

EXPLANATORY STATEMENT

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

Export Control Act 2020

Export Control (Animals) 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 conforms with State and Territory laws.

The *Export Control (Animals) Rules 2021* (the Animals Rules) prohibit the export of prescribed livestock, prescribed live animals and prescribed animal reproductive material from Australian territory, or from a part of Australian territory, unless prescribed conditions are adhered to. These conditions support the objectives of the Act including to ensure that goods that are exported meet relevant importing country requirements and conform with government and industry standards or other requirements and give effect to Australia's international obligations. Prescribed livestock, prescribed live animals and prescribed animal reproductive material are regulated by the Animals Rules.

The Animals 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 that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Several provisions in the Act set the parameters of the Secretary's rule-making power and either:

- provide examples of the kinds of things for which the Secretary may make provision in the rules; or
- set out the default matters for the provision and allow the Secretary to give further detail, or set additional requirements, in the rules.

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 purpose of rules relating to livestock, live animals and animal reproductive material.

Purpose

The purpose of the Animals Rules is to ensure Australian exported livestock, live animals and animal reproductive materials meet the requirements to enable and maintain overseas market access. The Animals Rules include measures to ensure exported livestock, live animals and animal reproductive materials comply with relevant government and industry standards, are described accurately and are traceable.

By setting out key requirements for the export of livestock, live animals or animal reproductive materials in the Animals Rules, the regulatory framework can be kept fit for purpose and responsive to changes to importing country requirements. Many changes are technical matters, concerning the way that goods are to be produced, prepared, or exported. Having the capacity to change the Animals 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 Animals Rules, in conjunction with the Act, set out the requirements that are particular to the export of livestock, live animals and animal reproductive materials from Australian territory. Wherever possible, the Animals 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 will ensure the framework is more accessible.

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 seek to 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 contemporary, flexible and responsive to emerging issues.

Impact and Effect

The Animals Rules impose regulatory controls on livestock, live animals and animal reproductive materials that are to be exported from Australia so that these products meet trade requirements. These controls maintain and strengthen the existing regulatory controls and oversight for the export of goods. Unless the contrary intention appears, the Animals Rules in relation to livestock apply the requirements in the Australian Standards for the Export of Livestock (ASEL), which means the document titled *Australian Standards for the Export of Livestock* (the Australian Livestock Standard) as existing from time to time. In 2021, this standard was available on the Department website (<http://www.awe.gov.au>).

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

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

- requirements relating to construction, equipment and facilities;
- conditions of registration;
- application, renewal, variation, suspension and revocation of registration;
- obligations of occupiers of registered establishments.

Chapter 5 deals with matters relating to approved arrangements. These include:

- requirements for approval;
- conditions of approval, including trade descriptions and official marks;
- application, renewal and variation of an approved arrangement.

Chapter 6 deals with matters relating to livestock export licences. These include:

- requirements for the grant of a livestock export licence;
- conditions, including exports to certain markets;
- application, renewal, suspension, revocation and variation of a livestock export licence;

- fit and proper persons tests; and
- exporter supply chain assurance systems and miscellaneous.

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

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

Chapter 9 deals with matters relating to powers, officials and matters relating to accredited veterinarians. This includes:

- provisions for the conduct of audits;
- carrying out assessments;
- approved export programs;
- requirements for accreditation;
- application, renewal, variation, suspension or revocation of accreditation;
- records and reports; and
- fit and proper person tests.

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

Chapter 11 deals with miscellaneous matters such as:

- review of decisions;
- record-keeping;
- storage of samples;
- destructions of goods; and
- relevant Commonwealth liabilities.

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 (Animals) Order 2004* and the old *Export Control (Prescribed Goods—General) Order 2005*). The provisions also allow for eligibility that commenced under the former Orders to continue, where applicable, under the Animals Rules.

Consultation

In accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Animals 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 poultry establishments. The level of regulatory oversight will not change under the new legislative framework, however the requirements are easier to understand, administer and use.

A public consultation draft of the Animals Rules was published on the Department website from 15 July to 21 August 2020. During this time, the Department consulted with stakeholders through information sessions held on 20 July 2020 and 30 July 2020. Eight written submissions were received and considered in further developing these rules.

An exposure draft of the Animals Rules was released on 26 October 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. Six submissions were received during this time which were considered in the development of the Animals Rules and were broadly supportive.

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 Animals Rules. The Act established a new regulatory framework which is supported by a number of subordinate legislative instruments and, 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 Animals Rules are set out in [Attachment A](#).

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

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

The Animals Rules incorporate the Australian Livestock Standard, the document titled *Australian Standards for the Export of Livestock* published by the Department of Agriculture, Water and the Environment, as it exists from time to time. In 2021, this standard could be viewed on the Department website (<http://www.awe.gov.au>).

Other

The Animals 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 (Animals) 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 (Animals) Rules 2021* (the Animals Rules).

1-2 Commencement

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

1-4 Application of this instrument

Section 1-4 provides that the Animals Rules do not apply to the export of live fish as food.

The note in section 1-4 explains that the export of live fish as food is dealt with under the *Export Control (Fish and Fish Products) Rules 2021*.

1-5 Simplified outline of this instrument

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

The Animals Rules prescribe matters and make other provisions in relation to prescribed livestock, prescribed live animals and prescribed animal reproductive material products for the purposes of the Act. The chapters in the Animals Rules have the same name and number as the corresponding chapters in the Act. There are some gaps in the Chapter numbering in the Animals Rules because some Chapters in the Act do not have corresponding chapters in the Animal rules.

Part 2—Interpretation

1-6 Definitions

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

Some key concepts for the regulatory framework established by the Animals Rules are ***livestock***, ***live animals*** and ***animal reproductive material***. These are key concepts because they broadly set the scope of what can be regulated by the Animals Rules; only ***prescribed livestock***, ***prescribed live animals*** and ***prescribed animal reproductive material*** are regulated by the Animals Rules and these terms are defined, respectively, as livestock, live animals and animal reproductive material that are prescribed goods under Division 1 of Part 1 of Chapter 2 of the Animals Rules.

Livestock is defined to mean cattle, sheep, goats, deer, buffalo or camelids, and includes the young of any of those animals. ***Prescribed livestock*** is defined as livestock that are prescribed goods under paragraph 2-1(1)(a) of the Animals Rules.

Prescribed live animals is defined as live animals that are prescribed goods under paragraph 2-1(1)(b) of the Animals Rules. The note after the definition of ***prescribed live animals*** explains that under paragraph 2-1(1)(b), prescribed live animals does not include livestock.

Prescribed animal reproductive material is defined as animal reproductive material that is a prescribed good under paragraph 2-1(1)(c) of the Animals Rules.

The purpose of the definition of ***Australian Standards for the Export of Livestock (ASEL)*** is to incorporate the *Australian Standards for the Export of Livestock*, which could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>). This document is incorporated as it exists from time to time as allowed under subsection 432(3) of the Act. The ASEL sets the minimum animal health and welfare requirements the livestock export industry must meet throughout the supply chain, from sourcing to completion of disembarkation overseas.

The purpose of the definition of ***entity*** is to describe what an entity means when used in connection with exporter supply chain assurance operations. An entity will include a facility in another country where operations are carried out in relation to a kind of feeder or slaughter livestock. It can also include an importer or person who exports this kind of livestock. This is necessary as exporter supply chain assurance operations will be in relation to an entity.

The purpose of the definition of ***exporter supply chain assurance operations*** is to make clear what operations are conducted to assist exporters to comply with their obligations under export supply chain assurance systems (ESCAS). The operations will include conducting audits, and giving assurances to the Secretary and exporters in relation to entities that meet certain standards for the control, traceability and welfare of feeder and slaughter livestock.

The purpose of the definition of **OIE recommendations** is to incorporate the recommendations and standards set out in section 7 of the *Terrestrial Animal Health Code* published by the Office International des Epizooties (also known as the World Organisation for Animal Health). This is incorporated as it exists from time to time as allowed under subsection 432(3) of the Act and is relevant to operations that deal with animals in relation to an ESCAS. The *Terrestrial Animal Health Code* could in 2020 be viewed for free on the website of the World Organisation for Animal Health (<http://www.oie.int>).

Other key concepts for the Animals Rules that are defined in section 1-6 include **registered establishment**, which means an establishment that is registered (under Chapter 4 of the Act) for a kind of export operations in relation to prescribed livestock, and **relevant importing country authority**, which means the authority or body that is responsible for regulating the importation of prescribed livestock, prescribed live animals, or prescribed animal reproductive material into that country from Australian territory. Another key concept is an **approved arrangement**, which is defined as an approved arrangement (approved under Chapter 5 of the Act) that covers a kind of export operations in relation to prescribed livestock.

CHAPTER 2—EXPORTING GOODS

Part 1—Goods

Division 1—Prescribed goods

Division 1 of Part 1 of Chapter 2 of the Animals Rules sets out which kinds of goods will be ***prescribed goods*** for the purpose 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 Livestock, other live animals and animal reproductive materials 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 kinds of goods prescribed by the rules made for the purposes of subsection 28(1) are ***prescribed goods***. The Act regulates the export of ***prescribed goods***.

Subsection 2-1(1) prescribes livestock, live animals (other than livestock) to which subsection 2-1(2) applies, and animal reproductive material as ***prescribed goods*** for the purposes of subsection 28(1) of the Act.

This means that goods that meet the definition of ***livestock*** in section 1-6 of the Animals Rules or ***animal reproductive material*** in section 12 of the Act will be subject to the regulatory controls in the Act and the Animals Rules, including the requirement to comply with prescribed export conditions. Live animals (other than livestock) will also be subject to the same regulatory controls in the Act and Animals Rules, provided that they are covered by subsection 2-1(2). This general rule is, however, subject to the express prohibitions set out in sections 2-2 to 2-5 of the Animals Rules.

The note following subsection 2-1(1) refers the reader to section 1-6 of the Animals Rules for the definition of ***livestock***, and section 12 of the Act for the definition of ***animal reproductive material***.

Subsection 2-1(2) provides clarity on the kind of live animals (other than livestock) that are prescribed goods under section 28(1) of the Act, and subject to the regulatory controls set out in the Act and the Animals Rules (including the requirement to comply with the prescribed export conditions). This subsection provides that subsection 2-1(1) applies to the following live animals:

- a warm-blooded animal which is intended to be exported alive; and
- a cold-blooded animal which is intended to be exported alive if, for the purpose of meeting an importing country requirement, a government certificate stating certain matters relating to the animal is required.

This provides flexibility to increase or decrease the level of regulation for the export of cold-blooded and warm-blooded live animals if there are changes to market requirements and importing country requirements. This also provides for the regulation of live animals (other than livestock) for export only where there is a need to do so.

The note following subsection 2-1(2) notifies the reader that under section 1-4 of the Animals Rules, the rules do not apply to the export of live fish as food.

Division 2—Prohibited export and prescribed export conditions

Division 2 (sections 2-2 to 2-5) of Part 1 of Chapter 2 of the Animals Rules sets out specific requirements that must be complied with when exporting prescribed livestock, prescribed live animals and prescribed animal reproductive material (prescribed export conditions).

The prescribed export conditions for prescribed livestock are set out in section 2-3.

The prescribed export conditions for prescribed live animals are set out in section 2-4.

The prescribed export conditions for prescribed animal reproductive material are set out in section 2-5.

2-2 Purpose and application of this Division

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

Subsection 2-2(1) provides that Division 2 of Part 1 of Chapter 2 (sections 2-2 to 2-5) is made for the purposes of section 29 of the Act.

Subsection 2-2(2) provides that Division 2 applies to prescribed livestock, prescribed live animals and prescribed animal reproductive material. This means that prescribed livestock, prescribed live animals and prescribed animal reproductive material can only be exported from Australian territory, or part of Australian territory, if the conditions set out in Division 2 are complied with.

The first note following subsection 2-2(2) refers the reader to Division 1 of Part 1 of Chapter 2 of the Animals Rules, which sets out what goods are prescribed livestock, prescribed live animals or prescribed animal reproductive material.

The second note following subsection 2-2(2) notifies the reader that under paragraph 2-1(1)(b), the definition of *prescribed live animals* does not include livestock.

Subsection 2-2(3) provides that a provision of Division 2 does not apply in relation to prescribed livestock or prescribed live animals that are to be exported in a circumstance referred to in subsection 52(1) or (3) of the Act (for example, a commercial sample) and for which an exemption from that provision is in force in relation to the livestock or live animals.

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 of the Act. 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 livestock or prescribed live animals for experimental purposes.

2-3 Export of prescribed livestock 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 2-3 prohibits the export of prescribed livestock from Australian territory unless the conditions specified in the table in section 2-3 (the prescribed export conditions) are complied with. These conditions are necessary to enable and maintain market access for goods exported from Australian territory and to ensure compliance with government and industry standards. The prescribed export conditions maintain the integrity of our exports, Australia's positive relationship with trading partners and our reputation as a reliable exporter of safe and high-quality products.

Item 1 of the table sets out specific conditions that must be complied with to export prescribed livestock by sea. These prescribed export conditions are:

- operations to prepare the livestock for export must be carried out at a registered establishment in relation to the livestock; and
- an approved arrangement held by the exporter that covers export operations in relation to the livestock up until they are unloaded at a port or landing place outside Australian territory, including operations to prepare the livestock for export at the registered establishment, must be in force; and
- at the time the operations are carried out, neither the registration of the establishment nor the approved arrangement can be suspended in relation to those operations.

Item 2 of the table sets out specific conditions that must be complied with for the export of prescribed livestock by air, where there is an importing country requirement that operations to prepare the livestock for export must be carried out at premises that are approved for pre-export quarantine or isolation. These prescribed export conditions are:

- operations to prepare the livestock for export must be carried out at a registered establishment in relation to the livestock, or at premises that are approved under paragraph 8-5(2)(a) of the Animals Rules for pre-quarantine export or isolation of the livestock; and
- an approved arrangement held by the exporter that covers export operations in relation to the livestock up until they are unloaded at a port or landing place outside Australian territory, including operations to prepare the livestock for export at the registered establishment or approved premises, must be in force; and

- at the time the operations are carried out, neither the registration of the establishment or the approval of the premises (as the case may be), nor the approved arrangement, can be suspended in relation to those operations.

Items 3 to 7 of the table set out prescribed export conditions that must be complied with for all exports of prescribed livestock (in addition to the relevant conditions in items 1 and 2).

Item 3 of the table sets out a prescribed export condition that:

- the exporter must hold a livestock export licence to carry out operations to export the livestock; and
- if the livestock are feeder or slaughter livestock, the exporter must hold an approved ESCAS covering export operations in relation to the livestock from preparation up until and including the point of slaughter; and
- the livestock export licence must be in force and not suspended both at the time the export operations to prepare the livestock for export are carried out (where the livestock are feeder or slaughter livestock), and at the time the livestock are exported.

Item 4 of the table makes it a prescribed export condition that:

- the exporter must hold an approved export program under Division 2 of Part 4 of Chapter 9 of the Animals Rules that applies to some or all of the export operations carried out in relation to the livestock; and
- at the time operations are carried out, the approved export program must be in force, and not suspended, in relation to those operations.

Item 5 of the table makes it a prescribed export condition that:

- for each consignment of livestock to be exported, a person prescribed by section 8-1 of the Animals Rules (the person who intends to export the consignment) must give the Secretary, at the time prescribed by section 8-3 of the Animals Rules, a notice of intention to export; and
- an approval of the notice of intention to export the consignment must be in force under paragraph 8-6(2)(a) of the Animals Rules; and
- the conditions of the notice of intention to export approval (if any) must be complied with.

Item 6 of the table makes it a prescribed export condition that:

- a person who intends to export livestock must hold an export permit that is in force and not suspended at the time the livestock are exported.

Item 7 of the table makes it a prescribed export condition that if a government certificate in relation to the livestock is required to meet importing country requirements, the person who intends to export the livestock must hold a government certificate in relation to the livestock and the government certificate must be in force at the time the livestock are exported.

The first note following section 2-3 alerts the reader that under Division 4 of Part 1 of Chapter 2 of the Act, a person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of prescribed export conditions.

The second note following section 2-3 explains that the holder of an export permit may commit an offence or be liable to a civil penalty if conditions of the permit are contravened (section 227 of the Act) and the permit may be revoked (section 233 of the Act).

2-4 Export of prescribed live animals 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 prohibits the export of prescribed live animals from Australian territory unless the conditions specified in the table in section 2-4 (the prescribed export conditions) are complied with. These conditions are necessary to enable and maintain market access for goods exported from Australian territory and to ensure compliance with government and industry standards. The prescribed export conditions maintain the integrity of our exports, Australia's positive relationship with trading partners and our reputation as a reliable exporter of safe and high-quality products.

Item 1 of the table sets out specific conditions that must be complied with for the export of prescribed live animals, where there is an importing country requirement that operations to prepare the live animals for export must be carried out at premises that are approved for pre-export quarantine or isolation. These prescribed export conditions are that:

- operations to prepare the live animals for export must take place in a premises approved under paragraph 8-10(2)(a) of the Animals Rules for pre-export quarantine or isolation; and
- at the time the operations are carried out, the approval must not be suspended in relation to those operations;

Items 2 and 3 of the table set out prescribed export conditions that must be complied with for all exports of prescribed live animals (in addition to the conditions in item 1 where relevant).

Item 2 of the table makes it a prescribed export condition that:

- for each consignment of prescribed live animals to be exported, a person prescribed by section 8-1 of the Animals Rules (the person intending to export the consignment) must give the Secretary, at the time prescribed by section 8-3 of the Animals Rules (as soon as reasonably practicable), a notice of intention to export; and

- an approval of the notice of intention to export the consignment must be in force under paragraph 8-11(2)(a) of the Animals Rules; and
- the conditions (if any) of the approval of the notice of intention to export must be complied with.

Item 3 of the table makes it a prescribed export condition that:

- a person who intends to export live animals must hold an export permit that is in force and not suspended at the time the live animals are exported.

The first note following section 2-4 alerts the reader that the definition of *prescribed live animals* does not include livestock (see paragraph 2-1(1)(b) of the Animals Rules).

The second note following section 2-4 explains that the export of fish and fish products as food is dealt with under the *Export Control (Fish and Fish Products) Rules 2021*.

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

The fourth note following section 2-4 explains that the holder of an export permit may commit an offence or be liable to a civil penalty if conditions of the permit are contravened (section 227 of the Act) and the permit may be revoked (section 233 of the Act).

2-5 Export of prescribed animal reproductive materials 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 2-5 prohibits the export of prescribed animal reproductive material from Australian territory unless the conditions specified in the table in section 2-5 (the prescribed export conditions) are complied with. These conditions are necessary to enable and maintain market access for goods exported from Australian territory and to ensure compliance with government and industry standards. The prescribed export conditions maintain the integrity of our exports, Australia's positive relationship with trading partners and our reputation as a reliable exporter of safe and high-quality products.

Items 1 and 2 of the table set out prescribed export conditions that must be complied with for all exports of prescribed animal reproductive material.

Item 1 of the table makes it a prescribed export condition that:

- for each consignment of prescribed animal reproductive material to be exported, a person prescribed by section 8-1 of the Animals Rules (the person intending to export the consignment) must give the Secretary, at the time prescribed by section 8-3 of the Animals Rules (as soon as reasonably practicable), a notice of intention to export.

Item 2 makes it a prescribed export condition that:

- a person who intends to export animal reproductive material must hold an export permit that is in force and not suspended at the time the animal reproductive material is exported.

Part 2—Exemptions

Part 2 of Chapter 2 of the Animals Rules (sections 2-6 to 2-12) sets out matters relating to exemptions from one or more provisions in the Act in relation to prescribed livestock or prescribed live animals.

Under Part 2 of Chapter 2 of 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 prescribed livestock or live animals of a particular kind or exported to a particular country. This is to enable different regulatory oversight in circumstances where the risk posed by exporting the livestock or live animals to the importing country is minimal or can be managed effectively in a different way.

2-6 Application of this Part

Section 2-6 provides that Part 2 of Chapter 2 of the Animals Rules (sections 2-6 to 2-12) applies only in relation to prescribed livestock and prescribed live animals, which are called ***relevant goods*** in this Part. This Part does not apply in relation to prescribed animal reproductive material.

The note following section 2-6 refers the reader to Division 1 of Part 1 of Chapter 2 of the Animals Rules, which sets out goods that are prescribed livestock and prescribed live animals.

2-7 Exports of small numbers of animals in infrequent consignments

Subsection 52(1) of the Act provides that exemptions apply in relation to a kind of prescribed goods that are to be exported in certain circumstances. Paragraph 52(1)(e) allows the rules to prescribe other circumstances where an exemption may apply.

Section 2-7 is made for the purpose of paragraph 52(1)(e) of the Act and provides that an exemption from one or more provisions in the Act applies in relation to prescribed livestock if the livestock are to be exported by person who intends to export no more than 400 head of livestock of that kind in no more than 4 consignments during any calendar year. This means that such a person may apply for an exemption from one or more provisions of the Act (or the Animals Rules), for example, having an Approved Arrangement.

2-8 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 (or rules made under the Act) must be made.

Section 2-8 prescribes, for the purposes of subparagraph 53(3)(f)(i) of the Act, the timeframe in which an application for an exemption in respect of the export of prescribed livestock or prescribed live animals must be made.

If operations to prepare the relevant prescribed livestock or prescribed live animals for export have started, this period is 12 months ending on the day that is 10 business days before the earlier of either the date it is proposed to export the relevant goods or (if applicable) the date pre-export quarantine or isolation begins.

In any other case, the period is 12 months ending on the day that is 10 business days before the date it is proposed to start carrying out operations to prepare the relevant goods for export.

These timeframes ensure the Secretary has a reasonable amount of time to assess applications for an exemption prior to the export of the prescribed livestock or prescribed live animals.

The first note following section 2-8 refers the reader to subparagraph 53(3)(f)(ii) of the Act, which allows the Secretary to specify a different period for making a particular application for an exemption.

The second note following section 2-8 explains that an exemption in relation to relevant goods remains in force for 5 years or, if another period is specified in the instrument of exemption, for the specified period (see section 2-10 of the Animals Rules).

2-9 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 2-9 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 livestock and prescribed live animals, to consider whether imposing a condition would ensure that one or more objects of the Act will be met in relation to the goods.

This requirement is intended to ensure that exemptions are granted in circumstances where one or more objectives of the Act will be met in relation to the goods to be exported from Australia.

2-10 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 2-10 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 livestock or prescribed live animals is 5 years, or another period when 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 livestock or live animals.

The note following section 2-10 explains that, under paragraph 57(a) of the Act, an exemption takes effect on the date specified in the instrument of exemption.

2-11 Variation of conditions of exemption—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 of an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 58(3)).

Section 2-11 is made for the purposes of subsection 58(3) of the Act and requires the Secretary, in deciding whether it is necessary to vary a condition of an exemption that relates to prescribed livestock or prescribed live animals, to consider whether varying the condition would ensure that one or more objects of the Act will be met in relation to the relevant goods.

This requirement is intended to ensure that the objects of the Act are taken into account by the Secretary when considering whether to vary a condition on the granting of an exemption (for example, that the goods exported from Australia are of the highest standard, strengthening Australia's reputation as a trading partner).

2-12 Revocation of exemption—matter to which Secretary must have regard

Section 59 of the Act allows the Secretary to revoke an exemption that is in force. In considering whether to revoke an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 59(2) of the Act).

Section 2-12 is made for the purposes of subsection 59(2) of the Act and requires the Secretary, in deciding whether to revoke an exemption in relation to prescribed livestock or prescribed live animals, to consider whether the conditions of the exemption have been, or are being, complied with.

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 Animals Rules sets out specific requirements relating to the issue of government certificates for prescribed livestock, prescribed live animals and prescribed animal reproductive material that are to be, or have been, exported.

A government certificate is an official document containing details about the goods being exported. The purpose of the government certificate is to confirm to importing country authorities that the prescribed livestock, live animals or animal reproductive materials have met specified requirements of that country. Government certificates may be issued electronically, providing an efficient means of facilitating trade.

Division 1—General

2-13 Application of this Division

Section 2-13 provides that Division 1 of Part 3 of Chapter 2 of the Animals Rules (sections 2-13 to 2-17) makes provision in relation to government certificates in relation to prescribed livestock, prescribed live animals and prescribed animal reproductive material.

The note following section 2-13 alerts the reader that Division 2 makes further provision in relation to government certificates for prescribed livestock, and Division 3 makes further provision in relation to government certificates for prescribed live animals.

2-14 When government certificate may be issued in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material

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.

A certificate can be issued for any livestock, live animals and animal reproductive material, whether they are prescribed or non-prescribed goods, so long as the goods are intended for export or have been exported.

Subsection 2-14(1) is made for the purposes of subsection 62(1) and (2) of the Act and provides that a government certificate may be issued for prescribed livestock, prescribed live animals or prescribed animal reproductive material that will be, or have been, exported.

The first note following section 2-14 refers the reader to paragraph 63(1)(b) of the Act, which provides that the issuing body for a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material is the Secretary.

The second note following section 2-14 refers the reader to section 11-4 of the Animals Rules, which provides that a government certificate issued under section 67 of the Act (other than a certificate issued by electronic means) must be retained in a secure place when it is not being used.

The third note following section 2-14 alerts the reader that under section 11-6 of the Animals Rules, an exporter who applies for a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material must retain certain records for at least 2 years.

Subsection 2-14(2) sets out matters to which the issuing body may have regard in deciding whether to issue a government certificate in relation to prescribed livestock. The issuing body may have regard to the health and welfare of the livestock, and any information or undertaking or document related to the application, as to the treatment, handling or transport of the livestock.

Subsection 2-14(3) sets out matters to which the issuing body may have regard in deciding whether to issue a government certificate in relation to prescribed live animals. The issuing body may have regard to:

- the health and welfare of the animals;
- whether the pre-export quarantine or isolation, treatment and testing requirements have been or will be met;
- the number of animals to be exported;
- a description and type of the animals, or each animal to be exported;
- the travel arrangements, including details of the vessel or aircraft, route, container specifications and feed and water arrangements;
- the expected dates of arrival of the animals at, and departure of the animals from, the premises approved under paragraph 8-10(2)(a) of the Animals Rules for pre-export quarantine or isolation of the live animals.

Subsection 2-14(4) sets out matters to which the issuing body may have regard in deciding whether to issue a government certificate in relation to prescribed animal reproductive material. The issuing body may have regard to the health and condition of the animal reproductive material.

2-15 Circumstances for refusing to issue government certificate

Section 67 of the Act requires the issuing body (currently the Secretary), 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) of the Act are met.

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

Section 2-15 sets out, for the purposes of paragraph 67(3)(g) of the Act, additional circumstances for an issuing body to refuse to issue a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material. These additional circumstances are where:

- a prescribed export condition that applies in relation to the livestock, live animals or animal reproductive material has not been complied with;
- the applicant for the certificate failed to comply with a direction given to the applicant under subsection 305(1) of the Act (to deal with non-compliance with the requirements of the Act);
- a condition or disease that is likely to affect the acceptability of the livestock, live animals or animal reproductive material to the importing country is present in Australian territory;

- the export of the livestock, live animals or animal reproductive material could result in trade in the export of goods from Australian territory being adversely affected;
- the applicant for the certificate:
 - failed to return a government certificate as required by section 2-17 of the Animals Rules; or
 - failed to retain a government certificate in a secure place in accordance with section 11-4 of the Animals Rules; or
 - failed to provide facilities and assistance to an auditor as required by section 271 of the Act.

These additional grounds are necessary to ensure government certificates are not issued for goods which could cause harm to Australia's trade reputation and ensures Australia complies with international obligations relating to animal health or welfare. The additional circumstances set out in subsection 2-15 only apply to applications for a government certificate in relation to prescribed livestock, prescribed live animals and prescribed animal reproductive material.

2-16 Changes that require holder of 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 prescribed livestock, prescribed live animals and prescribed animal reproductive material 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 health or welfare of the livestock or live animals or the health or condition of the animal reproductive material cannot be ensured; or
- an importing country requirement relating to the livestock, live animals or animal reproductive material will not be, or is not likely to be, met prior to the import of the goods into the importing country; or
- a prescribed export condition relating to the livestock, live animals or animal reproductive material 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 circumstances for the issue of the certificate, and to inform the issuing body when the relevant circumstances 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 Animals Rules, maintaining and enhancing Australia's reputation as a reliable trading partner.

The note following subsection 2-16(2) alerts the reader that 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 it is relevant to assessing the matters referred to in paragraph 74(2)(a) to (c) of the Act.

2-17 Return of government certificate

Subsection 76(1) of the Act allows the rules to require a person who is in possession of a government certificate that was issued in relation to the export of prescribed goods to return the certificate to the issuing body (currently the Secretary) in the circumstances, and timeframe, prescribed by the rules.

Section 2-17 requires a government certificate in relation to prescribed livestock, prescribed live animals or prescribed reproductive material to be returned to an issuing body if:

- the livestock, live animals or animal reproductive material is no longer intended for export to the country for which the government certificate was issued; or
- the certificate has been revoked under section 75 of the Act.

The purpose of this requirement is to ensure that government certificates are not misused by placing an obligation on the holder to return the certificate where the prescribed livestock, prescribed live animals or prescribed animal reproductive material are no longer intended for export or the certificate has been revoked.

Subsection 2-17(2) is made for the purposes of paragraph 76(1)(b) of the Act and requires a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material to be returned as soon as reasonably practicable after the day the circumstance listed in subsection 2-17(1) occurs. A requirement for the holder to return the certificate to the issuing body as soon as practicable is appropriate to mitigate against the risk that the certificate would be misused.

Subsection 2-17(3) provides that the requirement in section 2-17 to return the government certificate does not apply to a government certificate that was issued by electronic means, as there will not necessarily be a physical certificate to return.

Failure to comply with the requirement to return a government certificate in the circumstances set out in section 2-17 will be a contravention of a civil penalty provision (subsection 76(2) of the Act).

Division 2—Prescribed livestock

2-18 Application of this Division

Section 2-18 provides that Division 2 of Part 3 of Chapter 2 of the Animals Rules (sections 2-18 to 2-22) makes further provision in relation to government certificates in relation to prescribed livestock. The requirements in this Division will apply in addition to those in Division 1.

2-19 When application for government certificate may be made

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

Section 2-19 is made for the purpose of subparagraph 62(2)(b)(i) of the Act and provides that, unless paragraph 2-19(b) applies, a person must not make an application for a government certificate in relation to prescribed livestock until operations to prepare the livestock for export in accordance with an approved arrangement have been completed.

Paragraph 2-19(b) provides that if the livestock are to be prepared for export in accordance with an operations and governance manual under subsection 6-1(4) of the Animals Rules, the application for the government certificate must not be made until operations to prepare the livestock for export in accordance with that manual have been completed.

The first note following section 2-19 explains that paragraph 2-19(b) will only apply in relation to prescribed livestock if an exemption is in force under Part 2 of Chapter 2 of the Act from the requirement that the livestock be prepared for export in accordance with an approved arrangement (subsection 6-1(4) and section 6-8 of the Animals Rules).

The second note following section 2-19 explains to the reader that under subsection 239(4), the Secretary may approve a single form that may be used to apply for a government certificate in relation to a kind of prescribed good and an export permit for the goods.

2-20 Application for new government certificate if original government certificate is revoked

Subsection 2-20(1) provides that section 2-20 applies if a government certificate in relation to prescribed livestock is revoked under subsection 75(1) of the Act after the livestock have been exported and before they are accepted into an importing country.

The note following subsection 2-20(1) refers the reader to section 20 of the Act, which explains when goods are exported for the purposes of the Act.

Paragraph 65(2)(c) of the Act provides that an application for a government certificate must include the information prescribed by the rules. Subsection 2-20(2) is made for the purpose of paragraph 65(2)(c) of the Act and has the effect that an application for a new government certificate in relation to prescribed livestock must include details of any changes from the information that was included in the application for the government certificate that was revoked.

The note following subsection 2-20(2) notifies the reader that, under subsection 65(3) of the Act, information or documents previously given to an issuing body in connection with the application satisfies any requirement to give that information or documents to the issuing body under subsection 65(3) of the Act.

2-21 Requirements that must be complied with before government certificate may be issued

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. Subparagraph 62(2)(b)(iii) allows the rules to make provision for and in relation to requirements that must be complied with in relation to a kind of goods before a government certificate in relation to goods of that kind may be issued.

Subsection 2-21(1) provides that for the purposes of subparagraph 62(2)(b)(iii) of the Act and subject to subsection 2-21(2), an issuing body must not issue a government certificate in relation to prescribed livestock unless an assessment of the livestock has been carried out under Part 2 of Chapter 9 of the Act at a location chosen by the assessor.

The purpose of this requirement is to ensure that a government certificate is issued only if an assessment of the prescribed livestock has been completed, to ensure the accuracy and reliability of the information in a government certificate. The purpose of the assessment of the goods is to verify that the requirements of the Act and importing country requirements have been, or will be, complied with and matters stated in the government certificate are true and correct. Furthermore, the assessment is intended to ensure that Australia's rights and obligations relating to goods of that kind under any international agreements to which Australia is a party is upheld.

The note following subsection 2-21(1) explains that an assessment is not required to be carried out of each animal in a consignment of prescribed livestock in relation to which an application for a government certificate has been made.

Subsection 2-21(2) provides that an assessment is not required to be carried out on prescribed livestock in relation to which an application for a government certificate has been made if:

- a government certificate has previously been issued in relation to the livestock; and
- the government certificate was revoked after the livestock were exported but before they were accepted into an importing country.

The note following subsection 2-21(2) refers the reader to section 65 of the Act (dealing with application requirements for government certificates) and subsection 2-20(2) of the Animals Rules (which provides additional application requirements where the government certificate has been revoked after the goods have been exported).

2-22 Issuing body must consider conditions (if any) of approval of notice of intention to export consignment

Section 2-22 requires the issuing body, for the purposes of deciding whether to issue a government certificate in relation to prescribed livestock, to consider the conditions (if any) of the approval of the notice of intention to export a consignment including the livestock.

The note following section 2-22 explains that an approval of a notice of intention to export a consignment of prescribed livestock may be given subject to conditions (see subsection 8-6(6) of the Animals Rules).

Division 3—Prescribed live animals

2-23 Application of this Division

Section 2-23 provides that Division 3 of Part 3 of Chapter 2 of the Animals Rules (sections 2-23 and 2-24) makes further provision in relation to government certificates for prescribed live animals. These requirements will apply in addition to those in Division 1.

The note following section 2-23 explains that under paragraph 2-1(1)(b) of the Animals Rules, *prescribed live animals* does not include livestock.

2-24 Issuing body must consider conditions (if any) of approval of notice of intention to export consignment

Section 2-24 requires the issuing body, for the purposes of deciding whether to issue a government certificate in relation to prescribed live animals, to consider the conditions (if any) of the approval of the notice of intention to export a consignment including the live animals.

The note to section 2-24 explains that an approval of the notice of intention to export a consignment of prescribed live animals may be given subject to conditions (subsection 8-11(5) of the Animals Rules).

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 and the equipment at the establishment available are fit for the purpose of preparing prescribed livestock for export;
- necessary measures to prepare the livestock and other requirements applicable to maintain the suitability of an establishment to carry out export operations; and
- prescribed livestock 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 livestock. The registration of the establishment is subject to certain conditions.

It is a prescribed export condition that operations to prepare livestock for export must be carried out at an establishment registered for those operations in relation to livestock (see section 2-3 of the Animals Rules).

Part 1—Requirements for registration

4-1 Application of this Chapter

Section 4-1 provides that Part 1 of Chapter 4 of the Animals Rules applies in relation to an establishment where operations to prepare prescribed livestock for export (by sea or air) are carried out.

Part 2—Requirements for registration and other matters

Division 1—Requirements for registration

Division 1 of Part 2 of Chapter 4 of the Animals Rules (sections 4-2 to 4-3) set out general requirements for the registration of establishments for carrying out operations to prepare prescribed livestock for export.

4-2 Matters relating to constructions, equipment and facilities

Subsection 112(1) of the Act provides that, on receiving an application under section 111 of the Act 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.

Section 4-2 prescribes, for the purposes of paragraph 112(2)(c) of the Act, the matters to which the Secretary must consider when deciding whether the construction of the establishment and its equipment and facilities are suitable for carrying out operations to prepare prescribed livestock for export.

These matters are:

- whether the construction of the establishment and its facilities comply with Standard 3 of the Australian Standards for the Export of Livestock (ASEL). This standard relates to the management of exports and provides specific requirements about the location of an establishment, controls related to drainage, and aspects of construction to ensure livestock are adequately protected from adverse climate conditions. The ASEL is available on the Department's website (www.awe.gov.au).
- any other matters that would affect the suitability of the establishment for carrying out the export operations in relation to the kind, class and maximum number of livestock to be held in the establishment.

The purpose of these requirements is to ensure that operations to prepare prescribed livestock consider the health and welfare of the animals.

The first note following section 4-2 refers the reader to subsection 4-11(1) of the Animals Rules, which provides that the matters prescribed by section 4-2 also apply in relation to an application to renew the registration of an establishment.

The second note following section 4-2 refers the reader to paragraphs 112(2)(a), (b), (d) and (e) of the Act and section 4-3 of the Animals Rules which set out requirements that must be met for the establishment to be registered for operations to prepare prescribed livestock for export.

4-3 Other requirements for registration

Section 4-3 prescribes, for the purposes of paragraph 112(2)(f) of the Act, additional requirements that must be met for an establishment to be registered for operations to prepare prescribed livestock for export. These requirements are specific to operations for preparing prescribed livestock and are in addition to the requirements provided for in subsection 112(2) of the Act.

The Secretary can only decide to register an establishment if satisfied that the requirements in section 4-3 are met.

Subsection 4-3(2) makes it a requirement for a registered establishment to have an operations manual that clearly states:

- the export operations to be carried out at the establishment; and
- the management system to be implemented in the establishment in relation to the export operations, including the supervision arrangements, arrangements for keeping records, and the maintenance to be carried out at the establishment.

The operations manual must include sufficient detail to enable the export operations to be effectively monitored and audited.

The note following subsection 4-3(2) explains that, if the establishment is registered for operations to prepare prescribed livestock for export, the operations manual must not be varied except as permitted by section 4-9 of the Animals Rules.

Subsection 4-3(3) requires the occupier of the establishment to have the capacity:

- to carry out the export operations in accordance with the operations manual; and
- to comply with the conditions of registration of the establishment that may be imposed or provided for in Part 3 of Chapter 4 of the Animals Rules.

Subsection 4-3(4) imposes an obligation on the occupier of the establishment to manage or control the day-to-day export operations carried out at the establishment.

Subsection 4-3(5) provides that if an approval or licence (or similar permission) from the relevant State or Territory body is required to carry out operations at the establishment, the occupier of the establishment must hold that approval or licence (or similar permission). This will mean that the operations are in accordance with the relevant State or Territory regulations.

Subsection 4-3(6) is a requirement related to the location of the establishment. The location of the establishment must be appropriate for the kind, class and maximum number of livestock to be held at the establishment and the export operations. This provision allows for the transportation of the prescribed livestock to occur in accordance with the Australian Standards for the Export of Livestock (ASEL). The ASEL contains standards in relation to travel time for livestock and the location of a registered establishment will affect how long a trip will take to point of loading and is available on the Department's website (www.awe.gov.au).

Subsection 4-3(7) provides that adequate measures to ensure security at the establishment must be in place. The physical security of an establishment will ensure the integrity and traceability of prescribed livestock whilst they are held at the establishment.

Subsection 4-3(8) provides that export operations in relation to prescribed livestock must be carried out at the establishment in a way that will ensure the requirements of the Act are complied with. This ensures only those establishments that operate safely and in accordance with ASEL are eligible for registration. These requirements must continue to be met once the establishment is registered.

The first note following subsection 4-3(8) refers the reader to subsection 4-11(2) of the Animals Rules, which provides that the requirements in section 4-3 also apply in relation to an application to renew the registration of an establishment.

The second note following subsection 4-3(8) refers the reader to paragraphs 112(2)(a), (b), (c) and (e) of the Act for other requirements that must be met. The note also refers to paragraph 112(2)(d) of the Act and item 1 of the table in section 2-3 of the Animals Rules, which requires that an approved arrangement covering operations to prepare the prescribed livestock must be in force.

Division 2—Other matters relating to registration

Division 2 (section 4-4) sets out additional matters relating to the registration of establishments for carrying out operations to prepare prescribed livestock for export.

4-4 Period of effect of registration

Subsection 115(5) of the Act allows the rules to prescribe the period during which the registration of an establishment remains in force. The rules may apply in relation to registration of establishments generally or registrations of establishments for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

Section 4-5 provides that, for the purposes of paragraph 115(5)(b) of the Act, the registration of an establishment for operations to prepare prescribed livestock for export remains in force for 5 years starting on the date the registration takes effect. This period applies unless a different expiry date is set by the Secretary when deciding to register an establishment, or to renew or vary the registration under the Act.

The first note following section 4-4 refers the reader to subparagraph 114(a)(iv) of the Act, which requires the Secretary to give written notice of the date the registration takes effect.

The second note following section 4-4 explains that the last day of the 5 year period is the expiry date for the registration unless an expiry date set under subsection 112(3) or 117(3) or paragraph 123(1)(c) or (d) of the Act is in force in relation to the registration. The registration of the establishment remains in force until the end of the expiry date unless it is renewed or revoked on or before that date.

Part 3—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 3 of Chapter 4 of the Animals Rules (sections 4-5 to 4-9) prescribes, for the purposes of paragraph 113(1)(b) of the Act, conditions of the registration of an establishment to carry out operations to prepare prescribed livestock for export.

The first note following section 4-5 explains that the conditions in Part 3 of Chapter 4 of the Animals Rules (sections 4-5 to 4-9) 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 fault-based offence and civil penalty provisions for the contravention of conditions for registration. Failure to comply with the provisions of this Part may result in contravention of section 144 of the Act.

4-6 Prescribed livestock at establishment must be covered by registration and approved arrangement or operations and governance manual

Subsection 4-6(1) requires that prescribed livestock for export must not be accepted, held or assembled at a registered establishment unless they are covered by the registration of the establishment.

Subsection 4-6(2) requires that prescribed livestock must not be accepted, held or assembled at a registered establishment unless the occupier of the establishment is satisfied that the livestock can be held or assembled in accordance with either of the following:

- the standards and requirements provided in an approved arrangement to prepare the livestock for export; or
- if the holder of the livestock export licence covering the livestock has an exemption from the requirement that the livestock be prepared for export in accordance with an approved arrangement – the holder’s operations and governance manual required under subsection 6-1(4) of the Animals Rules.

This guarantees satisfactory treatment of prescribed livestock while being held or assembled at a registered establishment in accordance with the controls provided for in the Animals Rules.

4-7 Occupier must provide reasonable assistance to accredited veterinarian

Section 4-7 requires the occupier of a registered establishment to provide reasonable assistance to an accredited veterinarian who is carrying out export operations in an approved export program at the establishment.

4-8 Compliance with operations manual

Subsection 4-8(1) requires export operations and maintenance at a registered establishment to be carried out in accordance with the operations manual required under subsection 4-3(2) (including any variations of the operations manual made as permitted by section 4-9).

Subsection 4-8(2) provides that if carrying out operations at the registered establishment in accordance with the operations manual would be inconsistent with the requirements of the Act or a notice of intention to export a consignment of prescribed livestock held and assembled at the establishment, then subsection 4-8(1) does not apply to the extent of the inconsistency.

This means the requirements of the Act and the notice of intention prevail over any inconsistent requirements in the operations manual.

4-9 Variation of operations manual

Subsection 4-9(1) provides that the operations manual for a registered establishment required under subsection 4-3(2) must not be varied after the establishment is registered unless:

- the occupier of the registered establishment has applied to the Secretary under subsection 120(1) of the Act to vary the operations manual and the Secretary has

approved the variation and given the occupier notice of the variation under subsection 121(1) of the Act; or

- the occupier was required to make the variation by notice in writing given to the occupier by the Secretary under subsection 4-9(2).

Subsection 4-9(2) provides that if the Secretary gives the occupier of a registered establishment a written notice requiring the occupier to vary the operations manual for the establishment, the occupier must vary the operations manual as required within the period specified in the notice.

Subsection 4-9(3) provides that if the operations manual is varied as required under subsection 4-9(2), the occupier must give a copy of the varied operations manual to the Secretary as soon as practicable after the variation is made.

Part 4—Renewal of registration

4-10 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 a period prescribed by the rules (paragraph 116(4)(a)), or a longer period allowed by the Secretary (paragraph 116(4)(b)).

Section 4-10 prescribes, for the purposes of paragraph 116(4)(a) of the Act, the timeframe in which an application to renew the registration of a registered establishment 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 when the registration 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 note following section 4-10 gives an example that if the registration of an establishment expires on 8 July in a year (other than a leap year), an application for renewal must be made at any time between 9 January and 10 March in that year.

4-11 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 the 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) allow additional matters and requirements (respectively) to be prescribed by the rules.

Subsection 4-11(1) provides that, for the purposes of paragraph 117(2)(e) of the Act, the requirements of section 4-2 (matters relating to construction, equipment and facilities) are prescribed in relation to a registered establishment. This means the requirements prescribed in section 4-2 are also matters that the Secretary must have regard to when deciding whether the construction of the establishment and its equipment and facilities are suitable for carrying out

export operations (for the purpose of deciding whether to renew the registration of an establishment).

Subsection 4-11(2) provides that, for the purposes of paragraph 117(2)(g) of the Act, the requirements prescribed by section 4-3 (other requirements for registration) are prescribed in relation to a registered establishment. This means the requirements prescribed in section 4-3 are also matters that the Secretary must have regard to when deciding whether to renew the registration of an establishment.

The requirements for renewing a registration are the same as those for registering an establishment. This ensures registered establishments continue to operate in the manner approved by the Secretary. This will prevent registered establishments from merely meeting the requirements at the initial application phase and later reverting to unsatisfactory practices.

The note following section 4-11 makes clear that other requirements an establishment must meet for renewal of registration are provided by paragraphs 117(2)(a) to (d) of the Act, and that an approved arrangement covering operations to prepare the prescribed livestock for export must be in force.

Part 5—Variation of registration

4-12 Variation by Secretary—other reasons for varying registration

Section 123 of the Act deals with varying the registration of an establishment. Subsection 123(1) of the Act allows the Secretary to make certain variations in relation to the registration of an establishment, including varying any aspect of the registration or varying the conditions of the registration. 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 4-12 prescribes, for the purposes of paragraph 123(2)(h) of the Act, additional reasons for the Secretary to vary the registration of an establishment or set an earlier expiry date for the registration. These reasons are where:

- trade in the export from Australian territory of prescribed livestock could be adversely affected if the registration is not varied; or
- the health or welfare of prescribed livestock to be exported from Australian territory cannot be ensured if the registration is not varied.

Part 6—Suspension of registration

4-13 Other grounds for suspension

Section 127 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) of the Act allows the rules to prescribe additional grounds for the Secretary to suspend the registration of an establishment.

Subsection 4-13(1) provides, for the purposes of paragraph 127(1)(k) of the Act, that section 4-13 prescribes grounds for suspending the registration of a registered establishment.

The note following subsection 4-13(1) refers the reader to paragraphs 127(1)(a) to (j) of the Act for other grounds for suspending the registration of a registered establishment. The note also explains that one of the grounds for suspending the registration is if a requirement (including a requirement prescribed by section 4-3 of the Animals Rules (other requirements for registration) is no longer met (paragraph 127(1)(c) of the Act)).

Subsection 4-13(2) provides that it is a ground for suspension that trade in the export from Australian territory of the prescribed livestock could be adversely affected if the registration is not suspended.

Subsection 4-13(3) provides that it is a ground for suspension that the health or welfare of prescribed livestock to be exported from Australian territory cannot be ensured if the registration is not suspended.

The note following subsection 4-13(3) refers the reader to the Australian Standards for the Export of Livestock which includes requirements relating to animal health and welfare.

Subsection 4-13(4) provides that it is a ground for suspension that the occupier of the establishment was required to comply with subsection 378(2) of the Act (requirement to provide additional or corrected information) in relation to:

- information included in an application under a provision referred to in paragraph 376(1)(b) of the Act relating to the establishment; or
- information or a document given to the Secretary in relation to such an application;

and the occupier failed to comply with the requirement.

Part 7—Revocation of registration

4-14 Other grounds for revocation

Subsection 138(1) of the Act provides that the Secretary may revoke the registration of an establishment (including an establishment in relation to which a suspension is in effect under Part 5 of Chapter 4 of the Act) if the Secretary reasonably believes any of the grounds listed in paragraphs 138(1)(a) to (k) exist. Paragraph 138(1)(k) of the Act allows the rules to prescribe additional grounds for the Secretary to revoke the registration of an establishment.

Subsection 4-14(1) provides, for the purposes of paragraph 138(1)(k) of the Act, that section 4-14 prescribes grounds for revoking the registration of a registered establishment.

The note following subsection 4-14(1) refers the reader to paragraphs 138(1)(a) to (j) of the Act for other grounds for revoking the registration of a registered establishment. The note also explains that one of the grounds for revoking the registration is if a requirement (including a requirement prescribed by section 4-3 (other requirements for registration)) is no longer met (paragraph 138(1)(c) of the Act).

Subsection 4-14(2) provides that it is a ground for revocation that trade in the export of prescribed livestock could be adversely affected if the registration is not revoked.

Subsection 4-14(3) provides that it is a ground for revocation that the health or welfare of prescribed livestock to be exported from Australian territory cannot be ensured if the registration is not revoked.

The note following subsection 4-14(3) refers the reader to the Australian Standards for the Export of Livestock which includes requirements relating to animal health and welfare.

Subsection 4-14(4) provides that it is a ground for revocation that the occupier of the establishment was required to comply with subsection 378(2) of the Act (requirement to provide additional or corrected information) in relation to:

- information included in an application under a provision referred to in paragraph 376(1)(b) of the Act relating to the establishment; or
- information or a document given to the Secretary in relation to such an application;

and the occupier failed to comply with the requirement.

Part 8—Matters relating to applications

4-15 Application of this Part

Section 4-15 provides that Part 8 of Chapter 4 of the Animals Rules (sections 4-15 to 4-17) 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 prescribed livestock;
- section 116 of the Act to renew the registration of an establishment for a kind of export operations in relation to prescribed livestock;
- section 120 of the Act to do any of the following in relation to an establishment that is registered for a kind of export operations in relation to prescribed livestock:
 - vary the registration, or the particulars relating to the registration of the establishment;
 - approve an alteration of the establishment;
 - vary the conditions of the registration of an establishment.

4-16 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 4-16 prescribes, for the purposes of subsection 379(3) of the Act the initial consideration period of 120 days. The period of 120 days is appropriate, having regard to the matters the Secretary must consider in granting or refusing an application. The initial consideration period may be extended in accordance with subsection 379(5) of the Act.

The note following section 4-16 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.

4-17 Maximum 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 4-17 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 may 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 applicants on the maximum amount of time required for an application to be processed. The time provided will also allow for applications which have been abandoned by the applicant to be deemed rejected after the period has elapsed.

CHAPTER 5—APPROVED ARRANGEMENTS

An approved arrangement sets out the operations which, when correctly applied by a livestock exporter, will effectively manage the preparation and certification of livestock exported from Australia. An approved arrangement streamlines the export certification process.

The Secretary may, on application by a person, approve a proposed arrangement for a kind of export operations in relation to prescribed livestock. An approved arrangement is subject to certain conditions.

Part 1—Approved arrangements other than for exporter supply chain assurance operations

Division 1—Requirements for approval

5-1 Other requirements for approval

Subsection 151(1) of the Act provides that, on receiving an application under section 150 of the Act to approve a proposed arrangement, the Secretary must decide to approve the arrangement or refuse to approve the arrangement. Subsection 151(2) sets out the requirements that the Secretary must be satisfied of before approving a proposed arrangement. Paragraph 151(2)(d) allows the rules to prescribe additional requirements that must be satisfied.

Subsection 5-1(1) provides, for the purposes of paragraph 151(2)(d) of the Act, that section 5-1 prescribes other requirements of which the Secretary must be satisfied for the approval of a proposed arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations).

Approved arrangements provide the framework for an inspection, verification and certification system.

The first note following subsection 5-1(1) explains to the reader that the requirements provided by paragraphs 151(2)(b) and (c) of the Act must also be met.

The second note following subsection 5-1(1) advises the reader that Part 2 of Chapter 5 deals with approved arrangements for exporter supply chain assurance operations.

Subsection 5-1(2) provides that the applicant for approval of the proposed arrangement must hold a livestock export licence to carry out operations to export the prescribed livestock covered by the arrangement.

Subsection 5-1(3) provides that the proposed arrangement must record that the applicant for approval of the arrangement is committed:

- to meeting the objects referred to in section 3 of the Act that are applicable to the export operations and the prescribed livestock covered by the arrangement; and
- to complying with the requirements of the Act in relation to those operations; and
- to carrying out the export operations in accordance with the arrangement.

Subsection 5-1(4) requires the proposed arrangement to cover each step of the operations to be carried out to prepare prescribed livestock for export and the export operations to be carried out in relation to prescribed livestock that have been exported up until they are unloaded at a port or landing place outside Australian territory.

Subsection 5-1(5) has the effect that the Secretary must be satisfied that carrying out a kind of export operations in relation to prescribed livestock in accordance with the proposed arrangement will ensure compliance with the Australian Standards for the Export of Livestock (ASEL).

Subsection 5-1(6) has the effect that the Secretary must be satisfied that carrying out export operations in accordance with the proposed arrangement will provide a sound basis for issuing an export permit for, or a government certificate in relation to, prescribed livestock covered by the arrangement.

Division 2—Conditions of approved arrangement

Division 2 (sections 5-2 to 5-4) sets out the purpose of Division 2 of Part 1 of Chapter 5 of the Animals Rules, concerning conditions on approved arrangements for operations to prepare prescribed livestock for export operations.

5-2 Purpose of this Division

Section 152 of the Act deals with conditions imposed on an approved arrangement. Paragraph 152(1)(b) allows the rules to prescribe conditions that will apply to an approved arrangement (unless the Secretary decides the condition is not to be a condition of the approved arrangement).

Subsection 5-2(1) provides that Division 2 of Part 1 of Chapter 5 of the Animals Rules prescribes, for the purposes of paragraph 152(1)(b) of the Act, conditions of an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations).

Subsection 5-2(2) has the effect that the conditions in Division 2 apply in relation to an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations) if the condition relates to a kind of export operations that are covered by the arrangement.

Applying conditions to the approved arrangements prevents approved arrangements from merely meeting the requirements in Part 1 of Chapter 5 of Animals Rules in order to gain approval and then later altering procedures or processes in a manner detrimental to achieving the purpose of the approved arrangement. It is important that businesses continue to operate under an approved arrangement with appropriate processes and controls to ensure the goods continue to meet importing country requirements.

The first note following subsection 5-2(2) explains that under section 157 of the Act, the conditions also apply to an approved arrangement that has been renewed.

The second note following subsection 5-2(2) alerts the reader that failure to comply with a condition of an approved arrangement is an offence and the contravention of a civil penalty provision under section 184 of the Act.

5-3 Information for occupier of registered establishment where prescribed livestock are to be prepared for export by sea or air

Subsection 5-3(1) has the effect that the conditions in section 5-3 apply in relation to an approved arrangement for operations to prepare prescribed livestock for export (by sea or air) at a registered establishment.

Subsection 5-3(2) and (4) have the combined effect that the holder of the approved arrangement must give the following information to the occupier of a registered establishment where prescribed livestock covered by the approved arrangement are to be held and assembled for export:

- a description (including number, kind, class and condition) of the prescribed livestock;
- the dates the prescribed livestock are expected to arrive at, and depart from, the registered establishment, and the date the prescribed livestock are to be exported;
- the importing country requirements relating to sourcing, pre-export quarantine or isolation, treatment and testing, and the exporter's plans to meet those requirements;
- the Standards in the Australian Standards for the Export of Livestock that are relevant to the prescribed livestock while they are at the registered establishment, and the holder's plans to meet those Standards;
- the applicable requirements in the Animals Rules, and the holder's plans to meet those requirements.

Subsection 5-3(3) requires that this information be given to the occupier of the registered establishment as soon as reasonably practicable before the prescribed livestock arrive at the establishment.

The note following subsection 5-3(4) refers the reader to section 20 of the Act which provides for when goods are exported for the purposes of the Act.

Subsection 5-3(5) provides that, if information given to the occupier of the registered establishment under subsection 5-3(2) needs to be changed, or additional information needs to be given, the holder of the approved arrangement must give the changed or additional information to the occupier as soon as reasonably practicable after becoming aware of the relevant facts. Information may need to be changed if, for example, it is incomplete or incorrect.

5-4 Information for occupier of approved premises where prescribed livestock are to be prepared for export by air

Subsection 5-4(1) has the effect that the condition in section 5-4 applies in relation to an approved arrangement for operations to prepare prescribed livestock for export by air at premises (the *approved premises*) that are approved under paragraph 8-5(2)(a) of the Animals Rules for pre-export quarantine or isolation of the livestock.

Subsections 5-4(2) and 5-4(4) have the combined effect that the holder of the approved arrangement must give the following information to the occupier of the approved premises where prescribed livestock covered by the approved arrangement are to be held and assembled for export:

- a description (including number, kind, class and condition) of the prescribed livestock;
- the dates the prescribed livestock are expected to arrive at, and depart from, the approved premises, and the date the prescribed livestock are to be exported;
- the importing country requirements relating to sourcing, pre-export quarantine or isolation, treatment and testing, and the exporter's plans to meet those requirements;
- the Standards in the Australian Standards for the Export of Livestock that are relevant to the prescribed livestock while they are at the approved premises, and the holder's plans to meet those Standards;
- the applicable requirements in the Animals Rules, and the exporter's plans to meet those requirements.

Subsection 5-4(3) provides that this information must be given to the occupier of the approved premises as soon as reasonably practicable before the prescribed livestock arrive at the premises.

The note following subsection 5-4(4) refers the reader to section 20 of the Act which provides for when goods are exported for the purposes of the Act.

Subsection 5-4(5) provides that, if information given to the occupier of the approved premises under subsection 5-4(2) needs to be changed or additional information needs to be given, the holder of the approved arrangement must give the changed or additional information to the occupier as soon as reasonably practicable after becoming aware of the relevant facts. Information may need to be changed if, for example, it is incomplete or incorrect.

Division 3—Renewal of approved arrangement

5-5 Period within which application to renew approved arrangement must be made

Section 155 of the Act deals with an application to renew an approved arrangement. Subsection 155(2) allows the holder of an approved arrangement to apply to the Secretary to renew the approved arrangement. Subsection 155(4) requires an application for renewal to be made within the period prescribed by the rules (paragraph 155(4)(a)) or a longer period if allowed by the Secretary (paragraph 155(4)(b)).

Section 5-5 prescribes, for the purposes of paragraph 155(4)(a) of the Act, the period within which an application to renew an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations) must be made is the period of 60 days starting on the day that is 180 days before the expiry date of the approved arrangement.

The purpose of providing a specific timeframe for allowing applications to be made is to give the Secretary sufficient time to consider an application before a decision is required to be made. Requiring a person to apply for renewal at between 180 and 60 days before the expiry date ensures that the Secretary has sufficient time to decide the application before the approval expires.

The first note following section 5-5 provides an example that if an approved arrangement 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 5-5 refers to subsection 155(1) of the Act, which clarifies that an application to renew an approved arrangement will only need to be made if there is an expiry date for the approved arrangement.

Division 4—Variation of approved arrangement

5-6 Application by holder for variation—grounds for refusing application

Section 161 of the Act deals with varying an approved arrangement. Subsection 161(1) allows the holder of an approved arrangement to apply to the Secretary to approve a variation of the approved arrangement in the following circumstances:

- where the proposed variation is to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act;
- where the holder and the Secretary consider that the proposed variation is significant;
or
- where the proposed variation is to the conditions of the approved arrangement.

Subsection 161(3) of the Act allows the Secretary to refuse to approve the variation if the Secretary is not satisfied of one or more of the requirements listed in that subsection. Paragraph 161(3)(c) allows the rules to prescribe additional requirements.

Section 5-6 provides, for the purposes of paragraph 161(3)(c) of the Act, that it is a requirement in relation to an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations) that, if the approved arrangement is varied, or the conditions of the approved are varied, as proposed, the requirements prescribed by section 5-1 (other requirements for approval) of the Animals Rules will continue to be met.

This means if the Secretary is not satisfied that the requirements prescribed by section 5-1 will still be met following the variation, the Secretary can refuse to approve the variation.

Division 5—Suspension of approved arrangement

5-7 Other grounds for suspension

Subsection 171(1) of the Act provides that the Secretary may suspend an approved arrangement, or part of an approved arrangement, if the Secretary reasonably believes that one or more grounds listed in that subsection exists. Paragraph 171(1)(l) allows the rules to prescribe additional grounds for the Secretary to suspend an approved arrangement.

Subsection 5-7(1) provides that, for the purposes of paragraph 171(1)(l) of the Act, section 5-7 prescribes additional grounds for suspending an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations).

The note following subsection 5-7(1) refers the reader to paragraphs 171(1)(a) to (k) of the Act for other grounds for suspending an approved arrangement. The note also explains that one of these grounds is if a requirement provided by subsection 151(2) of the Act, including a requirement prescribed by section 5-1 of the Animals Rules, is no longer met (paragraph 171(1)(c) of the Act).

Subsection 5-7(2) provides that it is a ground for suspension that trade in the export from Australian territory of prescribed livestock could be adversely affected if the approved arrangement is not suspended.

Subsection 5-7(3) provides that it is a ground for suspension that the health or welfare of prescribed livestock to be exported from Australian territory cannot be ensured if the approved arrangement is not suspended.

The note following subsection 5-7(3) refers the reader to the Australian Standards for the Export of Livestock which includes requirements relating to animal health and welfare.

Subsection 5-7(4) provides that it is a ground for suspension that the holder of the approved arrangement was required to comply with subsection 378(2) of the Act (requirement to provide additional or corrected information) in relation to:

- information included in an application under a provision referred to in paragraph 376(1)(c) of the Act relating to the arrangement; or
- information or a document given to the Secretary in relation to such an application;

and the occupier failed to comply with the requirement.

Division 6—Revocation of approved arrangement

5-8 Other grounds for revocation

Subsection 179(1) of the Act provides that the Secretary may revoke an approved arrangement, or part of an approved arrangement, if the Secretary reasonably believes that one or more grounds listed in that subsection exists. Paragraph 179(1)(l) allows the rules to prescribe additional grounds for the Secretary to revoke an approved arrangement.

Subsection 5-8(1) provides, for the purposes of paragraph 179(1)(l) of the Act, that section 5-8 prescribes additional grounds for revoking an approved arrangement for a kind of export operations in relation to prescribed livestock (other than exporter supply chain assurance operations).

The note following subsection 5-8(1) refers the reader to paragraphs 179(1)(a) to (k) of the Act for other grounds for revoking an approved arrangement. The note also explains that one of these grounds is if a requirement provided by subsection 151(2) of the Act, including a requirement prescribed by section 5-1 of the Animals Rules, is no longer met (paragraph 179(1)(c) of the Act).

Subsection 5-8(2) provides that it is a ground for revocation that trade in the export from Australian territory of prescribed livestock could be adversely affected if the approved arrangement is not revoked.

Subsection 5-8(3) provides that it is a ground for revocation that the health or welfare of prescribed livestock to be exported from Australian territory cannot be ensured if the approved arrangement is not revoked.

The note following subsection 5-8(3) refers the reader to the Australian Standards for the Export of Livestock which includes requirements relating to animal health and welfare.

Subsection 5-8(4) provides that it is a ground for revocation that the holder of the approved arrangement was required to comply with subsection 378(2) of the Act (requirement to provide additional or corrected information) in relation to:

- information included in an application under a provision referred to in paragraph 376(1)(c) of the Act relating to the arrangement; or
- information or a document given to the Secretary in relation to such an application;

and the occupier failed to comply with the requirement.

Part 2—Approved arrangements for exporter supply chain assurance operations

Exporter supply chain assurance operations are operations to assist exporters in complying with obligations under Part 9 of Chapter 6 of the Animals Rules. Exporter supply chain assurance operations ensure the humane treatment and handling of feeder livestock or slaughter livestock that are exported up until, and including, the point of slaughter.

Division 1—Requirements for approval

5-9 Purpose of this Division

Subsection 151(1) of the Act provides that, on receiving an application under section 150 of the Act to approve a proposed arrangement, the Secretary must decide to approve the arrangement or refuse to approve the arrangement. Subsection 151(2) sets out the requirements that the Secretary must be satisfied of before approving a proposed arrangement. Paragraph 151(2)(d) allows the rules to prescribe additional requirements that must be satisfied.

Section 5-9 prescribes, for the purposes of paragraph 151(2)(d) of the Act, other requirements that must be met for approval of a proposed arrangement for exporter supply chain assurance operations.

The first note following section 5-9 refers the reader to section 1-6 of the Animals Rules for the definition of the term *exporter supply chain assurance operations* (ESCAS).

The second note following section 5-9 refers the reader to subsection 6-35(5) of the Animals Rules and explains that an ESCAS may provide that independent auditing and reporting in relation to certain matters covered by the ESCAS is to be carried out in accordance with an approved arrangement for exporter supply chain assurance operations held by a person specified in the ESCAS.

The third note following section 5-9 explains to the reader that the requirements provided by paragraphs 151(2)(b) and (c) of the Act must also be met. It is also a requirement for approval of the proposed arrangement that the applicant is a fit and proper person (see paragraph 151(2)(a) of the Act and section 5-24 of the Animals Rules).

5-10 Requirements relating to the applicant

Section 5-10 sets out requirements for the applicant for approval of a proposed arrangement for exporter supply chain assurance operations.

Subsection 5-10(1) provides that the applicant for approval of the proposed arrangement must be an Australian company and must not hold a livestock export licence.

Subsection 5-10(2) requires the applicant for approval of the proposed arrangement must not have any direct or indirect pecuniary or other interest that conflicts, or could conflict, with the proper carrying out of the exporter supply chain assurance operations covered by the arrangement.

The note following subsection 5-10(2) explains that an application for approval must be accompanied by a declaration stating that the applicant does not have any direct or indirect pecuniary or other interest that conflict, or could conflict, with the proper carrying out of the export operations covered by the arrangement, or, if the applicant has no such interests, a declaration stating that fact (see section 5-27).

Subsection 5-10(3) provides that the proposed arrangement must record that the applicant is committed:

- to meeting the objects referred to in section 3 of the Act that are applicable to the exporter supply chain assurance operations covered by the arrangement; and
- to complying with the requirements of the Act in relation to those operations; and
- to carrying out those operations in accordance with the arrangement.

5-11 Assurance rules and standards

Subsection 5-11(1) provides that a proposed arrangement for exporter supply chain assurance operations must provide for:

- rules (the *assurance rules*) for carrying out exporter supply chain assurance operations covered by the arrangement; and
- standards (the *assurance standards*) that must be met for assurances to be given in relation to entities in accordance with the arrangement.

Subsection 5-11(2) provides that, without limiting paragraph 5-11(1)(a), the assurance rules must provide for the system to be implemented to deal with any identified non-conformity with the assurance standards by an entity, including the circumstances in which an assurance given in relation to an entity in accordance with the arrangement may be removed.

The first note following section 5-11 clarifies that the proposed arrangement (including the assurance rules and assurance standards) may be recorded in one or more separate documents, as per paragraph 150(2)(a) of the Act.

The second note following section 5-11 explains that the assurance rules or assurance standards may need to be varied under Subdivision B of Division 1 of Part 4 of Chapter 5 of the Act if, for example, the International Organisation for Standardisation requirements or the OIE recommendations are varied or replaced. The note also refers the reader to paragraph 5-21(c) of the Animals Rules, which deals with significant variations to the assurance rules or assurance standards provided by the approved arrangement.

5-12 Applicant's management practices and business structure etc.

Section 5-12 provides that a proposed arrangement for exporter supply chain assurance operations must record details of:

- the applicant's management practices;
- the business structure of the applicant;
- the persons who are to manage or control the exporter supply chain assurance operations covered by the arrangement; and

- the system of controls to be implemented to ensure that the conditions prescribed by Division 2 of Part 2 of Chapter 5 of the Animals Rules (conditions of approved arrangement for exporter supply chain assurance operations) will be complied with in relation to the exporter supply chain assurance operations covered by the arrangement.

5-13 Kinds of prescribed livestock and countries in relation to which exporter supply chain assurance operations are to be carried out

Section 5-13 requires a proposed arrangement for exporter supply chain assurance operations to specify each kind of feeder livestock or slaughter livestock in relation to which exporter supply chain assurance operations covered by the arrangement are to be carried out. The proposed arrangement must also specify each country to which those operations are to be carried out in relation to that kind of livestock.

Division 2—Conditions of approved arrangement

Division 2 (sections 5-14 to 5-18) sets out the purpose of Division 2 of Part 2 of Chapter 5 of the Animals Rules, concerning conditions on approved arrangements for operations to prepare prescribed livestock for exporter supply chain assurance operations.

5-14 Purpose of this Division

Section 152 of the Act deals with conditions imposed on an approved arrangement. Paragraph 152(1)(b) allows the rules to prescribe conditions that will apply to an approved arrangement (unless the Secretary decides the condition is not to be a condition of the approved arrangement).

Section 5-14 provides that, for the purposes of paragraph 152(1)(b) of the Act, Division 2 of Part 2 of Chapter 5 (sections 5-15 to 5-19) of the Animals Rules prescribes conditions of an approved arrangement for exporter supply chain assurance operations.

Applying conditions to the approved arrangements prevents approved arrangements from meeting the requirements in Part 2 of Chapter 5 of the Animals Rules in order to gain approval and then later altering procedures or processes in a manner detrimental to achieving the purpose of the approved arrangement. It is important that businesses continue to operate under an approved arrangement with appropriate processes and controls to ensure the goods continue to meet importing country requirements.

The first note following section 5-14 refers the reader to section 157 of the Act, which provides that the conditions also apply to an approved arrangement that has been renewed.

The second note following section 5-14 alerts the reader that failure to comply with a condition of an approved arrangement is an offence and a contravention of a civil penalty provision under section 184 of the Act.

5-15 Requirements for approval must continue to be met

Subsection 5-15(1) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the requirements prescribed by Division 1 of Part 2 of Chapter 5 (sections 5-9 to 5-13) of the Animals Rules continue to be met after the arrangement has been approved.

This is to prevent an applicant of a proposed arrangement from meeting the requirements of the Animals Rules to gain approval and later altering their export operations in a way that results in the requirements no longer being met. It is important for businesses to continue to operate in accordance with the requirements of an approved arrangement to ensure the humane treatment of livestock and quality of the export goods.

Subsection 5-15(2) provides that, for the purposes of subsection 5-15(1), a reference in Division 1 (sections 5-9 to 5-13) to a proposed arrangement is to be read as an approved arrangement, and a reference to the applicant for approval of a proposed arrangement is to be read as a reference to the holder of an approved arrangement.

5-16 Compliance with assurance rules and meeting assurance standards

Subsection 5-16(1) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the holder of the approved arrangement must ensure that exporter supply chain assurance operations covered by the approved arrangement are carried out in accordance with the assurance rules provided by the approved arrangement.

The note following subsection 5-16(1) refers the reader to paragraph 5-11(1)(a), which provides that an approved arrangement for exporter supply chain assurance operations must provide for assurance rules.

Subsection 5-16(2) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the holder of the approved arrangement must not give an assurance in relation to an entity unless an audit has been conducted in accordance with the approved arrangement in relation to:

- the export operations carried out at or by the entity in relation to a kind of feeder livestock or slaughter livestock; and
- the construction of the premises, and the equipment and facilities used at the premises, where the operations are carried out;

and the audit finds that the operations and premises meet the assurance standards provided by the approved arrangement.

The definition of *entity*, when used in connection with exporter supply chain assurance operations, includes a facility in another country where operations in relation to a kind of feeder livestock or slaughter livestock are carried out (for example, feedlots and abattoirs), an importer of livestock, or a person who exports that kind of livestock (section 1-6).

The first note following subsection 5-16(2) refers the reader to paragraph 5-11(1)(b), which requires an approved arrangement for exporter supply chain assurance operations to provide for assurance standards.

The second note following subsection 5-16(2) refers to section 16 of the Act for the definition of *export operations*. The note explains that export operations includes operations in relation to goods that have been exported up until the delivery of the goods to their final overseas destination or, in the case of live animals intended to be slaughtered, up until and including, the point of slaughter (see paragraph 16(d) of the Act).

Subsection 5-16(3) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the holder of an approved arrangement must conduct regular reviews of the assurance rules and assurance standards provided by the approved arrangement. This allows for any irregularities to be quickly identified and addressed by the holder of the approved arrangement, to ensure compliance with the relevant assurance rules and standards.

5-17 Information must be given to the Secretary about entities in relation to which exporter supply chain assurance operations have been carried out

Subsection 5-17(1) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the holder of the approved arrangement must, on written request by the Secretary, give information or documents specified in the request relating to entities in relation to which exporter supply chain assurance operations have been carried out in accordance with the approved arrangement.

The note following subsection 5-17(1) explains that the Secretary may publish information (including information contained in a document) given to the Secretary in compliance with a request made under this subsection (see section 5-25 of the Animals Rules).

Subsection 5-17(2) provides that the holder of the approved arrangement must comply with the request no later than 10 business days after receiving it or, if a shorter period is specified in the request under subsection 5-17(3), no later than the period specified in the request.

Subsection 5-17(3) provides that a request made under subsection 5-17(1) may specify a period shorter than 10 business days (but not less than 1 business day) for complying with the request if the Secretary reasonably believes that the reason for the request is serious and urgent.

5-18 Report to Secretary on exporter supply chain assurance operations carried out

Subsection 5-18(1) makes it a condition of an approved arrangement for exporter supply chain assurance operations that the holder of an approved arrangement must prepare and give to the Secretary a written report on the exporter supply chain assurance operations carried out in accordance with the approved arrangement during each period of 3 months (the *reporting period*) the approved arrangement is in force. The report must be given to the Secretary as soon as practicable after the end of the relevant reporting period.

For an approved arrangement for exporter supply chain assurance operations that has ceased to be in force, subsection 5-18(2) makes it a condition that the holder of the approved arrangement must prepare and give the Secretary a written report on the exporter supply chain assurance operations carried out in accordance with the approved arrangement during the period after the period covered by the most recent report given under subsection 5-18(1).

The report must be given to the Secretary as soon as practicable after the approved arrangement has ceased to be in force.

Subsection 5-18(3) provides that, without limiting subsections 5-18(1) or (2), a report under the relevant subsection must:

- identify each entity in relation to which exporter supply chain assurance operations were carried out in accordance with the approved arrangement during the reporting period; and
- set out the findings of audits that were conducted in accordance with the approved arrangement during the reporting period; and
- identify each entity in relation to which assurances were given in accordance with the approved arrangement during the reporting period; and
- include any other information in relation to the entities for which export supply chain assurance operations were carried out that the holder considers is relevant to assist exporters to comply with their obligations under Part 9 of Chapter 6 (exporter supply chain assurance systems).

The note following section 5-18 explains that the Secretary may publish information included in a report given to the Secretary under subsection 5-18(1) or (2) (see section 5-25 of the Animals Rules).

Division 3—Renewal of approved arrangement

5-19 Period within which application to renew approved arrangement must be made

Section 155 of the Act deals with an application to renew an approved arrangement. Subsection 155(2) allows the holder of an approved arrangement to apply to the Secretary to renew the approved arrangement. Subsection 155(4) requires an application for renewal to be made within the period prescribed by the rules (paragraph 155(4)(a)) or a longer period if allowed by the Secretary (paragraph 155(4)(b)).

Section 5-19 prescribes, for the purposes of paragraph 155(4)(a) of the Act, the period within which an application to renew an approved arrangement for exporter supply chain assurance operations must be made is the period of 60 days starting on the day that is 180 days before the expiry date of the approved arrangement.

The purpose of providing a specific timeframe for allowing applications to be made is to give the Secretary sufficient time to consider an application before a decision is required to be made. Requiring a person to apply for renewal between 60 and 180 days before the expiry

date ensures that the Secretary has sufficient time to decide the application before the approval expires.

The first note following section 5-19 provides an example if an approved arrangement 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 5-19 refers the reader to subsection 155(1) of the Act and explains that, under the Act, only approved arrangements that have an expiry date will be able to be renewed.

Division 4—Variation of approved arrangement

Division 4 Part 2 of Chapter 5 of the Animals Rules sets out requirements relating to the variation of an approved arrangement for exporter supply chain assurance operations to prepare prescribed livestock for export at a registered establishment.

5-20 Application by holder for variation—grounds for refusing application

Section 161 of the Act deals with varying an approved arrangement. Subsection 161(1) allows the holder of an approved arrangement to apply to the Secretary to approve a variation of the approved arrangement in the following circumstances:

- where the proposed variation is to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act;
- where the holder and the Secretary consider that the proposed variation is significant;
- where the proposed variation is to the conditions of the approved arrangement.

Subsection 161(3) of the Act allows the Secretary to refuse to approve the variation if the Secretary is not satisfied of one or more of the requirements listed in that subsection. Paragraph 161(3)(d) allows the rules to prescribe additional requirements.

Section 5-20 provides, for the purposes of paragraph 161(3)(c) of the Act, that it is a requirement in relation to an approved arrangement for exporter supply chain assurance operations that, if the approved arrangement is varied, or the conditions of the approved arrangement are varied, as proposed, the requirements prescribed by Division 1 of Part 2 of Chapter 5 of the Animals Rules (sections 5-9 to 5-13) will continue to be met.

This means that if the Secretary is not satisfied that the requirements in sections 5-9 to 5-13 will continue to be met, the Secretary may refuse to approve the variation.

The requirements for varying an approved arrangement are the same as those for approving a proposed arrangement. This is intended to ensure that approved arrangements continue to operate in the manner approved by the Secretary and prevent the holder of an approved arrangement from merely meeting the requirements at the initial application phase and later reverting to practices which do not comply with the requirements.

5-21 Significant variations

Section 164 of the Act lists the matters the holder of the approved arrangement and the Secretary must have regard to in considering whether a proposed variation, or the combined effect of two or more variations, is significant. Paragraph 164(2)(c)(ii) allows the rules to prescribe kinds of variations as significant.

Section 5-21 prescribes, for the purposes of subparagraph 164(2)(c)(ii) of the Act, the following kinds of variations to an approved arrangement for exporter supply chain assurances operations:

- a variation of the business structure of the holder of the approved arrangement;
- a variation because of an event referred to in paragraph 186(1)(b) or (c) of the Act (relating to insolvency);
- a variation (other than to correct a minor or technical error) to the assurance rules or assurance standards provided by the approved arrangement;
- the removal of a country, or the addition of a country, in relation to which the exporter supply chain assurance operations are to be carried out;
- a variation that may have the effect that carrying out exporter supply chain assurance operations in accordance with the approved arrangement will no longer ensure compliance with the requirements of the Act in relation to those operations.

The example following section 5-21 explains that a change in a person who manages or controls export operations covered by the approved arrangement or, if the holder is a partnership, a change in the membership of the partnership would constitute a change in the holder's business structure.

The first note following section 5-21 refers the reader to subsection 161(1) of the Act, which provides that if the holder of the approved arrangement wishes to make any of the variations prescribed by section 5-21, or vary the arrangement to remove or add a kind of prescribed livestock, the holder must apply to the Secretary to approve the variation. The note also refers the reader to section 164 of the Act (matters to which regard must be had in considering whether proposed variation of approved arrangement is significant).

The second note following section 5-22 alerts the reader to the fact that the holder of the approved arrangement may commit an offence or be liable to a civil penalty if a variation of the approved arrangement prescribed by this section is implemented and the variation has not been approved by the Secretary under paragraph 161(2)(a) of the Act.

Division 5—Suspension of approved arrangement

5-22 Other grounds for suspension

Subsection 171(1) of the Act provides that the Secretary may suspend an approved arrangement, or part of an approved arrangement, if the Secretary reasonably believes that one or more grounds listed in that subsection exist. Paragraph 171(1)(l) allows the rules to prescribe additional grounds for which the Secretary may suspend an approved arrangement.

Section 5-22 prescribes, for the purposes of paragraph 171(1)(l) of the Act, that it is a ground for suspending an approved arrangement for exporter supply chain operations where the holder does not have the financial resources to carry out the exporter supply chain assurance operations in accordance with the approved arrangement.

The note following section 5-22 refers the reader to paragraphs 171(1)(a) to (k) of the Act for other grounds for suspending approved arrangements. The note also explains one of these grounds is if a requirement provided by subsection 151(2) of the Act, including a requirement prescribed by Division 1 (sections 5-9 to 5-13) of Chapter 5 of the Animals Rules, is no longer met (see paragraph 171(1)(c) of the Act).

Division 6—Revocation of approved arrangement

5-23 Other grounds for revocation

Subsection 179(1) of the Act provides that the Secretary may revoke an approved arrangement, or part of an approved arrangement, if the Secretary reasonably believes that one or more grounds listed in that subsection exist. Paragraph 179(1)(l) allows the rules to prescribe additional grounds for revoking an approved arrangement.

Section 5-23 prescribes, for the purposes of paragraph 179(1)(l) of the Act, that it is a ground for revoking an approved arrangement for exporter supply chain assurance operations where the holder does not have the financial resources to carry out the exporter supply chain assurance operations in accordance with the approved arrangement.

The note following section 5-23 refers the reader to paragraphs 179(1)(a) to (k) of the Act for other grounds for revoking approved arrangements. The note also explains one of these grounds is if a requirement provided by subsection 151(2) of the Act, including a requirement prescribed by Division 1 of Part 1 of Chapter 5 of the Animals Rules, is no longer met (see paragraph 179(1)(c) of the Act).

Division 7—Fit and proper persons

5-24 Kinds of persons who are required to be fit and proper persons

Subsection 372(1) of the Act sets out which provisions in the Act require the Minister 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 Animals Rules).

Subsection 373(1) of the Act allows the rules to prescribe kinds of persons who are required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 (export licences), to be fit and proper persons (having regard to the matters in section 372 of the Act).

Section 5-24 prescribes, for the purposes of subsection 373(1) of the Act, the kinds of persons who are required, for the purposes of Chapter 5 of the Act (approved arrangements), to be fit and proper persons having regard to the matters referred to in section 372 of the Act. These are:

- the applicant for approval of a proposed arrangement for exporter supply chain assurance operations;
- a person who would manage or control exporter supply chain assurance operations in accordance with a proposed arrangement for those operations;
- the holder of an approved arrangement for exporter supply chain assurance operations;
- a person who manages or controls exporter supply chain assurance operations in accordance with an approved arrangement for those operations.

Prescribing the kind of persons required to be a fit and proper person provides clarity for those performing operations in relation to the export of a prescribed good as to whether they are required to undergo a fit and proper person test.

The first note following section 5-24 refers the reader to section 21 of the Act for a person who is taken to be a person who manages or controls, or would manage or control, export operations.

The second note following section 5-24 alerts the reader to the fact that section 374 of the Act (notification of conviction of offence or order to pay pecuniary penalty) applies to a person who is required to be a fit and proper person by section 5-24 of the Animals Rules.

Division 8—Miscellaneous

5-25 Secretary may publish information given by holder of approved arrangement for exporter supply chain assurance operations

Section 5-25 of the Animals Rules provides that the Secretary may publish any of the following information:

- information (including information contained in a document) given to the Secretary by the holder of an approved arrangement for exporter supply chain assurance operations in compliance with a request made under subsection 5-17(1) of the Animals Rules;
- information included in a report given to the Secretary by the holder of an approved arrangement for exporter supply chain assurance operations under subsection 5-18(1) or (2) of the Animals Rules.

Part 3—Matters relating to applications

Part 3 of Chapter 5 of the Animals Rules deals with matters relating to applications under the Act concerning approved arrangements for a kind of export operations in relation to prescribed livestock.

5-26 Application of this Part

Section 5-26 sets out the applications under the Act to which the requirements in Part 3 of Chapter 5 of the Animals Rules (sections 5-27 to 5-30) apply. These applications are:

- an application under section 150 of the Act to approve a proposed arrangement for a kind of export operations in relation to prescribed livestock;
- an application under section 155 of the Act to renew an approved arrangement for a kind of export operations in relation to prescribed livestock;
- an application under section 161 of the Act to approve a variation of an approved arrangement or to vary the conditions of an approved arrangement for a kind of export operations in relation to prescribed livestock; or
- an application that is taken to have been made under subsection 166(2) of the Act to approve a varied approved arrangement for a kind of export operations in relation to prescribed livestock.

5-27 Documents to accompany application relating to arrangement for exporter supply chain assurance operations

Section 377 of the Act details requirements for applications. Paragraph 377(1)(d) allows the rules to prescribe information which must be included with an application.

Section 5-27 provides, for the purposes of paragraph 377(1)(d) of the Act, that an application to approve a proposed arrangement for exporter supply chain assurance operations, or to renew an approved arrangement for exporter supply chain operations, must be accompanied by a declaration from the applicant stating that:

- the interests (if any) direct or indirect and pecuniary or otherwise of the applicant that conflicts, or could conflict, with the applicant's ability to properly carry out the exporter supply chain assurance operations covered by the approved arrangement; or
- if the applicant has no such interests, a declaration stating that fact.

The first note following section 5-27 explains to the reader that the proposed arrangement or approved arrangement, including the assurance rules and assurance standards required by section 5-11, must accompany the application or otherwise be made available to the Secretary for evaluation (see subsection 377(2) of the Act).

The second note following section 5-27 explains to the reader that the application must be accompanied by any other document required by the approved application form, for example, information relating to the applicant's financial resources (subparagraph 377(1)(b)(ii) of the Act).

The third note following section 5-27 advises the reader that the Secretary may accept any document previously given to the Secretary in connection with an application made under the Act, as satisfying the requirement to give that document under subsection 377(1) of the Act.

5-28 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 initial consideration 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 initial consideration period (and the initial consideration period is not renewed) the application is taken to have been refused.

Section 5-28 prescribes, for the purposes of subsection 379(3) of the Act, the initial consideration period for an application in relation to an approved arrangement is 120 days. The period of 120 days is appropriate, having regard to the matters the Secretary must consider in making a decision on an application.

The note following section 5-28 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.

5-29 Maximum 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 such a request must be complied with.

Section 5-28 prescribes, for the purposes of paragraph 379(10)(b) of the Act, the period within which a request by the Secretary under subsection 379(9) to an applicant for information or documents relating to the applicant must be complied with is 6 months. At the end of this period if an application has not been decided, it will be deemed to be refused and this is a reviewable decision. 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 on the maximum amount of time required for an application to be processed. The time provided will also allow for abandoned applications to be deemed rejected after the period as elapsed.

CHAPTER 6—LIVESTOCK EXPORT LICENCES

A livestock exporter must hold a livestock export licence issued under the Act. The Secretary is responsible for issuing livestock export licences if an application for a licence meets criteria set out in the Act and the Animals Rules. Licenced exporters must have an approved arrangement or be granted an exemption from the requirement to have an approved arrangement. The provisions made in this chapter are in addition to those in the Act.

The purpose of export licences is to allow people in the livestock export system to take responsibility for meeting requirements while enabling the Secretary to have regulatory oversight of their export operations and activities. This will help to safeguard the Australian livestock export industry.

Part 1—Requirements for grant of livestock export licence

Division 1—Requirements for grant of livestock export licence

6-1 Other requirements for grant of livestock export licence

Section 190 of the Act provides that a person may apply to the Secretary for an export licence to carry out a kind of export operations in relation to a kind of prescribed goods. Under subsection 191(1) of the Act, on receiving an application under section 190 for an export licence, the Secretary must decide to grant or refuse to grant the applicant an export licence.

Subsection 191(2) of the Act provides that the Secretary may grant the applicant an export licence if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the specified requirements listed under the subsection are met.

Paragraph 191(2)(d) allows the rules to prescribe additional requirements of which the Secretary must be satisfied before granting an export licence.

Subsection 6-1(1) provides, for the purposes of paragraph 191(2)(d) of the Act, that section 6-1 prescribes other requirements that must be met for the grant of a livestock export licence.

The note following subsection 6-1(1) explains that the requirements provided by paragraphs 191(2)(b) and (c) of the Act must also be met. The note also explains that it is also a requirement for the grant of an export licence that the applicant be a fit and proper person (see paragraph 191(2)(a) of the Act and section 6-28 of the Animals Rules).

Subsection 6-1(2) requires the applicant for a livestock export licence to be competent to hold the licence and be of sound financial standing.

Subsection 6-1(3) provides that the grant of the licence to the applicant must not, for any reason, be contrary to the interests of the livestock industry.

Subsection 6-1(4) provides that, if the applicant applies, or intends to apply, for an exemption under Part 2 of Chapter 2 of the Act from the requirement that prescribed livestock be prepared for export in accordance with an approved arrangement, the applicant must have an operations and governance manual for the applicant's livestock export business or proposed livestock export business.

The first note following subsection 6-1(4) refers the reader to items 1 and 2 of the table in section 2-3 of the Animals Rules, and explains that it is a prescribed export condition that an approved arrangement held by the exporter that covers export operations to prepared prescribed livestock for export at a registered establishment or approved premises must be in force and not suspended in relation to those operations at the time they are carried out.

The second note following subsection 6-1(4) explains that the Secretary may deal with an application for an export licence for a kind of export operations in relation to livestock and an application for an exemption at the same time.

The third note following subsection 6-1(4) explains that if the livestock export licence and the exemption are granted, the operations and governance manual must not be varied except as permitted by subsections 6-8(3) to (5).

Subsection 6-1(5) provides that the operations and governance manual must set out how the applicant's livestock export business will operate and be governed, and must include information about the following aspects of the business:

- how the export operations of the business will comply with the Australian Standards for the Export of Livestock;
- the structure of the business;
- staff management and training;
- risk and records management; and
- the strategy for managing compliance, and review of the strategy.

The Department provides extensive guidance to exporters on the content of the operations and governance manual which is available on the website (www.awe.gov.au).

Division 2—Other matters relating to livestock export licences

6-2 Other information to be stated in livestock export licence

Section 193 of the Act details matters to be stated in an export licence. Paragraph 193(2)(h) permits the rules to prescribe additional information to be stated in the export licence.

Section 6-2 prescribes, for the purposes of paragraph 193(2)(h) of the Act, additional information that must be stated in a livestock export licence. This additional information is the kind and class of livestock covered by the licence, and the mode of transport (aircraft or vessel) covered by the licence.

6-3 Period of effect of livestock export licence

Section 194 of the Act details the period of effect of an export licence. Subsection 194(5) provides that the rules may prescribe the period during which an export licence remains in force. The rules may apply in relation to export licences generally or export licences for a

kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

Section 6-3 is made for the purposes of paragraph 194(5)(b) of the Act and provides that a livestock export licence remains in force for 5 years starting on the day the licence takes effect.

The first note following section 6-3 explains that under paragraph 193(2)(d) of the Act, the Secretary must give written notice of the date the livestock export licence takes effect.

The second note following section 6-3 explains that the last day of the 5 year period is the expiry date for the livestock export licence unless an expiry date set under subsection 191(3) or 196(3) or paragraph 201(1)(c) or (d) of the Act is in force in relation to the licence (see paragraph 194(4)(a) of the Act). The livestock export licence remains in force until the end of the expiry date unless it is renewed or revoked before that date (see subsection 194(2) of the Act).

Part 2—Conditions of livestock export licence

Division 1—Purpose of this Part

6-4 Purpose of this Part

Paragraph 192(1)(b) of the Act allows the rules to prescribe conditions of an export licence (other than any of those conditions that the Secretary decides are not to be conditions of the licence).

Section 6-4 provides, for the purposes of paragraph 192(1)(b) of the Act, that Part 2 of Chapter 6 of the Animals Rules (section 6-3 to 6-23) prescribes the conditions of a livestock export licence.

The first note following section 6-4 refers the reader to paragraph 197(1)(b) of the Act and explains that if the export licence is renewed, these conditions also apply in relation to the renewed licence.

The second note following section 6-4 explains that a livestock 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 to the holder under subsection 222(4) of the Act.

The third note following section 6-4 alerts the reader to section 217 of the Act, which provides that the holder of a livestock export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened.

The fourth note following section 6-4 refers to subsection 428(1) of the Act and explains that if the holder of a livestock export licence has the power, or is required, under the Animals Rules to do a thing, they are taken to have done the thing if they cause another person to do the thing on behalf of the holder. For example, if the holder of a livestock export licence subcontracts to service providers, the holder is responsible for instructing the service provider to comply with the Animals Rules.

Division 2—General conditions

Division 2 (sections 6-4 to 6-7) of Part 2 of Chapter 6 of the Animals Rules set out general conditions that apply to all livestock export licences.

6-5 Audits

Section 6-5 requires the holder of a livestock export licence to comply with any reasonable request by an auditor or the Secretary to remedy any deficiencies identified during an audit of export operations covered by the licence.

The note following section 6-5 refers the reader to section 271 of the Act, which requires the holder of the livestock export licence to provide an auditor with the facilities and assistance that are reasonably necessary for the conduct of the audit.

6-6 Australian Standards for the Export of Livestock

Subsection 6-6(1) requires export operations covered by a livestock export licence to be carried out in accordance with the Australian Standards for the Export of Livestock (ASEL).

Subsection 6-6(2) provides that, without limiting subsection 6-6(1), the end of voyage or end of flight report for prescribed livestock exported by sea or air must be given to the Department as required by the ASEL.

The note following subsection 6-6(2) provides that the Secretary may publish information given in those reports (see section 6-44 of the Animals Rules).

The purpose of ASEL is to ensure livestock are appropriate for export to manage the risks to livestock health and welfare throughout the export supply chain, from sourcing to completion of disembarkation overseas. Failure to comply with the standards may result in refusal to grant an export permit, or in compliance action which could include cancellation or suspension of a livestock export licence.

6-7 Holder of licence must have, and comply with, an approved ESCAS

Subsection 6-7(1) provides that if the livestock export licence covers export operations in relation to feeder livestock or slaughter livestock:

- operations to prepare the feeder livestock or slaughter livestock for export must not be carried out unless the holder of the licence holds an approved Exporter Supply Chain Assurance Scheme (ESCAS) that applies to the livestock; and
- the holder must ensure that export operations in relation to the livestock are carried out in accordance with the ESCAS up until and including the point of slaughter of the livestock.

ESCAS is an assurance system which requires the holder of a livestock export licence to have arrangements with supply chain partners to ensure the humane treatment and handling of the livestock from arrival in the importing country up until, and including, the point of slaughter. Part 9 of Chapter 6 of the Animals Rules provides details on the ESCAS.

The note following subsection 6-7(1) explains to the reader that the holder of a livestock export licence may need to have more than one approved ESCAS to cover different kinds of livestock or different places to which the livestock are intended to be exported.

Subsection 6-7(2) makes it a condition of a livestock export licence that if the Secretary requires the holder of the livestock export licence to vary the approved ESCAS under section 6-40, the holder must comply with the requirement.

The first note following subsection 6-7(2) explains to the reader that an ESCAS is not required in relation to livestock that are to be exported as breeder livestock.

The second note following subsection 6-7(2) refers the reader to Part 9 which deals with approval of a proposed ESCAS and other matters relating to an ESCAS.

6-8 Compliance with operations and governance manual

Subsection 6-8(1) provides that the conditions in section 6-7 apply in relation to a livestock export licence if the holder of the licence has an exemption under Part 2 of Chapter 2 of the Act from the requirement that the livestock be prepared for export in accordance with an approved arrangement.

Subsection 6-8(2) provides that export operations covered by the livestock export licence must be carried out in accordance with the holder's operations and governance manual required under subsection 6-1(4) of the Animals Rules.

Subsection 6-8(3) provides that the holder's operations and governance manual must not be varied unless:

- the holder has applied to the Secretary under subsection 199(1) of the Act to vary the operations and governance manual and the Secretary has approved the variation and given the holder notice of the variation under subsection 200(1) of the Act; or
- the holder was required to make the variation by notice in writing given to the holder by the Secretary under subsection 6-8(4).

The note following subsection 6-8(3) explains that the holder's approved operations and governance manual may need to be varied if the Australian Standards for the Export of Livestock (ASEL) are varied or replaced, the conditions of the holder's livestock export licence are varied, or new conditions are imposed on the licence.

Subsection 6-8(4) provides that if the Secretary gives the holder a written notice requiring the holder to vary the operations and governance manual, the holder must vary the operations and governance manual as required within the period specified in the notice.

Subsection 6-8(5) provides that if the holder's operations and governance manual is varied as required under subsection 6-8(4), the holder must give the Secretary a copy of the varied operations and governance manual to the Secretary as soon as practicable after the variation is made.

Division 3—Exports of cattle to the Republic of Korea

Division 3 (sections 6-8 and 6-9) of Part 2 of Chapter 6 of the Animals Rules set out additional conditions that apply to a livestock export licence in respect of exports of cattle to the Republic of Korea.

6-9 Restrictions on export

Section 6-9 provides that the holder of a livestock export licence must not:

- export a consignment of cattle to the Republic of Korea; or
- cause a consignment of cattle to be to be exported to the Republic of Korea; or
- assist another person to export a consignment of cattle to the Republic of Korea;

unless the consignment includes only steers and all previous consignments of cattle exported from Australian territory to the Republic of Korea by any person have been released from quarantine before the new consignment is exported.

6-10 Conditions on export

Subsection 6-10(1) provides that the conditions in section 6-10 apply in relation to the export of a consignment of cattle to the Republic of Korea.

The note following subsection 6-10(1) refers the reader to section 6-9 for restrictions on the export of cattle to the Republic of Korea.

Subsection 6-10(2) provides that the conditions in subsections 6-10(3) and (4) must be complied with after confirmation of the initial negative enzootic bovine leucosis (EBL) test on the cattle. EBL is caused by bovine leukaemia virus which infects white blood cells and persists for the life of an animal. The disease is most commonly seen in adult beef cattle and is usually transmitted through routine activities like vaccination or ear tagging.

Subsection 6-10(3) requires the cattle to be individually identified using radio frequency identification.

The note following subsection 6-10(3) refers the reader to the definition of *radio frequency identification* in section 1-6. This definition includes a functioning radio tracking device that is inserted into an animal or forms part of an ear tag.

Subsection 6-10(4) provides that, at least 14 days before the expected date of export, the following documents must be given to the Department:

- a statement by a competent Korean authority that quarantine space is available for the expected weight and number of cattle in the proposed consignment;
- a written declaration from the importer in Korea that the importer has:
 - access to at least 1 month’s supply of fodder for the cattle after their release from quarantine, and
 - suitable land transport arrangements are in place to transport the cattle to their final destination.

Division 4—Exports of sheep by sea to the Middle East

Division 4 (sections 6-11 to 6-23) of Part 2 of Chapter 6 of the Animals Rules sets out additional conditions on livestock export licences with respect to exports of sheep by sea to the Middle East. The central issues relevant to sheep health and welfare during shipping to the Middle East in the months of May to October are stocking density, ventilation and thermoregulation of the sheep.

Subdivision A—Application of this Division

6-11 Application of this Division

Subsection 6-11(1) provides that Division 4 of Part 2 of Chapter 6 of the Animals Rules (sections 6-11 to 6-23) prescribes conditions of a sheep export licence that covers export of sheep by sea to the Middle East.

Subsection 6-11(2) clarifies that the conditions in Division 4 apply in relation to a vessel transporting sheep whether or not the vessel will transport, or is transporting, livestock other than sheep.

Subsection 6-11(3) provides that the conditions in Division 4 are not intended to limit a condition or restriction in the Australian Standards for the Export of Livestock (ASEL) to which the export of sheep is subject but, to the extent of any inconsistency between such a condition or restriction and a condition in the Animals Rules, the Animals Rules prevails.

The note following subsection 6-11(2) refers the reader to Division 5 of Part 2 of Chapter 6 of the Animals Rules, which deals with exports of sheep to the Kingdom of Saudi Arabia.

Subdivision B—Prohibition on export to specific places

6-12 Sheep must not be exported to Oman between 8 May and 14 September

Section 6-12 provides that a consignment of sheep must not be exported to Oman by sea on a vessel that leaves an Australian port between 8 May in a year and 14 September in that year.

6-13 Sheep must not be exported to Qatar between 22 May and 22 September

Section 6-13 provides that a consignment of sheep must not be exported to Qatar by sea on a vessel that leaves an Australian port between 22 May in a year and 22 September in that year.

6-14 Sheep must not be exported through certain waters between 1 June and 14 September

Section 6-14 provides that a consignment of sheep must not be exported by sea on a vessel that leaves an Australian port between 1 June in a year and 14 September in that year and that will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N at any time during its voyage.

The purpose of specifying the timeframes in sections 6-12, 6-13 and 6-14 of the Animals Rules is to avoid the export of live sheep from Australia during the northern hemisphere summer to improve animal welfare outcomes. This will maintain a sustainable live export trade while meeting the objective of reducing heat stress in sheep.

Subdivision C—Exports during northern summer

6-15 Application of this Subdivision

Subsection 6-15(1) provides that Subdivision C of Division 4 (sections 6-15 to 6-16) applies to sheep that are to be exported, or that are exported, by sea between 1 May in a year and 31 October in that year if the vessel transporting the sheep:

- leaves Australian territory after the commencement of the Animals Rules (28 March 2021), and
- will travel, or travels, through waters of the Arabian Sea or the Red Sea, north of latitude 11°N at any time during the voyage.

Live sheep exports will be prohibited under section 6-14 or allowed under section 6-15 of the Animals Rules during the northern hemisphere summer, to improve animal welfare outcomes. The purpose is to improve animal welfare with a focus on conditions to manage the risk of heat stress during the northern hemisphere summer (1 May to 31 October).

Subsection 6-15(2) clarifies that Subdivision C does not permit the export of a consignment of sheep if it is prohibited by sections 6-12 to 6-14 of the Animals Rules (prohibition on export to specific places).

6-16 General conditions

Section 6-16 has the effect that a consignment of sheep must not be exported to the Middle East by sea unless each of the following is met:

- the vessel on which the sheep are to be transported is equipped with a functional automatic livestock watering systems that have water receptacles at a height suitable for the sheep; and
- details of those watering systems are set out in the record of equipment and arrangements attached to the Australian certificate for the carriage of livestock for the vessel issued by the Australian Maritime Safety Authority under *Marine Order 43 (Cargo and cargo handling—livestock) 2018*; and

- a heat stress management plan for the voyage is in place; and
- bedding (such as straw, shavings or sawdust) of at least 1 tonne for every 10,000 sheep will be provided on the vessel.

6-17 Pen air turnover

The purpose of section 6-17 is to detail requirements relating to pen air turnover. Pen air turnover is a measure of ventilation as m³/hour per square metre of pen space. As a result of the recommendations from the McCarthy review, the government has decided that all vessels are required to comply with ventilation requirements on open decks and air flow across pens.

Subsection 6-17(1) prohibits the export of a consignment of sheep unless all of the following are met:

- the pen air turnover for the vessel on which the sheep are to be transported has been verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported; and
- if changes to the vessel have been made since the verification and the changes may have affected the pen air turnover for the vessel – the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer after the changes to the vessel were made; and
- the holder of the sheep export licence has taken reasonable steps to be satisfied that the most recent verified pen air turnover for the vessel is correct; and
- the holder of the sheep export licence has made a record stating the name of the vessel on which the sheep are to be transported, the name and qualifications of the independent qualified mechanical engineer who carried out the most recent verification of pen air turnover for the vessel, the method used to carry out the verification, the date the verification was carried out and the results of the verification.

Subsection 6-17(2) requires the holder of the sheep export licence to give both the Secretary and the Australian Livestock Export Corporation Ltd (LiveCorp) a written notice stating the most recent verified pen air turnover for the vessel. The written notice to the Secretary must also state the method used to carry out the verification.

Subsection 6-17(3) provides that the notices required by subsection 6-17(2) must be given as soon as practicable after the most recent verification of pen air turnover for the vessel was carried out.

6-18 Condition of sheep and of pens on vessel

Subsection 6-18(1) provides that a consignment of sheep must not be exported unless the conditions prescribed by section 6-18 are complied with.

Subsection 6-18(2) provides the body condition score for each sheep in the consignment must be 2 or 3 as specified in Table 4 of the Australian Standards for the Export of Livestock.

Subsections 6-18(3) applies where the vessel on which the sheep are to be transported is 140 metres long or less. On such vessels:

- the relative humidity and wet bulb temperature in at least two representative pens on each deck of the vessel must be automatically measured and recorded every 20 minutes during the voyage; and
- if the vessel has more than one hold on a deck in which sheep are being held—at least one measurement and recording under paragraph 6-18(3)(a) must be taken in each hold on that deck.

Excessive humidity may expose livestock to stress, cause injury and may result in unfavourable animal health or welfare outcomes.

Subsection 6-18(4) applies if the vessel on which the sheep are to be transported is longer than 140 metres. On such vessels:

- the relative humidity and wet bulb temperature in at least three representative pens on each deck of the vessel must be automatically measured and recorded every 20 minutes during the voyage; and
- if the vessel has more than one hold on a deck in which sheep are being held—at least one measurement and recording under paragraph 6-18(4)(a) must be taken in each hold on that deck.

Excessive humidity may expose livestock to stress, cause injury and may result in unfavourable animal health or welfare outcomes.

Subsection 6-18(5) requires a written report of each record of the relative humidity and wet bulb temperatures on the vessel made under paragraphs 6-18(3)(a) and (b) or 6-18(4)(a) and (b) to be given to the Secretary, by electronic means, within 5 days after the end of the voyage. The report must also state the location of each device used to take measurements and make records, and the time each record was made.

6-19 Exports to Kuwait

Subsection 6-19(1) provides that if a consignment of sheep is to be exported to Kuwait, Kuwait must be the first port of unloading for the vessel transporting the sheep.

Subsection 6-19(2) provides that the condition in subsection 6-19(1) applies regardless of whether the holder of the sheep export licence covering the sheep became aware before or after the vessel left Australian territory that Kuwait would be a destination place for the vessel.

6-20 Restrictions on number of ports where vessel may dock

Section 6-20 provides that a consignment of sheep must not be exported on a vessel that:

- leaves an Australian port before 1 June in a year and will enter the waters in the Arabian Sea, or the Red Sea, north of latitude 11°N on or after 1 June in that year; or
- leaves an Australian port between 15 September in a year and 30 September in that year;

unless the vessel will dock at no more than two ports to unload sheep or any other livestock from the vessel or for any other purpose.

Subdivision D—Exports during northern winter

6-21 Application of this Subdivision

Section 6-21 provides that Subdivision D (sections 6-21 to 6-23) of Division 4 of Part 2 of Chapter 6 of the Animals Rules applies in relation to sheep that are to be exported, or that are exported, by sea between 1 November in a year and 30 April in the next year if the vessel transporting the sheep:

- leaves an Australian port after the commencement of the Animals Rules (28 March 2021); and
- will travel, or travels, through waters in the Arabian or Red Sea, north of latitude 11°N at any time during the voyage.

6-22 Watering systems

Section 6-22 prohibits the export of a consignment of sheep unless:

- the vessel on which the sheep are to be transported is equipped with a functional automatic livestock watering systems that have water receptacles at a height suitable for the sheep; and
- details of those systems are set out in the record of equipment and arrangements attached to the Australia certificate for the carriage of livestock for the vessel issued by the Australian Maritime Safety Authority under *Marine Order 43 (Cargo and cargo handling—livestock) 2018*.

6-23 Pen air turnover

The purpose of section 6-23 is to detail requirements relating to pen air turnover. Pen air turnover is a measure of ventilation as m³/hour per square metre of pen space. Pen air turnover for the vessel must be verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported. As a result of the recommendations from the McCarthy review, the government has decided that all vessels are required to comply with ventilation requirements on open decks and air flow across pens.

Subsection 6-21(1) prohibits export of a consignment of sheep unless all of the following are met:

- the pen air turnover for the vessel on which the sheep are to be transported has been verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported; and
- if changes to the vessel have been made since the verification and the changes may have affected the pen air turnover for the vessel – the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer after the changes were made; and
- the holder of the sheep export licence has taken reasonable steps to be satisfied that the most recent verified pen air turnover for the vessel is correct; and
- the holder of the sheep export licence has made written a record stating the name of the vessel, the name and qualifications of the independent qualified mechanical engineer who carried out the most recent verification of pen air turnover for the vessel, the method used to carry out the verification, the date the verification was carried out and the results of the verification.

Subsection 6-23(2) provides that the holder of the sheep export licence must give both the Secretary and the Australian Livestock Export Corporation Ltd a written notice stating the most recent verified pen air turnover for the vessel. The written notice to the Secretary must also state the method used to carry out the verification.

Subsection 6-21(3) provides that the notices required by subsection 6-21(2) must be given as soon as practicable after the most recent verification of pen air turnover for the vessel was carried out.

Division 5—Exports of sheep, goats and cattle to the Kingdom of Saudi Arabia

Division 5 (sections 6-24 and 6-25) of Part 2 of Chapter 6 of the Animals Rules sets out additional conditions for livestock export licences in respect of exports of sheep, goat and cattle to the Kingdom of Saudi Arabia.

6-24 Pre-export conditions for sheep and goats

Section 6-24 prescribes pre-export conditions in relation to the export of a consignment of sheep or goats to the Kingdom of Saudi Arabia. These pre-export conditions are in relation to vaccination against scabby mouth and reports, documents, declarations and examinations relating to scabby mouth. Scabby mouth is a viral disease affecting sheep which is easily transmitted by other infected animals. Scabby mouth is a significant disease for live export. The concentration of sheep for backgrounding and shipping for live export allows rapid spread of the disease if it is present. Requiring sheep to be vaccinated prior to export ensures access to export markets.

Subsection 6-24(1) prohibits the holder of a livestock export licence from exporting a consignment of sheep or goats to the Kingdom of Saudi Arabia unless the conditions prescribed by section 6-22 are complied with.

The note following subsection 6-24(1) alerts the reader that Division 4 of Part 2 of Chapter 6 of the Animals Rules, which deals with exports of sheep by sea to the Middle East, may impose additional conditions on such exports.

Subsection 6-24(2) requires each sheep or goat in the consignment to have been vaccinated against scabby mouth, using a modified live virus, at least 30 days and not more than 12 months before the date it is proposed to export the consignment.

Subsection 6-24(3) requires the person (the *vaccinator*) who carried out the vaccination to make a written record (the *vaccination record*) of the following:

- the vaccinator's name and address;
- if the vaccinator is not the vendor of the sheep or goats—the vendor's name and address;
- the address and property identification code (under State or Territory law) of the property from which the sheep or goats originated;
- the time (which may be a period) and the date when, and the place where, the vaccination was carried out;
- the system used to identify each sheep or goat that was vaccinated (for example, property of origin tags, radio-frequency identification tags; eartags), the actual means of identification used (for example, red tags), and the number or other identifier used for each sheep and goat;
- details about the vaccine that was administered, including the product name, batch number, supplier, each invoice number relating to the purchase of the vaccine, and any other identifying information.

Subsection 6-24(4) requires the vendor of the sheep or goats to give the following documents to the holder of the livestock export licence:

- a copy of the vaccination record;
- a declaration by the vaccinator stating that the vaccine was stored, handled and administered strictly in accordance with the manufacturer's directions, and that the vaccinator has retained each invoice relating to the purchase of the vaccine and can provide a copy to the holder of the livestock export licence within 5 days of receiving a request to do so;
- a declaration by the vendor of the sheep or goats stating that the information in the vaccination record is true and complete, and that the vendor has given evidence to the holder of the livestock export licence supporting the information in the vaccination record.

The note following subsection 6-24(4) refers the reader to section 11-6 of the Animals Rules, which provides that the holder of the livestock export licence must retain the information and declarations given to the holder under subsection 6-24(4) for at least 2 years.

Subsection 6-24(5) provides that the declarations required to be given to the holder of the livestock export licence under subsection 6-24(4) must be in writing.

Subsection 6-24(6) has the effect that a declaration by the vaccinator or vendor under this section:

- must not be made if there are no reasonable grounds for making it;
- must not be false or misleading; and
- must be signed and dated by the person making the declaration.

The note following subsection 6-24(6) explains that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents, as per sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act.

Subsection 6-24(7) provides that a declaration by a vendor made under paragraph 6-24(4)(c) must also be signed and dated by the vaccinator if the vaccinator is not the vendor.

Subsection 6-24(8) requires a veterinarian to:

- have examined each sheep or goat in the consignment not more than 48 hours before the sheep or goat enters:
 - a registered establishment where it is to be held and assembled for export, or
 - if export is by air, a registered establishment in relation to the sheep or goat or premises that have been approved for pre-export quarantine or isolation of sheep or goats under paragraph 8-5(2)(a); and
- have ensured that each sheep or goat (if any) showing clinical evidence of scabby mouth was removed from the consignment.

The note following subsection 6-24(8) refers the reader to section 1-6 of the Animals Rules, for the definition of *veterinarian*.

Subsection 6-24(9) requires the veterinarian who carried out the examination of sheep or goats in a consignment under subsection 6-24(8) to make a written record of the examination stating:

- the veterinarian's name, address and identification number;
- the date and time of the examination;
- confirmation that the veterinarian examined each sheep or goat in the consignment;

- confirmation that each sheep or goat to be exported in the consignment is free of clinical evidence of scabby mouth; and
- give the record to the holder of the livestock export licence.

The note following subsection 6-24(9) refers the reader to section 11-6 of the Animals Rules, which provides that the holder of the livestock export licence must retain each record made under subsection 6-24(9) for at least 2 years.

6-25 Shipping conditions for sheep, goats and cattle

Subsection 6-25(1) prohibits the holder of a livestock export licence from exporting a consignment of sheep, goats or cattle to the Kingdom of Saudi Arabia by sea unless the conditions prescribed by section 6-25 are complied with.

The note following subsection 6-25(1) alerts the reader that Division 4 of Part 2 of Chapter 6 of the Animals Rules, which deals with exports of sheep by sea to the Middle East, may impose additional conditions on such exports.

Subsection 6-25(2) requires the holder of the livestock export licence to hold a government certificate in relation to the sheep, goats or cattle in the consignment.

Subsection 6-25(3) requires the sheep, goats or cattle in the consignment to be accompanied by an accredited veterinarian during their journey from Australian territory, until all sheep, goats and cattle in the consignment are unloaded.

Subsection 6-25(4) prohibits the vessel transporting the consignment from docking at any other port, for any purpose, before the consignment is unloaded at a port in the Kingdom of Saudi Arabia.

Part 3—Renewal of livestock export licence

6-26 Period within which application to renew livestock export licence must be made

Section 195 of the Act deals with matters relating to applications for the renewal of export licences. Paragraph 195(4)(a) of the Act allows the rules to prescribe the period within which an application for renewal of an export licence must be made.

Section 6-26 is made for the purposes of paragraph 195(4)(a) of the Act and requires an application to renew a livestock export licence to be made within the period of 60 days starting on the day that is 180 days before the date the licence expires. In other words, the application must be submitted when the registration is between 180 days and 120 days from expiring. The purpose of providing a specific timeframe for allowing applications to be made is to give the Secretary sufficient time to consider an application before a decision is required to be made.

The first note following section 6-26 provides an example of how section 6-24 works in practice. If a livestock export licence 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 6-26 clarifies that an application to renew a livestock export licence will only need to be made if there is an expiry date for the licence (see subsection 195(1) of the Act).

Part 4—Suspension of livestock export licence

6-27 Other grounds for suspension

Subsection 205(1) of the Act allows the Secretary to suspend an export licence 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 the goods may be exported, if the Secretary reasonably believes any of the grounds listed in that subsection are satisfied.

Paragraph 205(1)(j) allows the rules to prescribe additional grounds for suspension.

Section 6-27 is made for the purpose of paragraph 205(1)(j) of the Act and prescribes additional grounds for suspending a livestock export licence. The additional grounds are where the Secretary reasonably believes that:

- the holder of the licence failed to comply with a requirement under subsection 378(2) of the Act to provide additional or corrected information to the Secretary (subsection 6-27(2));
- an importing country requirement relating to operations to prepare a consignment of prescribed livestock for export was not met and the failure to meet the requirement was the result of the negligence or dishonesty of the holder of the licence (subsection 6-27(3));
- the holder of the licence failed to ensure the health or welfare of prescribed livestock (subsection 6-27(4)); or
- trade in the export from Australian territory of prescribed livestock could be adversely affected if the licence is not suspended (subsection 6-27(4)).

The note following subsection 6-27(1) alerts the reader that other grounds of suspension are set out in paragraphs 205(1)(a) to (i) of the Act, including where a requirement prescribed by section 6-1 of the Animals Rules is no longer met.

The note following subsection 6-27(4) refers the reader to the Australian Standards for the Export of Livestock, which includes requirements relating to animal health and welfare.

Part 5—Revocation of livestock export licence

6-28 Other grounds for revocation

Subsection 212(1) of the Act allows the Secretary to revoke an export licence (including a licence that is wholly or partly suspended) if the Secretary reasonably believes any of the grounds listed in that subsection are satisfied. Paragraph 212(1)(j) allows the rules to prescribe additional grounds for suspension.

Section 6-28 is made for the purpose of paragraph 205(1)(j) of the Act and prescribes additional grounds for revoking a livestock export licence. The additional grounds are where the Secretary reasonably believes that:

- the holder of the licence failed to comply with a requirement under subsection 378(2) of the Act to provide additional or corrected information to the Secretary (subsection 6-28(2));
- an importing country requirement relating to operations to prepare a consignment of prescribed livestock for export was not met and the failure to meet the requirement was the result of the negligence or dishonesty of the holder of the licence (subsection 6-28(3));
- the holder of the licence failed to ensure the health or welfare of prescribed livestock (subsection 6-28(4)); or
- trade in the export from Australian territory of prescribed livestock could be adversely affected if the licence is not revoked (subsection 6-28(5)).

The note after subsection 6-28(1) alerts the reader that other grounds of suspension are set out in paragraphs 212(1)(a) to (i) of the Act, including where a requirement prescribed by section 6-1 of the Animals Rules is no longer met.

The note following subsection 6-28(4) refers the reader to the Australian Standards for the Export of Livestock, which includes requirements relating to animal health and welfare.

Part 6—Obligations of holders of livestock export licences

6-29 Other events of which Secretary must be notified

Subsection 219(1) of the Act requires the holder of an export licence to notify the Secretary in writing of certain events as soon as practicable after the event occurring. Paragraph 219(1)(e) of the Act allows the rules to prescribe additional events.

Section 6-29 is made for the purpose of paragraph 219(1)(e) and requires the holder of an export licence to notify the Secretary as soon as practicable after the following events occur:

- the holder of the licence ceases to operate the export business that carries out export operations covered by the licence; or
- a relevant importing country authority notifies the holder that they are no longer regarded as an approved supplier of prescribed livestock to that country.

Part 7—Fit and proper persons

6-30 Kinds of persons who are required to be fit and proper person

Subsection 373(1) of the Act allows the rules to prescribe kinds of persons who are required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 (export licences) to be fit and proper persons (having regard to the matters referred to in section 372 of the Act).

Section 6-30 is made for the purposes of subsection 373(1) of the Act and prescribes the kinds of persons required to be fit and proper persons for the purposes of Chapter 6 of the Act (export licences). These persons are:

- an applicant for a livestock export licence; and
- the holder of a livestock export licence.

This ensures that persons who are approved to hold a licence or to export goods from Australian territory are trustworthy and demonstrate integrity, upholding Australia's reputation as a trading partner.

Part 8—Matters relating to applications

6-31 Application of this Part

Section 6-31 provides that Part 8 of Chapter 6 of the Animals Rules applies to the following applications:

- under section 190 of the Act for a livestock export licence;
- under section 195 of the Act to renew a livestock export licence;
- under section 199 of the Act to vary, or vary the conditions of, a livestock export licence.

6-32 Initial consideration period

Section 379 of the Act details the requirements 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 6-32 prescribes, for the purposes of subsection 379(3) of the Act, the initial consideration period for an application for a livestock export licence is 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 note following section 6-32 explains that the initial consideration period for an application starts on the day after the day the Secretary receives the application.

6-33 Maximum 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 6-33 prescribes, for the purposes of paragraph 379(10)(b) of the Act, a period of 6 months within which a request from the Secretary under subsection 379(9) to an applicant for information or documents relating to the application must be complied with. At the end of this period if an application has not been decided, it will be deemed to be refused and this is a reviewable decision.

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 applicants and will also allow for abandoned applications to be deemed refused after the period as elapsed.

Part 9—Exporter supply chain assurance systems

The Exporter supply chain assurance system (ESCAS) is an assurance system based on four principles:

- animal welfare—animal handling and slaughter in the importing country conforms to World Organisation for Animal Health animal welfare recommendations;
- control through the supply chain—the exporter has control of all supply chain arrangements for livestock transport, management and slaughter, and all livestock remain in the supply chain;
- traceability through the supply chain—the exporter can trace all livestock through the supply chain; and
- independent audit—the supply chain in the importing country is independently audited.

Exporters are required to have an ESCAS in place for all feeder and slaughter livestock.

Division 1—Approval of ESCAS

6-34 Meaning of ESCAS

Section 6-32 provides that ESCAS (short for exporter supply chain assurance system) is an assurance system that requires the holder of a livestock export licence that covers export operations in relation to feeder livestock or slaughter livestock to have arrangements with supply chain partners to ensure the humane treatment and handling of the livestock from arrival in the importing country up until and including the point of slaughter.

The note following subsection 6-34(1) alerts the reader that it is condition of a livestock export licence that covers export operations in relation to feeder livestock or slaughter livestock that the holder of the licence:

- must have an approved ESCAS that applies to the kind and class of livestock covered by the licence; and
- must comply with the ESCAS.

6-35 Holder of livestock export licence may apply for approval of proposed ESCAS

Subsection 6-35(1) provides that the holder of a livestock export licence that covers feeder livestock or slaughter livestock may apply to the Secretary, in writing, to approve a proposed ESCAS that applies to the kind and class of livestock covered by the licence.

The note following subsection 6-35(1) refers the reader to section 6-36 of the Animals Rules, which sets out the requirements for applications.

Subsections 6-35(2) to (5) provide detail on the form and content of an ESCAS.

A proposed ESCAS must:

- be recorded in writing in a form approved by the Secretary (subsection 6-35(2));
- include details of a supply chain that will apply to exports of a particular kind of livestock covered by a livestock export licence to one or more specified ports or landing places, up to and including the point of slaughter (subsection 6-35(3));
- include details of:
 - the kind of livestock to which the ESCAS applies;
 - each port or landing place where the livestock are intended to be unloaded;
 - transport, handling and slaughter of the livestock;
 - feedlots;
 - identification, tracking, accounting and reconciliation of the livestock;
 - independent auditing and reporting in relation to matters referred to in paragraphs 6-35(4)(a), (b), (c), (d), (e) and (h);
 - access to premises where the livestock are to be held; and
 - any related operations and facilities (subsection 6-35(4)).

Subsection 6-35(5) clarifies that a proposed ESCAS may provide that independent auditing and reporting in relation to the above matters are to be carried out in accordance with an approved arrangement for exporter supply chain assurance operations held by a person specified in the ESCAS.

The first note following subsection 6-35(5) refers the reader to Part 2 of Chapter 5 of the Animals Rules, which deals with approved arrangements for exporter supply chain assurance operations.

The second note following subsection 6-35(5) clarifies that an audit referred to in section 6-35 is not an audit under Part 1 of Chapter 9 of the Act.

6-36 Requirements for applications

Subsection 6-36(1) provides that an application under subsection 6-35(1) for approval of a proposed ESCAS must:

- be made in a manner and form approved by the Secretary, if the Secretary has approved a manner or form for making an application; and
- include the information required by the form; and
- be accompanied by the proposed ESCAS and any other documents required by the form; and
- be made no later than:
 - if the importing country requirements for the port or landing place to which the proposed ESCAS relates require pre-export quarantine or isolation of the livestock – no later than 10 business days before quarantine or isolation begins for the first export to which the ESCAS is to apply;
 - in any other case – no later than 10 business days before the first export to which the proposed ESCAS is to apply.

Subsection 6-36(2) provides that, despite paragraph 6-36(1)(d), the Secretary may accept an application for approval of a proposed ESCAS at any time if the Secretary considers it reasonably to do so in all the circumstances.

Subsection 6-36(3) provides that the Secretary may accept any information or document previously given to the Secretary in connection with an application for approval of a proposed ESCAS as satisfying any requirement to give that information or document under subsection 6-36(1).

Subsection 6-36(4) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in subsection 6-36(1).

6-37 Secretary may approve proposed ESCAS

Subsection 6-37(1) requires the Secretary, upon receiving an application to approve a proposed ESCAS by the holder of a livestock export licence under section 6-35, to decide to either approve the ESCAS or refuse to approve ESCAS.

The note following subsection 6-37(1) explains that a decision to refuse to approve a proposed ESCAS is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the Secretary must give the applicant written notice of the decision, (see section 382 of the Act).

Subsection 6-37(2) provides that the Secretary must not approve the proposed ESCAS unless the Secretary is satisfied, having regard to any matter they consider relevant, that the ESCAS will ensure that livestock will be transported, handled, slaughtered and subjected to any other

related operations in accordance with relevant OIE recommendations. These are recommendations and standards set out in section 7 of the *Terrestrial Animal Health Code* published by the Office International des Epizooties (also known as the World Organisation for Animal Health).

The note after subsection 6-37(2) refers the reader to section 1-6 of the Animals Rules, for the definition of *OIE recommendations*.

Subsection 6-37(3) provides that, in deciding whether to approve the proposed ESCAS, the Secretary:

- must consider how the ESCAS deals with the matters referred to in subsection 6-35(4); and
- may have regard to the record of the licence holder in relation to compliance with a previously approved ESCAS.

Subsection 6-37(4) provides that the Secretary may request the applicant to provide further information about a proposed export or a proposed ESCAS, or to vary the proposed ESCAS in a specified way. The request must be by notice in writing.

Subsections 6-37(5) allows the Secretary to approve the proposed ESCAS subject to any conditions considered appropriate.

The note following subsection 6-37(5) explains that a decision to approve a proposed ESCAS subject to conditions is a reviewable decision (section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

Subsection 6-37(6) sets out a non-exhaustive list of matters the conditions of an ESCAS may relate to, without limiting subsection 6-35(5), the matters referred to in subsection 6-35(4), the publication of information provided by the licence holder in relation to the supply chain set out in the proposed ESCAS, the number of consignments to which the proposed ESCAS may apply, or any other matter the Secretary considers appropriate.

Subsection 6-37(7) provides that the Secretary must give the applicant written notice stating the kind of livestock covered by the approved ESCAS and the conditions of the approved ESCAS (if any).

6-38 Period of effect of an approved ESCAS

Section 6-38 provides that an approved ESCAS remains in force unless it is revoked under section 6-42 of the Animals Rules.

Division 2—Variation of approved ESCAS

6-39 Holder of approved ESCAS may apply to Secretary to vary ESCAS or conditions of ESCAS

Subsection 6-39(1) allows the holder of an approved ESCAS to apply, in writing, to the Secretary to approve a variation of:

- an approved ESCAS; or
- the conditions of an approved ESCAS.

Subsection 6-39(2) requires the Secretary, if they receive an application under subsection 6-39(1) to approve a variation, the Secretary must decide to either approve or to refuse to approve the variation.

The note following subsection 6-39(2) explains that a decision to refuse to approve a variation of an approved ESCAS, or the conditions of an approved ESCAS, is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that notice of the decision must include the reasons for the decision, (see subsection 382(1) of the Act).

Subsection 6-39(3) provides that the Secretary must not approve the variation unless satisfied, having regard to any matter the Secretary considers relevant, that the varied ESCAS will ensure that livestock to which it will apply will be transported, handled, slaughtered and subjected to any other related operations in accordance with OIE recommendations.

The note following subsection 6-39(3) refers the reader to section 1-6 of the Animals Rules, for the definition of *OIE recommendations*.

Subsection 6-36(4) requires the Secretary to give the holder written notice of the decision.

6-40 Secretary may require approved ESCAS to be varied or vary conditions of approved ESCAS

Subsection 6-40(1) allows the Secretary to give the holder of an approved ESCAS a written notice requiring the holder to vary any aspect of the approved ESCAS, as specified in the notice by the date specified in the notice, or, by written notice to the holder of an approved ESCAS, vary the conditions (if any) of the approved ESCAS (including by imposing new conditions).

The note following subsection 6-40(1) explains that a decision to require the holder to vary an aspect of an approved ESCAS, or to vary the conditions of an approved ESCAS, is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The notice given under subsection 6-40(1) must also include the reasons for the decision (see subsection 382(1) of the Act).

Subsection 6-40(2) sets out the grounds that must be established for the Secretary to issue a variation notice under paragraph 6-40(1)(a), or to vary the conditions of an approved ESCAS under paragraph 6-40(1)(b). These grounds are if:

- the Secretary is not satisfied that livestock to which the approved ESCAS apply will be dealt with in accordance with the approved ESCAS;
- the holder has not complied with any conditions of the holder's livestock export licence; or
- the Secretary considers the variation is needed for any other reason.

6-41 Effect of varied approved ESCAS

Section 6-41 provides that if:

- a variation of an approved ESCAS, or the conditions of an approved ESCAS, is approved under paragraph 6-39(2)(a) of the Animals Rules; or
- an approved ESCAS, or the conditions of an approved ESCAS, are varied (either by the request of the holder, or on the Secretary's initiative) under section 6-40 of the Animals Rules,

the varied approved ESCAS, and any varied conditions, apply in relation to all livestock to which the ESCAS applies, including livestock that have been exported but have not reached the point of slaughter.

Division 3—Revocation of approved ESCAS

6-42 Secretary may revoke approved ESCAS

Subsection 6-42(1) provides that the Secretary may, by written notice to the holder of an approved ESCAS, revoke the approved ESCAS if:

- the Secretary is not satisfied that livestock to which the ESCAS apply will be dealt with in accordance with the approved ESCAS;
- the holder has not complied with any conditions of the approved ESCAS or the holder's livestock export licence; or
- the Secretary considers the ESCAS needs to be revoked for any other reason.

The note following subsection 6-42(1) explains that a decision to revoke an approved ESCAS is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 6-42(1) must include the reasons for the decision (see subsection 382(1) of the Act).

Subsection 6-42(2) provides that the Secretary must not revoke an ESCAS under subsection 6-42(1) unless the Secretary has given written notice to the holder in accordance with subsection 6-42(3).

Subsection 6-42(3) provides that the notice must specify the grounds for the proposed revocation, request the holder to provide a written statement showing cause why the ESCAS

should not be revoked and include a statement setting out the right of review of a decision to revoke the approved ESCAS.

Subsection 6-39(4) provides that a notice under subsection 6-39(2) is not required to include the request for the holder of the ESCAS to give the Secretary a written statement showing cause why the ESCAS should not be revoked, if the Secretary reasonably believes that grounds for revocation are serious and urgent.

Division 4—Other matters

6-43 Holder of approved ESCAS must notify Secretary of change in circumstance

Section 6-43 requires the holder of an approved ESCAS to notify the Secretary in writing if there is a relevant change in any circumstances relating to an approved ESCAS. The notification must be made as soon as practicable, but not later than 5 business days after the holder becomes aware of the change.

Part 10—Miscellaneous

6-44 Secretary may publish information in end of voyage or end of flight report relating to prescribed livestock

Section 6-44 provides that the Secretary may publish information included in the end of voyage or end of flight report for prescribed livestock exported by sea or air given to the Department as required by the Australian Standards for the Export of Livestock (ASEL).

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 goods. The export permit must be issued in writing and will be in effect for a particular period. The permit may be varied, suspended or revoked, and may be required to be returned.

The prescribed export conditions in section 2-4 of the Animals Rules require the exporter of prescribed livestock, prescribed live animals or prescribed animal reproductive material to hold an export permit covering the export. The export permit must be in force, and not suspended, at the time the livestock, live animals or animal reproductive material are exported.

Subsection 225(1) of the Act provides that if an application for an export permit is made under section 224 of the Act, the Secretary must decide to issue the permit or refuse to issue the permit. A decision made under section 225 is not a reviewable decision due to the broad implications for Australia's export industry.

Part 1—Issue of export permit

7-1 Other matters to which Secretary may have regard in relation to application for export permit

Subsection 7-1(1) prescribes, for the purposes of paragraph 225(2)(c) of the Act, other requirements to which the Secretary may have regard in relation to an application for an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 7-1(2) provides the requirements in relation to an application for an export permit for prescribed livestock. This includes:

- a notice of intention to export a consignment including the livestock has been approved under paragraph 8-6(2)(a) of the Animals Rules and the approval is currently in force;
- the exporter holds a livestock export licence covering the livestock, the licence is in force and not suspended, and the exporter has complied with, or is in a position to comply with, the conditions of the licence;
- if a government certificate in relation to the livestock is required to meet importing country requirements:
 - the exporter holds a government certificate in relation to the livestock and the government certificate is in force; and
 - there has been no change to any relevant circumstances since the livestock were assessed for the purposes of deciding whether to issue the government certificate;

- operations to prepare the livestock for export have been carried out in accordance with:
 - the exporter's approved arrangement including the conditions of the approved arrangement; or
 - the exporter's operations and governance manual required under subsection 6-1(4) of the Animals Rules (if the exporter is required to prepare the livestock for export in accordance with that manual);
- an accredited veterinarian has carried out all required export operations in the approved export program held by the exporter that applies in relation to the livestock;
- if the exporter is required to hold an authorisation (however described) to export the livestock under another Commonwealth law—the exporter holds that authorisation;
- export operations in relation to the livestock have been, and will continue to be, carried out in accordance with the Australian Standards for the Export of Livestock;
- if the livestock are feeder livestock or slaughter livestock—the exporter has complied with, or is in a position to comply with, each approved ESCAS that applies to the livestock;
- the livestock will not be dealt with other than in accordance with an approved ESCAS that applies to the livestock;
- the livestock are fit enough to undertake the proposed export voyage or flight without any significant impairment of their health or welfare;
- the travel arrangements for the livestock are adequate for their health and welfare;
- there are no reasonable grounds to believe that:
 - the condition of the vessel or aircraft on which the livestock are to be transported may cause the health or welfare of any of the livestock to deteriorate during an export voyage or flight; or
 - the actions of the exporter, or the consignee, of the livestock may cause the health or welfare of any of the livestock to deteriorate during an export voyage or flight;
- the application for the export permit did not include false or misleading information;
- there are no reasonable grounds to believe that the livestock will not be permitted to enter the intended overseas destination.

Subsection 7-1(3) provides the requirements in relation to an application for an export permit for prescribed live animals . This includes:

- a notice of intention to export a consignment including the live animals has been approved under paragraph 8-11(2)(a) of the Animals Rules and the approval is currently in force;
- if a government certificate in relation to the live animals is required to meet importing country requirements:
 - the exporter holds a government certificate in relation to the live animals and the government certificate is in force; and
 - there has been no change to any relevant circumstances since the live animals were assessed for the purposes of deciding whether to issue the government certificate;
- if the exporter is required to hold an authorisation (however described) to export the live animals under another Commonwealth law—the exporter holds that authorisation;
- the live animals are fit enough to undertake the proposed export voyage or flight without any significant impairment of their health or welfare, taking into account:
 - the general condition of the live animals; and
 - the nature of the accommodation, feed and water for the live animals on the vessel or aircraft on which they are to be transported; and
 - if any other live animal not covered by the application is to be transported with the live animals—the species, health and general condition of each other live animal; and
 - the conditions that the live animals will be likely to encounter during the export voyage or flight;
- there are no reasonable grounds to believe that:
 - the condition of the vessel or aircraft on which the live animals are to be transported may cause the health or welfare of any of the live animals to deteriorate during an export voyage or flight; or
 - the actions of the exporter, or the consignee, of the live animals may cause the health or welfare of any of the live animals to deteriorate during an export voyage or flight;
- there are no reasonable grounds to believe that the animals will not be permitted to enter the intended overseas destination.

Subsection 7-1(4) provides the requirements in relation to an application for an export permit for prescribed animal reproductive material . This includes:

- a notice of intention to export a consignment including the animal reproductive material has been given in accordance with sections 8-1, 8-2 and 8-3 of the Animals Rules;
- if a government certificate in relation to the animal reproductive material is required to meet importing country requirements:
 - the exporter holds a government certificate in relation to the animal reproductive material and the government certificate is in force; and
 - there has been no change to any relevant circumstances since the animal reproductive material was assessed for the purposes of deciding whether to issue the government certificate;
- if the exporter is required to hold an authorisation (however described) to export the animal reproductive material under another Commonwealth law—the exporter holds that authorisation;
- a trade description that clearly identifies the animal reproductive material is applied to the primary container in which the animal reproductive material is packaged;
- the animal reproductive material has been collected and stored in accordance with the law of the State or Territory in which it was collected.

7-2 Requirements for export permit

Section 226 of the Act sets out information that must be included in an export permit. Paragraph 226(3)(b) enables the rules to prescribe additional information to be included in an export permit.

Subsection 7-2(1) prescribes, for the purposes of paragraph 226(3)(b) of the Act, additional information that must be included in an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material. This additional information is:

- the date the export permit is issued and the place to which the prescribed livestock, prescribed live animals or prescribed animal reproductive material are to be exported;
- if the export permit is for prescribed livestock or prescribed live animals—the maximum number, kind and class of prescribed livestock or prescribed animals to be exported;
- if the export permit is for prescribed animal reproductive material—the amount and kind of animal reproductive material to be exported and whether it is frozen or fresh;
- the name of the vessel, or the number of the flight, on which the prescribed livestock, prescribed live animals or prescribed animal reproductive material are to be exported;
- the signature of the Secretary;

- if the export permit is issued by an authorised officer—the authorised officer’s identity number on the authorised officer’s identity card;
- the Australian Government official mark specified by section 8-20 of the Animals Rules.

Subsection 7-2(2) provides that the export permit may also include any information required by the importing country.

The note following subsection 7-2(2) clarifies that an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material and a government certificate in relation to the prescribed livestock, live animals or animal reproductive material may be included in the same document.

7-3 Conditions of export permit

Paragraph 227(1)(a) of the Act allows the rules to prescribe conditions of an export permit. Section 227 of the Act provides that an export permit is subject to any conditions prescribed by the rules (in addition to any additional conditions specified in a written notice given to the holder of a permit). Subsections 7-3(1) to (3) are made for the purposes of paragraph 227(1)(a) of the Act and set the conditions for an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 7-3(1) makes it a condition of an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material that the livestock, live animals or animal reproductive material (as the case may be) must be exported within 72 hours after the permit is issued or, if the Secretary approves a different period in writing, within the approved period.

Subsection 7-3(2) sets an additional condition for an export permit for prescribed livestock, being that the livestock must be exported to the place, and by the mode of transport, specified in the export permit.

Subsection 7-3(3) sets an additional condition for an export permit for prescribed live animals or prescribed animal reproductive material, being that the live animals or animal reproductive material must be exported to the place specified in the permit.

The first note following subsection 7-3(3) alerts the reader to subsections 227(4) and (5) of the Act, which provide that the holder of an export permit may commit an offence or be liable to a civil penalty if a condition of the permit is contravened.

The second note following subsection 7-3(3) explains that an export permit may be revoked under section 233 of the Act if conditions of the permit are contravened.

7-4 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)) and remains in force as prescribed by the rules unless it is revoked earlier under section 233 of the Act (paragraph 228(b)).

Section 7-4 prescribes, for the purposes of paragraph 228(b) of the Act, the period of effect of an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material. An export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material remains in force (unless it is revoked under section 233 of the Act) until:

- the day the livestock, live animals or animal reproductive material are accepted at their final overseas destination; or
- the end of the period specified in the permit.

The first note following section 7-4 explains that an export permit takes effect when it is issued,(see paragraph 228(a) of the Act).

The second note following section 7-4 refers to section 11-5 of the Animals Rules, which requires an export permit (other than an export permit that was issued by electronic means) to be retained in a secure place when it is not being used.

Part 2—Variation, suspension and revocation of export permit

7-5 Circumstances for varying export permit for prescribed livestock

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 the Secretary reasonably believes 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)).

Subsection 7-5(1) provides that section 7-5 applies in relation to an export permit for prescribed livestock.

Subsection 7-5(2) is made for the purposes of paragraph 229(1)(a) of the Act, and prescribes the circumstances in which the Secretary may vary an export permit, or any conditions of an export permit, for prescribed livestock. These are:

- if circumstances relevant to the decision to issue the export permit have changed; or
- if the number, kind or class of the livestock to be exported has changed; or
- if the livestock are to be exported to a place other than the place specified in the export permit.

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 live animals or animal reproductive material. 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 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 7-6 is made for the purposes of paragraph 230(b) of the Act and provides that an approved varied export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material remains in force (unless it is revoked under section 233 of the Act) until the earlier of:

- the day the livestock, live animals or animal reproductive material are accepted at their final overseas destination; or
- the end of the period for which the export permit as originally issued was in force under section 7-4 of the Animals Rules.

The period of effect of the varied export permit is appropriate as export permits are made in relation to prescribed goods exported to various locations by different means.

The first note following section 7-6 explains that, under paragraph 230(a) of the Act, a varied export permit takes effect when it is issued.

The second note following section 7-6 alerts the reader to section 11-5 of the Animals Rules, which requires export permits (other than an export permit that was issued by electronic means) to be retained in a secure place when not in use.

7-7 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 7-7 prescribes, for the purpose of subsection 231(1) of the Act, the circumstances in which the Secretary may suspend an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive materials. The prescribed circumstances are the same as the circumstances for revoking a permit listed in subsection 233(1) of the Act and section 7-8 of the Animals Rules.

7-8 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.

Subsection 7-8(1) is made for the purposes of paragraph 233(1)(g) of the Act and prescribes circumstances, in addition to those specified in paragraphs 233(1)(a) to (f) of the Act, for revoking an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material. The additional circumstances are where there has been a change in the circumstances that were relevant to the decision to issue the export permit, or where the holder of the permit requests the Secretary, in writing, to revoke the permit.

The note following subsection 7-8(1) alerts the reader that other grounds for revoking an export permit are provided by paragraphs 233(1)(a) to (f) of the Act.

Subsection 7-8(2) is made for the purposes of paragraph 233(1)(g) of the Act and prescribes other circumstances, in addition to those specified in paragraphs 233(1)(a) to (f) of the Act and subsection 7-8(1), for revoking an export permit for prescribed livestock or prescribed live animals. This subsection does not apply to export permits for prescribed animal reproductive material. These additional circumstances are where the health, welfare or condition of the livestock or live animals may deteriorate during the journey, or where the importing country will not accept the livestock or live animals.

The note following subsection 7-8(2) explains that under section 7-10 of the Animals Rules, an export permit that is revoked must be returned to the Secretary within 10 business days, unless it was an electronic permit.

Part 3—Other matters

7-9 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 7-9 is made for the purposes of paragraph 235(1)(b) of the Act, and has the effect that the holder of an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material is required to provide the Secretary with additional or corrected information where there are reasonable grounds to suspect:

- an importing country requirement relating the prescribed livestock, prescribed live animals or prescribed animal reproductive material will not be met or is not likely to be met before the livestock, live animals or animal reproductive material are imported into the importing country; or
- a prescribed export condition relating to the prescribed livestock, prescribed live animals or prescribed animal reproductive material has not been complied with in circumstances where the condition should have been complied with.

Paragraph 7-9(b) relates specifically to export permits for prescribed livestock or prescribed live animals and requires the holder of such a permit to provide the Secretary with additional or corrected information where the holder reasonably suspects that the health or welfare of the livestock or live animals cannot be ensured.

Paragraph 7-9(c) relates specifically to export permits for prescribed animal reproductive material and requires the holder of such a permit to provide the Secretary with additional or corrected information where the holder reasonably suspects that the health or condition of the animal reproductive material cannot be ensured.

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 a number of 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 Animals Rules, enhancing Australia's reputation as a reliable trading partner.

7-10 Return of export permit

Subsection 236(1) of the Act provides that the rules may require a person to whom an export permit was issued to return the permit to the Secretary in the circumstances prescribed by the rules and at the time, or within the period, prescribed by the rules.

Section 7-10 is made for the purposes of section 236 of the Act and requires a person to whom an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material was issued to return the permit to the Secretary if the permit is revoked. The permit must be returned as soon as reasonably practicable after the day the permit was revoked.

The purpose is to ensure export permits are not misused by placing an obligation on the exporter to return the permit. This preserves the integrity of the export permit system by ensuring a revoked permit is not used to support the unauthorised export of prescribed goods. The obligation to return the permit as soon as reasonably practicable is a reasonable timeframe to allow the holder to return the permit to the Secretary, but is short enough to mitigate against the risk of the permit being misused.

Subsection 7-10(2) clarifies that subsection 7-10(1) does not apply in relation to an export permit that was issued by electronic means.

7-11 Notification that prescribed livestock, prescribed live animals or prescribed animal reproductive material are not to be exported

Section 237 of the Act provides that the rules may require the holder of an export permit for a kind of prescribed goods to notify the Secretary, in writing, if it is no longer intended to export the prescribed livestock, prescribed live animals or prescribed animal reproductive material in the circumstances prescribed by the rules, and at the time, or within the period, prescribed by the rules.

Subsection 7-11(1) is made for the purposes of section 237 of the Act and requires the holder of an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material to notify the Secretary, in writing, if it is no longer intended to export the livestock, live animals or animal reproductive material because of a circumstance referred to in section 7-8 of the Animals Rules (other circumstances in which export permit may be revoked).

Subsection 7-11(2) provides that the notification must be given as soon as practicable, but not later than 10 business days, after the decision not to export the prescribed goods is made.

The purpose of this section is to preserve the integrity of the export permit system and ensure the Secretary is aware of when prescribed livestock, prescribed live animals or prescribed animal reproductive material are no longer intended to be exported.

CHAPTER 8—OTHER MATTERS RELATING TO EXPORT

Part 1—Notices of intention to export

Division 1—General

Part 1 of Chapter 8 (sections 8-1 to 8-4) of the Animals Rules deals with matters relating to notices of intention to export.

A notice of intention to export prescribed goods serves to inform the Secretary about a person's intention to export prescribed goods, allowing the prescribed goods to be assessed prior to an export permit being granted. The notice of intention to export must include any information and documents prescribed by this Part. A person who has given a notice of intention to export must give the Secretary additional or corrected information in certain circumstances.

The prescribed export conditions in sections 2-3, 2-4 and 2-5 of the Animals Rules include a requirement for a notice of intention to export for each consignment of, or including, prescribed livestock, prescribed live animals or prescribed animal reproductive material.

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 is made for the purposes of paragraph 243(1)(e) of the Act and requires the person who intends to export a consignment of, or including, prescribed livestock, prescribed live animals or prescribed animal reproductive material to give notice of intention to export the consignment. This ensures the consignment, and any related documents, can be assessed prior to an export permit being granted.

The purpose is to ensure the person intending to export the prescribed livestock, prescribed live animals or prescribed animal reproductive material does not have another person submit a notice of intention to export on their behalf.

8-2 Persons to whom notification of intention to export must be given

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

Section 8-2 is made for the purposes of paragraph 243(1)(f) of the Act and requires the notice of intention to export a consignment of, or including, prescribed livestock, prescribed live animals or prescribed animal reproductive material to be provided to the Secretary.

Giving written notice to the Secretary ensures the necessary information is provided for assessment prior to 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 the time or period within which the notice of intention to export a consignment of, or including, prescribed goods must be given.

Section 8-3 is made for the purposes of 243(1)(g) of the Act, and prescribes when a notice of intention to export a consignment of prescribed livestock, prescribed live animals or prescribed animal reproductive material must be given to the Secretary.

Subsection 8-3(1) deals with a notice of intention to export a consignment of prescribed livestock or prescribed live animals. The notice of intention to export must be given at least 10 business days before the date the consignment is proposed to be exported, or at the time or within the period approved by the Secretary under subsection 8-3(3).

However, if, for the purpose of meeting importing country requirements, the livestock or live animals must be prepared for export at premises that are approved for pre-export quarantine or isolation, the notice of intention to export must be given:

- at least 10 business days before the quarantine or isolation begins; or
- at the time or within the period approved by the Secretary under subsection 8-3(3).

Subsection 8-3(2) deals with a notice of intention to export a consignment of prescribed animal reproductive material. The notice of intention to export must be given at least 10 business days before the date the consignment is proposed to be exported, or at the time or within the period approved by the Secretary under subsection 8-3(3).

However, if, for the purpose of meeting importing country requirements, the animal (or animals) from which the animal reproductive material was derived must be held at premises that are approved for pre-export quarantine or isolation, the notice of intention to export must be given:

- at least 10 business days before the quarantine or isolation begins; or
- at the time or within the period approved by the Secretary under subsection 8-3(3).

The note following subsection 8-3(2) alerts the reader that the prescribed export conditions in sections 2-3, 2-4 and 2-5 of the Animals Rules, include a requirement for a notice of intention to export for each consignment of, or including, prescribed livestock, prescribed live animals or prescribed animal reproductive animal material.

Subsection 8-3(3) provides that the Secretary may approve a different time, or a different period, for giving a notice of intention to export a consignment of prescribed livestock, prescribed live animals or prescribed animal reproductive material in certain circumstances. These circumstances are:

- where the Secretary is satisfied that the circumstances relating to the consignment that were not reasonably foreseeable to the exporter have occurred;

- in relation to a consignment of prescribed livestock – where the exporter was required to give the Secretary a new notice of intention to export the consignment under subsection 8-7(2) or 8-9(3) of the Animals Rules;
- in relation to a consignment of prescribed live animals – where the exporter was required to give the Secretary a new notice of intention to export the consignment under subsection 8-12(2) or 8-14(3) of the Animals Rules; or
- where the Secretary is satisfied there are other special circumstances relating to the consignment.

The timeframes in section 8-3 allow the Secretary time to consider the notice before the prescribed livestock, prescribed live animals or prescribed animal reproductive material are exported.

8-4 Changes requiring additional or corrected information

Section 244 of the Act requires a person who has given a notice of intention to export a consignment of prescribed goods to give the Secretary, as soon as reasonably practicable, additional or corrected information if a change prescribed by the rules occurs.

Section 8-4 is made for the purposes of paragraph 244(1)(b) of the Act, and has the effect that a person who has given notice of intention to export a consignment of prescribed livestock, prescribed live animals or prescribed animal reproductive material must provide the Secretary additional or corrected information if any information included in the notice of intention to export changes.

The note following section 8-4 refers the reader to subsection 244(2) of the Act, which clarifies that the person who must give the Secretary additional or corrected information under section 8-4 is the person who gave the notice of intention to export. The person may be liable to a civil penalty if the person does not give the information to the Secretary, as per subsection 244(3).

Division 2—Approval of notice of intention to export consignment

Subdivision A—Prescribed livestock

8-5 Approval of premises for pre-export quarantine or isolation

Section 8-5 deals with approvals of premises for pre-export quarantine or isolation of prescribed livestock.

Subsection 8-5(1) provides that section 8-5 applies where all of the following are met:

- a person (in this Division called the *exporter*) who intends to export a consignment of prescribed livestock has given a notice of intention to export in accordance with subsection 243(1) of the Act; and
- the notice has not been withdrawn; and

- the notice states that the livestock are to be transported by air and that, for the purpose of meeting importing country requirements, the livestock must be prepared for export at premises that are approved for pre-export quarantine or isolation; and
- the notice specifies the premises where the operations to prepare the livestock for export are to be carried out; and
- the premises are not a registered establishment in relation to the livestock.

Subsection 8-5(2) provides that the Secretary must decide, in writing, to approve or refuse to approve the premises for pre-export quarantine or isolation of the consignment.

The first note following subsection 8-5(2) explains that under the prescribed export conditions in Chapter 2 of the Animals Rules, operations to prepare the consignment for export must be carried out at an establishment that is registered for those operations or at premises that are approved for pre-export quarantine or isolation under paragraph 8-5(2)(a). A required period of pre-export quarantine or isolation at approved premises cannot start until the day after the approval is given (paragraph 8-5(7)(a)).

The second note following subsection 8-5(2) explains that a decision to refuse to approve the premises is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-5(5) must include the reasons for the decision.

Subsection 8-5(3) provides that the Secretary may approve premises for pre-export quarantine or isolation if the Secretary is satisfied the premises meet importing country requirements.

Subsection 8-5(4) provides that, for the purposes of making a decision to approve or refuse to approve premises for pre-export quarantine or isolation, the Secretary may request the exporter to provide further specified information or documents, or to obtain consent for an authorised officer to enter and inspect the premises.

Subsections 8-5(5) requires the Secretary to give the exporter written notice of the Secretary's decision under subsection 8-5(2). Subsection 8-5(6) provides that, if the Secretary decides to refuse to approve the premises for pre-export quarantine or isolation of the consignment, the notice may also request the exporter to give the Secretary a new notice of intention to export the consignment.

Subsection 8-5(7) provides that if premises are approved for pre-export quarantine or isolation of the consignment, the approval takes effect on the day after the approval is given and remains in force for the period in which operations to prepare the consignment for export are carried out at the premises, unless the approval is revoked earlier.

Subsection 8-5(8) allows the Secretary, by written notice to the exporter, to suspend or revoke the approval of the premises to carry out operations in relation to pre-export quarantine or isolation and request a new notice of intention to export, if the Secretary reasonably believes that importing country requirements relating to pre-export quarantine or isolation will not be met.

The note following subsection 8-5(8) explains that a decision to suspend or revoke the approval of the premises is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-5(8) must also include the reasons for the decision (see subsection 382(1) of the Act).

8-6 Approval of notice of intention to export consignment

Section 8-6 deals with pre-export approval of a consignment of prescribed livestock.

Subsection 8-6(1) provides that this section applies if an exporter who intends to export a consignment of prescribed livestock has given a notice of intention to export in accordance with subsection 243(1) of the Act and the notice has not been withdrawn.

Subsection 8-6(2) provides that the Secretary must decide, in writing, to approve or to refuse to approve the notice of intention to export the consignment.

The first note following subsection 8-6(2) alerts the reader to the prescribed export conditions in item 5 of the table in section 2-3, which requires that an approval of the notice of intention to export the consignment be in force and the conditions (if any) of the approval be complied with.

The second note following subsection 8-6(2) explains that a decision to refuse to approve the notice of intention to export the consignment is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-8(1) of the Animal Rules must also include the reasons for the decision (subsection 382(1) of the Act).

Subsection 8-6(3) sets out the requirements that must be met to approve a notice of intention to export a consignment of prescribed livestock. The Secretary may approve the notice of intention to export the consignment if the Secretary is satisfied that that all of the following are met:

- the requirements of the Act in relation to the export of the livestock in the consignment have been complied with, or will be complied with before the livestock are imported into the importing country; and
- the importing country requirements have been, or will be, met before the livestock are imported into the importing country; and
- the proposed export of the livestock would not contravene any directions given to the holder of the relevant livestock export licence under section 222 of the Act or the conditions of the livestock export licence; and
- the arrangements for the transport of the livestock to their final overseas destination are appropriate to ensure their health and welfare.

However, despite subsection 8-6(3), subsection 8-6(4) prevents the Secretary from approving the notice of intention to export the consignment if the prescribed livestock in the consignment are feeder livestock or slaughter livestock unless the Secretary is satisfied that an approved ESCAS is in force in relation to the livestock.

Subsection 8-6(5) provides that, for the purpose of deciding whether to approve the notice of intention to export the consignment, the Secretary may, by written notice, request the exporter to provide further specified information or documents or to vary the notice of intention to export the consignment in a specified way.

Subsection 8-6(6) provides the Secretary may approve a notice of intention to export a consignment of prescribed livestock subject to any conditions the Secretary considers appropriate. The conditions (if any) must be specified in the notice given to the exporter under section 8-7.

The note following subsection 8-6(6) explains that a decision to approve the notice of intention to export the consignment subject to conditions is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

8-7 Notice of decision relating to approval of notice of intention to export consignment

Subsection 8-7(1) requires the Secretary to give the exporter of a consignment of prescribed livestock written notice of the Secretary's decision under 8-6(2) in relation to a notice of intention to export the consignment.

Subsection 8-7(2) provides that if the decision is to refuse to approve the notice of intention to export the consignment, the notice of the decision may also request the exporter to give the Secretary a new notice of intention to export the consignment.

8-8 Variation of approved notice of intention to export consignment or conditions of approval

Subsection 8-8(1) provides that the Secretary may request the exporter to vary the notice of intention to export the consignment or give the Secretary a new notice of intention to export the consignment if an approval of a notice of intention to export the consignment of prescribed livestock is in force, and the circumstances change in relation to the consignment.

The note following subsection 8-8(1) explains that a decision to request the exporter to vary the notice of intention to export the consignment, or give the Secretary a new notice of intention to export the consignment, is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

Subsection 8-8(2) provides that the Secretary may vary the conditions (if any) of an approval of a notice of intention to export a consignment of prescribed livestock (including by removing conditions or imposing new conditions).

The first note following subsection 8-8(2) explains that the Secretary may vary the conditions to take account of information given to the Secretary under subsection 244(2) of the Act.

The second note following subsection 8-8(2) explains that a decision to vary the conditions of the approval is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

Subsection 8-8(3) provides that if the Secretary varies the conditions (if any) of an approval of a notice of intention to export a consignment of prescribed livestock, the Secretary must give the exporter of the consignment a written notice stating the varied conditions.

8-9 Secretary may revoke approval of notice of intention to export consignment

Section 8-9 deals with the revocation of a notice of intention to export a consignment of prescribed livestock.

Subsection 8-9(1) allows the Secretary to revoke the approval of a notice of intention to export a consignment of prescribed livestock in the following circumstances:

- where the Secretary is no longer satisfied of a matter referred to in subsection 8-6(3) in relation to the consignment (matters of which the Secretary must be satisfied before giving pre-export approval of a consignment); or
- where a condition of the approval has been contravened; or
- where additional or corrected information in relation to the notice of intention to export the consignment has been given to the Secretary under subsection 244(2) of the Act.

The first note following subsection 8-9(1) explains that if additional or corrected information in relation to the notice of intention to export the consignment is given to the Secretary under subsection 244(2) of the Act, there may not be sufficient time for the Secretary to consider the information before the proposed date of export of the consignment.

The second note following subsection 8-9(2) explains that a decision to revoke the approval of a notice of intention to export the consignment is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-9(2) must include the reasons for the decision (subsection 382(1) of the Act).

Subsection 8-9(2) provides that if the Secretary decides to revoke the approval of a notice of intention to export a consignment of prescribed livestock, the Secretary must give the exporter of the consignment written notice of the decision.

Subsection 8-9(3) allows the notice to include a request to the exporter to give the Secretary a new notice of intention to export the consignment.

Subdivision B—Prescribed live animals

8-10 Approval of premises for pre-export quarantine or isolation

Section 8-10 deals with approvals of premises for pre-export quarantine or isolation of prescribed live animals.

Subsection 8-10(1) provides that section 8-10 applies if all of the following are met:

- a person who intends to export a consignment of prescribed live animals has given a notice of intention to export the consignment in accordance with subsection 243(1) of the Act; and
- the notice has not been withdrawn; and
- the notice states that, for the purpose of meeting importing country requirements, the live animals must be prepared for export at premises that are approved for pre-export quarantine or isolation; and
- the notice specifies the premises where the operations to prepare the live animals for export are to be carried out.

The note following subsection 8-10(1) clarifies that the premises may be a registered establishment.

Subsection 8-10(2) provides that the Secretary must decide, in writing, to approve or to refuse to approve the premises for pre-export quarantine or isolation of the consignment.

The first note following subsection 8-10(2) alerts the reader to item 1 of the table in section 2-4 (pre-export conditions), which requires operations to prepare consignments of prescribed live animals for export to be carried out at premises that are approved for pre-export quarantine or isolation under paragraph 8-10(2)(a). The note also refers the reader to paragraph 8-10(7)(a), which provides that a required period of pre-export quarantine or isolation at approved premises cannot start until the day after the approval is given.

The second note following subsection 8-10(2) explains that a decision to refuse to approve the premises is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-10(5) must include the reasons for the decision.

Subsection 8-10(3) provides that the Secretary may approve premises for pre-export quarantine or isolation if satisfied the premises meet importing country requirements.

Subsection 8-10(4) provides that, for the purpose of making a decision as to whether to approve premises for pre-export quarantine or isolation under subsection 8-10(2), the Secretary may request the exporter to provide further information or documents, or to obtain consent for an authorised officer to enter the premises to carry out an inspection of the premises.

Subsections 8-10(5) requires the Secretary to give the exporter written notice of the Secretary's decision under subsection 8-5(2). Subsection 8-5(6) provides that, if the Secretary decides to refuse to approve the premises for pre-export quarantine or isolation of the consignment, the notice may also request the exporter to give the Secretary a new notice of intention to export the consignment.

Subsection 8-10(7) provides that if premises are approved for pre-export quarantine or isolation of the consignment, the approval takes effect on the day after the approval is given and remains in force for the period in which operations to prepare the consignment for export are carried out at the premises, unless the approval is revoked earlier.

Subsection 8-10(8) provides that if the Secretary reasonably believes that importing country requirements relating to the pre-export quarantine or isolation of the consignment at the premises will not be met, the Secretary may, by written notice to the exporter, suspend or revoke the approval of the premises for the operation and request that the exporter provide a new notice of intention to export the consignment.

The note following subsection 8-10(8) explains that a decision to suspend or revoke the approval of the premises is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-10(8) must also include the reasons for the decision, as per subsection 382(1) of the Act.

8-11 Approval of notice of intention to export consignment

Section 8-11 deals with the approval of the notice of intention to export a consignment of prescribed live animals.

Subsection 8-11(1) provides that this section applies if an exporter has given a notice of intention to export a consignment of prescribed live animals to the Secretary in accordance with subsection 243(1) of the Act, and the notice has not been withdrawn.

Subsection 8-11(2) provides that the Secretary must decide, in writing, to approve or to refuse to approve the notice of intention to export the consignment of prescribed live animals.

The first note following subsection 8-11(2) alerts the reader to item 2 of the table in section 2-4 of the Animals Rules (prescribed export conditions), which provides that an approval of the notice of intention to export the consignment of prescribed live animals must be in force and the conditions of the approval must be complied with.

The second note following subsection 8-11(2) explains that a decision to refuse to approve the notice of intention to export the consignment is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-12(1) of the Animal Rules must also include the reasons for the decision (subsection 382(1) of the Act).

Subsection 8-11(3) provides that the Secretary may approve the notice of intention to export the consignment of prescribed live animals if satisfied that all of the following are met:

- the requirements of the Act in relation to the export of the live animals in the consignment have been complied with, or will be complied with before the live animals are imported into the importing country; and
- the importing country requirements relating to the live animals have been met, or will be met before the live animals are imported into the importing country; and

- the arrangements for the transport of the live animals to their final overseas destination are appropriate to ensure their health and welfare.

Subsection 8-11(4) provides that, for the purpose of deciding whether to approve the notice of intention to export the consignment, the Secretary may, by written notice, request the exporter to provide further specified information or documents, or to vary the notice of intention to export the consignment in a specified way.

Subsection 8-11(5) provides that the Secretary may approve a notice of intention to export a consignment of prescribed live animals subject to any conditions the Secretary considers appropriate. The conditions (if any) must be specified in the notice given to the exporter under section 8-12.

The note following subsection 8-11(5) explains that a decision to approve the notice of intention to export the consignment subject to conditions is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

8-12 Notice of decision relating to approval of notice of intention to export consignment

Subsection 8-12(1) requires the Secretary to give the exporter of a consignment of prescribed live animals written notice of the Secretary's decision under section 8-11(2) of the Animals Rules, in relation to a notice of intention to export the consignment.

Subsection 8-13(2) provides that if the decision is to refuse to approve the notice of intention to export the consignment, the notice of the decision may also request the exporter to give the Secretary a new notice of intention to export the consignment.

8-13 Variation of approved notice of intention to export consignment or conditions of approval

Subsection 8-13(1) provides that the Secretary may request the exporter to vary the notice of intention to export the consignment or give the Secretary a new notice of intention to export the consignment if an approval of a notice of intention to export a consignment of prescribed live animals is in force, and circumstances change in relation to the consignment.

The note following subsection 8-13(1) explains that a decision to request the exporter to vary the notice of intention to export the consignment, or give the Secretary a new notice of intention to export the consignment, is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

Subsection 8-13(2) provides that the Secretary may vary the conditions (if any) of an approval of a notice of intention to export a consignment of prescribed live animals (including by removing conditions or imposing new conditions).

The first note following subsection 8-13(2) explains that the Secretary may vary the conditions to take account of information given to the Secretary under subsection 244(2) of the Act.

The second note following subsection 8-13(2) explains that a decision to vary the conditions of the approval is a reviewable decision (see section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

Subsection 8-13(3) provides that if the Secretary varies the conditions (if any) of an approval of a notice of intention to export a consignment of prescribed live animals, the Secretary must give the exporter of the consignment a written notice stating the varied conditions.

8-14 Secretary may revoke approval of notice of intention to export consignment

Section 8-14 deals with the revocation of approval of a notice of intention to export a consignment of prescribed live animals.

Subsection 8-14(1) provides that the Secretary may revoke the approval of a notice of intention to export a consignment of prescribed in the following circumstances:

- where the Secretary is no longer satisfied of a matter referred to in subsection 8-11(3) (matters of which the Secretary must be satisfied before giving pre-export approval of a consignment of prescribed live animals);
- where a condition of the approval has been contravened; or
- where additional or corrected information in relation to the notice of intention to export the consignment has been given to the Secretary under subsection 244(2) of the Act.

The first note following subsection 8-14(1) explains that if additional or corrected information in relation to the notice of intention to export the consignment is given to the Secretary under subsection 244(2) of the Act, there may not be sufficient time for the Secretary to consider the information before the proposed date of export of the consignment.

The second note following subsection 8-14(1) explains that a decision to revoke the approval of the notice of intention to export the consignment is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice under subsection 8-14(2) must include the reasons for the decision (subsection 382(1) of the Act).

Subsection 8-14(2) provides that if the Secretary decides to revoke the approval of a notice of intention to export a consignment of prescribed live animals, the Secretary must give the exporter of the consignment written notice of the decision.

Subsection 8-14(3) allows the notice to include a request to the exporter to give the Secretary a new notice of intention to export the consignment.

Part 2—Official Marks

Official marks are market labels, tags or other seals applied to products exported from Australian territory to confirm the identity, condition or status of the goods. Each type of label has specific mark dimensions. There are strict conditions set out to comply with export requirements. Official marks indicate compliance 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 upon by governments of importing countries as an assurance of the authenticity of a document or the origin, integrity and compliance of goods with the Act, importing country requirements or other relevant standards.

Division 1—Marks that are official marks

8-15 Purpose of this Division

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

Section 8-15 provides that Division 1 of Part 3 of Chapter 8 of the Animals Rules (sections 8-15 to 8-20) is made for the purposes of subsection 255(1) of the Act and specifies marks that are official marks for prescribed livestock, prescribed live animals or prescribed animal reproductive material that are intended to be exported. An official mark is a mark that is applied to goods to confirm the identity, condition, status of the goods or to secure the goods.

8-16 Tolerances for dimensions of official marks

Section 8-16 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 Animals 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.

8-17 Official mark—tamper-indicative metal strap seal

Section 8-17 provides that a tamper indicative metal strap seal is an official mark for the purposes of the Act if it meets the requirements of this section. The requirements are:

- the seal must be a tamper-indicative metal 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; and
- the seal must comply with ISO 17712:2013 *Freight containers—Mechanical seals*, as that document exists at the commencement of the Animals Rules. This international standard is a single source of information on mechanical seals and is available for a fee from the International Organization for Standardization (www.iso.org). 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; and
- 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 is, as part of the security system, to determine whether a freight container has been tampered with such as whether there has been unauthorised access to the container.

8-18 Official mark—bolt seal

Section 8-18 provides that a bolt seal is an official mark for the purposes of the Act if it meets the following requirements of this section. A bolt seal is a tamper-evident locking device that requires a tool to be removed. The requirements are:

- the seal must be a high security bolt seal; and
- the seal must comply with ISO 17712:2013 *Freight containers—mechanical seals*, as that document exists at the commencement of the Animals Rules. This international standard is a single source of information on mechanical seals and is available for a fee from the International Organization for Standardization (www.iso.org). 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; and
- 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; and
- the seal must also be coated with green or blue plastic.

A bolt seal is required to be applied to a container system unit (other than a container system unit intended for transport by air) under section 5-19 of the Meat Rules, and an official mark is required to be applied to the prescribed meat or meat products under Subdivision E of Part 2 of Chapter 5 of the Meat Rules (approved arrangements).

The purpose of bolt seal, 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.

8-19 Official mark—carton seal

Section 8-19 provides a representation of the design for a seal applied to a carton (a ‘carton seal’) that is an official mark for the purposes of the Act. The ‘carton seal’ mark must meet the specifications in paragraphs 8-19(1)(a) to (c). This includes being printed in black (except for the Coat of Arms, which must be printed in red), be on a white or security background (, including the substitutions set out in subsection 8-19(3)) and meeting the dimensions provided in subsection 8-19(2).

Subsection 8-19(2) provides the acceptable 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 8-19(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 relevant prescribed livestock, prescribed live animals or prescribed animal reproductive material 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 the mark must be included where ‘B’ is in the representation. A number, or a combination of letters and numbers, that is unique to each official mark must be included where ‘C’ is in the representation. This seal is necessary to provide confidence that the animal reproductive material inside the box has not been manipulated between the carton being packed in Australia and it being opened in an overseas country. The carton seals are used on animal reproductive material cartons when there is an importing country requirement to do so. This information is necessary to ensure the identification and traceability of the exported consignment of the prescribed goods.

8-20 Official mark—Australian Government

Section 8-20 provides a representation of the design of an ‘Australian Government’ official mark, which is an official mark for the purposes of the Act. The mark must contain a number identifying the person that used the mark where ‘XXXX’ is included in the representation.

Division 2—General rules relating to official marks

8-21 Purpose and application 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.

Subsection 8-21(1) provides that Division 2 of Part 3 of Chapter 8 of the Animals Rules (sections 8-21 to 8-31) 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 Animals Rules for prescribed livestock, prescribed

live animals or prescribed animal reproductive material that are intended to be exported. This is to ensure that official marks are not misused and only applied to eligible goods.

The note following subsection 8-21(1) 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 of the Animals Rules (see section 258 of the Act) or other provisions in Division 3 of part 3 of Chapter 8 of the Act (relating to false, misleading or deceptive official marks).

8-22 Meaning of *applied*

Section 8-22 sets out when an official mark is *applied* to prescribed livestock, prescribed live animals or prescribed animal reproductive material. This is fundamental to managing conduct in relation to that official mark.

Subsections 8-22(1) and (2) provide that, an official mark will be *applied* to prescribed livestock or prescribed live animals, for the purposes of the Animals Rules, if it is:

- applied to, or included in, any document relating to the livestock or live animals, or
- applied to any covering, label, reel or other thing used in connection with the livestock or live animals.

Subsection 8-23(3) provides that, an official mark will be *applied* to prescribed animal reproductive material, for the purposes of the Animals Rules, if it is:

- applied directly to the animal reproductive material, its packaging or any covering containing the animal reproductive material;
- applied to anything attached to the animal reproductive material, its packaging or any covering containing the animal reproductive material; or
- inserted into anything in which the animal reproductive material is packaged or any covering containing the animal reproductive material; or
- applied to, or included in, any document relating to animal reproductive material.

8-23 Persons who may manufacture official marks for prescribed livestock, prescribed live animals or prescribed animal reproductive material

Section 8-23 provides that a person may manufacture a kind of official mark for prescribed livestock, prescribed live animals or prescribed animal reproductive material 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.

8-24 Persons who may possess official marks that have not been applied

Section 8-24 specifies who may possess a kind of official mark for prescribed livestock, prescribed live animals or prescribed animal reproductive material that has not been applied to any of those goods. Limiting who can possess official marks ensures they are accounted for and only applied by nominated personnel.

The persons who can possess a kind of official mark for prescribed livestock, prescribed live animals or prescribed animal reproductive material that has not been applied to any of those goods are:

- authorised officers, or persons acting in accordance with a direction given by an authorised officer;
- a person who has been given a written approval by the Secretary to possess the official mark and the possession of the official mark is in accordance with that approval.

8-25 Persons who may apply official marks to prescribed livestock, prescribed live animals or prescribed animal reproductive material

Section 8-25 deals with who may apply official marks to prescribed livestock, prescribed live animals or prescribed animal reproductive material. Limiting those who can apply official marks ensures official marks are only applied to products passed as meeting importing country requirements and are used in accordance with the Act and Animals Rules.

The persons who can apply an official mark in these circumstances are:

- authorised officers, or persons acting in accordance with a direction given by an authorised officer;
- persons who have been given a written approval by the Secretary to apply the official mark to the prescribed livestock, prescribed live animals or prescribed animal reproductive material, and the application of the official mark is in accordance with that approval.

The note following section 8-25 refers the reader to section 309 of the Act, which deals with how a direction may be given by authorised officers.

8-26 Alteration of and interference with official marks

Section 8-26 provides that a person may alter or interfere with an official mark, regardless of whether it has been applied, only if the alteration or interference is required or permitted by the Secretary or under Part 2 of Chapter 8 of the Animals Rules.

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 requirements.

The note following section 8-26 alerts the reader that, under sections 261 and 262 of the Act, a person may commit an offence or contravene a civil penalty provision if the person engages in conduct that results an official mark being altered so as to be false, misleading or deceptive.

8-27 Official marks must be legible and securely applied

Section 8-27 requires official marks applied to prescribed livestock, prescribed live animals or prescribed animal reproductive material to be legible and securely attached.

This enables the official mark to be identified when it is being used on prescribed livestock, live animals and or animal reproductive materials and provides assurance of the authenticity of the official marks to trading partners.

8-28 Security of official marks

Section 8-28 requires a person who is in possession of an official mark that has not been applied to prescribed livestock, prescribed live animals or prescribed animal reproductive material (where permitted by section 8-24 of the Animals Rules) to ensure the official mark is securely stored. This ensures that all official marks can be accounted for when not in use.

8-29 Removal or defacement of official marks

Section 8-29 sets out requirements relating to the removal or defacement of official marks that have been applied to prescribed livestock, prescribed live animals or prescribed animal reproductive material, including when the marks must be removed or defaced and who can take that action.

Subsection 8-29(1) requires an official mark that has been applied to prescribed livestock, prescribed live animals or prescribed animal reproductive material to be removed or defaced if the prescribed livestock, prescribed live animals or prescribed animal reproductive material are no longer intended to be exported.

Subsection 8-29(2) details who may remove or deface an official mark. This is limited to:

- an authorised officer, or a person acting in accordance with a direction from an authorised officer; 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 first note following subsection 8-29(2) alerts the reader to section 309 of the Act, which deals with how a direction may be given by an authorised officer.

The second note following subsection 8-29(2) 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 the Chapter 8 of the Animals Rules.

8-30 Records of official marks manufactured

Section 8-30 requires a person who is permitted by section 8-23 to manufacture official marks to be applied to prescribed livestock, prescribed live animals or prescribed animal reproductive material to make daily written records detailing each kind and number of official marks manufactured on that day. The manufacturer of official marks must also make a written record stating each day a consignment of official marks is sent to a person permitted to possess the official marks, each kind of official marks included in the consignment, and the means used to transport the consignment.

The note following section 8-30 alerts the reader that each record made under this section must be retained for at least 2 years (in accordance with section 11-9 of the Animals Rules).

8-31 Records of official marks, applied, removed, defaced, destroyed or returned

Section 8-31 requires a person who is permitted to possess an official mark to make a written record of official marks applied to, or removed from, prescribed livestock, prescribed live animals or prescribed animal reproductive material, and of official marks defaced, destroyed and returned by the person.

This ensures only goods that meet requirements have official marks applied and allows for the tracing of official marks.

The note following section 8-31 notifies the reader that each record made under section 8-31 must be retained for at least 2 years (in accordance with section 11-9 of the Animals Rules).

Division 3—Official marking devices

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

8-32 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;
- any other matter relating to official marking devices.

Section 8-32 provides that Division 3 of Part 3 of Chapter 8 of the Animals Rules (sections 8-32 to 8-37) is made for the purposes of subsection 257(2) of the Act and makes provision for matters relating to official marking devices that are capable of being used to apply official marks as specified in Division 1 to prescribed livestock, prescribed live animals or prescribed animal reproductive material that are intended to be exported. These requirements are necessary to ensure the security of official marking devices and to preserve the integrity of official marks applied to livestock, live animals or animal reproductive material.

The note following section 8-32 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 Animals Rules.

8-33 Persons who may manufacture or possess official marking devices

Section 8-33 specifies who can manufacture or possess official marking devices for applying official marks. These are:

- authorised officers or persons acting in accordance with a direction given by an authorised officer;
- persons who have been given a written approval by the Secretary to manufacture or possess the official marking device and who are acting in accordance with that approval.

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

The note following section 8-33 refers the reader to section 309 of the Act, which deals with how directions may be given by authorised officers.

8-34 Security of official marking devices

Section 8-34 requires a person permitted to possess an official marking device under section 8-33 to store the device securely when it is not being used. This is to avoid unauthorised use of the official marking device.

8-35 Damaged or destroyed official marking devices

Section 8-35 requires a person (other than an authorised officer) in possession of an official marking device who becomes aware the device is damaged or destroyed, worn or otherwise unfit for applying an official mark to prescribed livestock, prescribed live animals or prescribed animal reproductive material, to notify an authorised officer in writing as soon as practicable after becoming aware of that fact.

The person must also retain the official marking device in a secure place until otherwise directed by an authorised officer. This is to ensure the ability to manufacture official marks is not compromised in any way.

8-36 Records of official marking devices manufactured

Section 8-36 requires a person permitted by section 8-33 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; and
- 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 to a person who is permitted to possess the device and how they were transported on each day.

The records provide evidence the manufacturer of official marking devices is satisfying regulatory requirements.

The note following section 8-36 explains that under section 11-10 of the Animals Rules, the person who is required to make a record under section 8-36 must retain each record for at least 2 years.

8-37 Records of official marking devices used, destroyed or returned

Section 8-37 requires a person who is permitted by section 8-33 to possess an official marking device to make a written record of the official marking devices that have been:

- used by the person to apply official marks to prescribed livestock, prescribed live animals or prescribed animal reproductive material; and
- destroyed or returned by the person.

The note following section 8-37 explains that under section 11-10 of the Animals Rules, the person who is required to make a record under section 8-36 must retain each record for at least 2 years.

CHAPTER 9—POWERS AND OFFICIALS

Part 1—Audits

Part 1 of Chapter 9 of the Animals Rules deals with matters relating to audits of export operations relating to livestock, live animals or animal reproductive material.

Audits helps retain wide access to overseas export markets by ensuring compliance with export requirements and importing country requirements. 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).

Division 1—General

9-1 References to audit in this Part

Section 9-1 provides that a reference to an audit under Part 1 of Chapter 9 of the Animals Rules 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 prescribed livestock, prescribed live animals or prescribed animal reproductive material;
- an audit in relation to performance by certain persons of their functions or the exercise of powers under the Act in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material. These persons are or were third party authorised officers, accredited veterinarians and 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; or
- an audit in relation to compliance by a third party authorised officer or accredited veterinarian of any conditions they are subject to when performing their functions and exercising their powers in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Division 2—Conduct of audit

9-2 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 after 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) of the Act.

Section 9-2 provides that Division 2 of Part 1 of Chapter 9 of the Animals Rules (sections 9-2 to 9-5) is made for the purposes of subsections 270(4) and (5) of the Act and makes provision for and in relation to the conduct of an audit, the notification of any non-compliance with a requirement to which an audit relates, and audit reports.

Audits verify 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.

9-3 Manner in which audit must be conducted

Section 9-3 requires an audit to be conducted as expeditiously as reasonably practicable and in a way that results in minimal interference to the export operations, or performance of functions or the exercise of powers under the Act, to which the audit relates. This approach seeks to minimise the impact on industry, while still ensuring compliance with requirements is being verified.

9-4 Notice of non-compliance with requirements

Section 9-4 specifies what an auditor must do when, in the auditor's opinion, following an audit of export operations in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material under subsection 266(1) of the Act, there is or has been, a failure (or a combination of failures) that amount to non-compliance with a requirement to which the audit relates.

Subsection 9-4(1) requires that, in such circumstances, the auditor must provide written notification, orally or in writing, of the auditor's opinion. The notification must be given to the relevant person for the audit as soon as reasonably practicable after completing the audit.

The first note following subsection 9-4(1) refers the reader to section 269 of the Act, for guidance on who is the *relevant person* for the audit.

The second note following subsection 9-4(1) clarifies that an audit may end before it is completed.

Subsection 9-4(2) specifies what an auditor must do when, in the auditor's opinion, following an audit conducted under section 267 of the Act, there is or has been, a contravention of the conditions of an accredited veterinarian's accreditation.

A relevant audit conducted under section 267 of the Act may relate to:

- the performance of functions and the exercise of powers under the Act by a person who is, or was, an accredited veterinarian; or
- compliance by a person who is, or was, an accredited veterinarian with the conditions applying to the performance of functions or exercise of powers by the person under the Act.

Where such an opinion has been formed, subsection 9-4(2) requires the auditor to provide notification, orally or in writing, of the auditor's opinion to the person. The notification must be given to the person relating to the audit as soon as reasonably practicable after the audit is completed.

Providing notice of failures or contraventions as soon as the audit is completed ensures transparency in the process and enables remedial action to be undertaken to minimise potential impact on export operations.

These failures may have considerable impact on Australia's trading reputation and may result in impacts on other persons or businesses through action by importing country authorities. It is therefore critical that these non-compliance failures are reported immediately, so necessary action can be implemented to mitigate consequences.

9-5 Audit reports

Section 9-5 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 verify 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 9-5(1) requires an audit report to be made in writing after the audit is completed or ends.

The note following subsection 9-5(1) clarifies that an audit may end before it is completed.

Subsection 9-5(2) specifies that an audit report must include the name of the auditor, the day the audit was commenced, the day the audit was completed or ended, the total time spent conducting the audit (in hours), the name of the relevant person for the audit, a description of the export operations or persons performing functions or exercising powers under subsection 267(1) of the Act, to which the audit relates, and a description of the nature and scope of the audit.

Subsection 9-5(3) requires the audit report to also state whether the audit was satisfactorily completed or was ended before it could be satisfactorily completed, the findings of the audit (including, whether, in the auditor's opinion, the requirements of the Act to which the audit relates are being, or have been, complied with) and the reasons for the opinion.

Subsection 9-5(4) provides that the audit report may also identify any risk of a potential non-compliance with a requirement to which an audit may relate and may include recommendations that any of the following actions be taken to:

- address any non-compliance with a requirement to which the audit relates;
- ensure that non-compliance does not recur;
- address the risk of a potential non-compliance with a requirement to which an audit may relate; and

- assess the effectiveness of any recommended actions.

Subsection 9-5(5) requires the audit report to be given to the Secretary (in a manner approved by the Secretary) and a copy of the report to be given to the relevant person for the audit within 14 business days after the audit is completed or ends.

The note following subsection 9-5(5) refers the reader to section 269 of the Act for guidance on who is the *relevant person* for an audit.

Part 2—Assessments

An assessment of goods may be carried out under Part 2 of Chapter 9 of the Act if the assessment is required or permitted to be carried out under the Act and Animals Rules (section 277 of the Act). This includes an assessment 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 goods are imported into the importing country;
- importing country requirements have been, or will be, met before the goods are imported into the importing country; or
- a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.

Division 1—General

9-6 References to assessment in this Part

Section 9-6 provides that a reference to an assessment in Part 2 of Chapter 9 of the Animals Rules is a reference to an assessment of prescribed livestock, prescribed live animals or prescribed animal reproductive material under Part 2 of Chapter 9 of the Act.

Division 2—Carrying out assessments

9-7 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 the Act. Subsection 277(2) of the Act allows the rules to prescribe 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.

Section 9-7 is made for the purposes of subsection 277(2) of the Act and provides that the Secretary may require or permit an assessment of prescribed livestock, prescribed live animals or prescribed animal reproductive material to be carried out at any stage of operations to prepare the prescribed livestock, prescribed live animals or prescribed animal reproductive material for export.

This provides the Secretary with flexibility to determine when it is necessary for an assessment of prescribed livestock, prescribed live animals or prescribed animal reproductive material to be carried out. This reflects the possibility that the circumstances requiring an assessment are likely to change from time to time and may need to commence at short notice.

9-8 Process to be followed after assessment completed

Section 279 of the Act provides that the rules may make provision for the process to be followed after an assessment has been completed.

Subsection 9-8(1) is made for the purposes of section 279 of the Act and specifies the process the Secretary must follow after the completion of an assessment carried out under section 9-7 of the Animals Rules or under paragraph 241(c) of the Act in relation to an application for an export permit or an application to vary an export permit (including the conditions) for prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 9-8(2) requires the assessor to give a written notice to the Secretary and the relevant person for the assessment stating whether the assessor reasonably believes that:

- the requirements of the Act in relation to the export of the livestock, live animals or animal reproductive material have been, or will be, complied with; and
- the importing country requirements relating to the livestock, live animals or animal reproductive material have been, or will be met, before the goods are imported into the relevant importing country.

The first note following subsection 9-8(2) refers the reader to section 12 of the Act, for the definition of *assessor* (an approved assessor or authorised officer) and clarifies that, for an assessment of prescribed livestock, prescribed live animals or prescribed animal reproductive material, an assessor refers to an authorised officer.

The second note following subsection 9-8(2) refers the reader to section 278 of the Act, for the definition of *relevant person* for an assessment (the applicant, holder of a government certificate, holder of an export permit, or person who gave a notice of intention to export).

Subsection 9-8(3) requires this notice given by an assessor under subsection 9-8(2) to be signed and dated by the assessor.

The note following subsection 9-8(3) alerts to the reader that an assessor may commit an offence or be liable to a civil penalty if they provide false or misleading information or documents.

Part 3—Accredited veterinarians

Section 311 of the Act provides that the Secretary may approve programs of export operations to be carried out by an accredited veterinarian for the purpose of ensuring the health and welfare of live animals or the health and condition of animal reproductive material.

The activities performed by an accredited veterinarian may take place while preparing live animals for export through to disembarkation in the importing country.

Division 1—Purpose of this Part

9-9 Purpose of this Part

Section 312 of the Act allows the rules to make provision for and in relation to the accreditation of veterinarians for the purposes of carrying out export operations in approved export programs.

Section 9-9 is made for the purposes of section 312 of the Act and provides that Part 3 of Chapter 9 of the Animals Rules (sections 9-9 to 9-31) makes provision for and in relation to the accreditation of veterinarians for the purposes of carrying out export operations in approved export programs.

A veterinarian is a person who is registered under the law of a State or Territory as a veterinarian, a veterinary practitioner, or a veterinary surgeon.

The note following section 9-9 alerts the reader to Division 3 of Part 5 of Chapter 9 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty for certain conduct relating to the carrying out of export operations in approved export programs by accredited veterinarians.

Division 2—Application for accreditation

9-10 Requirements for accreditation

Section 9-10 sets out the requirements that must be met to be accredited as an accredited veterinarian. A veterinarian must have successfully completed the Initial Accreditation Training Program for Australian Veterinarians and the Australian Government Accredited Veterinarian Program to be accredited.

The requirements ensure accredited veterinarians are suitably qualified and have the necessary skills to carry out pre-export operations or shipboard export operations.

The first note following section 9-10 refers the reader to Animal Health Australia for further information on the Initial Accreditation Training Program of the Accreditation Training Program.

The second note following section 9-10 refers the reader to the Department's website for information on the Australian Government Accredited Veterinarian Program (www.awe.gov.au).

9-11 Application for accreditation

Subsection 9-11(1) provides that, subject to subsection 9-11(2), a veterinarian may apply to the Secretary to be accredited to carry out either or both of the following:

- pre-export preparation operations in approved export programs in one or more States or Territories; or
- shipboard export operations in approved export programs.

The note following subsection 9-11(1) refers the reader to Division 9 of the Animals Rules, which sets out the requirements for applications.

Subsection 9-11(2) provides that a veterinarian who has had their accreditation revoked by the Secretary must not make an application for accreditation under subsection 9-11(1) unless the Secretary has given a written notice permitting the veterinarian to apply for accreditation.

9-12 Secretary must decide whether to accredit veterinarian

Subsection 9-12(1) provides that, on receiving an application under subsection 9-11(1) to accredit a veterinarian, the Secretary must decide to accredit or to refuse to accredit the veterinarian to carry out either or both of the following:

- pre-export preparation operations in approved export programs in one or more states;
- shipboard export operations in approved export programs.

The first note following subsection 9-12(1) refer the reader to Division 9 of the Animals Rules for matters relating to dealing with applications.

The second note following subsection 9-12(1) explains to the reader that a decision to refuse to accredit a veterinarian is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the Secretary must give the applicant written notice of the decision (see section 382 of the Act).

Subsection 9-12(2) sets out the requirements that must be met for the Secretary to accredit a veterinarian to carry out pre-export preparation operations in approved export programs in one or more states. These requirements are as follows:

- the veterinarian must meet the requirements in section 9-10; and
- if the veterinarian has previously had their accreditation revoked by the Secretary, the veterinarian must have a written notice by the Secretary permitting the veterinarian to apply for accreditation; and
- the veterinarian must be a fit and proper person (having regard to the matters referred to in section 372 of the Act; and
- the Secretary must be satisfied that the veterinarian is registered as a veterinarian in each State or Territory in which the applicant wishes to carry out the operations; and

- the veterinarian has given the Secretary a written notice stating the interests, pecuniary or otherwise, of the veterinarian that conflict or could conflict with the veterinarian's ability to properly carry out the operations, or, if the person has no such interests, that fact.

Subsection 9-12(3) sets out the requirements that must be met for the Secretary to accredit a veterinarian to carry out shipboard export operations in approved export programs. These requirements are as follows:

- the veterinarian must meet the requirements in section 9-10; and
- if the veterinarian has previously had their accreditation revoked by the Secretary, the veterinarian must have a written notice by the Secretary permitting the veterinarian to apply for accreditation; and
- the veterinarian must be a fit and proper person (having regard to the matters referred to in section 372 of the Act; and
- the Secretary must be satisfied that the veterinarian is an Australian citizen; and
- the veterinarian must give the Secretary a written notice stating the interests, pecuniary or otherwise, of the veterinarian that conflict or could conflict with the veterinarian's ability to properly carry out the operations, or, if the person has no such interests, that fact.

Subsection 9-12(4) provides that if the Secretary accredits a veterinarian under paragraph 9-12(1)(a), the Secretary may accredit the veterinarian for a period of less than 5 years if the Secretary considers it appropriate.

The note following subsection 9-12(4) explains to the reader that a decision to accredit a veterinarian for a period of less than 5 years is a reviewable decision (section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act).

9-13 Conditions of accreditation

Subsection 9-13(1) provides that the accreditation of a veterinarian is subject to the conditions provided by subsections 9-13(3) to (7) and any additional conditions that the Secretary considers appropriate and that are specified in the notice given to the veterinarian under section 9-14.

The note following subsection 9-13(1) explains to the reader that a decision to accredit a veterinarian subject to additional conditions is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

Subsection 9-13(2) provides, without limiting paragraph 9-13(1)(b), additional conditions may relate to any matters stated in the notice given by the veterinarian under paragraph 9-12(2)(e) or (3)(e) relating to conflicts of interest.

Subsection 9-13(3) requires accredited veterinarians to give notice to the Secretary of the following:

- each interest, pecuniary or otherwise (if any), that the accredited veterinarian acquires and that conflicts or could conflict with the accredited veterinarian's ability to properly carry out export operation in approved export programs or has not been previously notified to the Secretary;
- any other change that could affect the accredited veterinarian's ability to properly carry out those export operations.

The note following subsection 9-13(3) provides an example that paragraph 9-13(3)(b) would cover a change to a matter referred to in paragraph 9-12(2)(c), (d) or (e) or (3)(c), (d) or (e).

Subsection 9-13(4) provides that a notice that is required to be given under subsection 9-13(3), must be given as soon as practicable after the interest is acquired or the change occurs (as the case may be).

Subsection 9-13(5) provides that an accredited veterinarian must carry out the export operations the accredited veterinarian is required to carry out in each approved export program for which the veterinarian is the accredited veterinarian.

Subsection 9-13(6) provides that, if an accredited veterinarian receives a written notice from the Secretary requiring the veterinarian to undertake specified further training that is likely to improve the veterinarian's ability to carry out export operations in approved export programs, the accredited veterinarian must complete the training satisfactorily as required by the notice.

Subsection 9-13(7) requires an accredited veterinarian who has carried out export operations in an approved export program in relation to prescribed livestock to give the Secretary, upon the Secretary's written request, a copy of each document that was given to the accredited veterinarian in connection with the export operations and that is specified or described in the request. The accredited veterinarian must give the required documents to the Secretary within 14 days after receiving the request, or within a shorter period as specified in the request.

The note following subsection 9-13(7) refers the reader to subsection 9-26(3), which deals with requirements to keep a copy of certain documents.

9-14 Notice of accreditation

Section 9-14 requires the Secretary, upon accrediting a veterinarian under paragraph 9-12(1)(a), to provide the applicant with a written notice of accreditation.

The notice must state a unique accreditation number covered by the accreditation, the kind of export operations covered by the accreditation, the date the accreditation takes effect, the period the accreditation remains in force, any additional conditions of the accreditation and, if the veterinarian is accredited to carry out pre-export preparation operations in approved export programs in one or more States or Territories, each State or Territory covered by the accreditation.

9-15 Period of effect of accreditation

Section 9-15 specifies that an accreditation of a veterinarian, including an accreditation that has been renewed, takes effect on the day stated in the notice given to the veterinarian under section 9-14 (for new accreditations) or subsection 9-17(5) (for renewed accreditations) and remains in force for 5 years or, if the Secretary considers it appropriate, a period of less than 5 years. This ensures accredited veterinarians maintain the currency of their qualifications to conduct export operations.

The note following section 9-15 explains that the Secretary may accredit a veterinarian, or renew the accreditation of a veterinarian, for a period of less than 5 years under subsections 9-12(4) (for new accreditations) and 9-17(4) (for renewed accreditations).

Division 3—Renewal of accreditation

9-16 Application to renew accreditation

Subsection 9-16(1) provides that an accredited veterinarian (other than a veterinarian whose accreditation is suspended in whole or in part) may apply to the Secretary to renew their accreditation.

The note following subsection 9-16(1) refers the reader to Division 9 of Chapter 9 of the Animals Rules for requirements for applications.

Subsection 9-16(2) provides that an application for renewal of accreditation must be made in the period that is between 180 days and 60 days before the accreditation is due to expire. The purpose of providing a specific timeframe for allowing applications to be made is to give the Secretary sufficient time to consider an application before a decision is required to be made. Requiring a person to apply for renewal at between 180 and 60 days before the expiry date ensures that the Secretary has sufficient time to decide the application before the approval expires.

The note following subsection 9-16(2) provides an example if the accreditation of a veterinarian 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.

Subsection 9-16(3) deals with applications to renew the accreditation of a veterinarian that are made after the period applying in subsection 9-16(2). These applications are dealt with under Division 2 of the Animals Rules as applications for accreditation (rather than renewals).

9-17 Secretary must decide whether to renew accreditation

Subsection 9-17(1) provides that, on receiving an application under section 9-16 to renew the accreditation of a veterinarian, the Secretary must decide to either renew or to refuse to renew the accreditation.

The first note following subsection 9-17(1) refers the reader to Division 9 of the Animals Rules for matters relating to dealing with applications.

The second note following subsection 9-17(1) explains to the reader that a decision to refuse to renew the accreditation of a veterinarian is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the Secretary must give the applicant written notice of the decision (section 382 of the Act).

Subsection 9-17(2) provides that the Secretary may renew the accreditation if the Secretary is satisfied that the requirements in subsections 9-12(2) or (3) (as the case requires) are met. The requirements are the same as those for accrediting a veterinarian.

Subsection 9-17(3) provides that if the Secretary renews the accreditation of a veterinarian, the accreditation is subject to the conditions provided by subsections 9-13(3) to (7) and any additional conditions the Secretary considers appropriate and that are specified in the notice given under subsection 9-17(5).

Subsection 9-17(4) provides that if the Secretary renews the accreditation of a veterinarian, the Secretary may, if the Secretary considers it appropriate, renew the accreditation for a period of less than 5 years.

The note following subsection 9-17(4) explains to the reader that a decision to renew the accreditation of a veterinarian for a period of less than 5 years is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

Subsection 9-17(5) provides that if the accreditation of a veterinarian is renewed, the Secretary must give the veterinarian a written notice stating the information referred to in section 9-14.

The note following subsection 9-17(5) explains to the reader that the renewed accreditation remains in force as provided by section 9-15.

Division 4—Variation of accreditation

9-18 Application by accredited veterinarian

Subsection 9-18(1) provides that an accredited veterinarian may apply to the Secretary for the following kinds of variations in relation to their accreditation:

- a variation to the accreditation of the veterinarian in relation to:
 - the kinds of export operations covered by the accreditation; or
 - if the veterinarian is accredited to carry out pre-export preparation operations in approved export programs in one or more States or Territories, a State or Territory covered by the accreditation;
- a variation of the conditions of the accreditation; or
- a variation to particulars relating to the accreditation to make a minor change to a matter (including to correct a minor or technical error); or
- a variation to any other aspect of the accreditation.

The note to subsection 9-18(1) explains to the reader that Division 9 of Chapter 9 of the Animals Rules sets out requirements for applications.

Subsection 9-18(2) provides that if the Secretary receives an application under subsection 9-18(1), the Secretary must decide to either make or refuse to make the variation.

The first note following subsection 9-18(2) refers the reader to Division 9 of Chapter 9 of the Animals Rules, which sets out requirements for applications.

The second note following subsection 9-18(2) explains to the reader that a decision to refuse to make the variation is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act and that the Secretary must give the applicant written notice of the decision (section 382 of the Act).

Subsection 9-18(3) allows the Secretary to make the variation if the Secretary is satisfied that, if the variation were made, the requirements in paragraph 9-12(2)(c) and (d) or (3)(c) and (d) (as the case may be) would continue to be met. These requirements are the same as for granting the original accreditation.

Subsection 9-18(4) provides that if the Secretary makes a variation in relation to the accreditation of a veterinarian under paragraph 9-18(2)(a), the Secretary must give the accredited veterinarian a written notice stating the details of the variation, the varied conditions (if applicable), the date the variation takes effect and any other information the Secretary considers appropriate.

The note following subsection 9-19(4) explains that the accreditation, as varied, remains in force as provided by section 9-15.

9-19 Secretary may make variations in relation to accreditation

Subsection 9-19(1) has the effect that the Secretary may, on the Secretary's own initiative, vary any aspect of the accreditation, or vary the conditions of the accreditation, including by removing conditions or imposing new conditions.

The note following subsection 9-19(1) explains to the reader that a decision to vary an accreditation of a veterinarian on the Secretary's initiative is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

However, subsection 9-19(2) provides that the Secretary may make a variation under subsection 9-19(1) only if the Secretary reasonably believes that:

- the requirements in paragraph 9-12(2)(c) or (d) or (3)(c) or (d) (as the case requires) is no longer being met;
- a condition of the accreditation has been, or is being, contravened; or

- it is necessary to do so to correct a minor or technical error, or to take account of information notified under subsection 9-13(3) (in relation to acquired interests or other changes that could affect the veterinarian’s ability to properly carry out operations).

Subsection 9-19(3) provides that the Secretary must not make a variation unless the Secretary has given a written notice to the accredited veterinarian in accordance with subsection 9-19(4). Under subsection 9-19(4), the notice must:

- specify each proposed variation and the grounds for each proposed variation;
- subject to subsection 9-19(5), request the accredited veterinarian to give the Secretary, within 14 days after the notice is given, a written statement showing cause why the proposed variation should not be made; and
- include a statement setting out the accredited veterinarian’s right to seek review of a decision to make the proposed variation.

Subsection 9-19(5) provides that the notice is not required to include a request for the accredited veterinarian to give the Secretary a written statement showing cause why the proposed variation should not be made if the Secretary reasonably believes that the grounds for the proposed variation are serious and urgent.

Subsection 9-19(6) provides that if the Secretary makes a variation in relation to the accreditation of a veterinarian under subsection 9-19(1), the Secretary must give the accredited veterinarian a written notice that states the details of the variation, the varied conditions and any new conditions (if any), the date the variation takes effect, and any other information the Secretary considers appropriate.

Subsection 9-19(7) provides that, if the accredited veterinarian was given a notice under subsection 9-19(3) that included a request to show cause as to why a proposed variation should not be made, the variation must not take effect before the earlier of the following:

- the day after any response to the request is received by the Secretary;
- the end of 14 days after the notice was given.

The note following subsection 9-19(7) explains that the accreditation, as varied, remains in force as provided by section 9-15.

Division 5—Suspension of accreditation

9-20 Secretary may suspend accreditation of veterinarian in whole or in part

Subsection 9-20(1) sets out the grounds on which the Secretary may suspend the accreditation of a veterinarian in whole or in part. The accreditation of a veterinarian may be suspended by the Secretary if the Secretary reasonably believes any of the following:

- the accredited veterinarian ceases to be registered as a veterinarian in the State or Territory where the veterinarian is accredited to carry out pre-export preparation operations in approved export programs.
- a condition has been imposed on the accredited veterinarian’s registration in a State or Territory that prevents the veterinarian from examining, inspecting, testing or treating animals in that State or Territory;
- the accredited veterinarian is not a fit and proper person;
- the accredited veterinarian has contravened a condition of the accreditation;
- the accredited veterinarian failed to comply with a direction given to the accredited veterinarian under subsection 314(2) of the Act to remedy a deficiency in carrying out export operations in an approved export program;
- the accredited veterinarian:
 - made a false, misleading or incomplete statement in an application under Part 3 of Chapter 9 of the Animals Rules; or
 - gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Act; or
 - gave false, misleading or incomplete information or documents to the Secretary or to the Department under a prescribed agriculture law;
- the accredited veterinarian failed to keep records in accordance with section 9-26;
- the accredited veterinarian failed to make reports in accordance with subsection 9-27(1);
- the accredited veterinarian has contravened another requirement of the Act.

The first note following subsection 9-20(1) explains that under subsection 9-20(5), a suspension must not last for more than 28 days.

The second note following subsection 9-20(1) explains that a decision to suspend the accreditation of a veterinarian is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

The third note following subsection 9-20(1) alerts the reader that, if the accreditation of a veterinarian is suspended in whole or in part, the veterinarian may not apply to the Secretary to renew the accreditation under subsection 9-16(1).

Subsection 9-20(2) provides that the Secretary must not suspend the accreditation of a veterinarian under subsection 9-20(1) unless the Secretary has given a written notice to the accredited veterinarian in accordance with subsection 9-20(3).

Subsection 9-20(3) provides that a notice given under subsection 9-20(2) must:

- state that the Secretary proposes to suspend the accreditation of the veterinarian in whole or in part (9-20(3)(a));
- if the Secretary proposes to suspend the accreditation in part, give details of the part that is proposed to be suspended (9-20(3)(b));
- specify the grounds for the proposed suspension (9-20(3)(c));
- specify the start date of the proposed suspension (9-20(3)(d));
- specify the period of the proposed suspension (9-20(3)(e));
- subject to subsection 9-20(4), request the accredited veterinarian to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the accreditation should not be suspended as proposed (9-20(3)(f));
- include a statement setting out the accredited veterinarian's right to seek review of a decision to suspend the accreditation as proposed (9-20(3)(g)); and
- if the notice includes the request to provide a written statement showing cause why the accreditation should not be suspended as proposed, state that the proposed suspension will start on the date specified in the notice if the Secretary does not receive a response to the request within 14 days after the notice is given (9-20(3)(h)).

Subsection 9-20(4) provides that a notice under subsection 9-20(2) is not required to include a request for the accredited veterinarian to give the Secretary a written statement showing cause why the accreditation should not be suspended, if the Secretary reasonably believes that the grounds for the suspension are serious and urgent.

Subsection 9-20(5) provides that a suspension of the accreditation of a veterinarian must not be for more than 28 days.

9-21 Notice and start of suspension

Subsection 9-21(1) requires the Secretary, if they decide to suspend the accreditation of a veterinarian, in whole or in part, to provide the accredited veterinarian a written notice. The notice must state:

- that the accreditation is to be suspended in whole or in part;

- details of the part that is to be suspended (where relevant);
- the reasons for the suspension;
- the date the suspension is to start; and
- the period of the suspension.

The note following subsection 9-21(1) refers the reader to subsection 9-20(5), which provides that a suspension must not be for more than 28 days.

Subsection 9-21(2) provides that, if the notice (the *show cause notice*) given to the accredited veterinarian under subsection 9-20(2) included a request to provide a written statement showing cause why the accreditation should not be suspended as proposed, and a response to the request is provided by the accredited veterinarian within 14 days after the notice was given, the suspension must not start before the day after the response is received.

Subsection 9-21(3) provides that, if the notice given to the accredited veterinarian under subsection 9-20(2) included the request referred to in paragraph 9-20(3)(f), the suspension will start on the date specified in the notice if the Secretary does not receive a response to the request within 14 days after the notice is given.

Subsection 9-21(4) provides that the suspension starts on the day specified in the notice if the notice did not include a request for the accredited veterinarian to provide a written statement showing cause why the accreditation should not be suspended.

9-22 Revocation of suspension

Section 9-22 enables the Secretary to revoke a suspension of the accreditation of a veterinarian under subsection 9-20(1) by written notice to the accredited veterinarian.

9-23 Effect of suspension

Subsection 9-23(1) provides that, for the period during which accreditation is suspended in whole or in part, the accreditation remains in force and the requirements of the Act in relation to the accreditation, including the conditions of the accreditation, must be complied with.

However, subsection 9-23(2) provides that, during the period of suspension, the veterinarian must not carry out export operations in approved export programs in relation to which the accreditation is suspended.

The note following subsection 9-23(2) alerts the reader that, if the accreditation of a veterinarian is suspended in whole or in part under subsection 9-20(1), the veterinarian may not apply to the Secretary to renew the accreditation (subsection 9-16(1)).

Division 6—Revocation of accreditation

9-24 Secretary may revoke accreditation of veterinarian

Subsection 9-24(1) sets out the grounds on which the Secretary may revoke the accreditation of a veterinarian. The grounds for revoking accreditation are the same as those for suspending accreditation.

The first note following subsection 9-24(1) explains that a decision to revoke the accreditation of a veterinarian is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

The second note following subsection 9-24(1) alerts the reader that, if the accreditation of a veterinarian is revoked, the veterinarian must not make an application for accreditation under subsection 9-11(1) unless the Secretary has given the veterinarian a written notice permitting the veterinarian to apply for accreditation (subsection 9-11(2)).

Subsection 9-24(2) provides that the Secretary must not revoke the accreditation of a veterinarian under subsection 9-24(1) unless the Secretary has given a written notice to the accredited veterinarian in accordance with subsection 9-24(3).

Subsection 9-24(3) provides that a notice given under subsection 9-24(2) must:

- state that the Secretary proposes to revoke the accreditation of the veterinarian (9-24(3)(a));
- specify the grounds for the proposed revocation (9-24(3)(b));
- specify the date the proposed revocation is to take effect (9-24(3)(c));
- subject to subsection 9-24(4), request the accredited veterinarian to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the accreditation should not be revoked (9-24(3)(d));
- include a statement setting out the accredited veterinarian's right to seek review of a decision to revoke the accreditation (9-24(3)(e));
- if the notice includes the request referred to in paragraph 9-24(3)(d), state that the proposed revocation will take effect on the date specified in the notice if the Secretary does not receive a response to the request within 14 days after the notice is given (paragraph 9-24(3)(f)).

Subsection 9-24(4) provides that a notice under subsection 9-20(3) is not required to include the request for the accredited veterinarian to give the Secretary a written statement showing cause why accreditation should not be revoked, if the Secretary reasonably believes that the grounds for revocation are serious and urgent.

9-25 Notice of revocation

Subsection 9-25(1) requires the Secretary, if they decide to revoke the accreditation of a veterinarian under subsection 9-24(1), to give the accredited veterinarian a written notice stating the accreditation is to be revoked, the reasons for the revocation, and the date the revocation is to take effect.

Subsection 9-25(2) and (3) have the combined effect that, where the notice (the *show cause notice*) given to the accredited veterinarian under subsection 9-24(2) included a request to provide a written statement showing cause why the accreditation should not be revoked:

- if the Secretary receives a response to the request within 14 days after the notice was given, the revocation must not take effect before the day after the response is received;
- if the Secretary does not receive a response to the request within 14 days after the notice is given, the revocation takes effect on the date specified in the notice.

Subsection 9-21(4) provides that if the notice given under subsection 9-24(2) did not include a request for the accredited veterinarian to provide a written statement showing cause why the accreditation should not be revoked, the revocation takes effect on the day specified in the notice.

Division 7—Records and reports

9-26 Records

Subsection 9-26(1) requires that an accredited veterinarian who is engaged to carry out export operations in an approved export program that relates to prescribed livestock must keep records of the following:

- if the accredited veterinarian administers or supervises any veterinary examination, inspection, testing or treatment of prescribed livestock in connection with the approved export program:
 - details of the examination, inspection, testing or treatment;
 - the date when the examination, inspection, testing or treatment was administered or supervised;
 - the place where the examination, inspection, testing or treatment was administered or supervised;
 - if a treatment involving the administration of a drug or product to prescribed livestock is carried out—the name and amount of the active constituent in the drug or product that was administered; and
 - the results of any testing carried out.
- if samples have been taken in connection with the approved export program—details of how the samples were handled, stored and transported;

- details about pre-export quarantine or isolation of prescribed livestock to which the approved export program relates, including the length and conditions of the quarantine or isolation;
- sufficient information to identify (either generally or specifically as required to meet importing country requirements) prescribed livestock that have been examined, inspected, tested, treated, or prepared for export at premises that have been approved by the Secretary for pre-export quarantine or isolation under paragraph 8-5(2)(a).

Accredited veterinarians play a major role in the pre-export preparation of prescribed livestock for export, including by collecting samples for laboratory testing of the livestock in accordance with importing country requirements, specified pre-export treatments (for example, treatments and vaccinations) and pre-export health inspections.

The export of livestock is highly regulated by both the Act, and the Animals Rules, and must meet the requirements provided by the Australian Standards for the Export of Livestock. There is a heightened risk regarding disease and illness of livestock entering an overseas destination. Therefore, it is essential that the registered veterinarian has a comprehensive understanding of the legislative framework, and complies with the requirements to maintain and keep records to ensure the traceability of the livestock.

Subsection 9-26(2) requires that the records referred to in subsection 9-26(1) be retained for at least 2 years after the prescribed livestock to which the record relates leave the registered establishment where they were held and assembled for export.

Subsection 9-26(3) requires an accredited veterinarian who carries out export operations in an approved export program in relation to prescribed livestock to keep a copy of each document given to the accredited veterinarian in connection with the export operations for at least 2 years after the livestock leave the registered establishment where they were held and assembled for export.

The note following subsection 9-26(3) alerts the reader that under section 316 of the Act, an accredited veterinarian may commit an offence of strict liability if the accredited veterinarian contravenes subsection 9-26(2) or (3).

9-27 Reports

Subsection 9-27(1) provides that an accredited veterinarian who is engaged to accompany prescribed livestock during their journey from Australia to their overseas destination in connection with an approved export program must give the Secretary written reports in accordance with the reporting requirements provided by the Australian Standards for the Export of Livestock.

The note following section 9-27 alerts the reader that under section 316 of the Act, an accredited veterinarian may commit an offence of strict liability if the accredited veterinarian contravenes section 9-27.

Subsection 9-27(2) provides that the Secretary may publish information included in an end of voyage report given to the Secretary by an accredited veterinarian as required by subsection 9-27(1).

Division 8—Fit and proper persons

9-28 Fit and proper person test

Subsection 372(1) of the Act sets out which provisions in the Act require the Secretary to comply with the requirements of section 372 of the Act 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 Animals Rules).

Subsection 9-28(1) prescribes, for the purposes of paragraph 372(1)(d) of the Act, the provisions of the Animals Rules to which the fit and proper person test will apply. These are:

- section 9-12 (relating to a decision to accredit a veterinarian);
- section 9-17 (relating to a decision to renew the accreditation of a veterinarian);
- subsection 9-20(1) (relating to a decision to suspend, in whole or in part, the accreditation of a veterinarian); and
- subsection 9-24(1) (relating to a decision to revoke the accreditation of a veterinarian).

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, has been refused, when determining whether the person is a fit and proper person.

Subsection 9-28(2) prescribes section 9-11 of the Animals Rules (application by veterinarian to be accredited) for the purposes of subparagraph 372(2)(e)(v) of the Act.

Subparagraph 372(2)(e)(v) of the Act allows the rules to prescribe any other provision of the Act to be considered for this purpose. This has the effect that when determining whether a veterinarian is a fit a proper person, the Secretary must consider whether an application under section 9-11 of the Animals Rules made by the veterinarian, or an associate of the veterinarian, was refused. It is expected that the Secretary consider this matter to determine 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 the associates of the person.

Subsection 9-28(3) prescribes an accredited veterinarian for the purposes of paragraph 372(4)(b) of the Act. This means the matters listed in subsection 372(2) that must be given regard to, in determining whether an accredited veterinarian is a fit and proper person, refer only to the accredited veterinarian and not an associate of the veterinarian.

Subsection 9-28(4) prescribes, for the purposes of 374(1)(g) of the Act, an accredited veterinarian. This has the effect that, if an accredited veterinarian or an associate of the accredited veterinarian is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the accredited veterinarian must notify the Secretary, in writing, of the conviction or order in accordance with subsection 374(4) or (5) of the Act (as the case may be).

The purpose of this section is to ensure that a prospective veterinarian is of a suitable character to conduct assessments. Assessments are necessary to establish whether export operations comply with the Act and the requirements of importing countries. Assessments also involve access to business premises where commercially sensitive operations are conducted. It is essential that accredited veterinarians are trustworthy and undertake assessments with integrity. For these reasons, the fit and proper test applies when deciding whether to approve an individual to conduct assessments and when deciding whether to revoke an approval to conduct assessments.

Division 9—Matters relating to applications

9-29 Applications to which this Division applies

Section 9-29 provides that Division 9 of Part 3 of Chapter 9 of the Animals Rules applies in relation to applications made under the following:

- subsection 9-11(1) to accredit a veterinarian;
- subsection 9-16(1) to renew the accreditation of a veterinarian;
- subsection 9-18(1) to make a variation in relation to the accreditation of a veterinarian.

9-30 Requirements for applications

Subsection 9-30(1) requires applications of the kind referred to in section 9-29 to be made in a manner and form approved by the Secretary. These applications must also include the information, and be accompanied by the documentation, required by the approved form.

Subsection 9-30(2) enables the Secretary to accept any information or document previously given to the Secretary in connection with an application to which Division 9 applies as satisfying any requirement to give that information or document under subsection 9-30(1).

Subsection 9-30(3) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in subsection 9-30(1) for the application.

9-31 Dealing with applications

Subsection 9-31(1) sets out the consideration period within which the Secretary must make a decision in relation to a kind of application listed in section 9-29. If the application complies with the requirements referred to in subsection 9-30(1), and the application has not been

withdrawn, a decision must be made by the Secretary within the period of 120 days starting on the day after the application is received.

The note following section 9-31 alerts the reader that under subsection 9-30(3), an application is taken not to have been made if the application does not comply with the requirements referred to in subsection 9-30(1).

Subsection 9-31(2) provides that, if the Secretary does not make a decision in relation to the application within the consideration period, the Secretary is taken to have refused the application at the end of that period.

Subsection 9-31(3) allows the Secretary to make a request to the applicant to provide further specified information or documents for the purpose of making a decision under subsection 9-31(1).

Part 4—Approved export programs

Division 1—Purpose of this Part

9-32 Purpose of this Part

Subsection 311(1) of the Act allows the Secretary to approve programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of eligible live animals, or the health and condition of eligible animal reproductive material.

Subsection 311(4) of the Act allows the rules to make provision for and in relation to:

- matters relating to the approval of programs of export operations;
- the implementation, variation, suspension and revocation of approved export programs;
- dealing with inconsistencies between approved export programs that relate to the export operations.

Subsection 311(5) of the Act allows the rules to also provides for:

- the giving of directions to a person who wishes to export eligible live animals or eligible animal reproductive material in relation to the implementation of an approved export program;
- the publishing by the Secretary of records and reports made by accredited veterinarians and authorised officers in relation to approved export programs.

Section 9-32 provides that Part 4 of Chapter 9 (sections 9-32 to 9-48) of the Animals Rules is made for the purposes of subsections 311(4) and (5) of the Act, and makes provision for and in relation to programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of prescribed livestock.

Division 2—Exporter’s approved export programs

Subdivision A—Approval of program of export operations

9-33 Application by exporter for approval of program of export operations

Subsection 9-33(1) allows an exporter who wants to export one or more kinds or classes of livestock to:

- prepare a program of export operations to be undertaken by an accredited veterinarian for the purpose of ensuring the health and welfare of each kind or class of livestock in the course of some or all of the export operations of the exporter in relation to each kind or class of livestock (paragraph 9-33(1)(a)); and
- apply, in writing, to the Secretary for approval of the program of export operations (paragraph 9-33(1)(b)).

Subsection 9-33(2) provides that, for the purposes of paragraph 9-33(1)(a) and in addition to the matters covered by subsection 311(2) of the Act (which deals with approved export programs), a program of export operations in relation to one or more kinds or classes of livestock may be undertaken within or outside Australian territory and may include operations other than those referred to in subparagraphs 311(2)(a)(i) to (v) of the Act.

Subsection 9-33(3) provides that an application under paragraph 9-33(1)(b) for approval of a program of export operations must be accompanied by a written record of the program of export operations and may be made at the same time as an application under subsection 150(1) of the Act for approval of a proposed arrangement for those export operations.

9-34 Assessment of application and Secretary’s decision

Subsection 9-34(1) provides that section 9-34 applies if an exporter makes an application under paragraph 9-33(1)(b) for approval of a program of export operations.

Subsection 9-34(2) allows the Secretary, for the purpose of deciding whether to approve the program of export operations under subsection 311(1) of the Act, to request the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the application.

The note following subsection 9-34(1) explains that under subsection 311(1) of the Act, an approval by the Secretary of a program of export operations must be in writing.

Subsection 9-34(3) requires a request by the Secretary under subsection 9-34(2) for additional information or documents to specify the period within which the request must be complied with. The request by the Secretary may be made orally or in writing.

Subsection 9-34(4) allows the Secretary to approve the program of export operations if the Secretary is satisfied that the program is for the purpose of ensuring the health and welfare of each kind or class of livestock to which the program relates in the course of the export operations included in the program.

The first note following subsection 9-34(4) alerts the reader that under Division 3 of Part 5 of Chapter 9 of the Act, an exporter may commit an offence for certain contraventions relating to approved export programs.

The second note following subsection 9-34(4) explains that under section 313 of the Act, the Secretary may direct an authorised officer to undertake some or all of the export operations in an exporter's approved export program.

Subsection 9-34(5) provides that, in deciding whether to approve the program of export operations, the Secretary may have regard to whether the program of export operations complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the program relates.

Subsection 9-34(6) provides that if the Secretary approves the program of export operations, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the approved export program.

Subsection 9-34(7) provides that the Secretary is taken to have decided not to approve the program of export operations if the Secretary has not made a decision on the application within 120 days (the *initial consideration period*), after the day the application was received (or, if the application was varied, the day the variation was made) or such extended period as may apply under subsection 9-34(8).

Subsection 9-34(8) extends the initial consideration period for the application, for each request for further information or documents made under subsection 9-34(2), by the number of days in the period beginning on the day the request was made and ending on the day the request was complied with or, if the request was not complied with within period specified in the request, the last day of that period.

Subsection 9-34(9) requires the Secretary, if they approve the program of export operations, to give the applicant a written notice stating the following:

- the day the approved export program takes effect; and
- either:
 - that the approved export program remains in force unless it is suspended or revoked; or
 - the expiry date for the approved export program if applicable.

Subsection 9-34(10) provides that if the Secretary decides, or is taken to have decided, not to approve the program of export operations, the Secretary must give the applicant written notice of the decision.

The note following subsection 9-34(10) explains that a decision to refuse to approve a program of export operations is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the notice must include the reasons for the decision, as required by subsection 382(1) of the Act.

9-35 Period of effect of approved export program

Section 9-35 sets out the period of effect of an approved export program. Paragraph 9-35(1)(a) specifies an approved export program remains in force until its expiry date unless the approved export program is revoked under section 9-42 or 9-43. Paragraph 9-35(1)(b) specifies that, if there is no expiry date for the approved export program, the approved export program remains in force until the approved export program is revoked under section 9-42 or 9-43.

Subsection 9-35(2) provides that, if the whole or a part of an approved export program is suspended under paragraph 9-39(3)(a) or subsection 9-41(1), the whole or the part of the approved export program (as the case may be) is not in force during the period of the suspension.

Subdivision B—Variation of approved export program

9-36 Holder may apply for approval of variation of approved export program

Subsection 9-36(1) allows the holder of an approved export program to apply to the Secretary, in writing, to approve a variation of the approved export program.

Subsection 9-36(2) requires the Secretary, on receiving an application for a variation of the approved export program, to decide to either approve the variation or to refuse to approve the variation.

The note following subsection 9-36(2) explains to the reader that a decision to refuse to approve a variation of an approved export program is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that the Secretary must give the applicant written notice of the decision.

Subsection 9-36(3) allows the Secretary, for the purpose of making a decision in relation to the application, to request the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to provide further specified information or documents relevant to the application.

Subsection 9-36(4) requires the request under subsection 9-36(3) to specify the period within which the request must be complied with. The request may be made orally or in writing.

Subsection 9-36(5) enables the Secretary to approve a variation of the approved export program if the Secretary is satisfied that the approved export program, as proposed to be varied, is for the purpose of ensuring the health and welfare of a kind or class of livestock in the course of export operations to which the approved export program relates.

Subsection 9-36(6) provides that, in deciding whether to approve a variation of the approved export program, the Secretary may have regard to whether the approved export program, as proposed to be varied, complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the approved export program relates.

Subsection 9-36(7) requires the Secretary, if they approve the variation as proposed, to give the applicant a written notice stating the details of the variation and the day the variation takes effect.

Subsection 9-36(8) provides that the Secretary is taken to have decided not to approve a variation of the approved export program if the Secretary has not made a decision on the application within 120 days (the *initial consideration period*), after the day the application was received or, if the application was varied, the day the application was varied, or such extended period as may apply under subsection 9-36(9).

Subsection 9-36(9) extends the initial consideration period for the application, for each request for further information or documents made under subsection 9-36(3), by the number of days in the period beginning on the day the request was made and ending on the day the request was complied with or, if the request was not complied with within the period specified in the request, the last day of that period.

9-37 Secretary may require the holder to vary approved export program

Subsection 9-37(1) enables the Secretary, by written notice (a *variation notice*), to the holder of an approved export program, to require the holder to vary the approved export program if the Secretary is satisfied that the variation is necessary for the purpose of ensuring the health and welfare of a kind or class of livestock in the course of export operations to which the approved export program relates.

The note following subsection 9-37(1) explains to the reader that a decision to require the holder to vary an approved export program is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act.

Subsection 9-37(2) provides that, for the purposes of subsection 9-37(1), the Secretary may have regard to whether the variation is necessary to ensure that the approved export program complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the approved export program relates.

Subsection 9-37(3) sets out the requirements for a variation notice given under subsection 9-37(1). A variation notice must:

- identify (in general or specific terms) the variation required;
- require the holder of the approved export program to give the varied approved export program to the Secretary within a specified period; and
- set out the reasons for the decision to require the holder to vary the approved export program and the holder's right to apply for review of the decision.

Subsection 9-37(4) requires the holder of the approved export program to comply with the variation notice.

Subsection 9-37(5) provides that, if the holder complies with the variation notice, the Secretary may approve the varied approved export program by written notice given to the holder. The notice must state the day the varied approved export program takes effect.

Subsection 9-37(6) allows the Secretary to amend or revoke the variation notice by giving a further written notice to the holder of the approved export program.

9-38 When approved export program includes a variation

Section 9-38 specifies when an approved export program under Division 2 of Part 4 of Chapter 9 includes a variation.

An approved export program includes a variation of the approved export program if either:

- the holder applied for a variation of the approved export program and the variation was approved by the Secretary under 9-36(2)(a); or
- the variation was required by a notice given by the Secretary under subsection 9-37(1) and the Secretary approved the varied approved export program under subsection 9-37(5).

Subdivision C—Suspension of approved export program

Subdivision C of Division 2 of Part 4 of Chapter 9 of the Animals Rules deals with matters relating to the suspension of an approved export program.

9-39 Holder may request suspension of approved export program

Subsection 9-39(1) allows the holder of an approved export program to request the Secretary to suspend the whole or a part of the approved export program.

Subsection 9-39(2) sets out the requirements for a request for suspension. The request for suspension must be in writing and specify the reasons for the suspension and whether the whole or a part of the approved export program is to be suspended. If a part of the approved export program is to be suspended, the request must also specify (as the case requires):

- the part of the approved export program that is to be suspended; or
- the export operations that are to be suspended; or
- any other aspects in relation to which the approved export program is to be suspended (for example, in relation to the kinds or classes of livestock, the countries to which the livestock are to be exported, or the methods of transport of the livestock).

Subsection 9-39(3) requires the Secretary, on receiving a request from the holder of an approved export program under subsection 9-39(1), to decide to either suspend or to refuse to suspend the whole or the part of the approved program, as requested.

The note following subsection 9-39(3) explains to the reader that a decision to refuse to suspend the whole or the part of the approved export program is a reviewable decision (section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act). The note also explains that the Secretary must give the applicant written notice of the decision, in accordance with section 382 of the Act.

Subsection 9-39(4) allows the Secretary, for the purpose of making a decision in relation to a request from the holder of an approved export program under subsection 9-39(1), to request the holder, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the holder's request.

Subsection 9-39(5) requires the request by the Secretary under subsection 9-39(4) for additional information or documents to specify the period within which the request must be complied with. The request may be made orally or in writing.

Subsection 9-39(6) details the grounds on which the Secretary may refuse to suspend the whole or the part of the approved export program, as requested under subsection 9-39(1). The only ground for refusing a suspension of the approved export program, in whole or in part, is if the Secretary is satisfied the refusal is necessary for the purpose of ensuring the health or welfare of a kind or class of livestock in the course of export operations to which the approved export program relates.

Subsection 9-39(7) enables the Secretary, in deciding whether the ground listed in subsection 9-39(6) exists, to have regard to whether the approved export program complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the approved export program relates.

Subsection 9-39(8) requires the Secretary, if they suspend the whole or the part of the approved export program, to give the applicant written notice of the suspension. The suspension takes effect on the day specified in the notice or, if no day is specified in the notice, on the day the notice is given to the applicant.

The note following subsection 9-39(8) alerts the reader that under subsection 9-35(2), an approved export program, or a part of an approved export program, that is suspended is not in force during the period of the suspension.

Subsection 9-39(9) provides that the Secretary is taken to have decided not to suspend the whole or the part of the approved export program, as requested under subsection 9-39(1), if the Secretary has not made a decision on the request within 120 days (the *initial consideration period*) after the day the request was received, or such extended period as may apply under subsection 9-39(10).

Subsection 9-39(10) extends the initial consideration period for a request for a suspension under subsection 9-39(1), for each request made by the Secretary for further information or documents under subsection 9-39(4), by the number of days in the period beginning on the day the Secretary's request was made and ending on:

- the day the Secretary's request was complied with; or

- if the Secretary's request was not complied with within the period specified in the Secretary's request—the last day of that period.

9-40 Request to revoke suspension

Subsection 9-40(1) allows the holder of an approved export program to request the Secretary to revoke a suspension of the whole or a part of an approved export program made under paragraph 9-39(3)(a).

Subsection 9-40(2) requires a request to revoke a suspension to be in writing and to state the reason for the request.

Subsection 9-40(3) provides that, upon a receiving a request under subsection 9-40(1) from the holder of an approved export program, the Secretary may:

- revoke the suspension by written notice to the holder if the Secretary is satisfied that the reasons for the suspension no longer exist and there is no reason why the suspension should not be revoked; or
- in any other case, suspend the whole or a part of the approved export program under section 9-41, or revoke the approved export program under section 9-43.

9-41 Secretary may suspend approved export program

Subsection 9-41(1) allows the Secretary to suspend, by written notice on the Secretary's own initiative, the whole or a part of an approved export program, if the Secretary is satisfied that the suspension is necessary for the purpose of ensuring the health or welfare of a kind or class of livestock in the course of export operations to which the approved export program relates.

The first note following subsection 9-41(1) alerts the reader that under subsection 9-35(2), an approved export program, or a part of an approved export program, that is suspended is not in force during the period of suspension.

The second note following subsection 9-41(1) explains that a decision to suspend an approved export program, or a part of an approved export program, is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The note also explains that a notice given under subsection 9-41(1) must include the reasons for the decision, in accordance with subsection 382(1) of the Act.

Subsection 9-41(2) provides that, for the purposes of deciding whether to suspend the approved export program (or part of the approved export program) under subsection 9-41(1), the Secretary may have regard to whether the approved export program complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the approved export program relates.

Subsection 9-41(3) specifies that a period of suspension must not exceed 12 months.

Subsection 9-41(4) details the requirements for a notice given under subsection 9-41(1). The notice must:

- state that the whole or a part of an approved export program is to be suspended;
- set out the reasons for the suspension;
- specify the date the suspension is to take effect and the period of the suspension; and
- set out the holder's right to apply for a review of the decision.

If a part of the approved export program is to be suspended, the notice must also specify (as the case requires):

- the part of the approved export program that is to be suspended;
- the export operations that are to be suspended; or
- any other aspects in relation to which the approved export program is to be suspended (for example, in relation to the kinds or classes of livestock, the countries to which the livestock are to be exported, or the methods of transport of the livestock).

Subsection 9-41(5) allows the Secretary, under section 9-43, to revoke an approved export program that is suspended, or a part of which is suspended, even if the period of the suspension has not expired and on grounds that are the same as, or similar to, the grounds for the suspension.

Subdivision D—Revocation of approved export program

Subdivision D deals with matters relating to the revocation of an approved export program. An approved export program may be revoked upon request from the holder of an approved export program, or by written notice from the Secretary.

9-42 Holder may request revocation of approved export program

Subsection 9-42(1) provides that the holder of an approved export program (including an approved export program that is suspended, or a part of which is suspended) may request the Secretary, in writing, to revoke the approved export program.

The note following subsection 9-42(1) alerts the reader that, if the holder does not wish to revoke the approved export program for all purposes, the holder may apply to the Secretary under section 9-36 to approve a variation of the approved export program.

Subsection 9-42(1) requires the Secretary, if they receive a request from the holder of an approved export program under subsection 9-42(1), to revoke the approved program, by written notice to the holder, with effect on the day specified in the notice or, if no day is specified in the notice, on the day the notice is given to the holder.

9-43 Secretary may revoke approved export program

Subsection 9-43(1) allows the Secretary to revoke, by written notice on their own initiative, an approved export program, if the Secretary is satisfied that the revocation is necessary for the purpose of ensuring the health or welfare of each kind or class of livestock in the course of export operations to which the approved export program relates.

The note following subsection 9-43(1) explains that a decision to revoke an approved export program is a reviewable decision under section 11-1 of the Animals Rules and Part 2 of Chapter 11 of the Act. The notice under subsection 9-43(1) must include the reasons for the decision, in accordance with subsection 382(1) of the Act.

Subsection 9-43(2) provides that, in deciding whether to revoke an approved export program under subsection 9-43(1), the Secretary may have regard to whether the approved export program complies with the Australian Standards for the Export of Livestock in relation to the livestock to which the approved export program relates.

Subsection 9-43(3) sets out the requirements for a notice given under subsection 9-43(1). The notice must state that the approved export program is to be revoked, set out the reasons for the revocation, and specify the date the revocation is to take effect.

Division 3—Secretary’s approved export programs

9-44 Approvals of programs of export operations to be undertaken by authorised officers

Section 9-44 deals with matters relating to approvals of programs of export operations to be undertaken by authorised officers.

Subsection 9-44(1) provides that section 9-44 applies, if on the Secretary’s own initiative, the Secretary approves one or more programs of export operations, to be undertaken by authorised officers, for the purpose of ensuring the health and welfare of each kind or class of livestock that is to be exported by sea, in the course of export operations.

The first note following subsection 9-44(1) explains that under subparagraph 311(3)(a)(ii) of the Act, the Secretary may approve a program of export operations under subsection 311(1) of the Act on the Secretary’s own initiative.

The second note following subsection 9-44(1) alerts the reader that under subsection 311(1) of the Act, an approval by the Secretary of a program of export operations must be in writing.

The third note following subsection 9-44(1) explains that export operations in an approved export program covered by Division 3 of Chapter 9 of the Animals Rules will only be required to be undertaken if the Secretary directs an authorised officer to carry out the export operations under section 313 of the Act.

The fourth note following subsection 9-44(1) clarifies that an approved export program under Division 2 and an approved export program under Division 3 may apply to the same export operations of an exporter.

Subsection 9-44(2) provides that, for the purposes of subsection 9-44(1) and in addition to the matters covered by subsection 311(2) of the Act, a program of export operations in relation to one or more kinds or classes of livestock may be undertaken within or outside Australian territory and may include operations other than those referred to in subparagraphs 311(2)(a)(i) to (v) of the Act.

Subsection 9-44(3) allows the Secretary, if the Secretary considers it appropriate, to set an expiry date for an approved export program covered by Division 3.

9-45 Period of effect of approved export program

Section 9-45 sets out the period of effect of an approved export program covered by Division 3 of Chapter 9 of the Animals Rules.

Paragraph 9-45(a) specifies an approved export program remains in force until its expiry date unless the approved export program is revoked.

Paragraph 9-45(b) specifies that, if there is no expiry date for the approved export program, the approved export program remains in force until the approved export program is revoked.

9-46 Secretary may vary approved export program

Subsection 9-46(1) enables the Secretary to vary an approved export program covered by Division 3 if the Secretary is satisfied that the approved export program, as proposed to be varied, is for the purpose of ensuring the health and welfare of a kind or class of livestock in the course of export operations to which the approved export program relates.

Subsection 9-46(2) requires the Secretary, if they vary an approved export program under subsection 9-46(1), to notify in writing the exporters to whose export operations the approved export program relates.

Subsection 9-46(3) requires a notice given under subsection 9-46(2) to state the details of the variation and the day the variation takes effect.

Division 4—Other powers of the Secretary

9-47 Secretary may give direction to exporter in relation to implementation of approved export program

Subsection 9-47(1) allows the Secretary to give a direction, orally or in writing, to an exporter in relation to the implementation of an approved export program in relation to the export, or a particular export, of a kind or class of livestock by the exporter.

Subsection 9-47(2) requires an exporter to comply with a direction given under subsection 9-47(1).

9-48 Secretary may publish records and reports in relation to approved export programs

Section 9-48 allows the Secretary to publish records and reports made by accredited veterinarians or authorised officers in relation to approved export programs.

The note following section 9-48 explains that under sections 9-26 and 9-27 of the Animals Rules, an accredited veterinarian is required to keep records and make reports in connection with approved export programs. The note also explains that an accredited veterinarian who contravenes sections 9-26 or 9-27 of the Animals Rules may commit an offence of strict liability under section 316 of the Act.

Division 5—Other provisions

9-49 Circumstances in which exporter must allow accredited veterinarian or authorised officer to accompany livestock

Subsection 9-49(1) requires an exporter to allow an accredited veterinarian to accompany livestock during their transportation from Australia to their overseas destination in connection with an approved export program if:

- the approved export program provides for an accredited veterinarian to accompany a kind or class of livestock during their transport from Australia to their overseas destination in connection with the approved export program.

The note following subsection 9-49(1) alerts the reader that under section 319 of the Act, an exporter may commit an offence if the exporter contravenes subsection 9-49(1).

Subsection 9-49(2) requires an exporter to allow an authorised officer to accompany livestock during their transport from Australia to their overseas destination in connection with an approved export program if:

- under subsection 267(1) of the Act, the Secretary requires an authorised officer who is an auditor to conduct an audit in relation to the performance of functions and exercise of powers by an accredited veterinarian in connection with the approved export program; or
- under subsection 313(1) of the Act, the Secretary directs an authorised officer to carry out some or all of the export operations in the approved export program; or
- under subsection 314(1) of the Act, the Secretary directs an authorised officer to monitor or review:
 - the carrying out by an accredited veterinarian of the export operations in the approved export program; or
 - export operations in the approved export program carried out by the exporter.

The note following subsection 9-49(2) alerts the reader that under section 319 of the Act, an exporter may commit an offence if the exporter contravenes subsection 9-49(2).

9-50 Inconsistency between Secretary's approved export program and exporter's approved export program

Section 9-50 deals with circumstances where there is an inconsistency between a Secretary's approved export program and an exporter's approved export program.

Subsection 9-50(1) provides that section 9-50 applies if, under section 313 of the Act, the Secretary has directed an authorised officer to carry out some or all of the export operations in an approved export program covered by Division 3 (the Secretary's *approved export program*) in relation to export operations of an exporter.

Subsection 9-50(2) provides that if a Secretary's approved export program is inconsistent with an approved export program held by the exporter under Division 2, the Secretary's approved export program prevails.

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 sections 327 and 330 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.

Subsections 10-1 (1) and (2) provide requirements for a sample taken under sections 327 or 330 of the Act. The sample must be identified with a mark or tag, be kept under conditions that are unlikely to affect the result of any testing or analysis of the sample and be kept in the custody or control of an authorised officer until whichever of the listed events occurs first, in accordance with the Act. Either the sample is:

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

10-2 Dealing with things seized in exercising investigation powers

Section 10-2 sets out the requirements that apply if a thing is seized at premises entered by an authorised officer under an investigation warrant or under subsection 347(1) of the Act (where the authorised officer has reasonable grounds for suspecting there may be a thing on the premises that relates to an offence or contravention of a civil penalty provision).

The seized thing must be identified with a mark or tag and kept in the custody or control of an authorised officer until the first of one of the events listed occurs. The listed events are that the thing is:

- given to an analyst appointed under section 413 of the Act; or
- destroyed during testing or analysis in accordance with section 412 of the Act; or
- forfeited in accordance with the subsection 416(1) of the Act; or
- destroyed or 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 entering premises that are registered establishments.

CHAPTER 11—MISCELLANEOUS

Part 1—Review of decisions

11-1 Reviewable decisions

Section 381 of the Act sets out the decisions under the Act that are *reviewable decisions* and who can seek a review of such decisions (the *relevant person*). A reviewable decision can be reviewed on its merits internally and, in certain circumstances, externally by the Administrative Appeals Tribunal.

Subsection 381(2) of the Act allows the rules to prescribe additional decisions to be *reviewable decisions* under the Act, and the relevant person for such decisions.

Section 11-1 is made for the purposes of subsection 381(2) of the Act and sets out the decisions made under the Animals Rules which can be reviewed internally or by the Administrative Appeals Tribunal if the Secretary personally made the decision. The reviewable decisions under the Animals Rules are:

- a decision to refuse to approve an ESCAS;
- a decision to approve an ESCAS subject to conditions;
- a decision to refuse to approve a variation of an approved ESCAS or the conditions of an approved ESCAS;
- a decision to require an aspect of an approved ESCAS to be varied;
- a decision to vary the conditions of an approved ESCAS;
- a decision to revoke an approved ESCAS;
- a decision to refuse to approve premises for pre-export quarantine or isolation of prescribed livestock;
- a decision to suspend or revoke the approval of premises for pre-export quarantine or isolation of a consignment of prescribed livestock;
- a decision to refuse to approve a notice of intention to export a consignment of prescribed livestock;
- a decision to approve a notice of intention to export a consignment of prescribed livestock subject to conditions;
- a decision to request an exporter to vary a notice of intention to export a consignment of prescribed livestock or give the Secretary a new notice of intention to export a consignment of prescribed livestock;

- a decision to vary the conditions of an approval of a notice of intention to export a consignment of prescribed livestock;
- a decision to revoke the approval of a notice of intention to export a consignment of prescribed livestock;
- a decision to refuse to approve premises for pre-export quarantine or isolation of a consignment of prescribed live animals;
- a decision to suspend or revoke the approval of premises for pre-export quarantine or isolation of a consignment of prescribed live animals;
- a decision to refuse to approve a notice of intention to export a consignment of prescribed live animals;
- a decision to approve a notice of intention to export a consignment of prescribed live animals subject to conditions;
- a decision to request an exporter to vary a notice of intention to export a consignment of prescribed live animals or give the Secretary a new notice of intention to export a consignment of prescribed live animals;
- a decision to vary the conditions of an approval of a notice of intention to export a consignment of prescribed live animals;
- a decision to revoke the approval of a notice of intention to export a consignment of prescribed live animals;
- a decision to refuse to accredit a veterinarian;
- a decision to accredit a veterinarian for a period of less than 5 years;
- a decision to accredit a veterinarian subject to additional conditions;
- a decision to refuse to renew the accreditation of an accredited veterinarian;
- a decision to renew the accreditation of a veterinarian for a period of less than 5 years;
- a decision to refuse to make a variation in relation to the accreditation of a veterinarian;
- a decision to vary an aspect of the accreditation of a veterinarian;
- a decision to vary the conditions of the accreditation of a veterinarian;
- a decision to suspend, in whole or in part, the accreditation of a veterinarian;

- a decision to revoke the accreditation of a veterinarian;
- a decision to refuse to approve a program of export operations;
- a decision to refuse to approve a variation of an approved export program;
- a decision to require the holder to vary an approved export program;
- a decision to refuse to suspend the whole or a part of an approved export program;
- a decision to suspend the whole or a part of the approved export program;
- a decision to revoke an approved export program.

The specified relevant person may apply in writing for review of these decisions. Section 383 of the Act sets out the process for internal review of reviewable decisions, other than decisions made by the Secretary personally. The review will be conducted by the Secretary or a delegate of the Secretary who has not been previously involved and who is senior to the original decision-maker. The Secretary or their delegate may affirm the decision, vary the decision, or set the decision aside and substitute a new decision. Review by the Administrative Appeals Tribunal is set out in section 385 of the Act.

Reviewable decisions are in column 1 of the table in section 11-1, the provisions under which the reviewable decision is made is in column 2 of the table and the relevant person for the decision is in column 3 of the table.

Prescribing the decisions and relevant persons is necessary to allow for review consistent with the Government's policy that an administrative decision that is likely to affect the rights or interests of an individual should be reviewable on its merits unless to do so would be inappropriate, or there are factors justifying the exclusion of merits review.

Part 2—Records

Retention of records is necessary for monitoring compliance with importing country requirements and government and 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.

11-2 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.

Subsection 408(2) of the Act sets out a non-exhaustive list of matters that may be the subject of rules made under section 408.

Section 11-2 provides that Part 2 of Chapter 11 of the Animals Rules (sections 11-2 to 11-11) is made for the purposes of subsections 408(1) and (2) of the Act and makes provision for and in relation to requiring records to be retained in relation to prescribed livestock, prescribed live animals and prescribed animal reproductive material.

The note following section 11-2 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 2 of Chapter 11 of the Animals Rules and does not comply the requirement (subsection 408(3) of the Act).

11-3 General requirements for records

Section 11-3 sets out the general requirements for records that are required to be retained under Part 2 of Chapter 11 of the Animals Rules in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 11-3(1) requires records to be in English and to 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 11-3(2) specifies that a person is taken to have complied with a requirement to retain a record under Part 2 if they have retained a copy of a document where the original version was required to be given to another person under a Commonwealth, State or Territory law, or in accordance with ordinary commercial practice.

11-4 Government certificates

Subsection 11-4(1) requires a person to whom a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material is issued under the Act must retain the certificate in a secure place when it is not being used.

Subsection 11-4(2) provides that this requirement 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.

11-5 Export permits

Subsection 11-5(1) requires the person to whom an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material is issued under the Act, to retain the permit in a secure place when it is not being used.

Subsection 11-5(2) provides that this requirement 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.

11-6 Records to be retained by exporter

Subsections 11-6(1) and (2) require an exporter of prescribed livestock, prescribed live animals or prescribed animal reproductive material 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 (as the case may be):

- each application by the exporter for an export permit for prescribed livestock, prescribed live animals or prescribed animal reproductive material; and
- any other document that is made by or that comes into the exporter's possession and that is relevant to showing whether the exporter has complied, or is complying, with the applicable requirements of the Act.

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 operation in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material to retain each document that is made by the occupier or that comes into the occupier's possession and that is relevant to showing whether the occupier has complied, or is complying, with the applicable requirements of the Act (including whether the conditions of the registration of the establishment).

Subsection 11-7(2) provides that these records must be retained for at least 2 years starting on the day the record is made by the occupier or comes into the occupier's possession (as the case may be).

11-8 Records to be retained by holder of approved arrangement

Subsection 11-8(1) requires the holder of an approved arrangement for a kind of export operations in relation to prescribed livestock to retain each document that is made by the holder or that comes into their possession and that is relevant to showing compliance with the applicable requirements of the Act, the approved arrangement, and any conditions of the approved arrangement.

Subsection 11-8(2) provides that the holder of the approved arrangement must retain each record for at least 2 years, starting on the day the record is made by the holder or comes into the holder's possession (as the case may be).

11-9 Records relating to official marks

Section 11-9 requires a person who is required to make a record by sections 8-30 (records of official marks manufactured) or 8-31 (records of official marks applied, removed, defaced, destroyed or returned) of the Animals Rules to retain each record made under those sections for at least 2 years after making it.

11-10 Records relating to official marking devices

Section 11-10 requires a person who is required to make a record by sections 8-36 (records of official marking devices manufactured) or 8-37(records of official marking devices used, destroyed or returned) to retain each record made under those sections for at least 2 years after making it.

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 2 of Chapter 11 of the Animals Rules must not be altered or defaced during the period they must be kept (the *retention period*).

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 retain the record must also retain additional documents. These are any 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 3—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 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 the requirement in 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 4—Damaged or destroyed prescribed livestock, prescribed live animals or prescribed animal reproductive material

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) of the Act 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 to be divided among two or more owners of damaged or destroyed prescribed livestock, prescribed live animals or prescribed animal reproductive material. The total compensation payable must be divided among those owners according to their proportion of interest in the livestock, live animals or animal reproductive material 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 because 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 prescribed livestock, prescribed live animals or prescribed animal reproductive material 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 prescribed livestock, prescribed live animals or prescribed animal reproductive material that are damaged by a person who is performing functions or duties, or exercising powers, under the Act. This is the lesser of either the amount the Secretary determines was the market value of the livestock, live animals or animal reproductive material immediately before they were damaged, or the cost to repair 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) prescribes, for the purposes of subsection 420(5) of the Act, that the amount of compensation payable for prescribed livestock, prescribed live animals or prescribed animal reproductive that are destroyed under the Act is the amount that the Secretary determines was the market value of the livestock, live animals or animal reproductive material immediately before their destruction.

Part 5—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) 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 (a ***relevant provision***). The specified provisions of the Act are:

- paragraph 112(2)(b) (registration of establishment);
- paragraph 117(2)(b) (renewal of registration of establishment);
- paragraph 151(2)(b) (approval of proposed arrangement);
- paragraph 156(2)(b) (renewal of approved arrangement);
- paragraph 161(3)(a) (variation of approved arrangement);
- paragraph 191(2)(b) (grant of export licence);
- paragraph 196(2)(b) (renewal of export licence);
- paragraph 199(3)(a) (variation of export licence).

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 circumstance are where:

- the person, or another person, has given a written undertaking (a ***payment undertaking***) to the Secretary to pay the amount; and

- 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.

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, among other things, the registration of an establishment or a proposed arrangement, approve the renewal or variation of a registered establishment or approved arrangement, or grant, renew or vary an export permit even where the relevant Commonwealth liability of the applicant 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 (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 2 or more undertakings in relation to different 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 Commonwealth liability.

The matters the Secretary is required to consider 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 6—Miscellaneous

11-16 Collection of information from agriculture regulators

Subsections 11-16(1) to (3) have the combined effect that the Secretary is permitted to collect personal information, or information that is commercial-in-confidence, from:

- a Commonwealth, State or Territory authority or other body that is responsible for the health and welfare of animals, the health and condition of animal reproductive material or the regulation of agricultural production; or
- a body that is authorised to perform functions or exercise powers in relation to the health and welfare of animals, the health and condition of animal reproductive material or the regulation of agricultural production under Australian law;

provided that:

- the information relates to prescribed livestock, prescribed live animals or prescribed animal reproductive material that are included in a consignment for which a notice of intention to export was given; and
- the information is collected for either or both of the following purposes:
 - ensuring the health and welfare of prescribed livestock or prescribed live animals, or the health and condition of prescribed animal reproductive material, in the course of export operations; or
 - administering or enforcing the Act.

The first note following subsection 11-16(3) explains to the reader that the collection of such information may also be authorised in other circumstances (see the *Privacy Act 1988*).

The second note following subsection 11-16(3) refers the reader to Part 3 of Chapter 11 of the Act, which deals with the use and disclosure of protected information.

CHAPTER 12—TRANSITIONAL PROVISIONS

The transitional provisions in Chapter 12 will ensure that:

- persons who have submitted applications under the old *Export Control (Animals) Order 2004* (old Export Control (Animals) 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 (Animals) Order remain effective;
- requests made by an authorised officer in relation to trade descriptions remain effective; and
- approvals for a person to make or possess an official mark or an official marking device remain effective.

These 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 old Export Control (Animals) Order and are now dealt with in the Act. This includes, for example, the transition of registered establishments, approved arrangements and government certificates.

Part 1—Preliminary

12-1 Definitions

Section 12-1 defines terms that are used in Chapter 12 of the Animals Rules (sections 12-1 to 12-31).

The term *commencement time* is defined as the time when section 3 of the Act commences.

The term *old Export Control (Animals) Order* is defined as the *Export Control (Animals) Order 2004* as in force immediately before the commencement time.

The term *old Export Control (General) Order* means the *Export Control (Prescribed Goods—General) Order 2005* as in force immediately before the commencement time.

Part 2—Registered establishments

12-2 Application to alter operations manual made, but not decided, before commencement time

Subsection 12-2(1) provides that section 12-2 applies in relation to a registered establishment if:

- the establishment was registered premises under the old Export Control (Animals) Order; and
- an application had been made under that Order (subsection 2.11(1)) for approval to alter the approved operations manual for the registered premises; and

- no decision on the application had been made before the commencement time.

Subsection 12-2(2) has the effect that, after the commencement time, the application is taken to be an application made under subsection 120(1) of the Act to vary the operations manual for the registered establishment.

12-3 Direction given to operator of registered premises before commencement time to alter operations manual

Subsection 12-3(1) provides that section 12-3 applies in relation to a registered establishment if:

- the establishment was registered premises under the old Export Control (Animals) Order;
- the Secretary had, under that Order (subsection 2.11(4)), directed the operator of the registered premises, by notice in writing, to alter the approved operations manual for the premises in a specified way within a specified reasonable time;
- the specified time had not ended before the commencement time; and
- the operator had not complied with the notice before the commencement time.

Subsection 12-3(2) has the effect that the notice continues to have effect after the commencement time as if it were a notice given to the operator of the registered establishment under subsection 4-9(2) of the Animals Rules to vary the operations manual for the establishment.

Part 3—Livestock export licences: exporter supply chain assurance systems

12-4 ESCAS approved before commencement time

Section 12-4 has the effect that, if:

- the Secretary had approved an ESCAS under the old Export Control (Animals) Order (subsection 1A.21(2)); and
- the approval was in force immediately before the commencement time;

the approval continues to have effect after the commencement time as if it had been given under paragraph 6-37(1)(a) of the Animals Rules, and subject to any conditions to which the approval was subject immediately before the commencement time.

12-5 Request to vary ESCAS made before commencement time

Section 12-5 has the effect that, if:

- an exporter had requested the Secretary under the old Export Control (Animals) Order (paragraph 1A.23(1)(b) or (c)) to approve a variation of an approved ESCAS or vary the conditions imposed on an approved ESCAS; and

- no decision on the request had been made before the commencement time;

the application is taken, after the commencement time, to be an application made under subsection 6-39(1) of the Animals Rules to approve a variation of the ESCAS or the conditions of the approved ESCAS.

12-6 Variation of approved ESCAS required by Secretary before commencement time

Section 12-6 has the effect that, if:

- the Secretary had, under the old Export Control (Animals) Order (paragraph 1A.23(1)(a)), required an exporter to vary an approved ESCAS in a specified manner; and
- the exporter had not complied with the requirement before the commencement time;

then the exporter must comply with the requirement as soon as practicable after the commencement time.

Part 4—Other matters relating to export

Division 1—Notices of intention to export

12-7 Notice of intention to export consignment of livestock approved but consignment not exported before commencement time

Section 12-7 provides that if:

- the Secretary had approved a notice of intention to export (the *NOI*) for a proposed export of livestock (the *consignment*) under the old Export Control (Animals) Order (subsection 1A.25A(1)); and
- the Secretary had not, under that Order (subsection 1A.26(2)), cancelled the approval, required the exporter to vary the NOI, or required the exporter to provide a new NOI for the proposed export; and
- the consignment had not been exported before the commencement time;

the approval continues to have effect after the commencement time as if it were an approval of the notice of intention to export the consignment given under paragraph 8-6(2)(a) of the Animals Rules.

The first note following section 12-7 explains to the reader that the NOI continues in force after the commencement time as if it were a notice of intention to export the consignment given in compliance with subsection 243(1) of the Act (as per item 51 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions Act 2020)*). If the NOI had not been approved by the Secretary and had not been withdrawn before the commencement time, the Secretary must decide after the commencement time whether to approve the notice of intention to export the consignment under subsection 8-6(2) of the Animals Rules.

The second note following section 12-7 explains to the reader that if the Secretary had required the exporter to vary the NOI or give the Secretary a new NOI for the consignment under the old Export Control (Animals) Order and the exporter had not complied with the requirement before the commencement time, the exporter must comply with the requirement as soon as practicable after the commencement time (subitem 52(2) of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*).

12-8 Approval of premises for pre-export quarantine or isolation of consignment of livestock given before commencement time

Section 12-8 has the effect that, if:

- the Secretary had, under the old Export Control (Animals) Order (subsection 1A.27(4)), approved premises for pre-export quarantine or isolation of livestock (the *consignment*) that are to be exported by air; and
- the consignment had not been exported before the commencement time;

the approval continues to have effect after the commencement time as if it were an approval of the premises for pre-export quarantine or isolation of the consignment given under paragraph 8-5(2)(a) of the Animals Rules.

12-9 Notice of intention to export consignment of live animals approved, but consignment not exported, before commencement time

Section 12-9 provides that, if:

- the Secretary had approved a notice of intention to export (the *NOI*) for a proposed export of live animals (the *consignment*) under the old Export Control (Animals) Order (section 3.07); and
- the Secretary had not, under that Order (subsection 3.09(2)), cancelled the approval, directed that the approved NOI be varied in a specified manner, or required the exporter to submit a new NOI for the proposed export; and
- the consignment had not been exported before the commencement time;

the approval continues to have effect after the commencement time as if it were an approval of the notice of intention to export the consignment given under paragraph 8-11(2)(a) of the Animals Rules.

The first note following section 12-9 explains that the NOI continues in force after the commencement time as if it were a notice of intention to export the consignment given in compliance with subsection 243(1) of the Act (as per item 51 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*). If the NOI had not been approved by the Secretary and had not been withdrawn before the commencement time, the Secretary must decide after the commencement time whether to approve the notice of intention to export the consignment under subsection 8-11(2) of the Animals Rules.

The second note following section 12-9 explains that if the Secretary had directed that the approved NOI be varied or had required the exporter to give the Secretary a new NOI for the consignment under the old Export Control (Animals) Order, and the exporter had not complied with the requirement before the commencement time, the exporter must comply with the requirement as soon as practicable after the commencement time (subitem 52(2) of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*).

12-10 Approval of premises for pre-export quarantine or isolation of consignment of live animals given before commencement time

Section 12-10 has the effect that, if:

- the Secretary had, under the old Export Control (Animals) Order (subsection 3.06(4)), approved premises for pre-export quarantine or isolation of live animals (the *consignment*) that are to be exported; and
- the consignment had not been exported before the commencement time;

the approval continues to have effect after the commencement time as if it were an approval of the premises for pre-export quarantine or isolation of the consignment given under paragraph 8-10(2)(a) of the Animals Rules.

Division 2—Official marks

12-11 Person approved before commencement time to manufacture an official mark

Subsection 12-11(1) provides that section 12-11 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 for prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 12-11(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 8-23 of the Animals Rules to manufacture the official mark for prescribed livestock, prescribed live animals or prescribed animal reproductive material (as the case may be).

12-12 Person approved before commencement time to possess an official mark

Subsection 12-12(1) provides that section 12-12 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) for prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 12-12(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 8-24(b) of the Animals Rules to possess the official mark for prescribed livestock, prescribed live animals or prescribed animal reproductive material (as the case may be).

12-13 Person approved before commencement time to apply an official mark

Subsection 12-13(1) provides that section 12-13 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 to prescribed livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 12-13(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 8-25(b) of the Animals Rules to apply the official mark to prescribed livestock, prescribed live animals or prescribed animal reproductive material (as the case may be).

Division 3—Official marking devices

12-14 Person approved before commencement time to manufacture an official marking device

Subsection 12-14(1) provides that section 12-14 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 livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 12-14(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 8-33(b) of the Animals Rules to manufacture or supply the official marking device.

12-15 Person approved before commencement time to possess an official marking device

Subsection 12-15(1) provides that section 12-15 applies in relation to a person who, immediately before the commencement time, was a person 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 livestock, prescribed live animals or prescribed animal reproductive material.

Subsection 12-15(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 8-33(b) of the Animals Rules to possess the official marking device.

Part 5—Powers and officials

Division 1—Accredited veterinarians

12-16 Accreditations of veterinarians in force immediately before commencement time

Subsection 12-16(1) has the effect that, if:

- a veterinarian had been accredited under the old Export Control (Animals) Order (subsection 4A.06(1)) to provide pre-export preparation services under approved export programs in one or more States or Territories; and
- the accreditation was in force immediately before the commencement time;

the accreditation continues to have effect after the commencement time as if the veterinarian had been accredited, under subparagraph 9-12(1)(a)(i) of the Animals Rules, to carry out pre-export preparation operations in approved export programs in those States or Territories.

Subsection 12-16(2) has the effect that, if:

- a veterinarian had been accredited under the old Export Control (Animals) Order (subsection 4A.06(1)) to provide shipboard services under approved export programs; and
- the accreditation was in force immediately before the commencement time;

the accreditation continues to have effect after the commencement time as if the veterinarian had been accredited, under subparagraph 9-12(1)(a)(ii) of the Animals Rules, to carry out shipboard export operations in approved export programs.

The note following subsection 12-16(2) clarifies that if a veterinarian had been accredited to provide both pre-export preparation services and shipboard services under approved export programs, the accreditation continues to have effect as if the veterinarian had been accredited to carry out both kinds of export operations.

Subsection 12-16(3) provides that the accreditation of a veterinarian continues to have effect subject to the conditions (if any) to which the accreditation had been subject under the old Export Control (Animals) Order, and remains in force for the period of accreditation under that Order.

12-17 Application for accreditation of veterinarian made, but not decided, before commencement time

Subsection 12-17(1) provides that section 12-17 applies if:

- a veterinarian had made an application to the Secretary under the old Export Control (Animals) Order (subsection 4A.04(2)) for accreditation as a veterinarian; and
- no decision on the application had been made before the commencement time.

Subsection 12-17(2) provides that, after the commencement time, the application is taken to be an application made under subsection 9-11(1) of the Animals Rules.

Subsection 12-17(3) provides that section 9-30 of the Animals Rules does not apply in relation to the application. Section 9-30 sets out requirements for certain applications made under the Animals Rules.

Subsection 12-17(4) provides that subsection 9-31(1) of the Animals Rules (consideration period of applications) has effect in relation to the application as if:

- the reference to the period of 60 days starting on the day the application is received were a reference to the period of 60 days starting on the day the commencement time occurs; and
- paragraph (a) of that subsection were omitted.

12-18 Notice requiring accredited veterinarian to undertake further training given before commencement time

Section 12-18 has the effect that, if:

- the Secretary had given a written notice to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.09(1)) requiring the veterinarian to undertake specified further training; and
- the accredited veterinarian had not completed the training before the commencement time;

the accredited veterinarian must complete the training after the commencement time as required by the notice as if it had been given under subsection 9-13(6) of the Animals Rules.

12-19 Application to vary accreditation made, but not decided, before commencement time

Section 12-19 has the effect that, if:

- an accredited veterinarian had applied to the Secretary under the old Export Control (Animals) Order (section 4A.08) for the accreditation of the veterinarian to be varied; and
- no decision on the application had been made before the commencement time;

the application is taken, after the commencement time, to be an application made under subsection 9-18(1) of the Animals Rules.

12-20 Notice of varied conditions of accreditation given before commencement time to take effect after that time

Section 12-20 provides that, if:

- the Secretary had given a written notice to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.06(3)) adding, varying or removing conditions of the accreditation of the veterinarian; and
- the varied conditions had not taken effect before the commencement time;

the varied conditions take effect after the commencement time in accordance with the notice as if the variation had been made under subsection 9-18(3) of the Animals Rules and the notice had been given under subsection 9-18(4) of the Animals Rules.

12-21 Suspension of accreditation

Subsection 12-21(1) has the effect that, if:

- the accreditation of a veterinarian had been suspended under the old Export Control (Animals) Order (section 4A.10 or 4A.11); and
- the suspension was in force immediately before the commencement time;

the accreditation of the veterinarian is taken to be suspended under subsection 9-20(1) of the Animals Rules after the commencement time.

Subsection 12-21(2) has the effect that, if:

- a notice had been given to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.10(2)) directing the accredited veterinarian to show cause, within a specified period, why the accredited veterinarian's accreditation should not be suspended; and
- the period had not ended before the commencement time;

the notice continues to have effect after the commencement time as if it were a notice given to the accredited veterinarian under subsection 9-20(2) of the Animals Rules.

Subsection 12-21(3) provides that, if:

- the Secretary had given a written notice to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.10(6) or 4A.11(1)) of the suspension of the accreditation of the veterinarian; and
- the suspension had not taken effect before the commencement time;

the Secretary is taken to have decided, at the commencement time, to suspend the accreditation under subsection 9-20(1) of the Animals Rules. The notice has effect after the commencement time as if it had been given under subsection 9-21(1) of the Animals Rules, and the suspension takes effect in accordance with the notice.

The note following subsection 12-21(3) alerts the reader that under section 9-22 of the Animals Rules, the Secretary may revoke the suspension.

12-22 Revocation of accreditation

Subsection 12-22(1) has the effect that, if:

- a notice had been given to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.10(2)) directing the accredited veterinarian to show cause, within a specified period, why the accredited veterinarian's accreditation should not be revoked; and
- the period had not ended before the commencement time;

the notice continues to have effect after the commencement time as if it were a notice given to the accredited veterinarian under subsection 9-24(2) of the Animals Rules.

Subsection 12-22(2) provides that, if:

- the Secretary had given a written notice to an accredited veterinarian under the old Export Control (Animals) Order (subsection 4A.10(6)) of the revocation of the accreditation of the veterinarian; and
- the revocation had not taken effect before the commencement time, then;

the Secretary is taken to have decided, at the commencement time, to revoke the accreditation under subsection 9-24(1) of the Animals Rules. The notice has effect after the commencement time as if it had been given under subsection 9-25(1) of the Animals Rules, and the revocation takes effect in accordance with the notice.

Division 2—Approved export programs

Subdivision A—Exporter's approved export programs

12-23 Exporter's approved export program in force immediately before commencement time

Subsection 12-23(1) provides that an approved export program that was in force under the old Export Control (Animals) Order (Subdivision A of Division 1A.7 of Part 1A) immediately before the commencement time continues in force after that time as if it had been approved by the Secretary under subsection 311(1) of the Act.

Subsections 12-23(2) and (3) have the combined effect that:

- if there was no expiry date for the approved export program under the old Export Control (Animals) Order, the approved export program continues in force unless it is revoked under section 9-42 or 9-43 of the Animals Rules;
- if there was an expiry date for the approved export program under the old Export Control (Animals) Order, the approved export program continues in force until that expiry date unless it is revoked under section 9-42 or 9-43 of the Animals Rules on or before that date.

12-24 Application for approval of program of export operations made, but not decided, before commencement time

Subsection 12-24(1) provides that section 12-24 applies if an exporter had made an application to the Secretary under the old Export Control (Animals) Order (paragraph 1A.35(1)(a)) for approval of a program of activities and no decision on the application had been made before the commencement time.

Subsection 12-24(2) has the effect that, after the commencement time, the application is taken to be an application made under paragraph 9-33(1)(b) of the Animals Rules for approval of a program of export operations.

Subsection 12-24(3) has the effect that, if:

- the Secretary had requested, under the old Export Control (Animals) Order (subsection 1A.36(2)), further information or documents relevant to the application to be given to the Secretary; and
- the request had not been complied with before the commencement time;

the request is taken to be a request made under subsection 9-34(2) of the Animals Rules after the commencement time.

12-25 Variation of approved export program

Subsection 12-25(1) provides that if the holder of an approved export program had made an application to the Secretary under the old Export Control (Animals) Order (subsection 1A.38(1)) for approval of a variation of the approved export program, and no decision on the application had been made before the commencement time, then, after the commencement time, the application is taken to be an application made under subsection 9-36(1) of the Animals Rules.

Subsection 12-25(2) deals with a situation where an approval of a variation given before the commencement time is set to take effect after the commencement time. This subsection provides that if:

- the Secretary had approved a variation of an approved export program under the old Export Control (Animals) Order (subsection 1A.38(5)); and

- the Secretary had given the holder of the approved export program a written notice under that Order (subsection 1A.38(8)); and
- the variation is to take effect after the commencement time;

the variation takes effect, after the commencement time, in accordance with the notice.

Subsection 12-25(3) deals with a situation where a variation notice is given, but not complied with, before the commencement time. This subsection provides that if:

- the Secretary had given a written notice to the holder of an approved export program under the old Export Control (Animals) Order (subsection 1A.39(1)) requiring the holder to vary the approved export program; and
- the holder had not complied with the notice before the commencement time; and
- the period specified in the notice for complying with the notice had not ended before the commencement time;

the notice continues to have effect after the commencement time as if it had been given under subsection 9-37(1) of the Animals Rules.

12-26 Approved export program suspended before commencement

Subsection 12-26(1) has the effect that, if:

- the whole or a part of an approved export program had been suspended under the old Export Control (Animals) Order (subsection 1A.41(3)); and
- the period of the suspension had not ended before the commencement time;

the whole or the part of the approved export program is taken to be suspended under paragraph 9-39(3)(a) of the Animals Rules after the commencement time.

Subsection 12-26(2) provides that, if:

- the whole or a part of an approved export program had been suspended under the old Export Control (Animals) Order (subsection 1A.42(1)); and
- the period of the suspension had not ended before the commencement time;

the whole or a part of the approved export program is taken, after the commencement time, to be suspended under subsection 9-41(1) of the Animals Rules.

Subsection 12-26(3) provides that, if:

- the Secretary had suspended the whole or a part of an approved export program by written notice given to the holder of the approved export program under the old Export Control (Animals) Order (subsection 1A.41(3)); and

- the suspension is to take effect after the commencement time;

the Secretary is taken, after the commencement time, to have decided to suspend the accreditation under paragraph 9-39(3)(a) of the Animals Rules. The notice has effect as if it had been given under subsection 9-39(8) of the Animals Rules, and the suspension takes effect in accordance with the notice.

The note following subsection 12-26(3) explains to the reader that under section 9-40 of the Animals Rules, the holder may request the Secretary to revoke the suspension.

Subsection 12-26(4) has the effect that, if:

- the Secretary had given a written notice to the holder of an approved export program under the old Export Control (Animals) Order (subsection 1A.42(1)) stating that the whole or a part of the approved export program is to be suspended; and
- the suspension takes effect after the commencement time;

the Secretary is taken, after the commencement time, to have decided to suspend the accreditation under subsection 9-41(1) of the Animals Rules and the suspension takes effect in accordance with the notice.

12-27 Request by holder of approved export program to cancel suspension

Section 12-27 deals with a situation where a request to cancel a suspension of an approved export program is made, but not decided on, before the commencement time. This section provides that if:

- the whole or a part of an approved export program had been suspended under the old Export Control (Animals) order (subsection 1A.41(3)); and
- the holder of the approved export program had requested the Secretary, under that Order (subsection 1A.41(4)), to cancel the suspension; and
- no decision on the request had been made before the commencement time;

the request is taken, after the commencement time, to be a request made under subsection 9-40(1) of the Animals Rules to revoke the suspension of the whole or the part of the approved export program.

12-28 Request to suspend approved export program made, but not decided, before commencement time

Section 12-28 has the effect that, if:

- the holder of an approved export program had requested the Secretary under the old Export Control (Animals) Order (subsection 1A.41(1)) to suspend the whole or a part of the approved export program; and
- no decision on the request had been made before the commencement time;

the request is taken, after the commencement time, to be a request made under subsection 9-39(1) of the Animals Rules.

12-29 Cancellation of approved export program

Subsection 12-29(1) has the effect that, if:

- the holder of an approved export program had requested the Secretary under the old Export Control (Animals) Order (subsection 1A.43(1)) to cancel the approved export program; and
- the Secretary had not given a written notice to the holder under that Order (subsection 1A.43(2)) cancelling the approved export program before the commencement time;

the request is taken, after the commencement time, to be a request made under subsection 9-42(1) of the Animals Rules to revoke the approved export program.

Subsection 12-29(2) provides that, if:

- the Secretary had given a written notice to the holder of an approved export program under the old Export Control (Animals) Order (subsection 1A.44(1)) stating that the approved export program is to be cancelled; and
- the cancellation is to take effect after the commencement time;

the Secretary is taken, after the commencement time, to have decided to revoke the approved export program under subsection 9-43(1) of the Animals Rules and the revocation takes effect in accordance with the notice.

Subdivision B—Secretary’s approved export programs

12-30 Secretary’s approved export program in force immediately before commencement time

Subsection 12-30(1) provides that an approved export program that was in force under the old Export Control (Animals) Order (Subdivision B of Division 1A.7 of Part 1A) immediately before the commencement time continues in force after that time as if it had been approved by the Secretary under subsection 311(1) of the Act.

Subsections 12-30(2) and (3) have the combined effect that:

- if there was no expiry date for the approved export program under the old Export Control (Animals) Order, the approved export program continues in force until it is revoked;
- if there was an expiry date for the approved export program under the old Export Control (Animals) Order, the approved export program continues in force until that expiry date unless it is revoked.

12-31 Variation of approved export program before commencement time to take effect after commencement time

Subsection 12-31(1) deals with a situation where a notice of variation is given under the old Export Control (Animals) Order but takes effect after the commencement time. This subsection provides that if:

- the Secretary had varied an approved export program under the old Export Control (Animals) Order (e
- the Secretary had, under that Order (subsection 1A.47(2)), notified the exporters to whose export activities the approved export program relates; and
- the variation is to take effect after the commencement time;

the variation takes effect after the commencement time in accordance with the notice.

Subsection 12-31(2) deals with a situation where the Secretary has varied an approved export program under the old Export Control (Animals) Order but has not given notice of the variation before the commencement time. This subsection provides that if:

- the Secretary had varied an approved export program under the old Export Control (Animals) Order (subsection 1A.47(1)); and
- the Secretary had not, under that Order (subsection 1A.47(2)), notified the exporters to whose export activities the approved export program relates before the commencement time;

the Secretary must, under subsection 9-46(2) of the Animals Rules, notify the exporters to whose export operations the approved export program relates.

Statement of Compatibility with Human Rights

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

Export Control (Animals) 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 (Cth)*.

Overview of the legislative instrument

The *Export Control (Animals) Rules 2021* (the **Animals 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 livestock, live animals, and animal reproductive materials 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 (Animals) Order 2004*. The provisions allow for decisions and approvals under the former Orders to continue, where applicable, under the Animals Rules.

List of human rights engaged

The Animals Rules engage 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)

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, 4, 5, 6, 7, 8, 9 and 11 of the Animals 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 regulating the export of prescribed livestock, live animals, and animal reproductive materials to maintain overseas access, including 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 Animals 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.

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, accreditation or other approval.

The Animals Rules requires that the following persons must be fit and proper persons:

- accredited veterinarians
- an applicant for a livestock export licence
- the holder of a livestock export licence

- an applicant for approval of a proposed arrangement for exporter supply chain assurance operations
- a person who is to manage or control exporter supply chain assurance operations in accordance with a proposed arrangement
- the holder of an approved arrangement for exporter supply chain assurance operations
- a person who manages or controls exporter supply chain assurance operations in accordance with an approved arrangement

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 persons 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 approval to register an establishment, or to suspend, revoke or alter the conditions on an existing approved arrangement. This ensures that persons or companies are suitable entities to be responsible for the appropriate management of relevant risks. 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 requirement to provide information, including for 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 Animals Rules and the Act is protected from unauthorised disclosure by confidentiality provisions in sections 388 to 397 of the Act.

Right to freedom of association (Article 22 of the ICCPR)

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

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.

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 a 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 Animals 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 Animals 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.

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