

EXPLANATORY STATEMENT

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

Export Control Act 2020

Export Control (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021

Legislative Authority

The *Export Control (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Water and the Environment (the department) under section 432 of the *Export Control Act 2020* (the Act).

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

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

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

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

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

Purpose

The *Export Control (Fees and Payments) Rules 2021* (the Fees Rules) prescribes fees, cost-recovery charges and late payment fees, persons liable to pay fees or late payment fees, liability of a person's agent to pay cost-recovery charges, and the time for payment of cost-

recovery charges, in relation to functions carried out by, or on behalf of, the Commonwealth, under the Act.

The purpose of the Amendment Rules is to amend fee prices to more precisely reflect the Government's \$328.4 million Busting Congestion for Agricultural Exporters package, as part of the 2020-21 Budget. This package aims to ensure that departmental systems and processes underpinning the agricultural and food export system are made more efficient and reliable.

Background

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

The Amendment Rules prescribe changes to fees where a service is provided directly to an individual, business or organisation, and reflects the activities carried out by, or on behalf of, the Commonwealth under the Act.

The Amendment Rules provide for the implementation of these new cost recovery arrangements, in conjunction with the *Export Control (Fees and Payments) Amendment Rules 2021* (Previous Amendment Rules).

Impact and Effect

The Amendment Rules provide for the changes in the prices to be implemented immediately after the commencement of the Previous Amendment Rules and will assist the department to appropriately recover fees for these activities carried out by, or on behalf of, the Commonwealth.

The prices have been based on the modelling set out in the cost recovery implementation statements (CRISs), and are no higher than the department's expected costs of delivering the regulatory functions for export certification.

Consultation

The department has been engaging with industry on cost recovery charging arrangements since 2019, with food and plant CRISs released for public consultation between October 2019 and January 2020. Live animal export representatives have been consulted on alternate charging arrangements through consultative committee discussions from February 2020. In October 2020, the Government announced the Busting Congestion for Agricultural Exporters package, including announcing \$71.1 million to freeze fees and charges in 2020–21 and the intention to return to full cost recovery by 2023–24.

In February 2021, 2020–21 CRISs were published on the department's website for 7 agriculture and food export CRISs, which provided industry stakeholders with a description of the stepped increase to full cost recovery.

The department consulted publicly on proposed changes to cost recovery arrangements between 14 May 2021 and 10 June 2021. On 14 May 2021, the department released 7 draft 2021-22 agriculture and food export CRISs for public consultation. During that time the

department invited stakeholder feedback through a submissions process. 36 submissions were received. The department held 15 virtual meetings during the consultation period to engage with stakeholders across all 7 agricultural exports arrangements.

Feedback was considered by the department following the consultation period. Some stakeholders disagree with cost recovery in principle and raised concerns about price increases. Stakeholder views on CRISs varied with some supporting restructured charging arrangements and some preferring to continue working with the department over time to identify alternative charging structures. The final CRISs were certified by the Secretary of the department and endorsed by the then Minister for Agriculture, Drought and Emergency Management. The Minister for Finance agreed to release the final CRISs for live animal and horticulture exports which are available on the department's website alongside the other 5 final CRISs.

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*.

The Amendment Rules commence immediately after the commencement of the Previous Amendment Rules.

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 (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021* (the Amendment Rules).

Section 2 – Commencement

This section provides that the Amendment Rules commence immediately after the commencement of the *Export Control (Fees and Payments) Amendment Rules 2021* (Previous Amendment Rules). The Previous Amendment Rules commence on 1 July 2021.

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

Section 3 – Authority

This section provides that the Amendment Rules are made under the *Export Control Act 2020* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Rules. This enables the amendment of the *Export Control (Fees and Payments) Rules 2021* (the Fees Rules) (see Schedule 1 below).

Schedule 1 – Amendments

Export Control (Fees and Payments) Rules 2021

Item [1] – Subsection 2-2(1) (cell at table item 7, column 2)

Section 2-2 of the Fees Rules prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to audits carried out under the Act by a Commonwealth authorised officer. The fees are listed in the table in subsection 2-2(1), where column 1 of the table describes the type of audit and column 2 describes the corresponding fees that apply for that type of audit.

Table item 7 currently provides the quarter hourly fee that may be charged in relation to an audit by a Commonwealth authorised officer of export operations carried out, or in relation to the performance of functions or exercise of powers under the Act, in relation to prescribed organic goods for export.

This item repeals and substitutes the fee described in column 2 of table item 7 in subsection 2-2(1) of the Fees Rules. The amended fees differ depending on the financial year during which the activity is carried out.

Item [2] – Section 2-3 (cell at table item 1, column 2)

Section 2-3 of the Fees Rules prescribes, for the purposes of subsection 399(1) of the Act, fees that may be charged in relation to assessments and inspections carried out by a Commonwealth authorised officer or by a State or Territory authorised officer. The fees are listed in a table in section 2-3, where column 1 of the table describes the type of assessment or inspection, and column 2 describes the corresponding fee that may be charged in relation to the assessment or inspection.

Table item 1, when read with the Previous Amendment Rules, provides the quarter hourly fees that may be charged in relation to an assessment by a Commonwealth authorised officer of prescribed livestock for export, prescribed live animals for export, or prescribed animal reproductive material for export.

This item repeals and substitutes the fees described in column 2 of table item 1 in section 2-3 of the Fees Rules. The amended fees differ depending on the financial year during which the activity is carried out. The amended fees also differ depending on whether the activity was performed by a veterinarian and whether it could have been carried out by a State or Territory authorised officer or by a third party authorised officer.

Item [3] – Section 2-3 (table item 9A, column 2, subparagraph (c)(i))

Section 2-3 of the Fees Rules prescribes, for the purposes of subsection 399(1) of the Act, fees that may be charged in relation to assessments and inspections carried out by a Commonwealth authorised officer or a State or Territory authorised officer. The fees are listed in a table in section 2-3, where column 1 of the table describes the type of assessment or inspection and column 2 describes the corresponding fee that may be charged in relation to the assessment or inspection.

Item 9A, when read with the Previous Amendment Rules, provides the fees that may be charged in relation to activities carried out by a Commonwealth authorised officer as directed by the Secretary under section 313 of the Act in relation to an approved export program. Section 313 of the Act allows the Secretary to direct an authorised officer to carry out some or all of the export operations in an approved export program, whether or not an authorised officer is required in accordance with the program itself to carry out those operations.

Paragraph (c) in column 2 of table item 9A provides the amount for each authorised officer carrying out the activity during the financial year starting on 1 July 2023. Subparagraph (c)(i) provides a rate per day or part of a day.

This item omits the words “\$1,811” and substitutes “\$1,810” in subparagraph (c)(i) in column 2 of table item 9A in section 2-3 of the Fees Rules.

Item [4] – Section 2-6 (cell at table item 1, column 2)

Section 2-6 of the Fees Rules prescribes the fees that may be charged, for the purposes of subsection 399(1) of the Act, in relation to an application made under section 53 of the Act for an exemption from one or more of the provisions of the Act in relation to relevant goods (other than relevant goods to which subsection 52(3) of the Act applies). Section 53 of the Act allows an application for an exemption from one or more provisions of the Act in relation to relevant goods to be made to the Secretary.

The fees are listed in a table in section 2-6, where column 1 of the table describes the type of application for an exemption and column 2 describes the corresponding fee that may be charged in relation to the application.

Table item 1, when read with the Previous Amendment Rules, provides the fees that may be charged for consideration of an application for an exemption (other than an application mentioned in table item 1A) in relation to prescribed livestock, prescribed live animals, or prescribed animal reproductive material for export.

This item repeals and substitutes the fees in column 2 of table item 1 in section 2-6 of the Fees Rules. The amended fees differ depending on the financial year during which the activity is carried out and whether the application is considered by an authorised officer who is a veterinarian.

Item [5] – Subsection 2-11(1) (cell at table item 3, column 2)

Section 2-11 of the Fees Rules prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to activities carried out under the Act by a Commonwealth authorised officer in relation to applications to accredit a property, register an establishment or approve a proposed arrangement. The fees are listed in a table in subsection 2-11(1), where column 1 of the table describes the type of activity and column 2 describes the corresponding fee that may be charged in relation to the activity that is carried out.

Table item 3 currently provides the fees that may be charged for activities carried out by a Commonwealth authorised officer under subsection 379(9) of the Act in relation to:

- an application under Part 2 or 3, or Division 1 of Part 4, of Chapter 4 of the Act relating to the registration of an establishment for export operations in relation to prescribed meat or prescribed meat products for export; or
- an application under Part 2 or 3, or Subdivision B of Division 1 of Part 4, of Chapter 5 of the Act relating to the approval of a proposed arrangement, or an approved arrangement, for export operations in relation to prescribed meat or prescribed meat products for export.

This item repeals and substitutes the fees described in column 2 of table item 3 in subsection 2-11(1) of the Fees Rules. The amended fees differ depending on the financial year during which the activity is carried out and whether the activity is required to be carried out by a veterinarian.

Item [6] – Subsection 2-11(1) (cell at table item 7, column 2)

Section 2-11 of the Fees Rules prescribes, for the purposes of subsection 399(1) of the Act, the fees that may be charged in relation to activities carried out under the Act by a Commonwealth authorised officer in relation to applications to accredit a property, register an establishment or approve a proposed arrangement. The fees are listed in a table in subsection 2-11(1), where column 1 of the table describes the type of activity and column 2 describes the corresponding fee that may be charged in relation to the activity that is carried out.

Table item 7 currently provides the fees that may be charged in relation to activities carried out by a Commonwealth authorised officer under subsection 379(9) of the Act in relation to:

- an application under Part 2 or 3, or Division 1 of Part 4, of Chapter 4 of the Act relating to the registration of an establishment for export operations in relation to prescribed organic goods for export; or
- an application under Part 2 or 3, or Subdivision B of Division 1 of Part 4, of Chapter 5 of the Act relating to the approval of a proposed arrangement, or an approved arrangement, for export operations in relation to prescribed organic goods for export.

This item repeals and substitutes the fees described in column 2 of table item 7 in subsection 2-11(1) of the Fees Rules. The amended fees differ depending on the financial year during which the activity is carried out.

Statement of Compatibility with Human Rights

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

Export Control (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021

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

Overview of the Legislative Instrument

The *Export Control (Fees and Payments) Amendment (2021 Measures No. 2) Rules 2021* (the Amendment Rules) are made under the *Export Control Act 2020* (the Act).

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

The purpose of the Amendment Rules is to allow the Department of Agriculture, Water and the Environment to appropriately recover fees where a service is provided directly to an individual, business or organisation, for activities carried out by, or on behalf of, the Commonwealth under the Act. The Amendment Rules amend the fee prices in the *Export Control (Fees and Payments) Rules 2021*, when read with the *Export Control (Fees and Payments) Amendment Rules 2021*.

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