

## **EXPLANATORY STATEMENT**

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

*Export Control Act 2020*

*Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021*

### **Legislative Authority**

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

Section 264 of the Act allows the rules to make provision for, and in relation to, the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods.

### **Purpose**

The purpose of the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* (the Amendment Rules) is to transition three Export Control Orders (the Orders) into the Export Control Rules under the Act. These are:

- the *Export Control (Tariff Rate Quotas) Order 2019* which will transition to the *Export Control (Tariff Rate Quotas—General) Rules 2021*;
- the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020* which will transition to the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021*; and
- the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019* which will transition to the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021*.

The Amendment Rules amends the provisions in the Orders to refer to the relevant provisions in the Act and updates certain definitions to be consistent with those used in the Act.

The Orders were saved by section 55 of the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. This enabled the Orders to continue as if the Orders were rules made by the Secretary under subsection 432(1) of the Act for the purposes of section 264 of that Act and does not prevent tariff rate quota rules from being amended or repealed after the commencement of this item.

## **Background**

The Australian Government administers the tariff rate quota system which allows for a variety of agricultural products to have reduced tariffs applied at the point of import to several countries. These products include high quality beef and grain fed beef, buffalo meat, sheepmeat and goatmeat exported to the European Union and the United Kingdom, several dairy products exported to the EU, beef and dairy products exported to the United States of America (USA), meat, honey, apple juice, and orange juice exported to Japan, and horticultural products, live cattle, and feed grain exported to Indonesia.

This instrument does not introduce any changes in the management of the tariff rate quota system, rather it aligns relevant terminology for consistency with the Act.

## **Impact and Effect**

The Amendment Rules enable the department to properly administer the Tariff Rate Quotas (TRQs) consistent with the Act.

Schedule 1 of the Amendment Rules amends the *Export Control (Tariff Rate Quotas) Order 2019* which sets out the administrative arrangements for management, allocation, and access to certain tariff rate quotas operating under World Trade Organization arrangements and certain Free Trade Agreements.

Schedule 2 of the Amendment Rules amends the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020* which provides for the establishment and administration of a system of tariff rate quotas for the export of feed grain to Indonesia.

Schedule 3 of Attachment A amends the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019* which provides for administrative arrangements to ensure fair and equitable access by quota users to the European Union and United Kingdom markets for the export of sheepmeat and goatmeat.

## **Consultation**

The three originating instruments were all subject to extensive consultation with relevant stakeholders, both in the initial establishment of the processes for managing TRQs and in subsequent amendments to reflect the United Kingdom leaving the European Union. The proposed processes for managing tariff rate quotas has been supported overall by the export industry as providing a balanced outcome that minimises any negative commercial impacts.

Additional consultation was not undertaken for the Amendment Rules both because persons likely to be affected were consulted on the Export Control Bills 2019, and because the instrument does not introduce any changes in the management of the TRQ system.

A Regulatory Impact Statement *Improvements to agriculture export legislation* [OBPR ID:19535] was prepared for the Export Control Bill 2019 after consultation with stakeholders and having regard to the mandatory obligations on Australian businesses and the relevant industries. A copy of the Regulatory Impact Statement was provided with the explanatory memorandum to the Export Control Bill 2019.

## **Details and Operation**

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

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

## **Other**

The Amendment Rules are 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 Legislation Amendment (Tariff Rate Quotas) Rules 2021***

**Section 1 – Name**

Section 1 provides that the name of the Amendment Rules is the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* (the Amendment Rules).

**Section 2 – Commencement**

Section 2 provides for the Amendment Rules to commence immediately after the commencement of 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).

**Section 3 – Authority**

Section 3 provides that the Amendment Rules are made under the Act.

**Section 4 – Schedules**

The effect of section 4 is that the instruments are amended as specified in the Schedules to the Amendment Rules. Each instrument is amended as set out in the applicable items in the Schedule concerned.

## **Schedule 1 – Amendment of the *Export Control (Tariff Rate Quotas) Order 2019***

### **Item 1 – Section 1 (Name)**

This item omits “(*Tariff Rate Quotas) Order 2019*” and substitutes “(*Tariff Rate Quotas—General) Rules 2021*”. This amends the name of the instrument to be the *Export Control (Tariff Rate Quotas – General) Rules 2021* (Tariff Rate Quotas Rules).

For the purposes of Schedule 1 of this instrument, sections of the *Export Control (Tariff Rate Quotas) Order 2019* will be referred to as sections in the Tariff Rate Quotas Rules.

### **Item 2 – Section 3 (Authority)**

This item repeals and substitutes section 3 of the Tariff Rate Quotas Rules.

This item clarifies that the Tariff Rate Quotas Rules are made under the *Export Control Act 2020* (the Act). The exception to this is Part 3 of Chapter 7 of the Tariff Rate Quotas Rules. Part 3 of Chapter 7 is made under the Act and item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

### **Item 3 – Section 5 (Purpose of this instrument)**

This item omits “This” from section 5 of the Tariff Rate Quotas Rules and substitutes “For the purposes of section 264 of the Act, this”. This item clarifies that the Tariff Rate Quotas Rules are made pursuant to section 264 of the Act which allows rules to be made to make provision for and in relation to the establishment and administration of a system, or systems of, tariff rate quotas for the export of goods.

### **Item 4 – Section 6 (Definitions)**

This item inserts the following definition of *Act* in section 6 of the Tariff Rate Quotas Rules to provide a simplified reference to be used throughout the rules. *Act* means the *Export Control Act 2020*, and includes:

- Legislative instruments made under the *Export Control Act 2020*; and
- The Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

### **Item 5 – Section 6 (Definitions - *Australia-US Free Trade Agreement*)**

This item inserts “for Australia” after “in force” in the definition of *Australia-US Free Trade Agreement* in section 6 of the Tariff Rate Quotas Rules. This amendment to the definition clarifies that the Australia-US Free Trade Agreement, which sets out the goods eligible for tariff rate quotas, is taken to be the agreement as in force for Australia from time to time.

### **Item 6 – Section 6 (Definitions - *Indonesia-Australia Comprehensive Economic Partnership Agreement*)**

This item omits “amended” and substitutes “in force for Australia” in the definition of *Indonesia-Australia Comprehensive Partnership Agreement* in section 6 of the Tariff Rate Quotas Rules. This amendment to the definition clarifies that the Indonesia-Australia

Comprehensive Economic Partnership Agreement, which sets out the goods eligible for tariff rate quotas, is taken to be the agreement in force for Australia from time to time.

**Item 7 - Section 6 (Definitions - *initial decision*)**

This item repeals the definition of *initial decision* from section 6 of the Tariff Rate Quotas Rules. This is a consequential amendment to the repeal of section 120 of the Tariff Rate Quotas Rules by item 26 of Schedule 1 of this instrument as the term is not used elsewhere in the Tariff Rate Quotas Rules.

**Item 8 - Section 6 (Definitions - *Japan-Australia Economic Partnership Agreement*)**

This item omits “amended” and substitutes “in force for Australia” in the definition of *Japan-Australia Economic Partnership Agreement*. This amendment clarifies that the Japan-Australia Economic Partnership Agreement, which sets out the goods eligible for tariff rate quotas, is taken to be the agreement in force for Australia from time to time.

**Item 9 - Section 6 (Definitions)**

This item repeals the definitions of *relevant liability* and *relevant person* from section 6 of the Tariff Rate Quotas Rules.

The term *relevant liability* is replaced by the term *relevant Commonwealth liability* which is defined in section 12 of the Act. This ensures that the definitions in the Tariff Rate Quotas Rules are consistent with those in the Act.

The repeal of the definition of a *relevant person* is a consequential amendment to the repeal of section 120 of the Tariff Rate Quotas Rules by item 26 of Schedule 1 of this instrument. This definition is no longer required as it is not used elsewhere in the Tariff Rate Quotas Rules.

**Item 10 - Section 6 (Definitions - at the end of the definition of *tariff rate quota certificate*)**

This section adds a note to the definition of *tariff rate quota certificate* in section 6 of the Tariff Rate Quotas Rules to explain that a tariff rate quota certificate is not a government certificate as defined in section 12 of the Act. Part 3 of Chapter 2 of the Act provides that a government certificate may be issued for goods that are to be exported or have been exported. The purpose of the government certificate is to confirm to importing country authorities that the goods have met specified importing requirements of that country.

Tariff rate quota certificates do not certify that goods have met the importing requirements of various goods for various countries and are not required to be issued before goods can be exported. Rather, tariff rate quota certificates only state that the product being exported is Australian in origin and that the consignment of the product should receive a preferential customs tariff rate.

**Item 11 - Subsection 22(1) (Transfer of tariff rate quota entitlement)**

This item omits “make a written request to the Secretary to” in subsection 22(1) of the Tariff Rate Quotas Rules. This amendment allows a person who has an amount of tariff rate quota entitlement for a quota type and a quota year to, at any time before the end of the quota year, transfer all or part of the amount of tariff rate quota to an eligible person for that quota type without having to make a written request to the Secretary for the transfer to be made.

**Item 12 - Subsection 22(1) (Transfer of tariff rate quota entitlement)**

This item omits “(the *transferee*). The request must include” in subsection 22(1) of the Tariff Rate Quotas Rules and substitutes “(the *transferee*) by notifying the Secretary, in writing, of”.

**Item 13 - Subsection 22(2) (Transfer of tariff rate quota entitlement)**

This item omits “request” (wherever occurring) in subsection 22(2) of the Tariff Rate Quotas Rules and substitutes “notice”.

**Item 14 - Subsection 37(1) (Transfer of tariff rate quota entitlement)**

This item omits “make a written request to the Secretary to” in subsection 37(1) of the Tariff Rate Quotas Rules.

**Item 15 - Subsection 37(1) (Transfer of tariff rate quota entitlement)**

This item omits “(the *transferee*). The request must include” in subsection 37(1) of the Tariff Rate Quotas Rules and substitutes “(the *transferee*) by notifying the Secretary, in writing, of”.

**Item 16 - Subsection 37(3) (Transfer of tariff rate quota entitlement)**

This item omits “request” (wherever occurring) in subsection 37(3) of the Tariff Rate Quotas Rules and substitutes “notice”.

The effect of items 12 to 16 is that an exporter notifies the Secretary in writing of his or her decision to transfer an amount of tariff rate quota entitlement to another exporter. The person does not make a written request to the Secretary to approve the transfer and the Secretary does not have to make a decision whether or not to allow the transfer.

**Item 17 - Section 65 (Eligible person)**

This item omits “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*” from section 65 of the Tariff Rate Quotas Rules and substitutes “an export licence”.

Chapter 6 of the Act provides that the Secretary may, on application by a person, grant the person an export licence to carry out a kind of export operations in relation to a kind of prescribed goods. This definition is comprehensive and includes the licenses formerly issued under section 10 of Part 2 of the *Australian Meat and Live-stock Industry Act 1997*. Part 2 of

the *Australian Meat and Live-stock Industry Act 1997* was repealed by the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. The reference to a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997* is therefore no longer required.

#### **Item 18 - Section 89K**

This item omits “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*” from section 89K of the Tariff Rate Quotas Rules and substitutes “an export licence”.

Chapter 6 of the Act provides that the Secretary may, on application by a person, grant the person an export licence to carry out a kind of export operations in relation to a kind of prescribed goods. This definition is comprehensive and includes the licenses formerly issued under section 10 of Part 2 of the *Australian Meat and Live-stock Industry Act 1997*. Part 2 of the *Australian Meat and Live-stock Industry Act 1997* was repealed by the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. The reference to a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997* is therefore no longer required.

#### **Item 19 - Section 95 (Eligible person)**

This item omits “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*” in section 95 of the Tariff Rate Quotas Rules and substitutes “an export licence”.

Chapter 6 of the Act provides that the Secretary may, on application by a person, grant the person an export licence to carry out a kind of export operations in relation to a kind of prescribed goods. This definition is comprehensive and includes the licenses formerly issued under section 10 of Part 2 of the *Australian Meat and Live-stock Industry Act 1997*. Part 2 of the *Australian Meat and Live-stock Industry Act 1997* was repealed by the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. The reference to a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997* is therefore no longer required.

#### **Item 20 - Paragraph 114(2)(a) (Applications for tariff rate quota certificates)**

This item omits “Australia” and substitutes “Australian territory” in paragraph 114(2)(a) of the Tariff Rate Quotas Rules. Consistent with the application of the Act, tariff rate quota certificates can be issued for eligible goods leaving Australia or its territories.

#### **Item 21 - Paragraph 115(2)(c) (When Secretary may decide not to issue tariff rate quota certificate)**

This item inserts the word “Commonwealth” after “relevant” in paragraph 115(2)(c) of the Tariff Rate Quotas Rules. This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 9 of Schedule 1 of the Amendment Rules and is consistent with the definition “relevant Commonwealth liability” as defined in section 12 of the Act.

**Item 22 - At the end of subsection 115(3) (When Secretary may decide not to issue tariff rate quota certificate)**

This item inserts a note to subsection 115(3) of the Tariff Rate Quotas Rules to explain that a decision not to issue a tariff rate quota certificate is a reviewable decision (see section 120 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 23 - Subparagraph 119(2)(b)(ii) (Cancellation of tariff rate quota certificates)**

This item omits “Australia” from subparagraph 119(2)(b)(ii) of the Tariff Rate Quotas Rules and substitutes “Australian territory”. Consistent with the application of the Act, tariff rate quota certificates can be issued for eligible goods leaving Australia or its territories.

**Item 24 - Subparagraph 119(2)(b)(v) (Cancellation of tariff rate quota certificates)**

This item inserts “Commonwealth” after “relevant” in subparagraph 119(2)(b)(v) of the Tariff Rate Quotas Rules. This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 9 of Schedule 1 of this instrument and ensures consistency with the definition *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 25 - At the end of subsection 119(2) (Cancellation of tariff rate quota certificates)**

This item adds a note to subsection 119(2) of the Tariff Rate Quotas Rules to explain that the decision to revoke a tariff rate quota certificate is a reviewable decision (see section 120 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 26 - Sections 120 to 124 (Review of decisions)**

This item repeals sections 120 to 124 of the Tariff Rate Quotas Rules which deals with review of decisions and substitutes new sections 120 and 121.

Subsection 381(1) of the Act sets out the decisions that are reviewable decisions under the Act. Subsection 381(2) provides that the rules may also provide that a decision made under a specified provision of this Act is a reviewable decision and specify the relevant person for the reviewable decision.

New section 120 is made pursuant to subsection 381(2) of the Act. The effect of new section 120 is that:

- A decision under subsection 115(2) of the Act not to issue a tariff rate quota certificate is a reviewable decision and the person who applied for the certificate can seek review of that decision;
- A decision under subsection 119(2) of the Act to revoke a tariff rate quota certificate is a reviewable decision and the person to whom the certificate was issued can seek review of that decision.

New section 120 refers to the revocation of a tariff rate quota certificate for consistency with the terminology in the Act.

New section 121 deals with modifications of powers on review of decisions.

New subsection 121(1) provides that for the purposes of subsections 386(1) and (3) of the Act, this section modifies:

- The powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 120 of this instrument; and
- The powers of the Administrative Appeals Tribunal (the Tribunal), under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), when reviewing:
  - A reviewable decision mentioned in section 120 of this instrument made by the Secretary personally; or
  - A decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 120 of this instrument.

New subsection 121(2) provides that if a decision not to issue a tariff rate quota certificate to a person in relation to a consignment of a quota type for export in a quota year is set aside at a time, a certificate may only be issued for the amount for which a certificate could be issued to the person at that time under Chapter 2 in relation to the consignment for export in that quota year.

The note to this subsection provides that Chapter 2 provides methods for issuing tariff rate quota certificates. Chapter 3 determines which method applies for consignments of a particular quota type.

New subsection 121(3) provides that if:

- A decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment of a quota type for export in a quota year is set aside at a time; and
- The amount for which the certificate was issued is more than the amount (the **available amount**) for which a certificate could be issued to the person at that time under Chapter 2 for a consignment of that quota type for export in that quota year;

the revoked certificate may only be reinstated for the available amount.

Subsection 386(1) of the Act provides that the rules may prescribe modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements.

Subsection 386(2) of the Act provides that if the rules provide modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements, then that subsection has effect as so modified in relation to reviewable decisions of this kind.

Subsection 386(3) provides that the rules may prescribe modifications of subsection 43(1) of the AAT Act in its application to reviews of decisions relating to tariff rate quota entitlements. Subsection 43(1) of the AAT Act relevantly provides that for the purposes of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing setting aside the decision under review and making a decision in substitution for the decision so set aside.

Subsection 386(4) provides that the rules may prescribe modifications for the purposes of subsection (1) or (3) only for the purpose of ensuring tariff rate quota amounts are not exceeded.

Consistent with the provisions of the current order, this section modifies the powers of the AAT Act which are available on review of a decision not to issue a tariff rate quota certificate or to revoke a tariff rate quota certificate. Should the Tribunal set aside such a decision, the tariff rate quota certificate that is subsequently issued can only be for the available amount of tariff rate quota rather than the amount initially requested by the applicant or that was specified in the revoked certificate.

The ability to amend the application of section 43(1) of the AAT Act in relation to the tariff rate quota system recognises that, due to agreements in place with trading partners, certificates issued for any quota type cannot exceed the stated access amount (that is, must not be more than 100 per cent).

Tariff rate quota volumes are determined by the importing country. Eligibility for, and allocation of, the tariff rate quota entitlements for Australian exporters is determined by the specific methods prescribed in these rules and factor in access amounts agreed with Australia's trading partners.

There will be no change to the current administration of tariff rate quota certificates or impact on related trade agreements. Setting aside a decision where this would result in a quota being overfilled, or in the quota allocation issued to an individual being overused, would result in subsequent consignments being refused their preferential tariff rates at import. Refusal of such tariff rate concessions would negatively impact—by way of the imposition or increase of import tariffs—other parties who had correctly been issued TRQ certificates. Most importantly, the giving of TRQ certificates that exceed the total access amounts available may also undermine confidence in Australia's regulatory system. If the available amount of tariff rate quota is equal to or greater than the amount required for a certificate to be issued as initially requested or to reinstate the original amount requested, this section will not apply.

The repeal of sections 122, 123 and 124 of the Tariff Rate Quotas Rules reflects that provisions for review of decisions are now contained in Chapter 11, Part 2, Division 2 of the Act.

#### **Item 27 - Sections 125 and 126 (Audits) and (Secretary may arrange for use of computer programs to make decision)**

This item repeals sections 125 and 126 of the Tariff Rate Quotas Rules which deal with audits and the use of computer programs to make decisions and substitutes new sections 125 and 126.

New subsection 125(1) provides that for the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to a kind of goods covered by Chapter 3 of this instrument carried out by:

- A person who has applied for a tariff rate quota certificate in relation to the goods; or
- A person to whom a tariff rate quota certificate in relation to the goods has been issued (whether or not the certificate has been revoked).

The note to subsection 125(1) provides that the Secretary may require an audit to be conducted of the export operations under paragraph 266(1)(f) of the Act. Part 1 of Chapter 9 of the Act and this section provide for the conduct of an audit.

New subsection 125(2) provides that an audit must be conducted:

- As expeditiously as possible; and
- In a way that results in minimal interference to the export operations to which the audit relates.

New subsection 125(3) provides that after an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.

New subsection 125(4) provides that within 14 business days after the audit is completed or ends, the auditor must:

- Give the audit report to the Secretary in a manner approved by the Secretary; and
- Give a copy of the audit report to the relevant person for the audit.

The note to subsection 125(4) provides that for the person who is the *relevant person* for an audit, see section 269 of the Act.

Audits of export operations are covered by Division 1 of Part 1 of Chapter 9 of the Act. Under those provisions, the Secretary may require an audit to be conducted in relation to export operations carried out in certain circumstances, or in relation to the performance of functions and the exercise of powers under this Act by certain persons.

Section 270 of the Act deals with the conduct of an audit, including the requirements an auditor must comply with before entering premises to conduct an audit.

Subsection 270(4) provides that the rules may make provision for, and in relation to, other matters relating to the conduct of an audit and the process to be followed after an audit has been completed.

Subsection 270(5) of the Act provides that without limiting subsection (4), the rules may make provision for and in relation to:

- Information that must be provided to the relevant person for the audit during the audit or after the audit is completed;
- Requirements for, and in relation to, reports to be provided in relation to an audit
- Actions that the Secretary may require the relevant person for the audit to take after the audit has been completed.

New section 125 sets out the various matters for the purposes of subsection 270(5) of the Act, including the giving of an audit report to the Secretary and the giving of the audit report to the person who applied for a tariff rate quota certificate or the person to whom a tariff rate quota certificate was issued (as the case may be).

New section 126 deals with the use of computer programs to make decisions.

New subsection 126(1) provides that for the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a

computer program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act:

- A decision under section 11, 12 or 18 to issue a tariff rate quota certificate;
- A decision under section 21 to allocate a requested amount of tariff rate quota entitlement;
- A decision under section 25 to issue a tariff rate quota certificate;
- A decision under section 30 to allocate an amount of tariff rate quota entitlement;
- A decision under section 36 to issue a tariff rate quota certificate;
- A decision under section 42 or 45 to allocate an amount of tariff rate quota entitlement;
- A decision under section 49 or 52 to issue a tariff rate quota certificate;
- A decision under subsection 119(1) to revoke a tariff rate quota certificate on request.

New subsection 126(2) provides that to avoid doubt, subsection (1) does not apply to a decision under section 115 not to issue a tariff rate quota certificate.

New subsection 126(3) provides that for the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1):

- An exporter of a kind of goods covered by Chapter 3 of this instrument;
- An agent of an exporter of a kind of goods covered by Chapter 3 of this instrument;
- An authorised officer;
- An APS employee in the Department;
- A person performing services for the Department under a contract

if the Secretary has given the person a unique identifier to enable the person to access the computer program.

New subsection 126(4) provides that for the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:

- Be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
- Ensure that the information is accurately entered into the computer program.

It is necessary and appropriate to provide for automated decision-making in relation to decisions to issue tariff rate quota certificates, allocate amounts of tariff rate quota entitlement and decisions to revoke tariff rate quota certificates at the request of the holders of those certificates because it will promote administrative efficiency in the making of those decisions.

Specifically, those decisions:

- Will not be limited to being made during business hours; and
- Will be more accurate and consistent than decisions made by a human decision-maker;
- Will be based on objective criteria rather than the exercise of discretion. (By contrast, a decision not to issue a tariff rate quota certificate under section 115 of the Act will be made by a human decision maker rather than by the computer program.)

The Act provides safeguards to ensure decisions made by use of a computer program are correct:

- Paragraph 286(2)(b) of the Act allows the rules to prescribe the persons or bodies that may use computer programs under an arrangement in subsection 286(1). Subsection 126(2) of the rules sets out who may use an authorised computer program for a decision referred to in subsection 126(1) if the Secretary has given them a unique identifier to access the computer program. This ensures the computer program can only be used by those who require access to perform their functions.
- Subsection 126(3) is made for the purposes of paragraph 286(2)(c) of the Act and sets the conditions for use of the computer program by the persons listed under subsection 126(2). It provides that a person who has access to and uses the authorised computer program must be satisfied on reasonable grounds that the information entered into the computer program is true and correct and is accurately entered. This will avoid, as far as practicable, incorrect or incomplete information being entered into the computer program which may result in an incorrect decision.

The Act provides mechanisms by which incorrect decisions made by use of a computer program can be corrected:

- Under subsection 286(3) of the Act, the Secretary is required to take all reasonable steps to ensure decisions made by a computer program under the arrangement are correct.
- Subsection 286(5) of the Act provides that if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect, the Secretary may make a decision in substitution for that made by the computer program.

#### **Item 28 - At the end of Chapter 7 (Application, saving and transitional provisions)**

This item inserts a new Part 3 at the end of Chapter 7 of the Tariff Rate Quotas Rules to provide for transitional provisions in relation to audits and review of decisions.

Section 136 provides that *commencement time* for the purposes of this Part means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

The Tariff Rate Quotas Rules commence immediately after the commencement of the Act (or on 28 March 2021).

Subsection 137(1) provides that this section applies if:

- The Secretary had, under section 125 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
- The audit had not commenced before the commencement time.

Subsection 137(2) provides that the requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to the kind of goods for which the tariff rate quota certificate or certificates were issued.

This provision reflects the fact that audits are now carried out under the Act rather than the Tariff Rate Quotas Rules. It preserves a requirement of the Secretary that an audit be carried out in relation to a tariff rate quota certificate or certificates issued to a person that was made

under the Tariff Rate Quotas Rules by deeming the Secretary to have made that requirement under the Act.

Subsection 138(1) provides that this section applies if:

- The Secretary had, under section 125 of this instrument as in force before the commencement time, required an audit to be carried out; and
- The audit had commenced before the commencement time but had not been completed at that time.

Subsection 138(2) provides that the auditor must complete the audit as if section 125, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor (under subsection 125(2) before the commencement time) continues in force.

This provision preserves an audit that had commenced but had not yet been completed under section 125 of the *Export Control (Tariff Rate Quotas) Order 2019* before 28 March 2021. Although section 125 of the *Export Control (Tariff Rate Quotas) Order 2019* has been repealed by item 27 above, this section requires the auditor to complete the audit as though that provision was still in effect.

Section 139 provides that Chapter 5 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- An initial decision that was made under this instrument before the commencement time; and
- A decision of the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

This provision clarifies that the provisions dealing with review of decisions in this instrument (rather than the equivalent provisions dealing with review of decisions in the Act) apply to a decision made before 28 March 2021. Similarly, the provisions dealing with review of decisions in this instrument also apply to a decision of the Secretary to affirm that initial decision. This is regardless of whether the Secretary's decision was made before or after 28 March 2021.

Section 140 provides that information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

This provision recognises that information that was obtained under this instrument before 28 March 2021 is taken to be protected information for the purposes of the Act.

## **Item 29 - Amendments of listed provisions**

This item omits the words “cancelled” and “cancellation” wherever occurring in the Tariff Rate Quotas Rules and substitutes the words “revoked” and “revocation”. This ensures the terminology in the Tariff Rate Quotas Rules is consistent with the terminology in the Act.

## **Schedule 2—Amendment of the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020***

### **Item 1 – Section 1 (Name)**

This item omits “Order 2020” and substitutes “Rules 2021” in section 1 of the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020*. This amendment updates the name of the instrument to the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021* (Tariff Rate Quotas—Feed Grain Export to Indonesia Rules).

For the purposes of Schedule 2 of this instrument, sections of the *Export Control (Tariff Rate Quotas—Feed Grant Export to Indonesia) Order 2020* will be referred to as sections in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

### **Item 2 – Section 3 (Authority)**

This item repeals and substitutes section 3 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

This item clarifies that the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules are made under the *Export Control Act 2020* (the Act). The exception to this is Division 1 of Part 7 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. Division 1 of Part 7 is made under the Act and item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

### **Item 3 – Section 4 (Purpose of this instrument)**

This item omits “This” from section 4 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules and substitutes “For the purposes of section 264 of the Act, this”. This item clarifies that the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules are made pursuant to section 264 of the Act which allows rules to be made to make provision for and in relation to the establishment and administration of a system, or systems of, tariff rate quotas for the export of goods.

### **Item 4 – Section 5 (Definitions)**

This item inserts the following definition of *Act* in section 5 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to provide a simplified reference to be used throughout the rules. *Act* means the *Export Control Act 2020*, and includes:

- Legislative instruments made under the *Export Control Act 2020*; and
- The Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

### **Item 5 - Section 5 (Definitions - Indonesia-Australia Comprehensive Economic Partnership Agreement)**

This item omits “2019.” from the definition of *Indonesia-Australia Comprehensive Economic Partnership Agreement* in section 5 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules and substitutes “2019, as in force for Australia from time to time.”. This amendment clarifies that the Indonesia-Australia Comprehensive Economic Partnership

Agreement, which sets out the goods eligible for tariff rate quotas, is taken to be the agreement in force for Australia from time to time.

#### **Item 6 – Section 5 (Definitions)**

This item repeals the definitions for an *initial decision*, a *relevant liability*, and a *relevant person* from section 5 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

The repeal of the definition of an *initial decision* is a consequential amendment to the repeal of section 25 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules by item 22 of Schedule 2 of this instrument. The definition is no longer required as it is not used elsewhere in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

The term *relevant liability* is replaced by the term *relevant Commonwealth liability* which is defined in section 12 of the Act. This ensures that the definitions in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules are consistent with those in the Act.

The repeal of the definition of a *relevant person* is a consequential amendment to the repeal of section 26 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules by item 22 of Schedule 2 of this instrument. This definition is no longer required as it is not used elsewhere in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

#### **Item 7 - Section 5 (Definitions - at the end of the definition of *tariff rate quota certificate*)**

This section adds a note to the definition of *tariff rate quota certificate* in section 5 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to explain that a tariff rate quota certificate is not a government certificate as defined in section 12 of the Act. Part 3 of Chapter 2 of the Act provides that government certificates may be issued for prescribed goods and non-prescribed goods that are to be exported or have been exported. The purpose of the government certificate is to confirm to importing country authorities that the goods have met specified requirements of that country.

Tariff rate quota certificates do not certify that goods have met the importing requirements of various goods for various countries and are not required to be issued before goods can be exported. Rather, tariff rate quota certificates only state that the product being exported is Australian in origin and that the consignment of the product should receive a preferential customs tariff rate.

#### **Item 8 - Paragraph 10(c) (When Secretary may decide not to reserve tariff rate quota entitlement)**

This item inserts the word “Commonwealth” after “relevant” in paragraph 10(c) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 6 of Schedule 2 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act. This ensures the terminology in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules is consistent with the terminology in the Act.

**Item 9 - At the end of section 10 (When Secretary may decide not to reserve tariff rate quota entitlement)**

This item inserts a note at the end of section 10 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to explain that decision not to reserve an amount of tariff rate quota entitlement is a reviewable decision (see section 25 of Schedule 2 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 10 - Paragraph 14(1)(c) (When Secretary may decide not to issue tariff rate quota certificate)**

This item inserts the word “Commonwealth” after “relevant” in paragraph 14(1)(c) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 6 of Schedule 2 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 11 - At the end of subsection 14(2) (When Secretary may decide not to issue tariff rate quota certificate)**

This item inserts a note after subsection 14(2) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to explain that a decision not to issue a tariff rate quota certificate is a reviewable decision (see section 25 of Schedule 2 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 12 - Subparagraph 15(2)(b)(ii) (Cancellation of tariff rate quota certificates)**

This item omits “Australia” from subparagraph 15(2)(b)(ii) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules and substitutes “Australian territory”. Consistent with the application of the Act, tariff rate quota certificates can be issued for eligible goods leaving Australia or its territories.

**Item 13 - Subparagraph 15(2)(b)(v) (Cancellation of tariff rate quota certificates)**

This item inserts the word “Commonwealth” after “relevant” in subparagraph 15(2)(b)(v) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 6 of Schedule 2 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 14 - Subsection 15(2) (Cancellation of tariff rate quota certificates) (note)**

This item omits “Note:” and substitutes “Note 1:” in subsection 15(2) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. This is a consequential amendment to item 15 below which inserts a second note to subsection 15(2).

**Item 15 - At the end of subsection 15(2) (Cancellation of tariff rate quota certificates)**

This item inserts a second note to subsection 15(2) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to explain that a decision to revoke a tariff rate quota certificate is a reviewable decision (see section 25 of Schedule 2 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 16 - Paragraph 22(1)(c) (Secretary may cancel tariff rate quota entitlement)**

This item inserts the word “Commonwealth” after “relevant” in paragraph 22(1)(c) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 6 of Schedule 2 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 17 – Subsection 22(1) (Secretary may cancel tariff rate quota entitlement) (note)**

This item omits “take” and substitutes “taken” in the note following subsection 22(1) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. This amendment corrects a typographical error in the note.

**Item 18 – Subsection 22(1) (Secretary may cancel tariff rate quota entitlement) (note)**

This item inserts “)” after “9(4)” in the note to subsection 22(1) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. This amendment corrects a typographical error in the note.

**Item 19 - At the end of subsection 22(3) (Secretary may cancel tariff rate quota entitlement)**

This item inserts a note to subsection 22(3) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to explain that a decision to revoke a tariff rate quota entitlement is a reviewable decision (see section 25 of Schedule 2 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 20 – Subsection 23(3) (Cancellation of tariff rate quota entitlement on request) (note)**

This item omits “take” and substitutes “taken” in the note to subsection 23(3) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. This amendment corrects a typographical error in the note.

**Item 21 – Subsection 24(1) (Entitlement cancelled at end of certificate application period) (note)**

This item omits “take” and substitutes “taken” in the note to subsection 24(1) of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. This amendment corrects a typographical error in the note.

## Item 22 - Sections 25 to 29 (Reviewable decisions)

This item repeals section 25 to 29 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules which deal with reviewable decisions and substitutes new sections 25 and 26.

Subsection 381(1) of the Act sets out the decisions that are reviewable decisions under the Act. Subsection 381(2) provides that the rules may also provide that a decision made under a specified provision of this Act is a reviewable decision and specify the relevant person for the reviewable decision.

New section 25 is made pursuant to subsection 381(2) of the Act. The effect of new section 25 is that:

- A decision under section 10 of the Act not to reserve an amount of tariff rate quota entitlement is a reviewable decision and the person who applied for the reservation amount can seek review of that decision;
- A decision under subsection 14(1) of the Act not to issue a tariff rate quota certificate is a reviewable decision and the person who applied for the certificate can seek review of that decision;
- A decision under subsection 15(2) of the Act to revoke a tariff rate quota certificate is a reviewable decision and the person to whom the certificate was issued can seek review of that decision;
- A decision under subsection 22(1) of the Act to revoke a tariff rate quota entitlement is a reviewable decision and the person who held the entitlement can seek review of that decision.

New section 26 deals with modifications of powers on review of decisions.

New subsection 26(1) provides that for the purposes of subsections 386(1) and (3) of the Act, this section modifies:

- The powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 25 of this instrument; and
- The powers of the Administrative Appeals Tribunal (the Tribunal), under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), when reviewing:
  - A reviewable decision mentioned in section 25 of this instrument made by the Secretary personally; or
  - A decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 25 of this instrument.

New subsection 26(2) provides that if a decision not to issue a tariff rate quota certificate to a person in relation to a consignment for export under an eligible feed grain contract in a quota year is set aside at a time, a certificate may only be issued in relation to the consignment for:

- If the person has a tariff rate quota entitlement for the contract at that time—the amount for which a certificate could be issued to the person in relation to the consignment under section 13 at that time; or
- If the person does not have a tariff rate quota entitlement for the contract at that time—the lower of the following amounts:

- The weight of the consignment;
- The uncommitted annual access amount for the quota year at that time.

New subsection 26(3) provides that if:

- A decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment for export under an eligible feed grain contract in a quota year is set aside at a time; and
- The amount for which the certificate was issued is more than the amount (the available amount) for which a certificate could be issued to the person under section 13 or 16 in relation to a consignment for export to Indonesia under the contract in the quota year at that time;

the revoked certificate may only be reinstated for the available amount.

New subsection 26(4) provides that if a decision not to reserve an amount of tariff rate quota entitlement for export by a person under an eligible feed grain contract in a quota year is set aside at a time, the amount of tariff rate quota entitlement that may be reserved for the person is the amount that could be reserved for the person at that time for export under the contract in the quota year.

New subsection 26(5) provides that if:

- A decision to revoke a tariff rate quota entitlement for export by a person under an eligible feed grain contract in a quota year is set aside at a time; and
- The amount of tariff rate quota entitlement that was revoked is more than the uncommitted annual access amount for the quota year at that time (the available amount);

the tariff rate quota entitlement may only be reinstated for the available amount.

Subsection 386(1) of the Act provides that the rules may prescribe modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements or tariff rate quota certificates.

Subsection 386(2) of the Act provides that if the rules provide modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements or tariff rate quota certificates, then that subsection has effect as so modified in relation to reviewable decisions of that kind.

Subsection 386(3) provides that the rules may prescribe modifications of subsection 43(1) of the AAT Act in its application to reviews of decisions relating to tariff rate quota entitlements or tariff rate quota certificates. Subsection 43(1) of the AAT Act relevantly provides that for the purposes of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing setting aside the decision under review and making a decision in substitution for the decision so set aside.

Subsection 386(4) provides that the rules may prescribe modifications for the purposes of subsection (1) or (3) only for the purpose of ensuring tariff rate quota amounts are not exceeded.

Consistent with the provisions of the current order, this section modifies the powers of the Secretary, an internal reviewer and the Tribunal in reviewing a decision to not issue a tariff

rate quota certificate, to revoke a tariff rate quota certificate, not to reserve an amount of tariff rate quota entitlement, or to revoke a tariff rate quota entitlement.

The Secretary, an internal reviewer or the Tribunal (as the case may be) can only set aside such a decision in accordance with the provisions of subsection 26(2), (3), (4) or (5) (as relevant).

The ability to amend the application of section 43(1) of the AAT Act in relation to the tariff rate quota system recognises that, due to agreements in place with trading partners, certificates issued for any quota type cannot exceed the stated access amount (that is, must not be more than 100 per cent).

Tariff rate quota volumes are determined by the importing country. Eligibility for, and allocation of, the tariff rate quota entitlements for Australian exporters is determined by the specific methods prescribed in these rules and factor in access amounts agreed with Australia's trading partners.

There will be no change to the current administration of tariff rate quota certificates or impact on related trade agreements. Setting aside a decision where this would result in a quota being overfilled, or in the quota allocation issued to an individual being overused, would result in subsequent consignments being refused their preferential tariff rates at import. Refusal of such tariff rate concessions would negatively impact—by way of the imposition or increase of import tariffs—other parties who had correctly been issued TRQ certificates. Most importantly, the giving of TRQ certificates that exceed the total access amounts available may also undermine confidence in Australia's regulatory system. If the available amount of tariff rate quota is equal to or greater than the amount required for a certificate to be issued as initially requested or to reinstate the original amount requested, this section will not apply.

The repeal of sections 27 to 29 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules reflect that provisions for review of decisions are now contained in Chapter 11, Part 2, Division 2 of the Act.

### **Item 23 - Sections 31 (Audits) and 32 (Secretary may arrange for use of computer programs to make decisions)**

This item repeals sections 31 and 32 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules relating to audits and the use of computer programs to make decisions and substitutes new sections 31 to 33.

New subsection 31(1) provides that for the purposes of paragraph 266(1)(g) of the Act, the Secretary may require an audit to be conducted of export operations in relation to feed grain carried out by:

- A person who has applied to reserve an amount of tariff rate quota entitlement in relation to feed grain; or
- A person for whom an amount of tariff rate quota entitlement has been reserved for export in relation to feed grain (whether or not the entitlement has been revoked).

The note to subsection 31(1) provides that an audit may also be conducted of export operations carried out in relation to feed grain by a person who has applied for a tariff rate quota certificate or to whom a tariff rate quota certificate has been issued (see paragraph

266(1)(f) of the Act). Part 1 of Chapter 9 of the Act and section 32 of this instrument provide for the conduct of an audit.

New subsection 31(2) provides that for the purposes of paragraph 266(2)(f) of the Act, an audit may relate to whether a matter stated in connection with an application to reserve an amount of tariff rate quota entitlement in relation to feed grain is correct.

New subsection 32(1) provides that for the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to feed grain carried out by:

- A person who has applied to reserve an amount of tariff rate quota entitlement in relation to feed grain; or
- A person for whom an amount of tariff rate quota entitlement has been reserved in relation to feed grain (whether or not the entitlement has been revoked); or
- A person who has applied for a tariff rate quota certificate in relation to feed grain; or
- A person to whom a tariff rate quota certificate in relation to feed grain (whether or not the certificate has been revoked).

New subsection 32(2) provides that an audit must be conducted:

- As expeditiously as possible; and
- In a way that results in minimal interference to the export operations to which the audit relates.

New subsection 32(3) provides that after an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.

New subsection 32(4) provides that within 14 business days after the audit is completed or ends, the auditor must:

- Give the audit report to the Secretary in a manner approved by the Secretary; and
- Give a copy of the audit report to the relevant person for the audit.

The note to subsection 32(4) states that for the person who is the relevant person for an audit, see section 269 of the Act.

New sections 31 and 32 set out the various matters for the purposes of sections 266 and 270 of the Act. These include the persons in respect of whom the Secretary may require an audit to be carried out, the matters to which an audit may relate, how the audit must be conducted and the requirements to give the audit report to the Secretary and the person to whom the audit relates.

New section 33 deals with the use of computer programs to make decisions.

New subsection 33(1) provides that for the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a computer program (an authorised computer program) under an arrangement made under subsection 286(1) of the Act:

- A decision under section 9 to reserve an amount of tariff rate quota entitlement (but not a decision under section 10 not to reserve an amount);
- A decision under section 13 to issue a tariff rate quota certificate (but not a decision under section 14 not to issue a certificate);

- A decision under subsection 15(1) to revoke a tariff rate quota certificate upon request;
- A decision under section 16 to issue a replacement tariff rate quota certificate.

New subsection 33(2) provides that for the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1):

- An exporter of feed grain;
- An agent of an exporter of feed grain;
- An authorised officer;
- An APS employee in the Department;
- A person performing services for the Department under a contract;

if the Secretary has given the person a unique identifier to enable the person to access the computer program.

New subsection 33(3) provides that for the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:

- Be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
- Ensure that the information is accurately entered into the computer program.

It is necessary and appropriate to provide for automated decision-making in relation to a decision to reserve an amount of tariff rate quota entitlement, to issue a tariff rate quota certificate, to revoke a tariff rate quota certificate on request or issue a replacement tariff rate quota certificate because it will promote administrative efficiency in the making of those decisions.

Specifically, those decisions:

- Will not be limited to being made during business hours;
- Will be more accurate and consistent than decisions made by a human decision-maker; and
- Will be based on objective criteria rather than the exercise of discretion. (By contrast, a decision not to issue a tariff rate quota certificate under section 14 will be made by a human decision maker rather than by the computer program).

The Act provides safeguards to ensure decisions made by use of a computer program are correct:

- Paragraph 286(2)(b) of the Act allows the rules to prescribe the persons or bodies that may use computer programs under an arrangement in subsection 286(1). Subsection 33(2) of this instrument sets out who may use an authorised computer program for a decision referred to in subsection 33(1) if the Secretary has given them a unique identifier to access the computer program. This ensures the computer program can only be used by those who require access to perform their functions.
- Subsection 33(3) is made for the purposes of paragraph 286(2)(c) of the Act and sets the conditions for use of the computer program by the persons listed under subsection 33(2). It provides that a person who has access to and uses the authorised computer program must be satisfied on reasonable grounds that the information entered into the

computer program is true and correct and is accurately entered. This will avoid, as far as practicable, incorrect or incomplete information being entered into the computer program which may result in an incorrect decision.

The Act provides mechanisms by which incorrect decisions made by use of a computer program can be corrected:

- Under subsection 286(3) of the Act, the Secretary is required to take all reasonable steps to ensure decisions made by a computer program under the arrangement are correct.
- Subsection 286(5) of the Act provides that if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect, the Secretary may make a decision in substitution for that made by the computer program.

#### **Item 24 - At the end of the instrument**

This item adds a new Part 7 at the end of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules to provide for transitional and saving provisions in relation to audits, review of decisions and confidentiality of information.

Section 34 provides that in this Division *commencement time* means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

The Tariff Rate Quotas—Feed Grain Export to Indonesia Rules commence immediately after the commencement of section 3 the Act (or on 28 March 2021).

Subsection 35(1) provides that if:

- The Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
- The audit had not commenced before the commencement time;

the requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to feed grain.

Subsection 35(2) provides that if:

- The Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out in relation to an amount or amounts of tariff rate quota entitlement reserved for a person; and
- The audit had not commenced before the commencement time;

the requirement is taken to be a requirement under section 31 of this instrument as in force after the commencement time for an audit to be conducted of export operations carried out by the person in relation to feed grain.

This provision treats a requirement of the Secretary for an audit to be carried out under section 31 in relation to a tariff rate quota certificate issued to a person before commencement to be a requirement to be conducted of the export operations carried out by the person in relation to feed grain under paragraph 266(1)(f) of the Act. This provision reflects the fact that audits are now carried out under the Act rather than the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules. It preserves the Secretary’s requirement under section 31 of the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules that the audit be carried out by deeming the Secretary to have made that requirement under the Act.

Subsection 36(1) provides that this section applies if:

- The Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out; and
- The audit had commenced before the commencement time but had not been completed at that time.

Subsection 36(2) provides that the auditor must complete the audit as if section 31, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor under subsection 31(2) continues in force.

This provision preserves an audit that had commenced but had not yet been completed under section 31 of the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2019* before 28 March 2021. Although section 31 of the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2019* has been repealed by item 23 above, this section requires the auditor to complete the audit as though that provision was still in effect.

Section 37 provides that Part 5 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- An initial decision that was made under this instrument before the commencement time; and
- A decision of the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

This provision clarifies that the provisions dealing with review of decisions in Part 5 of this instrument (rather than the equivalent provisions dealing with review of decisions in the Act) apply to a decision made before 28 March 2021. Similarly, the provisions dealing with review of decisions in this instrument also apply to a decision of the Secretary to affirm that initial decision. This is regardless of whether the Secretary’s decision was made before or after 28 March 2021.

Section 38 provides that information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

This provision recognises that information that was obtained under this instrument before 28 March 2021 is taken to be protected information for the purposes of the Act.

## **Item 25 – Amendments of listed provisions**

This item omits the words “cancelled” and “cancellation” wherever occurring in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules and substitutes the words “revoked” and “revocation”. This ensures the terminology in the Tariff Rate Quotas—Feed Grain Export to Indonesia Rules is consistent with the terminology in the Act.

## **Schedule 3—Amendment of the Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019**

### **Item 1 – Section 1 (Name)**

This item omits “Order 2019” and substitutes “Rules 2021” in section 1 of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019*. This amendment updates the name of the instrument to the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export for the European Union and United Kingdom) Rules 2021* (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules).

For the purposes of Schedule 3 of this instrument, sections of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019* will be referred to as sections in the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

### **Item 2 – Section 3 (Authority)**

This item repeals and substitutes section 3 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules which provides the authority for making the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

This item clarifies that the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules are made under the *Export Control Act 2020* (the Act). The exception to this is Division 2 of Part 6 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules. Division 2 of Part 6 is made under the Act and item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

### **Item 3 – Section 5 (Purpose of this instrument)**

This item omits “This” from section 5 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “For the purposes of section 264 of the Act, this”. This item clarifies that the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules are made pursuant to section 264 of the Act which allows rules to be made to make provision for and in relation to the establishment and administration of a system, or systems of, tariff rate quotas for the export of goods.

### **Item 4 – Section 6 (Definitions) (paragraph (a) of the definition of *access amount*)**

This item omits “1354/2011,” in the definition of *access amount* in the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “1354/2011 as that Regulation is in force from time to time,”.

Part 2 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules provides for a system of tariff rate quotas for the export of eligible meat to a quota destination within the access amount for the quota destination and a quota year. *Access amount* is relevantly defined in section 6 to mean, for the EU and a quota year – the total carcass equivalent weight of eligible meat for the EU that may, under the import tariff quota for CN code 0204 that is specified for Australia in the Annex to Commission Implementing

Regulation (EU) No 1354/2011, be exported from Australia to the EU in the quota year at a reduced tariff rate.

This amendment clarifies that references to the Commission Implementing Regulation (EU) No 1354/2011, are to that instrument as in force from time to time.

#### **Item 5 – Section 6 (Definitions)**

This item inserts the following definition of *Act* in section 5 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to provide a simplified reference to be used throughout the rules. *Act* means the *Export Control Act 2020*, and includes:

- Legislative instruments made under the *Export Control Act 2020*; and
- The Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

#### **Item 6 – Section 6 (Definitions) (paragraph (b) of definition of *EU-accredited establishment*)**

This item omits “the *Export Control Act 1982*” from the definition of *EU-accredited establishment* and substitutes “Chapter 4 of the Act”. This amendment reflects that registered establishments for a kind of export operations in relation to a kind of prescribed goods are now covered by Chapter 4 of the Act.

#### **Item 7 – Section 6 (Definitions) (definition of *exporter*)**

This item omits “a meat export licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*” from the definition of *exporter* in the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “an export licence”.

This item reflects that export licences (including licences to export sheepmeat and goatmeat) are granted under Chapter 6 of the Act rather than under section 10 of Division 2 of Part 2 of the *Australian Meat and Live-stock Industry Act 1997*. Part 2 of the *Australian Meat and Live-stock Industry Act 1997* was repealed by the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

#### **Item 8 – Section 6 (Definitions) (definition of *relevant liability*)**

This item repeals the definition of a *relevant liability* from the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

This is a consequential amendment to item 10 below which inserts “Commonwealth” after “relevant” in paragraph 19(4)(c) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

#### **Item 9 - Section 6 (Definitions) (at the end of the definition of *tariff rate quota certificate*)**

This section adds a note to the definition of *tariff rate quota certificate* in section 6 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to explain that a tariff rate quota certificate is not a government certificate as defined in section 12 of the Act. Part 3 of Chapter 2 of the Act provides that government certificates may be issued for prescribed goods and non-prescribed goods that are to be exported or have been exported.

The purpose of the government certificate is to confirm to importing country authorities that the goods have met specified requirements of that country.

Tariff rate quota certificates do not certify that goods have met the importing requirements of various goods for various countries and are not required to be issued before goods can be exported. Rather, tariff rate quota certificates only state that the product being exported is Australian in origin and that the consignment of the product should receive a preferential customs tariff rate.

**Item 10 – Paragraph 19(4)(c) (Tariff rate quota certificates before additional allocations)**

This item inserts the word “Commonwealth” after “relevant” in paragraph 19(4)(c) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 8 of Schedule 3 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 11 – At the end of subsection 19(4) (Tariff rate quota certificates before additional allocations)**

This item inserts a note at the end of subsection 19(4) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to explain that a decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of Schedule 3 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 12 – Paragraph 20(7)(c) (Tariff rate quota certificates after additional allocations)**

This item inserts “Commonwealth” after “relevant” in paragraph 20(7)(c) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 8 of Schedule 3 of this instrument and the use of the expression *relevant Commonwealth liability* in section 12 of the Act.

**Item 13 – At the end of subsection 20(7) (Tariff rate quota certificates after additional allocations)**

This item inserts a note at the end of subsection 20(7) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to explain that a decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of Schedule 3 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 14 - Subsection 21(2) (Requirements for applications under section 19 or 20)**

This item omits “Australia” from subsection 21(2) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “Australian territory”. Consistent with the application of the Act, tariff rate quota certificates can be issued for eligible goods leaving Australia or its territories.

**Item 15 - Subparagraph 23(2)(b)(ii) (Cancellation of tariff rate quota certificate)**

This item omits “Australia” from subparagraph 23(2)(b)(ii) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “Australian territory”. Consistent with the application of the Act, tariff rate quota certificates can be issued for eligible goods leaving Australia or its territories.

**Item 16 - Subparagraph 23(2)(b)(v) (Cancellation of tariff rate quota certificate)**

This item inserts the word “Commonwealth” after “relevant” in subparagraph 23(2)(b)(v) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules.

This is a consequential amendment to the repeal of the definition of a *relevant liability* by item 8 of Schedule 3 of this instrument and the use of the expression *relevant Commonwealth liability* as defined in section 12 of the Act.

**Item 17 - At the end of subsection 23(2) (Cancellation of tariff rate quota certificate)**

This item inserts a note at the end of subsection 23(2) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to explain that the decision to revoke a tariff rate quota certificate is a reviewable decision (see section 29 of Schedule 3 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 18 - At the end of subsection 28(5) (Tariff rate quota certificates for erga omnes tariff rate quota)**

This item adds a note at the end of subsection 28(5) of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to explain that a decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of Schedule 3 of this instrument and Part 2 of Chapter 11 of the Act).

**Item 19 – Sections 29 to 32 (Review of decisions)**

This item repeals sections 29 to 32 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules which deal with applications for review and substitutes new sections 29 to 30.

Subsection 381(1) of the Act sets out the decisions that are reviewable decisions under the Act. Subsection 381(2) provides that the rules may also provide that a decision made under a specified provision of this Act is a reviewable decision and specify the relevant person for the reviewable decision.

New section 29 is made pursuant to subsection 381(2) of the Act. The effect of new section 29 is that:

- A decision under subsection 19(4) of the Act not to issue a tariff rate quota certificate is a reviewable decision and the person who applied for the certificate can seek review of that decision;
- A decision under subsection 20(7) of the Act not to issue a tariff rate quota certificate is a reviewable decision and the person who applied for the certificate can seek review of that decision;

- A decision under subsection 23(2) of the Act to revoke a tariff rate quota certificate is a reviewable decision and the person to whom the certificate was issued can seek review of that decision;
- A decision under subsection 28(4) of the Act not to issue a tariff rate quota certificate is a reviewable decision and the person who applied for the certificate can seek review of that decision.

New section 29 refers to the revocation of a tariff rate quota certificate for consistency with the terminology in the Act.

New subsection 30(1) provides that for the purposes of subsections 386(1) and (3) of the Act, this section modifies:

- The powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 29 of this instrument; and
- The powers of the Administrative Appeals Tribunal (the Tribunal), under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), when reviewing:
  - A reviewable decision mentioned in section 29 of this instrument made by the Secretary personally; or
  - a decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 29 of this instrument.

New subsection 30(2) provides that if a decision not to issue a tariff rate quota certificate to a person for export of a consignment of eligible meat to a quota destination in a quota year is set aside at a time, a certificate may only be issued for the amount for which a certificate could be issued to the person at that time under section 19 or 20 in relation to the consignment for export to that quota destination in that quota year.

The note to subsection 30(2) provides that if the original decision was made under section 19 before the Secretary allocates amounts under section 17, but was set aside after the Secretary allocates amounts, section 20 would be the section under which a certificate could be issued to the person at the time the original decision was set aside.

New subsection 30(3) provides that if:

- A decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment of eligible meat for export to a quota destination in a quota year is set aside at a time; and
- The amount for which the certificate was issued is more than the amount (the available amount) for which a certificate could be issued to the person at that time under section 19 or 20 in relation to a consignment for export to that quota destination in that quota year;

the revoked certificate may only be reinstated for the available amount.

Subsection 386(1) of the Act provides that the rules may prescribe modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements or tariff rate quota certificates.

Subsection 386(2) of the Act provides that if the rules provide modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements or tariff rate quota certificates, then that subsection has effect as so modified in relation to reviewable decisions of that kind.

Subsection 386(3) provides that the rules may prescribe modifications of subsection 43(1) of the AAT Act in its application to reviews of decisions relating to tariff rate quota entitlements or tariff rate quota certificates. Subsection 43(1) of the AAT Act relevantly provides that for the purposes of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing setting aside the decision under review and making a decision in substitution for the decision so set aside.

Subsection 386(4) provides that the rules may prescribe modifications for the purposes of subsection (1) or (3) only for the purpose of ensuring tariff rate quota amounts are not exceeded.

Consistent with the provisions of the current order, this section modifies the powers of the Secretary, an internal reviewer and the Tribunal which are available on review of a decision to either not issue a tariff rate quota certificate or to revoke a tariff rate quota certificate. Should such a decision be set aside, the tariff rate quota certificate that is issued can only be for the available amount of tariff rate quota rather than the amount initially requested by the applicant or that was specified in the revoked certificate.

The ability to amend the application of section 43(1) of the AAT Act in relation to the tariff rate quota system recognises that, due to agreements in place with trading partners, certificates issued for any quota type cannot exceed the stated access amount (that is, must not be more than 100 per cent).

Tariff rate quota volumes are determined by the importing country. Eligibility for, and allocation of, the tariff rate quota entitlements for Australian exporters is determined by the specific methods prescribed in these rules and factor in access amounts agreed with Australia's trading partners.

There will be no change to the current administration of tariff rate quota certificates or impact on related trade agreements. Setting aside a decision where this would result in a quota being overfilled, or in the quota allocation issued to an individual being overused, would result in subsequent consignments being refused their preferential tariff rates at import. Refusal of such tariff rate concessions would negatively impact—by way of the imposition or increase of import tariffs—other parties who had correctly been issued TRQ certificates. Most importantly, the giving of TRQ certificates that exceed the total access amounts available may also undermine confidence in Australia's regulatory system. If the available amount of tariff rate quota is equal to or greater than the amount required for a certificate to be issued as initially requested or to reinstate the original amount requested, this section will not apply.

The repeal of sections 29, 30, 31 and 32 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and the substitution of new sections 29 and 30 reflects that the provisions for review of those decisions are now contained in Chapter 11, Part 2, Division 2 of the Act.

## Item 20 - Section 33 (Audits) and 34 (decisions made by computer)

This item repeals sections 33 and 34 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules relating to audits and decisions made by computer and substitutes new sections 33 and 34.

New subsection 33(1) provides that for the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to lamb, mutton or goatmeat carried out by:

- A person who has applied for a tariff rate quota certificate in relation to lamb, mutton or goatmeat; or
- A person to whom a tariff rate quota certificate in relation to lamb, mutton or goatmeat has been issued (whether or not the certificate has been revoked).

The note to subsection 33(1) provides that the Secretary may require an audit to be conducted of the export operations under paragraph 266(1)(f) of the Act. Part 1 of Chapter 9 of the Act and this section provide for the conduct of an audit.

New subsection 33(2) provides that an audit must be conducted:

- As expeditiously as possible; and
- In a way that results in minimal interference to the export operations to which the audit relates.

New subsection 33(3) provides that after an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.

New subsection 33(4) provides that within 14 business days after the audit is completed or ends, the auditor must:

- Give the audit report to the Secretary in a manner approved by the Secretary; and
- Give a copy of the audit report to the relevant person for the audit.

The note to subsection 33(4) provides that for the person who is the *relevant person* for an audit, see section 269 of the Act.

Audits of export operations are covered by Division 2 of Part 1 of Chapter 9 of the Act. Under those provisions, the Secretary may require an audit to be conducted in relation to export operations carried out in certain circumstances, or in relation to the performance of functions and the exercise of powers under this Act by certain persons.

Section 270 of the Act deals with the conduct of an audit, including the requirements an auditor must comply with before entering premises to conduct an audit.

Subsection 270(4) provides that the rules may make provision for, and in relation to, other matters relating to the conduct of an audit and the process to be followed after an audit has been completed.

Subsection 270(5) of the Act provides that without limiting subsection (4), the rules may make provision for and in relation to:

- Information that must be provided to the relevant person for the audit during the audit or after the audit is completed;
- Requirements for, and in relation to, reports to be provided in relation to an audit

- Actions that the Secretary may require the relevant person for the audit to take after the audit has been completed.

New section 33 sets out the various matters for the purposes of subsections 270(4) and (5) of the Act concerning the audit of export operations in relation to lamb, mutton or goatmeat carried out by a person who has applied for a tariff rate quota certificate or a person to whom a tariff rate quota certificate has been issued in relation to those commodities. These include the giving of an audit report to the Secretary and the giving of the audit report to the person who applied for a tariff rate quota certificate or the person to whom a tariff rate quota certificate was issued (as the case may be).

New section 34 deals with the use of computer programs to make decisions.

New subsection 34(1) provides that for the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a computer program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act:

- Determining under section 10 an amount of tariff rate quota entitlement to be allocated;
- Determining under section 17 an additional amount of tariff rate quota entitlement to be allocated;
- A decision under section 19 to issue a tariff rate quota certificate (but not a decision under subsection 19(4) not to issue a certificate);
- A decision under section 20 to issue a tariff rate quota certificate (but not a decision under subsection 20(7) not to issue a certificate);
- A decision under subsection 23(1) to revoke a tariff rate quota certificate on request;
- A decision under section 28 to issue a tariff rate quota certificate (but not a decision under subsection 28(5) not to issue a certificate).

New subsection 34(2) provides that for the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1):

- An exporter;
- An agent of an exporter;
- An authorised officer;
- An APS employee in the Department;
- A person performing services for the Department under a contract;

if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Subsection 34(3) provides that for the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:

- Be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
- Ensure that the information is accurately entered into the computer program.

It is necessary and appropriate to provide for automated decision-making in relation to decisions to determine an amount of tariff rate quota entitlement to be allocated under section 10, decisions to determine additional amounts of tariff rate quota entitlement to be allocated under section 17, decisions to issue tariff rate quota certificates under sections 19, 20 and 28 and decisions to revoke tariff rate quota certificates on request under subsection 23(1), because it will promote administrative efficiency in the making of those decisions.

Specifically, those decisions:

- Will not be limited to being made during business hours;
- Will be more accurate and consistent than decisions made by a human decision-maker; and
- Will be based on objective criteria rather than the exercise of discretion. (By contrast, a decision not to issue a tariff rate quota certificate under sections 19(4), 20(7) and 28(5) of the Act will be made by a human decision maker rather than by the computer program).

The Act provides safeguards to ensure decisions made by use of a computer program are correct:

- Paragraph 286(2)(b) of the Act allows the rules to prescribe the persons or bodies that may use computer programs under an arrangement in subsection 286(1). Subsection 34(2) of this instrument sets out who may use an authorised computer program for a decision referred to in subsection 34(1) if the Secretary has given them a unique identifier to access the computer program. This ensures the computer program can only be used by those who require access to perform their functions.
- Subsection 34(3) is made for the purposes of paragraph 286(2)(c) of the Act and sets the conditions for use of the computer program by the persons listed under subsection 34(2). It provides that a person who has access to and uses the authorised computer program must be satisfied on reasonable grounds that the information entered into the computer program is true and correct and is accurately entered. This will avoid, as far as practicable, incorrect or incomplete information being entered into the computer program which may result in an incorrect decision.

The Act provides mechanisms by which incorrect decisions made by use of a computer program can be corrected:

- Under subsection 286(3) of the Act, the Secretary is required to take all reasonable steps to ensure decisions made by a computer program under the arrangement are correct.
- Subsection 286(5) of the Act provides that if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect, the Secretary may make a decision in substitution for that made by the computer program.

## **Item 21 – Before section 36**

This item inserts a new division heading “Division 1—Transitional provisions relating to 2020 and 2021 quota years” in Part 6 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules. This creates two Divisions in Part 6 (Application and transitional provisions) and results in sections 36 to 43 being in Division 1 of Part 6 and specifically related to the transitional provisions for the 2020 and 2021 quota years.

## **Item 22 – Section 36 (Definitions)**

This item omits “Part” from section 36 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes “Division”.

This is a consequential amendment to item 21 of Schedule 3 above which inserts a new Division in Part 6.

## **Item 23 – Section 43 (Repeal of this Part)**

This item repeals section 43 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes a new section 43, which provides that this Division is repealed at the start of 1 January 2022.

This is a consequential amendment to item 21 of Schedule 3 above, which inserts a new Division in Part 6.

## **Item 24 – At the end of Part 6**

This item adds a new Division at the end of Part 6 of the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules to provide for transitional provisions in relation to audits, review of decisions and confidentiality of information.

Section 44 provides that in this Division *commencement time* means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

The Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules commence immediately after the commencement of section 3 of the Act (or on 28 March 2021).

Subsection 45(1) provides that this section applies if:

- The Secretary had, under section 33 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
- The audit had not commenced before the repeal of that section.

Subsection 45(2) that the requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to the kind of goods for which the tariff rate quota certificate or certificates were issued.

This provision reflects the fact that audits are now carried out under the Act rather than the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules. It preserves a requirement of the Secretary that an audit be carried out in relation to a tariff rate quota certificate or certificates issued to a person that was made under the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules by deeming the Secretary to have made that requirement under the Act.

Subsection 46(1) provides that this section applies if:

- The Secretary had, under section 33 of this instrument as in force before the commencement time, required an audit to be carried out; and

- The audit had commenced before the commencement time but had not been completed at that time.

Subsection 46(2) provides that the auditor must complete the audit as if section 33, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor under subsection 33(2) continues in force.

This provision preserves an audit that had commenced but had not yet been completed under section 33 of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019* before 28 March 2021. Although section 33 of that instrument has been repealed by item 20 of Schedule 3 above, this section requires the auditor to complete the audit as though that provision was still in effect.

Section 47 provides that Part 4 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- A decision that was made under this instrument before the commencement time for which an application for reconsideration was permitted under section 29; and
- A decision of the Secretary (whether made before or after the commencement time) following a reconsideration of a decision referred to in paragraph (a).

This provision clarifies that the provisions dealing with review of decisions in Part 4 of this instrument (rather than the equivalent provisions dealing with review of decisions in the Act) apply to a decision made before 28 March 2021. Similarly, the provisions dealing with review of decisions in this instrument also apply to a decision of the Secretary to affirm that initial decision. This is regardless of whether the Secretary's decision was made before or after 28 March 2021.

Section 48 provides that information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

This provision recognises that information that was obtained under this instrument before 28 March 2021 is taken to be protected information for the purposes of the Act.

### **Item 25 – Amendments of listed provisions**

This item omits the words “cancelled” and “cancellation” wherever occurring in the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules and substitutes the words “revoked” and “revocation”. This ensures the terminology in the Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the EU and UK Rules is consistent with the terminology in the Act.

## **Statement of Compatibility with Human Rights**

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

### *Export Control (Tariff Rate Quotas) Amendment Rules 2021*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* (the Amendment Rules) is to transition three Export Control Orders (the Orders) into the Export Control Rules under the Act. These are:

- the *Export Control (Tariff Rate Quotas) Order 2019* which will transition to the *Export Control (Tariff Rate Quotas—General) Rules 2021*;
- the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020* which will transition to the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021*; and
- the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019* which will transition to the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021*.

The Amendment Rules amend the provisions in the Orders to refer to the relevant provisions in the Act and make changes certain terms to promote consistency with terms used in the Act.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Andrew Edgar Francis Metcalfe AO**

**Secretary of the Department of Agriculture, Water and the Environment**