

## **REPLACEMENT EXPLANATORY STATEMENT**

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

*Export Control Act 2020*

*Export Control (Wood and Woodchips) Rules 2021*

### **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 (Wood and Woodchips) Rules 2021* (the Wood Rules) prohibit the export of prescribed wood and woodchips from Australian territory, or from a part of Australian territory, 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 wood and woodchips are regulated by the Wood Rules.

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

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

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 wood and woodchips.

### **Purpose**

The purpose of the Wood Rules is to ensure Australian territory exported wood and woodchips have been sourced in accordance with the relevant provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and State government management arrangements and satisfy requirements to enable and maintain overseas market access. The Wood Rules include measures to ensure the integrity of wood and woodchips exported from Australia, for example by:

- Providing for the grant of government certificates in relation to wood or woodchips
- Prescribing requirements for the grant of an export licence, conditions that may be attached to a licence and grounds on which a licence can be revoked or suspended
- Prescribing the records that are to be retained by an exporter of wood or woodchips; and

- Providing for the approval, revocation and refusal of codes of practice covering the establishment, management and harvesting of plantations in a State.

By setting out the requirements for the export of wood or woodchips in the Wood Rules, and having those Rules made by the Secretary, the regulatory framework can be kept fit for purpose if importing country requirements change. Having the capacity to change the Wood 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 Wood Rules, in conjunction with the Act, set out the requirements that are particular to the export of wood and woodchips from Australian territory. Wherever possible, the Wood 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 that had been identified. As part of that process, existing export-related requirements were streamlined and consolidated into an improved legislative framework comprising the Act and commodity specific rules, to 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 clearer framework that is flexible and responsive to emerging issues.

## **Impact and Effect**

The Wood Rules impose regulatory controls on wood and woodchips that are to be exported from Australia so that these products meet domestic environmental protection and

international trade requirements. These controls maintain and strengthen the existing regulatory controls and oversight for the export of goods.

## **Consultation**

In accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Wood Rules have been informed by consultation with stakeholder groups including industry representatives and state and territory regulatory agencies. The level of regulatory oversight will have minimal change under the new legislative framework. However, the requirements are easier to understand, administer and use.

A public consultation draft of the Wood Rules was published on the Department website from 7 April 2020 to 15 May 2020. During this time, the Department consulted with stakeholders from industry and state governments. Three submissions on the draft rules were received and stakeholders were generally supportive of the development of the rules.

The Department received feedback on the Wood Rules during public consultation and engaged with stakeholders on resolving any key issues raised.

An exposure draft of the Wood Rules was available for public consultation from 9 December 2020 to 24 January 2021 as part of a package of revised commodity specific rules for 45 days of public consultation to ensure Australia's compliance with international obligations under the World Trade Organization's Sanitary and Phytosanitary Agreement. One submission on the exposure draft of the Wood Rules was received through this process.

The Office of Best Practice Regulation within the Department of the Prime Minister and Cabinet was consulted during the review of the regulatory framework of agricultural exports. The Regulation Impact Statement *Improvements to agricultural export legislation* [OBPR ID 19535] covers the complete regulatory framework including commodity specific rules. 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 Wood Rules are set out in [Attachment A](#).

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

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

## **Other**

The Wood 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 (Wood and Woodchips) 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 (Wood and Woodchips) Rules 2021* (the Wood Rules).

**1-2 Commencement**

Section 1-2 provides for the Wood 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 Wood Rules are made under the Act.

**1-4 Application of this instrument**

Section 1-4 provides that the Wood Rules does not limit the operation of the *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules) that apply in relation to goods that are prescribed goods under section 2-1 of the Wood Rules.

The Plant Rules regulate the export of prescribed plants and plant products from Australian territory.

The first note under section 1-4 alerts the reader that prescribed wood or woodchips may be a prescribed plant product under the Plant Rules, and that the export of the wood would be subject to the prescribed export conditions for that product under the Plant Rules in addition to any requirement for the exporter to hold a wood export licence to export the wood under the Wood Rules.

The second note under section 1-4 alerts the reader that wood or woodchips that are taken not to be prescribed wood or woodchips under section 2-2 of the Wood Rules may still be a prescribed plant product under the Plant Rules and may accordingly be subject to the relevant prescribed export conditions under the Plant Rules.

## 1-5 Simplified outline of this instrument

Section 1-5 provides a simplified outline of the matters covered in the Wood 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 of the Wood Rules.

Chapters in the Wood Rules have the same name and number as corresponding Chapters in the Act. Gaps in the Chapter numbering in the Wood Rules are because some Chapters of the Act are not relevant to the export of wood and woodchips.

### *Part 2—Interpretation*

## 1-6 Definitions

Section 1-6 contains definitions of key terms which are used in the Wood Rules. The note at the start of this section lists the terms which are defined in section 12 of the Act. These are *Australian law*, *Australian territory*, *export*, *export licence*, *export operations*, and *Regulatory Powers Act*. Such terms will have the same meaning in the Wood Rules as they have in the Act. Section 1-6 also includes some ‘signpost’ definitions that refer readers to the sections in the Wood Rules in which terms are substantively defined.

There are also a number of terms in section 1-6 that are defined as having the same meaning as the definitions in relevant Commonwealth legislation. These are *biodiversity*, *Commonwealth Heritage place*, *declared Ramsar wetland*, *declared World Heritage property*, *indigenous heritage value*, and *National Heritage place*.

A key concept for the regulatory framework established by the Wood Rules is *prescribed wood and woodchips*, as only prescribed goods are regulated by the Act and rules made under it. This term is defined as wood and woodchips that are prescribed goods under Division 1 of Part 1 of Chapter 2 of the Wood Rules.

Section 1-6 also defines the term *exporter*, in the context of exporting prescribed wood or woodchips, as the applicant for a wood export licence for the wood or woodchips, or, if a wood export licence has been issued for the wood or woodchips – the holder of the export licence. This is an important concept because it clarifies who is generally being regulated by the requirements of the Wood Rules. A *wood export licence* is defined in section 1-6 as an export licence granted to a person to carry out export operations in relation to prescribed wood or woodchips.

Other key terms defined in section 1-6 for the purposes of the Wood Rules are *designated place* and *code of practice*. *Designated place* means a place with indigenous heritage values, a declared World Heritage property, a declared Ramsar wetland, a National Heritage place, a Commonwealth Heritage place or an area where the biodiversity of a forest is protected by an Australian law. Part 1 of Chapter 6 of the Wood Rules provided a framework for the protection of designated places where export operations covered by a wood export licence are carried out. A *code of practice* for a State, means the practices adopted in that State for the establishment, management and harvesting of all plantations in that State, whether or not those practices are contained in a single document. Part 3 of Chapter 2 of the Wood Rules provides for the approval or revocation by the Minister of a code of practice.

## 1-7 Meaning of *management arrangement*

Subsection 1-7(1) provides the definition of *management arrangement*. *Management arrangement* is defined as a law of a State, or a code of practice, management plan or other instrument that is made by a State body and regulates forestry operations in that State, to the extent that the law, code of practice, management plan or other instrument relates to the protection of one or more designated places or the protection of the environment.

The note after subsection 1-7(1) provides examples of protection of the environment as protection of old growth forests, wilderness, or endangered species.

*Management arrangement* is a key term for the purposes of Part 1 of Chapter 6 of the Wood Rules.

Subsection 1-7(2) provides that *forestry operations*, when used in section 1-7, has the meaning given by subsection 40(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.

## CHAPTER 2—EXPORTING GOODS

### *Part 1—Goods*

#### **Division 1—Prescribed goods**

Division 1 sets out which kinds of goods will be *prescribed goods* for the purposes of the Act. Only prescribed goods are subject to the regulatory controls imposed by the Act and rules made under the Act, including the requirement to comply with the prescribed export conditions.

#### **2-1 Wood and woodchips that are prescribed goods**

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

Subsection 2-1(1) prescribes woodchips, wood in the round and wood with a cross-sectional area of at least 225 square centimetres for the purposes of subsection 28(1) of the Act. This general rule is, however, subject to the express exceptions set out in subsection 2-1(2).

Subsection 2-1(2) provides that wood or woodchips are not prescribed for the purposes of subsection 28(1) of the Act, if the wood or woodchips are derived from trees sourced from a plantation in a State for which there is an approved code of practice.

The note after section 2-1 alerts the reader that processed and unprocessed wood (including woodchips) sourced from a region covered by a Regional Forest Agreement (RFA) within the meaning of the *Regional Forest Agreements Act 2002* (RFA Act) is non-prescribed goods. This does not however include wood sourced from a plantation in a State where there is not an approved code of practice for that State; such wood is prescribed for the purposes of the Act and the Wood Rules. The note also directs the reader to subsection 6(1) of the RFA Act, the definition of *RFA wood* in section 4 of the RFA Act and the definition of *non-prescribed goods* in section 12 of the Act.

Non-prescribed wood or woodchips, sourced from a plantation in a State for which there is an approved code of practice, or from a region covered by an RFA, are not regulated by the Wood Rules.

The distinction between RFA and non-RFA wood in the definition of *prescribed goods* in section 2-1 reflects the intention of subsection 6(1) of the RFA Act which precludes any export controls under the Act being applied to RFA wood sourced from a region while an RFA is in force for the region. The objective of supporting RFAs is to protect environment and heritage values. A comprehensive assessment of the environmental and heritage values is undertaken during the RFA process, and RFAs themselves contain a framework for the ecologically sustainable development of forests.

## **2-2 Wood and woodchips that are taken not to be prescribed goods**

Subsection 28(4) of the Act provides that the rules may 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 when wood and woodchips that are prescribed under subsection 2-1(1) of the Wood Rules are taken not to be prescribed goods.

These circumstances are if the wood or woodchips are to be exported in a consignment of not more than 2 tonnes, or in a consignment that includes not more than 2 tonnes of wood or woodchips. The purpose of section 2-2 is to remove barriers to trade where there is minimal risk of inconsistency with State and Commonwealth government environmental regulation and minimal risk to the integrity of wood or woodchips, and allow for the regulation of wood and woodchips for export to focus on exports that attract the most risk.

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

Division 2 of the Wood Rules sets out specific requirements that must be complied with when exporting prescribed wood and woodchips. These requirements are prescribed export conditions.

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

Section 29 of the Act provides that the rules may prohibit the export of prescribed goods from Australian territory, unless conditions prescribed by the rules are complied with.

Subsection 2-3(1) provides that Division 2 of Part 1 of Chapter 2 of the Wood Rules is made for the purposes of section 29 of the Act. Subsection 2-3(2) has the effect that Division 2 applies to prescribed wood and woodchips (i.e., wood and woodchips prescribed under section 2-1).

The first note following subsection 2-3(2) refers the reader to Division 1 of Part 1 of Chapter 2 of the Wood Rules for what goods are prescribed wood and woodchips.

The second note following subsection 2-3(2) alerts the reader to the fact that, under section 2-2, wood and woodchips are taken to not be prescribed goods in the circumstances specified in that provision.

## **2-4 Export of prescribed wood or woodchips is prohibited unless prescribed conditions are complied with**

Paragraph 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 prescribes the conditions that must be complied with for the purposes of the export of prescribed wood or woodchips from Australian territory. The export of prescribed wood or woodchips is prohibited unless these conditions are met. These conditions are



necessary to enable and maintain market access for goods exported from Australia and to ensure compliance with government and industry standards.

The conditions prescribed by section 2-4 are the following:

- 1- That the exporter of the prescribed wood or woodchips holds a wood export licence to carry out operations to export the wood or woodchips; and
- 2- The wood export licence is in force and not suspended at the time the wood or woodchips are exported

The first note after subsection 2-4(1) alerts the reader that additional conditions may also apply if the prescribed wood or woodchips are a prescribed plant product under the Plant Rules. That is, the export of the wood or woodchips would also be subject to export conditions prescribed in the Plant Rules.

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

The third note after subsection 2-4 alerts the reader that a person may commit an offence or be liable to a civil penalty under section 215 of the Act if export operations covered by a wood export licence are carried out after the licence has been revoked.

### ***Part 2—Government certificates***

Part 2 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 2 of Chapter 2 of the Wood Rules sets out specific requirements relating to the issue of government certificates for wood and woodchips.

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 wood or woodchips have met specified requirements of that country. Government certificates may be issued electronically, providing an efficient means of facilitating trade.

### **2-5 Government certificates may be issued in relation to wood or woodchips**

Section 62 of the Act allows the 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 2-5 provides that, for the purposes of subsections 62(1) and (2) of the Act, a government certificate may be issued in relation to wood or woodchips that are to be, or that have been, exported.

The first note after section 2-5 directs the reader to paragraphs 67(3)(a) to (f) of the Act, which provide grounds for the issuing body to refuse to issue a government certificate in relation to wood or woodchips. Under section 63 of the Act, the issuing body for the purposes of the Wood Rules is the Secretary, as no other person or body has been prescribed by the rules to be an issuing body in relation to wood or woodchips.

The second note after section 2-5 alerts the reader to section 11-4 of the Wood Rules, which requires an exporter who applies for a government certificate in relation to wood or woodchips to retain certain records for at least 5 years.

### ***Part 3—State codes of practice***

Part 3 of Chapter 2 of the Wood Rules replaces Regulations 4B and 4C of the *Export Control (Unprocessed Wood) Regulations*.

Part 3 of Chapter 2 of the Wood Rules is made under paragraph 432(1)(b) of the Act, which allows the Secretary to make rules prescribing matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part 3 of Chapter 2 sets out the Minister's powers to approve or revoke codes of practice for states. *Code of practice* is defined in section 1-6 of the Wood Rules.

### **2-6 State may request approval of code of practice**

Section 2-6 provides that a State may request the Minister in writing, to approve a code of practice for the State.

### **2-7 Approval of code of practice**

Subsection 2-7(1) allows the Minister to approve a code of practice, by notifiable instrument, if a State has requested approval under section 2-6.

Subsection 2-7(2) provides that the Minister may only approve a code of practice under subsection 2-7(1) if either subsection 2-7(3) or (4) applies.

Subsection 2-7(3) applies if the Minister is satisfied that the code of practice for the State would satisfactorily protect environmental and heritage values in the State.

Subsection 2-7(4) applies if the Minister is satisfied that the code of practice for the State would substantially protect environmental and heritage values in the State; and the State enters into a written agreement with the Commonwealth to, by a date specified in the agreement, amend the code of practice to ensure that it would satisfactorily protect those values; and advise the Commonwealth in writing when the amendments have been made.

Subsection 2-7(5) provides that for the purposes of subsection 2-7(3) or (4), in considering whether a code of practice for a State would satisfactorily or substantially protect environmental and heritage values in the State, the Minister must have regard to the findings of a scientific assessment of the code of practice prepared under the direction of the Secretary and based on the national plantation principles. Subsection 2-7(5) aims to ensure that codes of practice are approved in accordance with a scientific assessment, with the Secretary having oversight over this assessment.

The *national plantation principles* are defined in section 1-6 of the Wood Rules as the document titled *Forest Practices Related to Wood Production in Plantations: National Principles*, prepared by the Ministerial Council of Forestry, Fisheries and Aquaculture, published in March 1996, as that document exists at the commencement of the Wood Rules.

The note to this definition alerts the reader that the document could, in 2021, be viewed on the Department's website: <http://www.awe.gov.au>.

The principles, endorsed by the Australian Government and all States and Territories, set the framework for a consistent and scientific basis for sound plantation management. The specific factors included in the scientific assessment are those outlined in the principles: environmental care; safety; planning; access; establishment and maintenance; timber harvesting; forest protection; and providing for monitoring and review.

The note to section 2-7 directs the reader to section 99 of the Constitution, which provides that, when exercising a power under Part 3 of Chapter 2 of the Woods Rules, a preference must not be given to one State, or part of a State, over another State, or part of another State.

#### **2-8 Approval must state date of effect**

Section 2-8 requires an instrument of approval of a code of practice for a State under subsection 2-7(1) to state the date of the commencement of the approval.

#### **2-9 Approval of amendments (other than minor amendments) of approved code of practice**

Subsection 2-9(1) provides that if a State wishes to amend an approved code of practice for the State (other than by making minor amendments covered by section 2-11), the State must request the Minister, in writing, to approve the code of practice as amended.

Subsection 2-9(2) provides that the Minister may by notifiable instrument approve the code of practice for the State as amended only if either subsection 2-7(3) or (4) applies to the code of practice as amended. For the purposes of subsection 2-7(3) or (4), in considering whether an amended code of practice for a State would satisfactorily or substantially protect environmental and heritage values in the State, the Minister must have regard to the findings of a scientific assessment of the code of practice based on the national plantation principles.

#### **2-10 Minister may require amendment of code of practice**

Subsection 2-10(1) provides that the Minister may, by written notice, require a State to amend an approved code of practice for the State. An example of when the Minister may require amendment of an approved code of practice is where the code does not adequately address any element of the national plantation principles.

Subsection 2-10(2) provides that if the Minister is satisfied that the State has amended the code of practice as required under subsection 2-10(1), the Minister must, by notifiable instrument, approve the code of practice as amended.

#### **2-11 State may make minor amendment of approved code of practice**

Subsection 2-11(1) permits a State to make a minor amendment of an approved code of practice for the State.

Subsection 2-11(2) provides that if a State makes a minor amendment of an approved code of practice for the State, the State must give a copy of the code of practice as amended to the Secretary; and the code of practice as amended is taken to be approved by the Minister.

Subsection 2-11(3) provides that, for the purposes of section 2-11, a *minor amendment* of an approved code of practice for a State is an amendment that does not change the substance of the code of practice. Examples are provided under subsection 2-11(3) as minor corrections to improve technical effectiveness, omission of redundant provisions, corrections of typographical errors, and amendments to update references to a law.

Section 2-11 provides flexibility to states to make minor amendments to an approved code of practice without requiring these amendments to be separately approved by the Minister, while ensuring that there is oversight of these changes through the requirement to provide a copy of the amended code to the Secretary.

## **2-12 Minister may revoke approval of code of practice**

Subsection 2-12(1) allows the Minister to, by notifiable instrument, revoke the approval of a code of practice for a State if the Minister reasonably believes that the code of practice does not, or will not, satisfactorily protect environmental and heritage values in the State.

Subsection 2-12(2) provides that the Minister, for the purposes of subsection 2-12(1), in considering whether a code of practice for a State does not, or will not, satisfactorily protect environmental and heritage values in the State, must have regard to the findings of a scientific assessment of the code of practice prepared under the direction of the Secretary and based on the national plantation principles. Subsection 2-12(2) aims to ensure that a decision to revoke approval of a code of practice is informed by a scientific assessment which has the oversight of the Secretary.

Subsection 2-12(3) provides that the Minister must not revoke the approval of a code of practice for a State under subsection 2-12(1) unless the Minister has given a written notice to the State in accordance with subsection 2-12(4).

Subsection 2-12(4) provides that a notice under subsection 2-12(3) must state that the Minister may revoke the approval of the code of practice on a specified date (which must be within a reasonable period after the notice is given) unless the State, by that date, amends the code of practice to ensure that it satisfactorily protects environmental and heritage values in the State.

The effect of subsections 2-12(3) and (4) is that the Minister may only revoke a code of practice if the Minister first gives an opportunity to the State to amend the code of practice.

## **2-13 Publication of approved code of practice**

Section 2-13 provides that the Secretary must ensure that an up-to-date copy of an approved code of practice for a State is published on the Department's website.

This requirement assists to promote transparency and is in addition to the requirement for the Minister's approval of a code of practice being published as a notifiable instrument under subsection 2-7(1).

## CHAPTER 6—WOOD EXPORT LICENCES

### *Part 1—Requirements for grant of wood export licence*

Part 1 of Chapter 6 of the Wood Rules prescribe requirements for the grant of a wood export licence.

#### **6-1 Other requirements for grant of wood export licence**

Section 191 of the Act allows the Secretary to grant or refuse an export licence. In granting an export licence the Secretary must be satisfied, having regard to any matter that the Secretary considers relevant, that the requirements in subsection 191(2) are met, including, pursuant to paragraph 191(2)(d), any other requirement prescribed by the rules.

Subsection 6-1(1) provides that section 6-1 is made for the purposes of paragraph 191(2)(d) of the Act and prescribes other requirements that the Secretary must be satisfied are met before granting a wood export licence.

The note after subsection 6-1(1) alerts the reader that the requirements provided by paragraphs 191(2)(b) and (c) of the Act must also be met in addition to the requirements prescribed by section 6-1.

Paragraph 191(2)(b) of the Act requires that either, all relevant Commonwealth liabilities of the applicant have been paid or are taken to have been paid, or if one or more relevant Commonwealth liabilities of the applicant have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances. Paragraph 191(2)(c) of the Act requires that the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if granted, would be subject.

Subsection 6-1(2) provides that the applicant for an export licence must make a declaration which:

- States that the application has complied, and will continue to comply, with the applicable requirements of the following in relation to the export operations and prescribed wood and woodchips to be covered by the licence:
  - The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)
  - Each management arrangement (if any) that applies to the export operations and prescribed wood or woodchips to be covered by the licence; and
- Identifies the designated places (if any) where export operations to be covered by the licence are to be carried out; or that would be adversely affected by those operations
- If a designated place is identified, set out any measures that the applicant undertakes to take to protect the designated place.

**Management arrangement** and **designated place** are defined in section 1-6 and 1-7 of the Wood Rules.

Subsection 6-1(3) prescribes further requirements for a declaration made under subsection 6-1(2). A declaration under subsection 6-1(2):

- Must be in a form approved by the Secretary; and
- Must be based on the knowledge of the applicant after making reasonable inquiries into the matters declared; and

- Must not, to the knowledge of the applicant, be false or misleading; and
- Must be signed and dated by the applicant.

The requirement in subsection 6-1(3) for the applicant to make “reasonable inquiries” into the matters declared acknowledges that it may not be reasonable to expect an applicant to have full knowledge of matters such as the management arrangements that apply to the export operations proposed to be covered by the licence. The applicant must make reasonable efforts to inform themselves of the matters declared, and, to the best of their knowledge, ensure that the declaration is not false or misleading.

The note after subsection 6-1(3) alerts the reader that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents, and directs the reader accordingly to sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act.

Subsections 6-1(4) and (5) prescribe requirements relating to the protection of designated places where export operations to be covered by the licence are to be carried out.

Subsection 6-1(4) provides that the following must satisfactorily protect the designated places where export operations to be covered by the licence are to be carried out or that would be adversely affected by those export operations:

- The requirements of the EPBC Act that apply to the export operations and prescribed wood or woodchips to be covered by the licence; and
- Each management arrangement (where relevant) that applies to the export operations and prescribed wood or woodchips to be covered by the licence; and
- Any written undertaking given to the Secretary by the applicant to take measures to protect the designated places where export operations to be covered by the licence are to be carried out or that would be adversely affected by those operations.

The objective of the requirement for the matters in subsection 6-1(4) to ‘satisfactorily protect’ designated places where export operations to be covered by the licence are carried out is to protect the environment and heritage values of these places, which may be adversely impacted by the export operations.

Subsection 6-1(5) provides for a number of matters that the Secretary must have regard to in considering whether the requirement in subsection 6-1(4) is met. These are:

- Any declaration made by the applicant under subsection 6-1(2); and
- Any information reasonably available to the Secretary in relation to the following:
  - The applicant’s history of compliance with the requirements of the EPBC Act;
  - The applicant’s history of compliance with any management arrangement that applies to the export operations and prescribed wood or woodchips to be covered by the licence;
  - The designated places (if any) where export operations to be covered by the licence are to be carried out or that would be adversely affected by those export operations;
  - The economic benefits arising from the export operations to be covered by the licence; and
  - The impacts (including future impacts) of the export operations to be covered by the licence on local communities.

In addition to the above matters, the Secretary is not prohibited from taking into account any other matter the Secretary considers relevant in considering whether the standard of ‘satisfactorily protect’ has been met, in granting an export licence pursuant to subsection 191(2) of the Act.

Subsection 6-1(5) is made under the ‘necessary or convenient’ rule-making power in section 432(1) of the Act and informs how the Secretary is to be satisfied that the standard of ‘satisfactorily protect’ in subsection 6-1(4) has been met.

The matters prescribed by subsection 6-1(5) that the Secretary must consider in determining whether the export operations ‘satisfactorily protect’ designated places reflect a balance of considerations between environmental, heritage, economic, and social values relating to Australia’s forestry industries.

### ***Part 2—Conditions of wood export licence***

Paragraph 192(1)(b) of the Act provides that an export licence is subject to any conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the licence).

Under paragraphs 192(1)(a) and (c) of the Act, these conditions are in addition to the conditions provided by the Act and any additional conditions the Secretary considers appropriate and that are specified in the licence.

#### **6-2 Conditions of wood export licence**

Subsection 6-2(1) provides that section 6-2 prescribes, for the purposes of paragraph 192(1)(b) of the Act, a condition of a wood export licence if the declaration required under subsection 6-1(2) of the Wood Rules in relation to the application for the licence includes a certain undertaking. That is where an undertaking is made to take measures to protect the designated places where export operations covered by the licence are to be carried out or that would be adversely affected by those operations.

Subsection 6-2(2) provides that the holder of the wood export licence must comply with the undertaking.

The first note after section 6-2 alerts the reader that the wood export licence is also subject to the conditions (if any) specified in the licence under paragraph 192(1)(c) of the Act; and the condition that the holder of the licence must comply with any directions given from time to time under section 222 of the Act.

The second note after section 6-2 alerts the reader that the holder of a wood export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened under section 217 of the Act.

### ***Part 3—Matters relating to applications***

#### **6-3 Application of this Part**

Section 6-3 provides that Part 3 of Chapter 6 of the Wood Rules applies in relation to an application made under the following:

- section 190 of the Act, which deals with applications for a wood export licence; and
- section 199 of the Act, which deals with applications to vary a wood export licence or the conditions of a licence.

#### **6-4 Initial consideration period**

Section 379 of the Act details the requirements for 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 6-4 provides that the initial consideration period for the purposes of subsection 379(3) is 30 days for an application made under:

- section 190 of the Act, which deals with applications for a wood export licence; or
- section 199 of the Act, which deals with applications to vary a wood export licence or the conditions of a licence.

The initial consideration may be extended in accordance with subsection 379(5) of the Act.

The maximum period of 30 days for a new application for a wood export licence, or to vary a wood export licence (or its conditions) is appropriate, having regard to the matters the Secretary must consider in granting or refusing an application.

The note after section 6-4 alerts the reader that the consideration period for an application starts on the day after the day the Secretary receives the application, in accordance with subsection 379(4) of the Act.

#### **6-5 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. Subsection 379(10) allows the rules to prescribe a maximum period within which the request must be complied with.

Section 6-5 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 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 provides for additional monitoring powers on top of the standard 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 provides for additional investigation powers on top of the standard 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) and 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 the requirements for a sample taken under paragraph 327(2)(a) or subsection 330(2) of the Act. The sample must be identified with a mark or tag and 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:

- destroyed during testing or analysis in accordance with section 412 of the Act;
- given to an analyst appointed under section 413 of the Act; or
- otherwise disposed of.

### **10-2 Dealing with things seized in exercising investigation powers**

Subsection 10-2(1) provides that section 10-2 applies if a place where export operations are being, or have been carried out in relation to prescribed wood or woodchips, has been entered under an investigation warrant and a thing was seized under the warrant.

Subsection 10-2(2) provides that the thing must be identified with a mark or tag and kept in the custody or control of an authorised officer until whichever of the following listed events occurs first. The listed events are that the thing is:

- destroyed or otherwise disposed of in accordance with section 418 of the Act;
- returned in accordance with subsection 66(4) of the Regulatory Powers Act; or
- disposed of in accordance with section 68 of the Regulatory Powers Act.

## CHAPTER 11—MISCELLANEOUS

### *Part 1—Records*

Retention of records is necessary for monitoring compliance with importing country requirements and government or 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; and
- 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 Wood Rules is made for the purposes of subsections 408(1) and (2) of the Act and makes provision for and in relation to records to be retained in relation to prescribed wood or woodchips.

The note following section 11-1 alerts the reader that a person may commit an offence of strict liability under subsection 408(3) of the Act if the person is required to make a record in accordance with a provision of Part 1 of Chapter 11 of the Wood Rules and does not comply with the requirement.

#### **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 Wood Rules in relation to wood or woodchips.

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 in English).

Subsection 11-2(2) provides that a person is taken to have complied with a requirement to retain a record under Part 1 of Chapter 11 of the Wood Rules if the person has 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, and the person has given the document to that other person as required.

### **11-3 Government certificates must be retained in secure place**

Subsection 11-3(1) requires a person to whom a government certificate in relation to wood or woodchips is issued under the Act to retain the certificate in a secure place when it is not being used.

Subsection 11-3(2) provides that the requirement in 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 Records to be retained by exporter**

Subsection 11-4(1) requires an exporter of prescribed wood or woodchips to retain certain records. These required records are applications by the exporter for a government certificate for prescribed wood or woodchips, and any other document that is made by the exporter or comes into the exporter's possession that is relevant to showing compliance with the applicable requirements in the Act in relation to export of prescribed wood or woodchips.

Subsection 11-4(2) requires an exporter to whom a government certificate in relation to non-prescribed wood or woodchips is issued under the Act to retain certain records. These required records are applications by the exporter for the government certificate, and any other document that is made by the exporter or comes into the exporter's possession that is relevant to showing compliance with the applicable requirements in the Act in relation to non-prescribed wood or woodchips.

Subsection 11-4(3) provides that the exporter must retain each record referred to in subsection 11-4(1) or (2) for at least five years starting on the day the record is made by the exporter or when it comes into their possession (as the case may be).

### **11-5 Records must not be altered or defaced during retention period**

Subsection 11-5(1) provides that records that are required to be maintained under Part 1 of Chapter 11 of the Wood Rules must not be altered or defaced during the period in which they must be retained. However, subsection 11-5(2) provides that records can be marked up or have notations added to them in accordance with ordinary practice.

Subsection 11-5(3) provides that, should a record be altered or defaced in accordance with ordinary practice, the person required to retain 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—Relevant Commonwealth liabilities***

### **11-6 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 specified provisions of the Act, in the circumstances prescribed by the rules.

Subsection 11-6(1) provides that section 11-6 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 191(2)(b) (grant of export licence); and
- Paragraph 199(3)(a) (variation of export licence).

The note following subsection 11-6(1) refers the reader to the definition of *relevant Commonwealth liability* in section 12 of the Act.

Subsection 11-6(2) prescribes the circumstances in which a relevant Commonwealth liability is taken to have been paid for the purposes of the provisions specified in subsection 11-6(1). These circumstances are where:

These circumstances are where:

- the person, or another person, has given a written undertaking to the Secretary to pay the amount;
- the payment 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.

Where accepting the undertaking, the Secretary must consider the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operation, whether the person who gave the undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the export operations, and any other relevant considerations (paragraph 11-6(2)(c)).

The circumstances prescribed by subsection 11-6(2) allow the Secretary to approve the grant or variation of an export licence even where the relevant Commonwealth liability of the applicant has not been paid, provided the requirements of this section have been met.

Subsection 11-6(3) provides that the payment undertaking may be given by a person in relation to the relevant Commonwealth liability of that person or another person.

Subsections 11-6(4) and (5) allow for a single undertaking to relate to 2 or more Commonwealth liabilities. Should a single undertaking relate to 2 or more Commonwealth liabilities, or a person has provided two or more undertakings, then the Secretary may decide in which order payments are to be applied to reduce the outstanding Commonwealth liabilities.

Subsection 11-6(6) allows for a payment undertaking to be varied subject to agreement between the Secretary and the person who gave the undertaking.

Subsection 11-6(7) allows the Secretary to agree to a variation to a payment undertaking if, having considered the matters at paragraph 11-6(2)(c), the Secretary considers the variation appropriate, and the variation does not reduce the amount of the remaining Commonwealth liability. The matters at paragraph 11-6(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.

## CHAPTER 12—TRANSITIONAL PROVISIONS

The transitional provisions in Chapter 12 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 under the *Export Control (Hardwood Wood Chips) Regulation 1996* and the *Export Control (Unprocessed Wood) Regulations 1986*, such as the grant of wood export licences.

### 12-1 State codes of practice

Section 12-1 applies in relation to a code of practice for a State, within the meaning of the *Export Control (Unprocessed Wood) Regulations* (as in force immediately before the commencement time), if the Minister had approved the code of practice under regulation 4B of those Regulations, and the approval was in force immediately before the commencement of the Act.

Subsection 12-1(2) provides that the approval of a code of practice approved under the *Export Control (Unprocessed Wood) Regulations* continues in force as if it had been given under subsection 2-7(1) of the Wood Rules.

Subsection 12-1(3) defines *commencement time* as the time when section 3 of the Act commences.

**Statement of Compatibility with Human Rights**

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

**Export Control (Wood and Woodchips) 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 instrument**

The *Export Control (Wood and Woodchips) Rules 2021* (the **Wood 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; and
- It imposes regulatory controls on wood and woodchips that are to be exported from Australia so that these products meet trade requirements and maintain overseas market access.

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

The purpose of the Wood Rules is to ensure Australian exported wood and woodchips satisfy requirements to enable and maintain overseas market access.

**Assessment of compatibility with human rights**

The Wood Rules may engage the right to protection from arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (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.

Chapter 6 of the Wood Rules requires a person to provide a declaration to support an application for a wood export licence. This declaration may require the person to provide information about the export operations which may incidentally involve personal information. To the extent that this requirement could involve personal information, it may engage Article 17 of the ICCPR as the collection, use, storage, and disclosure of personal information engages 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.

### **Conclusion**

The Wood Rules are 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**