

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 (Administrative Review Tribunal–Consequential Amendments) Rules 2024

Legislative Authority

The *Export Control Legislation Amendment (Administrative Review Tribunal–Consequential Amendments) Rules 2024* (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.

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 sunseting. 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.

Purpose

The Amendment Rules amend the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021*, the *Export Control (Tariff Rate Quotas—General) Rules 2021*, and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021*.

The purpose is to make consequential amendments to these instruments as a result of the upcoming repeal of the *Administrative Appeals Tribunal Act 1975* (AAT Act) and its replacement with the *Administrative Review Tribunal Act 2024* (the ART Act).

Background

When it commences, the *Administrative Review Tribunal Act 2024* (the ART Act) will repeal and replace the *Administrative Appeals Tribunal Act 1975* (AAT Act). The Australian Government has announced that the ART Act will commence on 14 October 2024.

Item 13 of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* provides that if an instrument in force immediately before commencement of the ART Act, refers to the AAT Act, a provision of the AAT Act, or the Administrative Appeals Tribunal (AAT), the reference is taken, after the ART Act commences, to be a reference to the following, as the case may require:

- the ART Act
- the equivalent, or nearly equivalent, provision of the ART Act
- the Administrative Review Tribunal (ART).

While this will ensure that AAT related references are taken to refer to the equivalent ART related references, from a clearer laws perspective it is preferable to update the references so that they are correct on the face of the legislation.

The *Export Control (Tariff Rate Quotas – General) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of goods. The instrument sets out the administrative arrangements for the allocation of, and access to, certain tariff rate quotas operating under World Trade Organisation arrangements and certain Free Trade Agreements.

The *Export Control (Tariff Rate Quotas – Feed Grain Export to Indonesia) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of feed grain to Indonesia.

The *Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of sheepmeat and goatmeat to the European Union and the United Kingdom.

Impact and Effect

The amendments are of a minor and technical nature, being consequential amendments to repeal and replace AAT related references with the equivalent ART related references.

The amendments will not have more than a minor regulatory impact and as such the preparation of an Impact Analysis (IA) is not required, as detailed in case OIA24-08035.

Consultation

The Attorney-General's Department undertook extensive consultation in the development of the ART Act. This included a public consultation process in April and May 2023, guidance from the Administrative Review Expert Advisory Group, chaired by former High Court

Justice, the Hon Patrick Keane AC KC, close engagement across government and with the AAT, and targeted consultation on draft legislation in September and October 2023.

The Amendment Rules are minor and technical in nature, and ensure that the Tariff Rate Quota Rules refer to the new ART and its enabling legislation on the face of the rules. Therefore, further specific consultation on these amendments was not required.

Details/ Operation

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

The amendments in the Amendment Rules commence at the same time as the ART Act.

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.

ATTACHMENT A

Details of the *Export Control Legislation Amendment (Administrative Review Tribunal–Consequential Amendments) Rules 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control Legislation Amendment (Administrative Review Tribunal–Consequential Amendments) Rules 2024* (the Amendment Rules).

Section 2 – Commencement

Section 2 provides for the commencement of each provision in the Amendment Rules.

Subsection 2(1) provides that the Amendment Rules commence at the same time as the *Administrative Review Tribunal Act 2024* (ART Act) commences, on 14 October 2024.

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 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 (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021*, the *Export Control (Tariff Rate Quotas—General) Rules 2021*, and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (see Schedule 1 below).

Schedule 1 – Amendments

Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021

The *Export Control (Tariff Rate Quotas – Feed Grain Export to Indonesia) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of feed grain to Indonesia.

Item [1] – Paragraph 26(1)(b)

Paragraph 26(1)(b) of the *Export Control (Tariff Rate Quotas – Feed Grain Export to Indonesia) Rules 2021* relevantly modifies, for the purposes of subsection 386(3) of the Act, the powers of the AAT under subsection 43(1) of the AAT Act when reviewing certain decisions relating to tariff rate quota entitlements or tariff rate quota certificates.

Subsection 386(3) of the Act allows rules to modify subsection 43(1) of the AAT Act in its application to review of decisions relating to tariff quota entitlements or tariff rate quota certificates. Subsection 386(4) clarifies that the rules may prescribe modifications only for the purpose of ensuring that tariff rate quota amounts are not exceeded.

Subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) prescribes that the Tribunal may exercise all the powers and discretions that are conferred on the decision-maker by an Act or an instrument made under an Act and that the Tribunal must make a decision affirming, varying or setting aside the reviewable decision.

This item amends paragraph 26(1)(b) of the *Export Control (Tariff Rate Quotas – Feed Grain Export to Indonesia) Rules 2021* by replacing the reference to subsection 43(1) of the AAT Act with the equivalent provisions in the ART Act, sections 54 and 105. It does this by omitting the words “Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*”, and substituting the words “Administrative Review Tribunal, under section 54 or 105 of the *Administrative Review Tribunal Act 2024*” in paragraph 26(1)(b).

This amendment is technical in nature, and consequential to the commencement of the new ART legislation. It ensures that the provisions are updated to refer to the relevant provisions in the ART Act on the face of the legislation.

Export Control (Tariff Rate Quotas – General) Rules 2021

The *Export Control (Tariff Rate Quotas – General) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of goods. The instrument sets out the administrative arrangements for the allocation of, and access to, certain tariff rate quotas operating under World Trade Organisation arrangements and certain Free Trade Agreements.

Item [2] – Paragraph 121(1)(b)

Paragraph 121(1)(b) of the *Export Control (Tariff Rate Quotas – General) Rules 2021* relevantly modifies, for the purposes of subsection 386(3) of the Act, the powers of the AAT under subsection 43(1) of the AAT Act when reviewing certain decisions relating to tariff rate quota entitlements or tariff rate quota certificates.

Subsection 386(3) of the Act allows rules to modify subsection 43(1) of the AAT Act in its application to review of decisions relating to tariff quota entitlements or tariff rate quota certificates. Subsection 386(4) clarifies that the rules may prescribe modifications only for the purpose of ensuring that tariff rate quota amounts are not exceeded.

Subsection 43(1) of the AAT Act prescribes that the Tribunal may exercise all the powers and discretions that are conferred on the decision-maker by an Act or an instrument made under an Act and that the Tribunal must make a decision affirming, varying or setting aside the reviewable decision.

This item amends paragraph 121(1)(b) of the *Export Control (Tariff Rate Quotas – General) Rules 2021* by replacing the reference to subsection 43(1) of the AAT Act with the equivalent provisions in the ART Act, sections 54 and 105. It does this by omitting the words “Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*”, and substituting the words “Administrative Review Tribunal, under section 54 or 105 of the *Administrative Review Tribunal Act 2024*” in paragraph 121(1)(b).

This amendment is technical in nature, and consequential to the commencement of the new ART legislation. It ensures that the provisions are updated to refer to the relevant provisions in the ART Act on the face of the legislation.

Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021

The *Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* are made for the purposes of section 264 of the Act and provide for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of sheepmeat and goatmeat to the European Union and the United Kingdom.

Item [3] – Paragraph 30(1)(b)

Paragraph 30(1)(b) of the *Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* relevantly modifies, for the purposes of subsection 386(3) of the Act, the powers of the AAT under subsection 43(1) of the AAT Act when reviewing certain decisions relating to tariff rate quota entitlements or tariff rate quota certificates.

Subsection 386(3) of the Act currently allows rules to modify subsection 43(1) of the AAT Act in its application to review of decisions relating to tariff quota entitlements or tariff rate quota certificates. Subsection 386(4) clarifies that the rules may prescribe modifications only for the purpose of ensuring that tariff rate quota amounts are not exceeded.

Subsection 43(1) of the AAT Act prescribes that the Tribunal may exercise all the powers and discretions that are conferred on the decision-maker by an Act or an instrument made under an Act and that the Tribunal must make a decision affirming, varying or setting aside the reviewable decision.

This item amends paragraph 30(1)(b) of the *Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* by replacing the reference to subsection 43(1) of the AAT Act with the equivalent provisions in the ART Act, sections 54 and 105. It does this by omitting the words “Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*”, and substituting the words “Administrative Review Tribunal, under section 54 or 105 of the *Administrative Review Tribunal Act 2024*” in paragraph 30(1)(b).

This amendment is technical in nature, and consequential to the commencement of the new ART legislation. It ensures that the provisions are updated to refer to the relevant provisions in the ART Act on the face of the legislation.

Statement of Compatibility with Human Rights

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

Export Control Legislation Amendment (Administrative Review Tribunal–Consequential Amendments) Rules 2024

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 (Administrative Review Tribunal–Consequential Amendments) Rules 2024* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Rules 2021*, the *Export Control (Tariff Rate Quotas—General) Rules 2021*, and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (collectively the Tariff Rate Quota Rules).

The amendments made by the Legislative Instrument to the Tariff Rate Quota Rules are minor consequential amendments arising from the repeal and replacement of the *Administrative Appeals Tribunal Act 1975* with the *Administrative Review Tribunal Act 2024* (the ART Act).

The amendments are technical in nature, and ensure that the provisions in the Tariff Rate Quota Rules are updated to refer to the equivalent provisions in the ART Act instead of the AAT Act when the Administrative Review Tribunal (ART) replaces the Administrative Appeals Tribunal (AAT).

Assessment of Compatibility with Human rights

The Statement of Compatibility with Human Rights for the ART Bill notes (at paragraph 28) that it engages the following rights:

- the right to an effective remedy in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR)
- the right to a fair and public hearing in Article 14 of the ICCPR
- the right to equality before the law in Article 26 of the ICCPR
- the right to freedom from arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR
- the right of access to justice for people with disability in Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD)
- the right to a presumption of innocence in Article 14(2) of the ICCPR
- the right to freedom of opinion and expression in Article 19 of the ICCPR (engaged tangentially).

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.

Adam Phillip Fennessy PSM
Secretary of the Department of Agriculture, Fisheries and Forestry