

## **EXPLANATORY STATEMENT**

Issued by the authority of the Secretary for the Department of Agriculture, Fisheries and Forestry

*Export Control Act 2020*

*Export Control Legislation Amendment (2023 Measures No. 1) Rules 2023*

### **Legislative Authority**

The *Export Control Legislation Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Fisheries and Forestry (the department) under section 432 of the *Export Control Act 2020* (the Act).

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

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

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

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

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### **Purpose**

The Amendment Rules amend the following instruments:

- *Export Control (Meat and Meat Products) Rules 2021* (the Meat Rules);
- *Export Control (Organic Goods) Rules 2021* (the Organic Goods Rules);
- *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules);
- *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the Poultry Meat Rules);
- *Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021* (the Rabbit and Ratite Meat Rules); and

- *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021* (the Wild Game Meat Rules).

The Amendment Rules amend the Organic Goods Rules to update the information required to be included in an organic goods certificate.

The Amendment Rules also amend the Meat Rules, Plant Rules, Poultry Meat Rules, Rabbit and Ratite Meat Rules and Wild Game Meat Rules to specify the dimensions of certain kinds of official marks that are applied to prescribed goods and clarify the use of carton seals.

## **Background**

The department regularly reviews the rules made under the Act to ensure that it supports the competitiveness and productivity of Australia's agricultural export sector.

The amendments to the Meat Rules, Organic Goods Rules, Plant Rules, Poultry Meat Rules, Rabbit and Ratite Meat Rules and Wild Game Meat Rules address issues that have been raised by stakeholders or identified by the department. The amendments ensure that the rules made under the Act remain fit for purpose and are updated to reflect current operational requirements.

## **Impact and Effect**

The amendments to the Organic Goods Rules ensure that the requirements for organic goods certificates will better align with current operational requirements.

The amendments to the Meat Rules, Plant Rules, Poultry Meat Rules, Rabbit and Ratite Meat Rules and Wild Game Meat Rules ensure a more consistent approach in relation to the use of official marks, as well as better align with current operational requirements.

The Office of Impact Analysis has advised that a regulation impact statement is not required as the proposal would result in minor regulatory impact, as detailed in cases OBPR22-02212, OBPR22-02503, OBPR22-03228 and OBPR22-42672.

## **Consultation**

The department undertook public consultation on the amendments between 28 November 2022 and 20 January 2023, through the department's 'Have Your Say' website, and through direct industry engagement. Feedback from the consultation process was considered by the department and informed the development of the Amendment Rules. This included making modifications to the amendments where appropriate to address stakeholder feedback.

A summary of the outcomes from the consultation process was published on the department's website on 19 July 2023. The department also issued an Industry Advice Notice on 14 June 2023 advising of an additional amendment to the use of official marks under the Plant Rules [IAN 2023-29].

## **Details and Operation**

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

The Amendment Rules commence the day after registration.

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

## **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 with Human Rights is set out in Attachment B.

**Details of the *Export Control Legislation Amendment (2023 Measures No. 1) Rules 2023***

**Section 1 – Name**

This section provides that the name of the instrument is the *Export Control Legislation Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules).

**Section 2 – Commencement**

Subsection 2(1) provides for the commencement of each provision in the Amendment Rules.

Item 1 in the table in subsection 2(1) provides that the whole of the Amendment Rules commence on the day after it is registered.

The note below the table provides that 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 would not be reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table in subsection 2(1) is not part of the Amendment Rules. This clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Amendment Rules.

**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 (Organic Goods) Rules 2021* (see Schedule 1 below). This also enables the amendment of the *Export Control (Meat and Meat Products) Rules 2021*, *Export Control (Plants and Plant Products) Rules 2021*, *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021*, *Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021* and *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021* (see Schedule 2 below).

## **Schedule 1 – Amendments of the *Export Control (Organic Goods) Rules 2021***

### ***Export Control (Organic Goods) Rules 2021***

The *Export Control (Organic Goods) Rules 2021* (the Organic Goods Rules) prescribe matters and makes other provision in relation to certain organic goods (prescribed organic goods) for the purposes of the Act.

#### **Item [1] – Paragraph 2-12(b)**

Subsection 62(1) of the Act allows the rules to make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported. Without limiting subsection 62(1), subsection 62(2) relevantly provides that the rules may:

- specify the kinds of goods in relation to which a government certificate may be issued; and
- make provision for and in relation to the matters that may be stated in a government certificate in relation to a kind of goods.

Section 2-11 of the Organic Goods Rules is made for the purposes of subsections 62(1) and (2) of the Act, and provides that an organic goods certificate may be issued for prescribed organic goods that are to be, or have been, exported.

Section 2-12 of the Organic Goods Rules sets out the information that is required to be included in an organic goods certificate. Currently, paragraph 2-12(b) requires that the name and address of each organic operator in relation to the organic goods, be stated on an organic goods certificate in relation to the prescribed organic goods.

This item repeals and substitutes paragraph 2-12(b) of the Organic Goods Rules. New paragraph 2-12(b) would require an organic goods certificate to state for each kind of organic goods, the name of the organic operator who carries out the last operation to produce or prepare the organic goods for export, and the identification number that has been issued to that organic operator by the approved certifying body, if such a number has been issued.

This amendment better aligns with current operational requirements, by requiring the organic goods certificate to only state the name and accreditation number (if one has been issued) of the final organic operator involved in the production or preparation of each of the organic goods listed for export. This is because there is no importing country requirement which requires an organic goods certificate to state the name and address of each organic operator involved in the production or preparation of the organic goods. For completeness, this amendment does not prevent an issuing body (that is, an approved certifying body or the Secretary of the department) from including details of other organic operators involved in the production or preparation of the organic goods for export, if considered necessary.

This amendment is not intended to reduce or impact the traceability requirements or the controls along the organic goods supply chain. This amendment does not affect other requirements in the Organic Goods Rules which require export operations in relation to the organic goods to be carried out in accordance with the National Organic Standard.

The National Organic Standard is defined in section 1-6 of the Organic Goods Rules to mean the *National Standard for Organic and Bio-dynamic Produce* published by the department, as

that document exists at the commencement of the Organic Goods Rules. The National Organic Standard provides assurance of the organic credentials applied to organic goods for export.

## **Schedule 2 – Amendments relating to official marks**

### ***Export Control (Meat and Meat Products) Rules 2021***

The *Export Control (Meat and Meat Products) Rules 2021* (the Meat Rules) prescribe matters and make other provision in relation to certain meat and meat products (prescribed meat and meat products) for the purposes of the Act.

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act. Division 1 of Part 3 of Chapter 8 of the Meat Rules is made for the purposes of subsection 255(1) of the Act, and provides that specified marks are official marks for the purposes of the Act for meat or meat products that are intended to be exported.

The amendments made by items [1] to [4] in this Schedule to Division 1 of Part 3 of Chapter 8 of the Meat Rules are made for the purposes of subsection 255(1) of the Act.

#### **Item [1] – Subsection 8-10(2)**

Section 8-10 of the Meat Rules deals with the Australia Inspected official mark for meat or meat products that are intended to be exported.

This item repeals existing subsection 8-10(2) and substitutes new subsection 8-10(2).

New subsection 8-10(2) provides for the acceptable dimensions of the Australia Inspected official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-10(2) for a normal size mark, in column 3 for a small size mark, or column 4 for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Inspected official mark, by allowing for a normal size, small size or computer-generated Australia Inspected official mark to be applied.

#### **Item [2] – Subsection 8-16(2)**

Section 8-16 of the Meat Rules deals with the Australia Approved official mark for meat or meat products that are intended to be exported.

This item repeals existing subsection 8-16(2) and substitutes new subsection 8-16(2).

New subsection 8-16(2) provides for the acceptable dimensions of the Australia Approved official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-16(2) for a normal size mark, in column 3 for a large size mark, in column 4 for a small size mark, or column 5 for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Approved official mark, by allowing for a normal size, large size, small size or computer-generated Australia Approved official mark to be applied.

**Item [3] – Paragraph 8-19(3)(a)**

Section 8-19 of the Meat Rules deals with the carton seal official mark for meat or meat products that are intended to be exported. Subsection 8-19(3) sets out the information that must be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark.

This item repeals existing paragraph 8-19(3)(a) and substitutes new paragraph 8-19(3)(a).

New paragraph 8-19(3)(a) provides that the information to be substituted at ‘A’ in the design of the official mark, is either the registration number of the registered establishment where operations to prepare the relevant meat or meat products for export were carried out, or a mark that resembles the Australia Inspected official mark set out in section 8-10 (with the registration number of the registered establishment where operations to prepare the relevant meat or meat products for export were carried out).

The purpose of this amendment is to provide for greater flexibility for the design of the carton seal official mark, by allowing for the registration number of the registered establishment or a resemblance of the Australia Inspected official mark (which also contains the registration number of the registered establishment) to be used. Section 8-10 provides for the Australia Inspected official mark and sets out the acceptable dimensions. Section 8-35 of the Meat Rules provides for the circumstances in which a mark resembles an official mark.

**Item [4] – At the end of section 8-19**

Section 8-19 of the Meat Rules deals with the carton seal official mark for meat or meat products that are intended to be exported.

This item inserts a note at the end of section 8-19 of the Meat Rules to provide that carton seals are used for the purposes of meeting an importing country requirement. The purpose of this note is to clarify the purpose for which a carton seal is used.



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

The *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules) prescribes matters and makes other provision in relation to certain plants and plant products (prescribed plants and plant products) for the purposes of the Act.

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act. Division 1 of Part 3 of Chapter 8 of the Plant Rules is made for the purposes of subsection 255(1) of the Act, and provides that specified marks are official marks for the purposes of the Act for plants and plant products that are intended to be exported.

The amendments made by items [5] and [6] in this Schedule to Division 1 of Part 3 of Chapter 8 of the Plant Rules are made for the purposes of subsection 255(1) of the Act.

### **Item [5] – Subsection 8-14(2)**

Section 8-14 of the Plant Rules deals with the Australia Approved official mark for plants or plant products that are intended to be exported.

This item repeals existing subsection 8-14(2) and substitutes new subsection 8-14(2).

New subsection 8-14(2) provides for the acceptable dimensions of the Australia Approved official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-14(2) for a normal size mark, in column 3 of the table for a large size mark, in column 4 of the table for a small size mark, or in column 5 of the table for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Approved official mark, by allowing for a normal size, large size, small size or computer-generated Australia Approved official mark to be applied.

### **Item [6] – Subsection 8-15(2)**

Section 8-15 of the Plant Rules deals with the approved for export official mark for plants or plant products that are intended to be exported.

This item repeals existing subsection 8-15(2) and substitutes new subsection 8-15(2).

New subsection 8-15(2) provides for the acceptable dimensions of the approved for export official mark. These dimensions relate to the diameter of the outer circle, the diameter of the inner circle, the minimum height of letters between inner and outer circles, and minimum height of letters in inner circle. The required dimensions are those set out in column 2 of the table in new subsection 8-15(2) for a normal size mark, or in column 3 of the table for a small size mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the approved for export official mark, by allowing for a normal size or small size approved for export official mark to be applied.

### ***Export Control (Poultry Meat and Poultry Meat Products) Rules 2021***

The *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the Poultry Meat Rules) prescribes matters and makes other provision in relation to certain poultry meat and poultry meat products (prescribed poultry meat and poultry meat products) for the purposes of the Act.

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act. Division 1 of Part 3 of Chapter 8 of the Poultry Meat Rules is made for the purposes of subsection 255(1) of the Act, and provides that specified marks are official marks for the purposes of the Act for poultry meat and poultry meat products that are intended to be exported.

The amendments made by items [7] to [10] in this Schedule to Division 1 of Part 3 of Chapter 8 of the Poultry Meat Rules are made for the purposes of subsection 255(1) of the Act.

#### **Item [7] – Subsection 8-10(2)**

Section 8-10 of the Poultry Meat Rules deals with the Australia Inspected official mark for poultry meat and poultry meat products that are intended to be exported.

This item repeals existing subsection 8-10(2) and substitutes new subsection 8-10(2).

New subsection 8-10(2) provides for the acceptable dimensions of the Australia Inspected official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-10(2) for a normal size mark, in column 3 for a small size mark, or column 4 for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Inspected official mark, by allowing for a normal size, small size or computer-generated Australia Inspected official mark to be applied.

#### **Item [8] – Subsection 8-14(2)**

Section 8-14 of the Poultry Meat Rules deals with the Australia Approved official mark for poultry meat and poultry meat products that are intended to be exported.

This item repeals existing subsection 8-14(2) and substitutes new subsection 8-14(2).

New subsection 8-14(2) provides for the acceptable dimensions of the Australia Approved official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-14(2) for a normal size mark, in column 3 of the table for a large size mark, in column 4 of the table for a small size mark, and in column 5 of the table for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Approved official mark, by allowing for a normal size, large size, small size or computer-generated Australia Approved official mark to be applied.

**Item [9] – Paragraph 8-15(3)(a)**

Section 8-15 of the Poultry Meat Rules deals with the carton seal official mark for poultry meat and poultry meat products that are intended to be exported. Subsection 8-15(3) sets out the information that must be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark.

This item repeals existing paragraph 8-15(3)(a) and substitutes new paragraph 8-15(3)(a).

New paragraph 8-15(3)(a) provides that the information to be substituted at ‘A’ in the design of the official mark, is either the registration number of the registered establishment where operations to prepare the relevant poultry meat or poultry meat products for export were carried out, or a mark that resembles the Australia Inspected official mark set out in section 8-10 (with the registration number of the registered establishment where operations to prepare the relevant poultry meat or poultry meat products for export were carried out).

The purpose of this amendment is to provide for greater flexibility for the design of the carton seal official mark, by allowing for the registration number of the registered establishment or a resemblance of the Australia Inspected official mark (which also contains the registration number of the registered establishment) to be used. Section 8-10 provides for the Australia Inspected official mark and sets out the acceptable dimensions. Section 8-31 of the Poultry Meat Rules provides for the circumstances in which a mark resembles an official mark.

**Item [10] – At the end of section 8-15**

Section 8-15 of the Poultry Meat Rules deals with the carton seal official mark for poultry meat and poultry meat products that are intended to be exported.

This item inserts a note at the end of section 8-15 of the Poultry Meat Rules to provide that carton seals are used for the purposes of meeting an importing country requirement. The purpose of this note is to clarify the purpose for which a carton seal is used.

## ***Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021***

The *Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021* (the Rabbit and Ratite Meat Rules) prescribes matters and makes other provision in relation to certain rabbit meat, ratite meat, rabbit meat products and ratite meat products (prescribed rabbit meat, ratite meat, rabbit meat products and ratite meat products) for the purposes of the Act.

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act. Division 1 of Part 3 of Chapter 8 of the Rabbit and Ratite Meat Rules is made for the purposes of subsection 255(1) of the Act, and provides that specified marks are official marks for the purposes of the Act for rabbit meat, ratite meat, rabbit meat products and ratite meat products that are intended to be exported.

The amendments made by items [11] to [13] in this Schedule to Division 1 of Part 3 of Chapter 8 of the Rabbit and Ratite Meat Rules are made for the purposes of subsection 255(1) of the Act.

### **Item [11] – Subsection 8-10(2)**

Section 8-10 of the Rabbit and Ratite Meat Rules deals with the Australia Inspected official mark for rabbit meat, ratite meat, rabbit meat products and ratite meat products that are intended to be exported.

This item repeals existing subsection 8-10(2) and substitutes new subsection 8-10(2).

New subsection 8-10(2) provides for the acceptable dimensions of the Australia Inspected official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-10(2) for a normal size mark, in column 3 for a small size mark, or column 4 for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Inspected official mark, by allowing for a normal size, small size or computer-generated Australia Inspected official mark to be applied.

### **Item [12] – Paragraph 8-15(3)(a)**

Section 8-15 of the Rabbit and Ratite Meat Rules deals with the carton seal official mark for rabbit meat, ratite meat, rabbit meat products and ratite meat products that are intended to be exported. Subsection 8-15(3) sets out the information that must be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark.

This item repeals existing paragraph 8-15(3)(a) and substitutes new paragraph 8-15(3)(a).

New paragraph 8-15(3)(a) provides that the information to be substituted at ‘A’ in the design of the official mark, is either the registration number of the registered establishment where operations to prepare the relevant rabbit meat, ratite meat, rabbit meat products or ratite meat products for export were carried out, or a mark that resembles the Australia Inspected official mark set out in section 8-10 (with the registration number of the registered establishment

where operations to prepare the relevant rabbit meat, ratite meat, rabbit meat products or ratite meat products for export were carried out).

The purpose of this amendment is to provide for greater flexibility for the design of the carton seal official mark, by allowing for the registration number of the registered establishment or a resemblance of the Australia Inspected official mark (which also contains the registration number of the registered establishment) to be used. Section 8-10 provides for the Australia Inspected official mark and sets out the acceptable dimensions. Section 8-31 of the Rabbit and Ratite Meat Rules provides for the circumstances in which a mark resembles an official mark.

**Item [13] – At the end of section 8-15**

Section 8-15 of the Rabbit and Ratite Meat Rules deals with the carton seal official mark for rabbit meat, ratite meat, rabbit meat products and ratite meat products that are intended to be exported.

This item inserts a note at the end of section 8-15 of the Rabbit and Ratite Meat Rules to provide that carton seals are used for the purposes of meeting an importing country requirement. The purpose of this note is to clarify the purpose for which a carton seal is used.

## ***Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021***

The *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021* (the Wild Game Meat Rules) prescribes matters and makes other provision in relation to certain wild game meat and wild game meat products (prescribed wild game meat and wild game meat products) for the purposes of the Act.

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act. Division 1 of Part 3 of Chapter 8 of the Wild Game Meat Rules is made for the purposes of subsection 255(1) of the Act, and provides that specified marks are official marks for the purposes of the Act for wild game meat and wild game meat products that are intended to be exported.

The amendments made by items [14] to [16] in this Schedule to Division 1 of Part 3 of Chapter 8 of the Wild Game Meat Rules are made for the purposes of subsection 255(1) of the Act.

### **Item [14] – Subsection 8-10(2)**

Section 8-10 of the Wild Game Meat Rules deals with the Australia Approved official mark for wild game meat and wild game meat products that are intended to be exported.

This item repeals existing subsection 8-10(2) and substitutes new subsection 8-10(2).

New subsection 8-10(2) provides for the acceptable dimensions of the Australia Approved official mark. These dimensions relate to the width and height of the mark, the height of the letters and the height of the establishment registration number. The required dimensions are those set out in column 2 of the table in new subsection 8-10(2) for a normal size mark, in column 3 for a large size mark, column 4 for a small size mark, or column 5 for a computer-generated mark.

The purpose of this amendment is to provide greater flexibility for the sizing of the Australia Approved official mark, by allowing for a normal size, large size, small size or computer-generated Australia Approved official mark to be applied.

### **Item [15] – Paragraph 8-16(3)(a)**

Section 8-16 of the Wild Game Meat Rules deals with the carton seal official mark for wild game meat and wild game meat products that are intended to be exported. Subsection 8-16(3) sets out the information that must be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark.

This item repeals existing paragraph 8-16(3)(a) and substitutes new paragraph 8-16(3)(a).

New paragraph 8-16(3)(a) provides that the information to be substituted at ‘A’ in the design of the official mark, is either the registration number of the registered establishment where operations to prepare the relevant wild game meat or wild game meat products for export were carried out, or a mark that resembles the Australia Approved official mark set out in section 8-10 (with the registration number of the registered establishment where operations to prepare the relevant wild game meat or wild game meat products for export were carried out).

The purpose of this amendment is to provide for greater flexibility for the design of the carton seal official mark, by allowing for the registration number of the registered establishment or a resemblance of the Australia Approved official mark (which also contains the registration number of the registered establishment) to be used. Section 8-10 provides for the Australia Approved official mark and sets out the acceptable dimensions. Section 8-32 of the Wild Game Meat Rules provides for the circumstances in which a mark resembles an official mark.

**Item [16] – At the end of section 8-16**

Section 8-16 of the Wild Game Meat Rules deals with the carton seal official mark for wild game meat and wild game meat products that are intended to be exported.

This item inserts a note at the end of section 8-16 of the Wild Game Meat Rules to provide that carton seals are used for the purposes of meeting an importing country requirement. The purpose of this note is to clarify the purpose for which a carton seal is used.

**Statement of Compatibility with Human Rights**

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

***Export Control Legislation Amendment (2023 Measures No. 1) Rules 2023***

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 Legislation Amendment Rules (2023 Measures No. 1) 2023* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the following rules:

- *Export Control (Meat and Meat Products) Rules 2021* (the Meat Rules);
- *Export Control (Organic Goods) Rules 2021* (the Organic Goods Rules);
- *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules);
- *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the Poultry Meat Rules);
- *Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products Rules) 2021* (the Rabbit and Ratite Meat Rules); and
- the *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021* (the Wild Game Meat Rules).

The Legislative Instrument amends the Organic Goods Rules by updating the information required to be included in an organic foods certificate.

The Legislative Instrument also amends the Meat Rules, Plant Rules, Poultry Meat Rules, Rabbit and Ratite Meat Rules and Wild Game Meat Rules to make provision for the dimensions of certain kinds of official marks that are applied to prescribed goods and clarify the use of carton seals.

**Assessment of Compatibility with Human Rights**

The Legislative Instrument engages Article 17 of the International Covenant on Civil and Political Rights (ICCPR), in relation to the right to protection from arbitrary interference with privacy.

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of 'reasonableness' as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined 'privacy',



the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

New paragraph 2-12(b) of the Organic Goods Rules requires an organic goods certificate to state the name of the organic operator who carries out the last operation to produce or prepare the organic goods for export and the identification number of that organic operator (if that number has been issued to the organic operator by an approved certifying body).

An organic goods certificate is a government certificate that is issued in relation to prescribed organic goods and states that all relevant importing country requirements relating to the prescribed organic goods and the operations to produce or prepare the goods for export are met. An organic goods certificate may be issued by an approved certifying body or the Secretary of the department (see section 2-4 of the Organic Goods Rules).

An approved certifying body is the holder of an approved arrangement for organic goods certification operations. Organic goods certification operations relate to operations to certify that relevant importing country requirements relating to prescribed organic goods and the operations to produce or prepare the goods for export are met for the purpose of issuing an organic goods certificate in relation to the organic goods.

An organic operator, in relation to prescribed organic goods, means a person who carries out operations to produce or prepare the organic goods for export (see section 1-6 of the Organic Goods Rules).

Requiring an approved certifying body or the Secretary to provide the name of an organic operator, and where applicable, their identification number, on an organic goods certificate may incidentally require the provision of personal information. The collection, use, storage, and disclosure of the personal information may therefore engage the right to freedom from arbitrary or unlawful interference with privacy.

Under the Organic Goods Rules, the collection, use, storage, and disclosure of this information is necessary for the legitimate objective of regulating the export of prescribed organic goods. Organic goods certificates are used to demonstrate that export operations in relation to the prescribed organic goods have been carried out in accordance with the National Organic Standard, that the applicable requirements of the Act in relation to the export operations and the organic goods have been complied with, and that all importing country requirements relating to the export operations and the organic goods have been met. This is necessary to ensure Australia's trading partners have confidence in Australia's agricultural exports and to maintain market access for organic goods. In particular, the provision of the name of an organic operator, and where applicable, their identification number, on an organic goods certificate is necessary to ensure that the organic goods are traceable and can be recalled if required.

An organic operator who carries out operations to produce or prepare the organic goods for export 'opts in' to the regulatory system. A person who has voluntarily decided to become involved in an export-related business should expect that a certain amount of personal information will need to be provided to the approved certifying body or the Secretary in order to gain the benefits of that system, such as for the issuing of an organic goods certificate.

Therefore, to the extent that new paragraph 2-12(b) of the Organic Goods Rules may limit the right to privacy in Article 17 of the ICCPR, such limitation is reasonable, necessary and proportionate to achieving legitimate objectives.

### **Conclusion**

This Legislative Instrument is compatible with human rights because, to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate.

**Andrew Edgar Francis Metcalfe AO**  
**Secretary of the Department of Agriculture, Fisheries and Forestry**