notice to:

- a person responsible for the bulk vessel; and
- if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk vessel, the occupier of the establishment or another person who manages or controls export operations at the establishment.

Subsection 9-28(2) provides that, for the purposes of deciding whether to revoke the suspension of a bulk vessel approval, the Secretary may do any of the following:

- carry out an inspection of the bulk vessel;

- request a person who the Secretary reasonably believes has information or documents that are relevant to the decision, to answer questions, provide information in writing or produce the documents;
- request a person who the Secretary considers may be able to provide facilities or assistance to them in carrying out an inspection of the vessel, to provide those facilities or that assistance.

Subsection 9-28(3) provides that if, as delegate of the Secretary, an authorised officer revokes the suspension of a bulk vessel approval under subsection 9-28(1), they must, as soon as practicable after revoking the suspension and in addition to the requirement in subsection 9-28(1), give written notice of the revocation to the Secretary.

### **9-29 Revocation of bulk vessel approval**

The purpose of section 9-29 is to prescribe the grounds for revoking a bulk vessel approval and requirements for providing notice of the revocation.

Subsection 9-29(1) prescribes the grounds under which the Secretary may revoke a bulk vessel approval. The Secretary may revoke a bulk vessel approval if:

- a person responsible for the bulk vessel fails to provide facilities or assistance to the Secretary for the purposes of an inspection of the vessel; or
- they reasonably believe the marine surveyor's certificate was not issued by a qualified marine surveyor or was obtained fraudulently; or
- they reasonably believe the requirements under paragraphs 9-23(1)(a) or (b) relating to pests and contaminants are not continuing to be met; or
- *Trogoderma* spp. is detected in or on the vessel.

This ensures that bulk vessel approvals are provided for vessels which do not contain pests or contaminants which would affect the integrity of the plants or plant products.

Subsection 9-29(2) provides, for the purposes of deciding whether to revoke a bulk vessel approval, that the Secretary may:

- carry out an inspection of the bulk vessel;
- request a person who the Secretary reasonably believes has information or documents that are relevant to the decision, to answer questions, provide information in writing or produce the documents;
- request a person who the Secretary considers may be able to provide facilities or assistance to them in carrying out an inspection of the vessel, to provide those facilities or assistance.

Subsection 9-29(3) provides that if the Secretary revokes a bulk vessel approval, they must, as soon as practicable after revoking the approval give written notice of the revocation to:

- a person responsible for the bulk vessel; and
- if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk vessel, the occupier of the establishment or another person who manages or controls export operations at the establishment.

Subsection 9-29(4) provides a notice revoking a bulk vessel approval must state the reasons for the revocation and the date the revocation is to take effect.

Subsection 9-29(5) provides that if, as delegate of the Secretary, an authorised officer revokes a bulk vessel approval under subsection 9-29(1), they must, as soon as practicable after revoking the approval and in addition to the requirement in subsection 9-29(3), give written notice to the Secretary.

### ***Part 6—Container approvals***

Empty containers for loading prescribed goods for export must be inspected by an authorised officer that is appropriately trained and competent, and has been appointed by the Secretary for the purpose of inspecting the container. The purpose of the container inspection is to ensure there are no pests or contaminants in or on the container which could infest or contaminate the prescribed plants or plant products. The inspection assists in ensuring that the integrity of the prescribed plants or plant products that will be loaded into the container will be maintained, including while on its journey to the final destination country.

#### **9-30 Authorised officer may approve a container**

The purpose of section 9-30 is to set out the process for authorised officers to inspect and decide whether to approve a container. This includes the location where inspections may be undertaken. This process ensures the inspection can be undertaken thoroughly and accurately.

Subsection 9-30(1) provides that an authorised officer may approve a container.

The first note following subsection 9-30(1) refers the reader to subsection 301(1) of the Act and explains that an authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation.

The second note following subsection 9-30(1) refers the reader to section 9-31 for circumstances where an authorised officer must not approve a container.

Subsection 9-30(2) provides that, for the purpose of deciding whether to approve a container, an authorised officer must inspect the container.

Subsection 9-30(3) provides that the inspection may be carried out at any place where there are adequate facilities to carry out the inspection. This allows an inspection at any premises, so long as the inspection can be undertaken by the authorised officer safely, thoroughly and

accurately, before it is subsequently moved to a registered establishment for loading with prescribed plants or plant products.

Subsection 9-30(4) provides that, in addition to inspecting the container, an authorised officer may do any other thing considered necessary for the purpose of deciding to approve the container, including:

- requesting a person who they reasonably believe has relevant information or documents to answer questions, provide information in writing or produce the documents; and
- requesting a person who they consider may be able to provide facilities or assistance to the authorised officer in carrying out an inspection to provide those facilities or that assistance.

The note following subsection 9-30(4) provides examples of assistance, including moving and lifting the container, opening and closing the container, and providing ladders or any other equipment that is necessary to carry out the inspection.

### **9-31 Requirements for approval of container**

Subsection 9-31(1) provides that an authorised officer must not approve a container intended to be loaded with prescribed plants or plant products to which subsection 9-31(2) applies unless they are reasonably satisfied of the following:

- there are no pests in or on the container that are likely to infest the plants or plant products;
- there are no contaminants or other material in or on the container that could contaminate the plants or plant products, or that are likely to harbour pests that could infest the plants or plant products;
- the container is not in a condition that could affect the integrity of the plants or plant products.

The note following subsection 9-31(1) gives examples of conditions that could affect the integrity of the plants or plant products, including a hole in the container and damaged container seals on the container doors.

Subsection 9-31(2) applies to the following prescribed plants or plant products:

- prescribed grain;
- prescribed plants or plant products for consumption;
- cereal grains, pulses, oil seeds or nuts that are not prescribed grain and in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.



The note following subsection 9-32(2) refers the reader to section 1-6 of the Plant Rules for the definition of the terms *prescribed grain* and *prescribed plants or plant products for consumption*.

Subsection 9-31(3) provides that an authorised officer must not approve a container intended to be loaded with prescribed plants or plant products (other than prescribed plants or plant products to which subsection 9-31(2) applies) unless they are reasonably satisfied the following requirements are met:

- there are no pests in or on the container that are likely to infest the plants or plant products;
- there are no residues of plants or plant products in or on the container that are likely to harbour pests that could infest the plants or plant products;
- the container is not in a condition that could result in infestation of the plants or plant products.

Subsection 9-31(3) sets out a different standard (from subsection 9-31(1)) for containers that are intended to be loaded with prescribed plants or plant products (other than prescribed plants or plant products to which subsection 9-31(2) applies).

The note following subsection 9-31(3) gives examples of conditions that could result in infestation of the plants or plant products, including a hole in the container and damaged container seals on the container doors.

Subsections 9-31(4) provides that an authorised officer must not approve a container if *Trogoderma* spp. (for example Khapra beetle) is detected in or on the container. The Khapra beetle is the number one plant priority pest for grains. This is a highly invasive pest that poses a major threat to Australia's grain industry as it destroys grain quality, making it unfit for human or animal consumption. If Khapra beetle enters Australia it would have significant economic consequences though revenue losses arising from damaged grain in storage and exports, and potentially loss of trade and market access for Australian grain exports.

Subsection 9-31(5) provides, if *Trogoderma* spp. is detected in or on a container, an authorised officer must, as soon as possible, notify the Secretary and a person responsible for the container. This ensures appropriate government biosecurity responses can be undertaken in relation to a detection of *Trogoderma* spp. in Australia.

### **9-32 Certain approved containers must be sealed with tamper evident seal**

Section 9-32 provides, if an authorised officer approves a container and it is not intended to load the container immediately after it has been inspected, an authorised officer must seal the container with a tamper evident seal. The purpose of the tamper evident seal is to reduce the likelihood of the condition of the approved container changing prior to it being loaded, particularly as that container may be moved to another location prior to loading, and a container approval may remain valid for an extended period of time.

### **9-33 Container inspection record**

The purpose of section 9-33 is to require a written record of an inspection of a container and associated approvals.

Subsection 9-33(1) provides that, as soon as practicable after an authorised officer completes an inspection of a container, they must make a written record of the inspection (an *inspection record*).

Subsection 9-33(2) provides that the inspection record must state whether the container is approved or not approved. If the Secretary has approved, in writing, a form for the inspection record, the record must include the information and be accompanied by any documents required by the form.

Subsection 9-33(3) provides that if the container is approved, the inspection record must also specify the kinds of plants or plant products for which the container is approved.

Subsection 9-33(4) provides that if the container is not approved, the inspection record must set out the reasons for the decision not to approve the container.

Subsection 9-33(5) provides that if the Secretary has approved, in writing, a manner for giving the inspection record, the inspection record must be given in the approved manner.

### **9-34 Period of effect of container approval**

Subsection 9-34(1) provides that a container approval takes effect on the day the container is approved and remains in force for 90 days or, if that period is extended under subsection 9-35(3), the extended period (unless revoked earlier under section 9-36).

Subsection 9-34(2) provides that, despite the period of effect or extended period of effect of a container approval under paragraph 9-34(1)(b), a container approval ceases to be in force when loading of plants or plant products into the containers has been completed.

### **9-35 Extension of period of effect of container approval**

Subsection 9-35(1) provides that a person responsible for a container for which a container approval is in force may apply to the Secretary, in writing, to extend the period of effect of the approval for a specified period.

Subsection 9-35(2) provides that an application under subsection 9-35(1) to extend the period of effect of the approval must be made no later than one business day before the end of the period of effect of the container approval. This period is appropriate to enable the Secretary to consider the application and make a decision in relation to the application.

Subsection 9-35(3) provides that if the Secretary receives an application under subsection 9-35(1) to extend the period of effect of approval, the Secretary may extend the period of effect of the container approval for a period of whatever length they consider appropriate.

Subsection 9-35(4) provides that the Secretary may extend the period of effect of a container approval more than once.

Subsection 9-35(5) provides that if the Secretary extends the period of effect of a container approval, the Secretary must give the applicant a written notice stating the extended period of effect of the approval.

Subsection 9-35(6) provides if the Secretary decides not to extend the period of effect of a container approval, they must notify the applicant for the extension, in writing, of the decision. The notice must include the reasons for the decision.

### **9-36 Revocation of container approval**

The purpose of section 9-36 is to prescribe the grounds for revoking a container approval and requirements for providing notice of the revocation.

Subsection 9-36(1) prescribes the grounds under which the Secretary may revoke a container approval. The Secretary may revoke a container approval if:

- they reasonably believe the requirements under subsection 9-31(1) or (3) relating to pests and contaminants are not continuing to be met; or
- *Trogoderma* spp. is detected in or on the container.

This ensures that container approvals are provided for containers that do not contain pests or contaminants which would affect the integrity of the plants or plant products, and not provided in circumstances where the condition of the container may have changed since it was initially approved. This is important because approved containers may be moved between premises prior to being loaded, and the container approval may remain in effect for a lengthy period of time prior to the container being loaded for export.

Subsection 9-36(2) provides, for the purposes of deciding whether to revoke a container approval, the Secretary may:

- carry out an inspection of the container;
- request a person who the Secretary reasonably believes has information or documents that are relevant to the decision, to answer questions, provide information in writing or produce the documents; or
- request a person who the Secretary considers may be able to provide facilities or assistance to them in carrying out an inspection of the container, to provide those facilities or assistance.

Subsection 9-36(3) provides that if the Secretary revokes a container approval, they must, as soon as practicable after revoking the approval give written notice of the revocation to:

- a person responsible for the container; and

- if the container is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the container, the occupier of the establishment or another person who manages or controls export operations at the establishment.

Subsection 9-36(4) provides a notice revoking a container approval must state the reasons for the revocation and the date the revocation is to take effect.

Subsection 9-36(5) provides that if, as delegate of the Secretary, an authorised officer revokes a container approval under subsection 9-36(1), they must, as soon as practicable after revoking the approval and in addition to the requirement in subsection 9-36(3), give written notice to the Secretary.

## **CHAPTER 10—COMPLIANCE AND ENFORCEMENT**

### **10-1 Samples taken in exercising monitoring or investigation powers**

Section 326 of the Act triggers the standard suite of monitoring powers in Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) for the purposes of the Act. Section 327 of the Act provides for additional monitoring powers on top of the standard suite of monitoring powers. Those additional monitoring powers are taken to be monitoring powers under Part 2 of the Regulatory Powers Act.

Section 329 of the Act triggers the baseline investigation powers in Part 3 of the Regulatory Powers Act) for the purposes of the Act. Section 330 of the Act provides for additional investigation powers on top of the baseline investigation powers. Those additional investigation powers are taken to be investigation powers under Part 3 of the Regulatory Powers Act.

One of the additional monitoring and investigation powers provided by paragraph 327(2)(a) or subsection 330(2) of the Act is the power to take, test and analyse samples of any thing on premises entered under Parts 2 or 3 of the Regulatory Powers Act.

Section 10-1 provides requirements for a sample taken as permitted under paragraph 327(2)(a) or subsection 330(2) of the Act. The sample must be identified with a mark or tag and kept under conditions that are unlikely to affect the result of any testing or analysis of the sample. The sample must also be kept in the custody or control of an authorised officer until whichever of the following listed events occurs first. The listed events are where the sample is:

- given to an analyst appointed under section 413 of the Act;
- destroyed during testing or analysis in accordance with section 412 of the Act; or
- otherwise disposed of.

### **10-2 Dealing with things seized in exercising investigation powers**

Subsection 347(1) of the Act provides that an authorised officer may enter premises if the officer has reasonable grounds for suspecting there may be a thing on the premises that relates to an offence provision or contravention of a civil penalty provision.

Section 10-2 sets out the requirements if a thing is seized from premises entered by an authorised officer under an investigation warrant or under subsection 347(1) of the Act.

The seized thing must be identified with a mark or tag and kept in the custody or control of an authorised officer until the whichever of the following listed events occurs first. The events are where the thing is:

- given to an analyst appointed under section 413 of the Act;
- destroyed during testing or analysis in accordance with section 412 of the Act;

- forfeited in accordance with the subsection 416(1) of the Act;
- destroyed or otherwise disposed of in accordance with section 418 of the Act; or
- returned or disposed of in accordance with, respectively, subsection 66(4) or section 68 of the Regulatory Powers Act.

The note following section 10-2 refers the reader to subsection 347(1) of the Act, which deals with entry to premises that are, or that form part of, an accredited property or a registered establishment.

## CHAPTER 11—MISCELLANEOUS

### *Part 1—Records*

Retention of records is necessary for monitoring compliance with importing country requirements and government and industry standards. Records may also be relevant in relation to the traceability of goods if there is a need to recall those goods. Retaining records is essential for accountability and enables oversight of the export supply chain.

#### **11-1 Purpose of this Part**

Section 408 of the Act deals with requirements to retain records. Subsection 408(1) allows the rules to make provision for and in relation to requiring records to be retained by any of the following (relevantly):

- a person who carries out, or has carried out, export operations in relation to prescribed goods;
- a person who manages or controls, or who has managed or controlled, export operations at a registered establishment;
- a person who manages or controls, or has managed or controlled, export operations in accordance with an approved arrangement;
- a person who carries out, or has carried out, export operations in relation to non-prescribed goods in relation to which an application for a government certificate has been made or a government certificate has been issued.

Subsection 408(2) sets out a non-exhaustive list of matters that may be the subject of rules made under section 408.

Section 11-1 provides that Part 1 of Chapter 11 of the Plant Rules is made for the purposes of subsections 408(1) and (2) of the Act and makes provision for records to be retained in relation to plants or plant products.

The note following section 11-1 alerts the reader that a person commits an offence of strict liability if the person is required to make a record in accordance with a provision of Part 1 of Chapter 11 of the Plant Rules and does not comply.

#### **11-2 General requirements for records**

Section 11-2 sets out the general requirements for records required to be retained under Part 1 of Chapter 11 of the Plant Rules in relation to plants or plant products.

Subsection 11-2(1) requires records to be in English, be dated, accurate, legible and able to be audited. In addition, if the record was required to be in another language to meet importing requirements, it must also be kept in that other language (in addition to the English record).

Subsection 11-2(2) specifies that a person is taken to have complied with a requirement to retain a record under Part 1 if they have retained a copy of a document where the original version was given to another person, as required, under a Commonwealth, State or Territory law or in accordance with ordinary commercial practice.

### **11-3 Government certificates must be retained in secure place**

Subsection 11-3(1) provides a person to whom a government certificate in relation to plants or plant products is issued under the Act must retain the certificate in a secure place when it is not being used.

The note following subsection 11-3(1) explains that a government certificate may be a phytosanitary certificate or a phytosanitary certificate for re-export.

Subsection 11-3(2) provides that the requirement under subsection 11-3(1) does not apply in relation to a government certificate issued by electronic means.

This ensures, for example, that a government certificate is not misused or lost.

### **11-4 Export permits must be retained in secure place**

Subsection 11-4(1) provides that a person to whom an export permit for prescribed plants or plant products is issued under the Act must retain the export permit in a secure place when it is not being used.

Subsection 11-4(2) provides that the requirement under subsection 11-4(1) does not apply in relation to an export permit issued by electronic means.

This ensures, for example, that an export permit is not misused or lost.

### **11-5 Records to be retained by exporter etc.**

Subsections 11-5(1) and (2) require an exporter of prescribed plants or plant products to retain the following records for at least 2 years starting on the day the record is made or when it comes into their possession:

- each application by the exporter for a government certificate in relation to prescribed plants or plant products;
- each application by the exporter for an export permit; and
- any other document that is made by the exporter or that comes into their possession that is relevant to showing whether they have complied, or are complying, with the applicable requirements of the Act in relation to the export of prescribed plants or plant products.



Subsection 11-5(3) requires a person who has been issued a phytosanitary certificate, or a phytosanitary certificate for re-export, for non-prescribed plants or plant products must retain the following records:

- the application made by the person for the phytosanitary certificate or phytosanitary certificate for re-export; and
- each other document that is made by the person or that comes into their possession that is relevant to showing whether they have complied, or are complying, with the applicable requirements of the Act in relation to non-prescribed plants or plant products in relation to which the phytosanitary certificate, or a phytosanitary certificate for re-export, was issued.

Subsection 11-5(4) provides that the person must retain each record referred to in subsection 11-5(3) for at least 2 years starting on the day the record is made by the person or when it comes into their possession (as the case may be).

Subsection 11-5(5) provides the record-keeping requirements in section 11-5 do not apply to records referred to in paragraph 11-5(1)(a) or (b) or (3)(a) that has been entered into an electronic system operated by the Department for the purposes of the Act. For example, this could include the Department's Plant Exports Management System (PEMS). Further information on PEMS is available via the Department website (<https://www.agriculture.gov.au/export/controlled-goods/plants-plant-products/plant-exports-management-system-information>). This is because entry of the information or document into an electronic system operated by the Department facilitates monitoring compliance with importing country requirements and government or industry standards.

### **11-6 Records to be retained by manager of accredited property**

Subsection 11-6(1) requires the manager of an accredited property that is accredited for a kind of export operations in relation to a kind of prescribed plants or plant products to retain each document that is made by the manager or that comes into their possession that is relevant to showing whether they have complied or are complying with the applicable requirements of the Act. This includes whether the conditions of the accreditation of the property have been, and are being, complied with.

Subsection 11-6(2) provides the manager of the accredited property must retain each record referred to in subsection 11-6(1) for at least 2 years starting on the day the record is made or when it comes into their possession (as the case may be).

### **11-7 Records to be retained by occupier of registered establishment**

Subsection 11-7(1) requires the occupier of a registered establishment that is registered for a kind of export operations in relation to a kind of prescribed plants or plant products to retain each document they make or that comes into their possession relevant to showing whether they have complied or are complying with the applicable requirements of the Act. This includes whether the conditions of the registration of the property have been and are being complied with.

Subsection 11-7(2) provides the occupier of the registered establishment must retain each record referred to in subsection 11-7(1) for at least 2 years starting on the day the record is made or when it comes into their possession (as the case may be).

### **11-8 Records relating to official marks**

Section 11-8 requires a person, who is required to make a record under sections 8-29 (records of official marks manufactured) or 8-30 (records of official marks applied, removed, defaced, destroyed or returned) of the Plant Rules must retain each record for at least 2 years after making the record.

### **11-9 Records relating to official marking devices**

Section 11-9 sets out that a person who is required to make a record under sections 8-35 (records of official marking devices manufactured) or 8-36 (records of official marking devices used, destroyed or returned) of the Plant Rules must retain each record for at least 2 years after making the record.

### **11-10 Records to be retained by authorised officers**

Subsection 11-10(1) provides that an authorised officer who is, or was authorised to perform functions or exercise powers under the Act in relation to plants or plant products to retain the following records:

- a record of each assessment of plants or plant products carried out by the authorised officer and each document considered in carrying out the assessment;
- each bulk vessel inspection record made by the authorised officer and each document considered in deciding whether to approve the bulk vessel or not;
- each notice suspending a bulk vessel approval and each document considered in deciding to suspend the bulk vessel approval;
- each notice revoking a bulk vessel approval and each document considered in deciding to revoke the bulk vessel approval;
- each notice revoking the suspension of a bulk vessel approval and each document considered in deciding to revoke the suspension;
- each container inspection record given by the authorised officer and each document considered in deciding whether to approve the container or not; and
- each notice revoking a container approval and each document considered in deciding to revoke the container approval.

Subsection 11-10(2) provides that, in addition to subsection 11-10(1), a third party authorised officer who is, or was, authorised to perform functions or exercise powers under the Act in relation to plants or plant products must retain the following records:

- each application under subsection 291(3) of the Act to be a third party authorised officer;
- each application under subsection 298A(1) of the Act for a variation in relation to the third party authorised officer's authorisation;
- each request under subsection 298C(1) of the Act to suspend the third party authorised officer's authorisation;
- each request under subsection 298C(4) of the Act to revoke a suspension of the third party authorised officer's authorisation;
- each request under subsection 298D(1) of the Act to revoke the third party authorised officer's authorisation; and
- each instrument of authorisation of the third party authorised officer.

Subsection 11-10(3) provides that an authorised officer must retain each record referred to in subsection 11-10(1) or (2) for at least 2 years starting on the day the record is made or when it comes into their possession (as the case may be).

Subsection 11-10(4) provides the record-keeping requirements under subsections 11-10(1) to (3) do not apply to records entered into an electronic system operated by the Department for the purposes of the Act. For example, this could include the Department's Plant Exports Management System (PEMS). Further information on PEMS is available via the Department website (<https://www.agriculture.gov.au/export/controlled-goods/plants-plant-products/plant-exports-management-system-information>). This is because entry of the information or document into an electronic system operated by the Department facilitates monitoring compliance with importing country requirements and government or industry standards.

### **11-11 Records must not be altered or defaced during retention period**

Subsection 11-11(1) provides that records that are required to be maintained under Part 1 of Chapter 11 of the Plant Rules must not be altered or defaced during the period they must be kept.

Subsection 11-11(2) provides that records can be marked up or have notations added to them in accordance with ordinary practice.

Subsection 11-11(3) provides that where a record is altered or defaced in accordance with ordinary practice, the person required to keep the record must also retain additional documents. These are additional documents that come into the person's possession or are created by the person, which shows how the original record was altered or defaced.

## ***Part 2—Samples***

### **11-12 Storage of samples**

Section 411 of the Act allows the rules to make provision for and in relation to the storage of samples that may be tested or analysed under the Act.

Subsection 11-12(1) is made for the purposes of section 411 of the Act and requires samples that may be tested or analysed under the Act to be held under conditions that are unlikely to affect the result of any testing or analysis of the samples. This is necessary to preserve the integrity of samples that may be used for regulatory purposes.

Subsection 11-12(2) provides that subsection 11-12(1) does not apply in the context of samples that may be tested under Chapter 10 of the Act (compliance and enforcement) or the Regulatory Powers Act. This exception is necessary to allow for samples to be tested and analysed under those provisions in a manner that may destroy the sample.

## ***Part 3—Damaged or destroyed plants or plant products***

### **11-13 Division of compensation between owners**

Section 419 of the Act allows the Secretary to approve the payment of a reasonable amount of compensation in respect of goods that are damaged or destroyed in the course of exercising powers or functions under the Act, if the Secretary considers it appropriate. Section 420 provides for matters relating to claims for compensation under section 419.

Subsection 420(2) sets out who can be paid compensation approved under section 419. Relevantly, paragraph 420(2)(b) provides that if there are 2 or more owners of the compensable goods, the compensation is to be divided among those owners as prescribed by the rules.

Section 11-13 is made for the purposes of paragraph 420(2)(b) of the Act and sets out how compensation is divided among two or more owners of damaged or destroyed plants or plant products. The total compensation payable must be divided among those owners according to their proportion of interest in the plants or plant products at the time of destruction or damage. The Secretary must be satisfied the proportion represents the owner's interest at the time the goods were damaged or destroyed. This ensures each owner is paid an amount of compensation equal to their share of ownership that the Secretary considers is equitable in the circumstances and no owner is disadvantaged as a result of the destruction of, or damage to, the goods.

### **11-14 Amount of compensation**

Subsection 420(5) of the Act provides that the amount of compensation payable under subsection 419(1) is a reasonable amount prescribed by, or determined in accordance with, the rules.

Section 11-14 is made for the purposes of subsection 420(5) of the Act and specifies the amount of compensation payable under subsection 419(1) of the Act to the owners of damaged or destroyed plants or plant products, where the damage or destruction occurred in the course of performing functions or duties, or exercising powers, under the Act.

Subsection 11-14(1) provides the amount of compensation payable for goods damaged by a person who is performing functions or duties or exercising powers under the Act is the lesser of either the amount the Secretary determines was the market value of the plants or plant products immediately before they were damaged, and the cost of repairing the damage.

The note following subsection 11-14(1) refers the reader to subsection 419(2) of the Act, which deals with when compensation is not payable in respect of goods that are damaged as a result of samples of the goods being taken during an audit, during an assessment or as permitted by subsection 327(2) or 330(2) of the Act.

Subsection 11-14(2) provides that the amount of compensation payable for destroyed plants or plant products is the amount the Secretary determines was the market value of the plants or plant products immediately before their destruction.

#### ***Part 4—Relevant Commonwealth liabilities***

##### **11-15 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid**

Section 431 of the Act provides that a relevant Commonwealth liability of a person is taken to have been paid for the purposes of a specified provision of the Act in the circumstances prescribed by the rules.

Subsection 11-15(1) provides that section 11-15 is made for the purposes of section 431 of the Act, and prescribes circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of certain provisions of the Act. The specified provisions of the Act are:

- Paragraph 79(2)(a) (accreditation of property);
- Paragraph 84(2)(b) (renewal of accreditation of property);
- Paragraph 112(2)(b) (registration of establishment);
- Paragraph 117(2)(b) (renewal of registration of establishment).

The note following subsection 11-15(1) refers the reader to the definition of ***relevant Commonwealth liability*** in section 12 of the Act.

Subsection 11-15(2) prescribes the circumstances that a relevant Commonwealth liability is taken to have been paid for the purposes of the provisions specified in subsection 11-15(1). These circumstances are where:

- the person, or another person, has given a written undertaking to the Secretary to pay the amount;

- the undertaking includes a term that the relevant Commonwealth liability is to be reduced by the amount paid in accordance with the undertaking; and
- the Secretary accepts the undertaking.

When accepting an undertaking, the Secretary must consider the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operations, whether the person will be able to comply with the undertaking and, if applicable, meet the cost of the export operations and any other relevant considerations (paragraph 11-15(2)(c)).

This ensures that the Secretary is able to approve the accreditation of a property or the registration of an establishment even where the relevant Commonwealth liability of the applicant has person has not been paid, provided the requirements of this section are met.

Subsection 11-15(3) provides that the payment undertaking may be given by a person in relation to their relevant Commonwealth liability or the relevant Commonwealth liability of another person.

Subsections 11-15(4) and 11-15(5) allows for a single undertaking to relate to two or more Commonwealth liabilities. Should a single undertaking relate to two or more Commonwealth liabilities, or a person has provided two or more undertakings in relation to different relevant Commonwealth liabilities, then the Secretary may decide in which order payments are to be applied to reduce the outstanding Commonwealth liabilities.

Subsection 11-15(6) allows for a payment undertaking to be varied at any time by agreement between the Secretary and the person who gave the undertaking.

Subsection 11-15(7) allows the Secretary to agree to a variation to a payment undertaking if, having considered the matters at paragraph 11-15(2)(c), the Secretary considers the variation appropriate, and the variation does not reduce the amount of the remaining liability.

The matters at paragraph 11-15(2)(c) are the same matters that the Secretary must consider when deciding whether to accept the undertaking in the first place, namely the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operations, whether the person will be able to comply with the undertaking and, if applicable, meet the cost of the export operations and any other relevant considerations.

## ***Part 5—Miscellaneous***

### **11-16 Qualified marine surveyors and marine surveyor’s certificates**

Subsection 11-16(1) provides, for the purposes of the Plant Rules, that a person is qualified to carry out a survey of a bulk vessel (***bulk vessel survey***) at a time (***relevant time***) for the purpose of deciding whether the vessel is suitable to transport prescribed plants or plant products to which subsection 9-23(2) applies if:

- at the relevant time, the person satisfies the eligibility requirements for a Master grade certificate under Schedule 2 to *Marine Order 71 (Masters and deck officers) 2014* made under the *Navigation Act 2012*, or holds a Diploma of Marine Surveying that includes a module on dry bulk cargoes; and

- the person has carried out at least 10 bulk vessel surveys within a period of 2 years; and
- the person carried out the bulk vessel surveys referred to in paragraph 11-16(1)(b) while accompanied by another person who was a qualified marine surveyor; and
- the person has carried out a bulk vessel survey of at least three bulk vessels within the period of three years ending immediately before the relevant time.

The purpose of subsection 11-16(1) is to ensure that surveys of vessels intended to transport plants or plant products are undertaken by an appropriately qualified person. This ensures that the integrity of the goods is maintained, and that requirements under the Act and any importing country requirements are met.

Subsection 11-16(2) provides, for the purposes of the Plant Rules, a qualified marine surveyor may issue a certificate for a bulk vessel that is to be used to transport prescribed plants or plant products to which subsection 9-23(2) applies if the qualified marine surveyor:

- has carried out a survey of the vessel, including cargo spaces into or onto which prescribed plants or plant products of that kind are intended to be loaded; and
- is satisfied that the vessel is free of conditions that could result in contaminating, wetting or imparting an odour to prescribed plants or plant products of that kind transported in or on the vessel; and
- is satisfied that the vessel, including the cargo spaces into or onto which prescribed plants or plant products of that kind are intended to be loaded, is suitable to transport prescribed plants or plant products of that kind.

## CHAPTER 12—TRANSITIONAL PROVISIONS

The transitional provisions in Chapter 12 will ensure:

- persons who have submitted applications under the *Export Control (Plants) Orders 2011* (old Export Control (Plants) Orders) or the *Export Control (Prescribed Goods—General) Order 2005* (old Export Control (General) Order) do not have to resubmit those applications for a decision or determination to be made;
- decisions or determinations made under the old Export Control (Plants) Orders remain effective; and
- approvals for a person to make or possess an official mark or an official marking device remain effective.

These transitional provisions are in addition to transitional provisions provided for in the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* which provides transitional arrangements for matters that were made under the old Export Control (Plant) Orders, the old Export Control (General) Order, and the old *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* and are now dealt with under the Act. This includes for example, the transition of accredited properties, registered establishments, export permits, authorisations, and government certificates.

### *Part 1—Preliminary*

#### **12-1 Definitions**

Section 12-1 defines terms that are used in Chapter 12 of the Plant Rules.

The term *commencement time* is defined as the time when section 3 of the Act commences.

The term *old Export Control (General) Order* is defined as the *Export Control (Prescribed Goods—General) Order 2005*, as in force immediately before the commencement time.

The term *old Export Control (Plants) Order* is defined as the *Export Control (Plants and Plant Products) Order 2011* as in force immediately before the commencement time.

### *Part 2—Registered establishments*

#### **12-2 Application for determination that establishment is a small horticultural products registered establishment for a financial year**

Subsection 12-2(1) provides that section 12-2 applies if an application had been made to the Secretary under the old Export Control (Plants) Order for a determination that the establishment is small horticultural products registered establishment for a financial year; and no decision on the application had been made before the commencement time.

Subsection 12-2(2) provides that if the application was in relation to a registered establishment, the application is taken to have been withdrawn at the commencement time.



Subsection 12-2(3) provides that if the application was in relation to an establishment that was not a registered establishment the application is taken to be an application made under section 111 of the Act to register the establishment for the kind of export operations in relation to the kind of prescribed plants or plant products referred to in the application.

The note following subsection 12-2(3) refers the reader to section 1-8 of the Plant Rules for requirements that must be met for a registered establishment to be a small horticultural products registered establishment for a financial year.

Subsection 12-2(4) provides if subsection 12-2(3) (in relation to an establishment that was not a registered establishment) applies in relation to the application and the Secretary had requested, under subsection 13A(5) of the old Export Control (Plants) Order, the applicant provide further information and the information had not been provided before the commencement time, the request is taken, after the commencement time, to be a request made under paragraph 379(9)(a) of the Act for information relevant to the application.

Subsection 12-2(5) provides that if the request did not specify the period within which the request must be complied with, it must be complied with as soon as practicable.

### **12-3 Determination in force that establishment is a small horticultural products registered establishment for financial year ending on 30 June 2021**

Subsection 12-3(1) provides that section 12-3 applies if a determination is in force under subsection 13A(6) of the old Export Control (Plants) Order that a registered establishment is a small horticultural products registered establishment for the financial year ending on 30 June 2021.

Subsection 12-3(2) has the effect that, after commencement time, the registered establishment is taken to be a small horticultural products registered establishment for the financial year ending on 30 June 2021 if the requirements in section 1-8 of the Plant Rules are met in relation to the establishment in the financial year.

## ***Part 3—Other matters relating to export***

### **Division 1—Official marks**

#### **12-4 Person approved before commencement time to manufacture an official mark**

Subsection 12-4(1) provides that section 12-4 applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under the old Export Control (General) Order (subsection 13.18(2)) to manufacture an official mark in relation to prescribed plants or plant products.

Subsection 12-4(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under section 8-22 of the Plant Rules to manufacture the official mark in relation to prescribed plants or plant products.

## **12-5 Persons permitted before commencement time to possess an official mark**

Subsection 12-5(1) provides that subsection 12-5(2) applies if, immediately before the commencement time, a direction was in force under paragraph 13.18(3)(c) of the old Export Control (General) Order permitting a person to possess an official mark for prescribed plants or plant products (other than an official mark that had been applied to goods).

Subsection 12-5(2) has the effect that, after the commencement time, the direction continues in force as if it were a direction of an authorised officer under paragraph 8-23(d) of the Plant Rules permitting a person to possess an official mark for prescribed plants or plant products (other than an official mark that has been applied to goods).

Subsection 12-5(3) provides that subsection 12-5(4) applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under the old Export Control (General) Order (paragraph 13.18(3)(e)) as a person who may possess an official mark (other than an official mark that has been applied to goods) in a specified registered establishment in relation to prescribed plants or plant products.

Subsection 12-5(4) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-23(e) of the Plant Rules to possess the official mark at the registered establishment in relation to prescribed plants or plant products.

## **12-6 Persons permitted before commencement time to apply an official mark**

Subsection 12-6(1) provides that subsection 12-6(2) applies if, immediately before the commencement time, a direction was in force under paragraph 13.18(3)(c) of the old Export Control (General) Order permitting a person to apply an official mark for prescribed plants or plant products.

Subsection 12-6(2) has the effect that, after the commencement time, the direction continues in force as if it were a direction of an authorised officer under paragraph 8-24(c) of the Plant Rules permitting a person to apply an official mark for prescribed plants or plant products.

Subsection 12-6(3) provides that subsection 12-6(4) applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under the old Export Control (General) Order (paragraph 13.18(3)(e)) as a person who may apply an official mark in a specified registered establishment in relation to prescribed plants or plant products.

Subsection 12-6(4) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-24(d) of the Plant Rules to apply the official mark at the registered establishment in relation to prescribed plants or plant products.

## **Division 2—Official marking devices**

### **12-7 Person approved before commencement time to manufacture an official marking device**

Subsection 12-7(1) provides that section 12-7 applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under the old Export Control (General) Order (subsection 13.18(2)) to manufacture an official marking device that is capable of being used to apply an official mark to prescribed plants or plant products.

Subsection 12-7(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-32(b) of the Plant Rules to manufacture the official marking device.

### **12-8 Person approved before commencement time to possess an official marking device**

Subsection 12-8(1) provides that section 12-8 applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under the old Export Control (General) Order (subsection 13.18(2)) to possess an official marking device that is capable of being used to apply an official mark to prescribed plants or plant products.

Subsection 12-8(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-32(b) of the Plant Rules to possess the official marking device.

## ***Part 4—Powers and officials***

### **Division 1—Assessments**

#### **12-9 Declaration by authorised officer before commencement time that prescribed goods are passed as export compliant**

Subsection 12-9(1) provides that section 12-9 applies if:

- an authorised officer had declared a consignment of prescribed goods to be passed as export compliant under the old Export Control (Plants) Order or under the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* (as in force immediately before commencement time) and
- the ***export compliant period*** during which the prescribed goods may remain passed as export compliant specified by the authorised officer as extended by any additional period specified by the authorised officer, had not ended before the commencement time.

Subsection 12-9(2) has the effect that, after the commencement time, the declaration has effect as if the authorised officer had decided, under subsection 9-10(1) of the Plant Rules, that the prescribed plants and plant products had passed an assessment in relation to a matter referred to in subsection 277(3) of the Act.

Subsection 12-9(3) has the effect that, after the commencement time, the validity period for the prescribed plants and plant products is the period remaining immediately before the commencement time of the export compliant period for the prescribed goods.

Subsection 12-9(4) deals with applications to the Secretary or an authorised officer to specify an additional period during which the prescribed plants or plant products may remain passed as export complaint and for which a decision was not made prior to the commencement time. The application is taken, after the commencement time, to be an application to the Secretary under subsection 9-13(2) of the Plant Rules to extend the validity period for the prescribed goods.

## **Division 2—Bulk vessel approvals**

### **12-10 Marine surveyor’s certificate issued in relation to bulk vessel before commencement time**

Subsection 12-10(1) provides that section 12-10 applies if a marine surveyor had issued a certificate in relation to a bulk vessel under the old Export Control (Plants) Order (subsection 33.2) and the certificate had not been revoked before the commencement time.

Subsection 12-10(2) has the effect that, after the commencement time, the certificate continues to have effect as if it were a marine surveyor’s certificate for the bulk vessel issued under subsection 11-16(2) of the Plant Rules.

Subsection 12-10(3) provides that if the certificate was issued in paper form, and the marine surveyor had not given the certificate and a copy of the certificate to the master of the bulk vessel before the commencement time, they must do so as soon as practicable after the commencement time.

### **12-11 Bulk vessel approval in force before commencement time**

Subsection 12-11(1) provides that section 12-11 applies if an authorised officer had issued a vessel approval for a bulk vessel under the old Export Control (Plants) Order (sections 37) and the *validity period* (including any additional periods specified under section 38 of that Order) during which the vessel approval was valid had not ended before the commencement time.

Subsection 12-11(2) has the effect that the vessel approval has effect until the end of the validity period as if the approval had been given under subsection 9-22(1) of the Plant Rules.

Subsection 12-11(3) deals with applications to the Secretary or an authorised officer to specify an additional period during which the vessel approval was to be valid and for which a decision was not made prior to the commencement time. The application is taken, after the commencement time, to be an application to the Secretary under subsection 9-26(1) of the Plant Rules to extend the period of effect of the vessel approval for an additional period.

## **12-12 Bulk vessel approval suspended before commencement time**

Subsection 12-12(1) provides that section 12-12 applies if an authorised officer had suspended a vessel approval under the old Export Control (Plants) Order (subsection 39.1) and the suspension was in force immediately before the commencement time.

Subsection 12-12(2) has the effect that after the commencement time, the vessel approval is taken to be suspended under subsection 9-27(1) of the Plant Rules.

## **Division 3—Container approvals**

### **12-13 Container approval in force before commencement time**

Subsection 12-13(1) provides that section 12-13 applies if an authorised officer had issued a container approval for a container under the old Export Control (Plants) Order (sections 27) and the *validity period* (including any additional periods specified under section 28 of that Order) during which the container approval was valid had not ended before the commencement time.

Subsection 12-13(2) has the effect that the container approval has effect until the end of the validity period as if the approval had been given under subsection 9-30(1) of the Plant Rules.

Subsection 12-13(3) deals with applications to the Secretary or an authorised officer to specify an additional period during which the container approval was to be valid and for which a decision was not made prior to the commencement time. The application is taken, after the commencement time, to be an application to the Secretary under subsection 9-35(1) of the Plant Rules to extend the period of effect of the container approval for an additional period.

## Statement of Compatibility with Human Rights

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

### Export Control (Plants and Plant Products) 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 (Plants and Plant Products) Rules 2021* (the **Plant Rules**) has the following purposes:

- In conjunction with the *Export Control Act 2020* (the Act), it implements an improved regulatory framework for the export of prescribed goods, reducing complexity and strengthening compliance;
- It reduces duplication in the regulatory framework and provides streamlined and consolidated export-related requirements;
- It imposes regulatory controls on plants and plant products that are to be exported from Australia so that these products meet trade requirements and maintain overseas market access; and
- It provides a scheme of transitional and savings provisions that will preserve accrued rights and liabilities under the *Export Control (Plants and Plant Products) Order 2011* the old *Export Control (Prescribed Goods—General) Order 2005* and the old *Export Control (Plants and Plant Products—Norfolk Island) Order 2016*. The provisions allow for decisions and approvals under the former Orders to continue, where applicable, under the Plant Rules.

#### List of human rights engaged

This legislative instrument engages the following rights:

International Covenant on Civil and Political Rights (ICCPR)

- Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy;
- Article 22 of the ICCPR – Right to freedom of association.

## **Assessment of compatibility with human rights**

### **Right to protection from arbitrary interference with privacy (Article 17 of the ICCPR) and right to freedom of association (Article 22 of the ICCPR)**

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of 'reasonableness' as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined 'privacy', the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

Chapters 2, 7, 8, 9 and 11 of the Plant Rules require a person to provide information or documents. Requiring persons to provide information or documents may incidentally require the provision of personal information. The collection, use, storage, and disclosure of personal information may engage the right to freedom from arbitrary or unlawful interference with privacy.

The collection of this information is necessary for the legitimate objective of assessing the suitability of a person to participate in export operations and to ensure those persons continue to comply with the legislative requirements in the Rules.

A person who provides information in an application 'opts in' to the regulatory system. A person who has opted in should expect that a certain amount of personal information about the way their business operates will need to be provided to the Secretary to gain the benefits of that system.

Article 22(1) of the ICCPR protects the right to freedom of association with others. Article 22(2) permits limitations which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This right may be engaged by the requirement to be a fit and proper person which incorporates an assessment of a person's associates.

### ***Fit and proper person test***

Participation in Australia's agricultural export markets is not a right; it is a privilege granted by the Australian Government to suitable persons. A person seeking the benefits of participating in those markets does so in the knowledge that the existence of certain prior conduct or associations may result in the rejection of an application, or suspension, variation or revocation of a registration or other approval.

The Plant Rules requires that third party authorised officers must be fit and proper persons. The Secretary can apply the fit and proper person test. Persons are required to notify the Secretary if they have been convicted of certain specific offences or ordered to pay a pecuniary penalty in relation to certain specified contraventions. When determining whether a person is a fit and proper person, the Secretary may consider the nature of the offences, the interest of the industry or industries relating to the person's export business, and any other relevant matter. While these factors are considered by the Secretary when applying the fit and proper person test, they may not automatically give rise to a negative finding. Rather, it will be up to the Secretary to consider whether a person is fit and proper after having regard to these matters.

A fit and proper person test can be used to consider a person's history of compliance with legislation and then deny authorisation, or to suspend, revoke or vary the conditions on an existing authorisation. This ensures that persons or companies are suitable entities to be responsible for the appropriate management of relevant risks.

Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. Putting a 'fit and proper person' test in place will notify the Department of any associates of the primary person who may pose a risk and allow them to take action to ensure Australia's agricultural exports are not compromised.

The associates' test is designed to ensure that an applicant for a regulatory control under the Act (e.g. a registered establishment) is a suitable person to be responsible for managing relevant risks, considering potential consequences of non-compliance. It is appropriate for associates to be included in the consideration to ensure that the conduct of all types of entities may be considered where the Secretary considers it appropriate to do so.

Enabling the Secretary to take into account a broad range of matters is important when considering whether a person is a fit and proper person because such a person might be involved in the export of a wide range of goods, with varying degrees of risk. This ensures that the integrity of the regulatory framework is not compromised by limiting conduct that can be considered in this context. As the agricultural export sector is regularly changing and evolving, this is reasonable and proportionate and ensures that the current level of market access can be maintained and possibly even increased in future.

Australia's access to markets and the ability to export agricultural goods depends on its trading reputation and the confidence of its trading partners. To the extent these requirements engage Article 17 of the ICCPR, any interference with privacy is not arbitrary as the fit and proper person test is necessary, reasonable and proportionate for the legitimate objective of ensuring that persons who are involved in exporting goods from Australian territory are trustworthy and demonstrate the required integrity necessary to uphold Australian law and protect our trading reputation. In addition, any information collected under the Plant Rules and the Act is protected from unauthorised disclosure by confidentiality provisions in sections 388 to 397 of the Act.

While the fit and proper person test could be seen to restrict the associations a relevant person may have, it does not prevent or prohibit a person from holding any particular associations. Rather, holding certain association may mean that a person's circumstances are not compatible with participation in Australia's agricultural export markets. Australia's



agricultural export industries are underpinned by trust. Importing country requirements relating to agricultural goods will often relate to the preservation of public health, with non-compliance representing a risk to Australia's participation in those markets. Consideration of a person's associations is necessary because associates may leverage their personal relationship with the primary person to engage in non-compliant export activities. This may pose a risk to public health and safety.

Therefore, to the extent that the fit and proper person test limits the right to freedom of association, it is permissible under Article 22(2) as it is for the purpose of protecting public health.

### Summary

The Plant Rules are compatible with the right to protection from arbitrary interference with privacy under Article 17 and the right to freedom of association under Article 22 of the ICCPR. To the extent that the 'fit and proper person' test required by the Plant Rules limits these rights, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the Act.

### **Conclusion**

This Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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