**EXPLANATORY STATEMENT**

Issued by Authority of the Secretary of the Department of Agriculture, Fisheries and Forestry

*Export Control Act 2020*

*Export Control Legislation Amendment (Information Management) Rules 2025*

**Legislative Authority**

The *Export Control Legislation Amendment (Information Management) Rules 2025* (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.

Section 397E of the Act permits a class of persons to be prescribed to use or disclose relevant information of a prescribed kind for a prescribed purpose if the use or disclosure complies with any conditions prescribed by 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 sunsetting. 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 *Export Control (Animals) Rules 2021* (the Animals Rules) and the *Export Control (Miscellaneous) Rules 2021* (the Miscellaneous Rules)to repeal provisions relating to the publication of information and replace these with a single provision in the Animals Rules made for the purposes of section 397E of the Act. The new provision prescribes classes of persons in the department who may use or disclose prescribed kinds of relevant information relating to export operations carried out in relation to prescribed livestock, for the purposes of making the information available to the public, including by publishing it on the department’s website. A condition on disclosure is that any personal information about an individual is de-identified, with the exception that the name of a holder of an export licence, an occupier of a registered establishment or an export business can be disclosed.

**Background**

Various provisions in the Animals Rules currently allow for the publication of certain reports and other information relating to export operations carried out in relation to prescribed livestock. In particular, the Animals Rules specifically permit the following information to be published:

* information included in reports given to the department by an occupier of a registered establishment for operations to prepare prescribed livestock for export as required by the Australian Standards for the Export of Livestock (ASEL);
* certain information, documents or periodical reports relating to export supply chain assurance operations that are given to the Secretary by the holder of an approved arrangement for exporter supply chain assurance operations;
* information included in daily reports and end of voyage reports for prescribed livestock exported by sea and end of journey reports for prescribed livestock exported by air given to the department as required by the ASEL; and
* information included in records and reports made by accredited veterinarians or authorised officers in relation to approved export programs.

The Miscellaneous Rules currently provide that the Secretary may publish protected information if it does not include personal information about any individual, or if all personal information about an individual included in the protected information is de-identified.

Amendments to improve the operation of information management provisions in the Act were made on 1 February 2024, with the commencement of relevant provisions in the *Export Control Amendment (Streamlining Administrative Processes) Act 2023*. Relevantly, the amendments in the SAP Act provided new definitions for ‘relevant information’ and ‘protected information’ and introduced new section 397E of the Act, which authorises the use and disclosure of relevant information in accordance with the rules.

“Protected information” refers to certain specified kinds of information of which an unauthorised use or disclosure would be likely to cause harm. An offence provision applies where protected information is used or disclosed in a manner that is not required or authorised by a Commonwealth law or prescribed State or Territory law.

“Relevant information” refers to information obtained or generated by a person in relation to activities undertaken in connection with the Act. The proper, effective and efficient performance of functions or duties, or the exercise of powers, under the Act will often involve the use or disclosure of relevant information. People occupying certain positions or undertaking certain activities as part of the export regulatory framework are specifically authorised to use or disclose relevant information in certain circumstances.

The Amendment Rules include rules made for the purposes of section 397E of the Act that prescribe classes of person who may use or disclose kinds of relevant information relating to export operations carried out in relation to prescribed livestock. Consequently, the Amendment Rules also repeal the current provisions in the Animals Rules and Miscellaneous Rules which refer to the publication of information. This streamlines the rules relating to the publication of information while aligning them with the new information management provisions in Part 3 of Chapter 11 of the Act.

**Impact and Effect**

The Amendment Rules would have the effect of replacing current provisions relating to the publication of information in each of the Animals Rules and Miscellaneous Rules with one provision relating to the use or disclosure of certain kinds of de-identified relevant information in the Animals Rules, which aligns with the new information management provisions in the Act.

The same categories of information will be able to be published under the new provision, which applies to relevant information relating to export operations carried out in relation to prescribed livestock and how the department regulates these export operations. A condition of disclosure is that the information does not include personal information about an individual or any personal information must be de-identified (with the exception of the name of an export licence holder, occupier of a registered establishment or export business).

The Amendment Rules provide that the classes of persons in the department who may use or disclose the information is limited to the Secretary of the department and SES employees or acting SES employees in the department. The purpose for which the information may be used or disclosed is to make the information available to the public (including by publishing it on the department’s website) for one or both of the following reasons:

* to encourage compliance with the requirements of the Act and rules by livestock exporters;
* to provide assurance to Australia’s trading partners regarding how the department regulates export operations carried out in relation to prescribed livestock.

The Amendment Rules specify the powers of the Parliament in respect of which the rules are made, as required by subsection 397E(3) of the Act.

**Consultation**

The department consulted Attorney-General’s Department in relation to the Amendment Rules. Further consultation was not considered necessary for the amendments as they are consequential to the commencement of the new information management provisions in the SAP Act and preserve current practices in relation to the publication of information. In addition, the amendments are administrative in nature and consistent with the department’s objectives of promoting the transparency and traceability of exports of goods.

The Office of Impact Analysis has advised that a detailed impact analysis is not required, as detailed in case OIA24-07490.

**Details/ Operation**

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

The Amendment Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

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 (Information Management) Rules 2025***

Section 1 – Name

This section provides that the name of the instrument is the *Export Control Legislation Amendment (Information Management) Rules 2025* (the Amendment Rules).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Amendment Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the instrument commences on the day after the Amendment Rules are registered.

The note below the table provides that the table relates only to the provision of the Amendment Rules as originally made. It would 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 amendments is not reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

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

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 (Animals) Rules 2021* (the Animals Rules) and the *Export Control (Miscellaneous) Rules 2021* (the Miscellaneous Rules).

**Schedule 1 – Amendments**

*Export Control (Animals) Rules 2021*

**Item [1] – Subsection 4-5A(2) (note)**

This item repeals the note under subsection 4-5A(2) of the Animals Rules and substitutes a new note.

Subsection 4-5A(2) of the Animals Rules provides that the occupier of a registered establishment must give the department written reports as required by the Australian Standards for the Export of Livestock (ASEL). The ASEL is defined in section 1-6 of the Animals Rules to mean the document titled “Australian Standards for the Export of Livestock” published by the department as it exists from time to time. The ASEL can in 2025 be viewed on the department’s website (<http://www.agriculture.gov.au>).

The existing note explains that the Secretary may publish information given in the reports on the basis of section 4-18.

The new note explains that information given in those reports may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 2 of this Schedule which repeals section 4-18 (to which the previous note refers) and item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [2] – Part 9 of Chapter 4**

This item repeals Part 9 of Chapter 4 of the Animals Rules. Section 4-18 is the only section in this Part.

Section 4-18 of the Animals Rules currently provides that the Secretary may publish information included in reports given to the department by the occupier of a registered establishment as required by the ASEL. This includes, for example, mortality reports for each consignment at a registered establishment that must be provided to the department within 5 days of departure of the last animal in the consignment from the registered establishment.

This section is repealed because new section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations (which includes any reports required to be given to the department by the occupier of a registered establishment). As such, section 4-18 is redundant and can be repealed.

**Item [3] – Subsection 5-17(1) (note)**

This item repeals the note under subsection 5-17(1) of the Animals Rules and substitutes a new note.

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

The existing note explains that the Secretary may publish information given in compliance with a request on the basis of section 5-25.

The new note explains that information given in compliance with a request made subsection 5-17(1) may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 5 of this Schedule which repeals section 5-25 (to which the previous note refers) and item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [4] – Subsection 5-18(3) (note)**

This item repeals the note under subsection 5-18(3) of the Animals Rules and substitutes a new note.

Section 5-18 requires the holder of an approved arrangement for ESCAO to prepare and give to the Secretary periodical reports on the ESCAO carried out in accordance with the approved arrangement.

The existing note explains that the Secretary may publish information included in a report on the basis of section 5-25.

The new note explains that information included in a report given to the Secretary under subsections 5-18(1) and (2) may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 5 of this Schedule which repeals section 5-25 (to which the previous note refers) and item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [5] – Division 8 of Part 2 of Chapter 5**

This item repeals Division 8 of Part 2 of Chapter 5 of the Animals Rules. Section 5-25 is the only section in this Division.

Section 5-25 of the Animals Rules currently provides that the Secretary may publish information (including information contained in a document) given to the Secretary by the holder of an approved arrangement for ESCAO in compliance with a request made under subsection 5-17(1) or in a report given to the Secretary by the holder of an approved arrangement for ESCAO under subsection 5-18(1) or (2) of the Animals Rules. These sections are described above at items 3 and 4 of this Schedule.

This section is repealed because new section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations (which includes information given to the Secretary by the holder of an approved arrangement for ESCAO). As such, section 5-25 is redundant and can be repealed.

**Item [6] – Subsection 6-6(2) (note)**

This item repeals the note under subsection 6-6(2) of the Animals Rules and substitutes a new note.

Subsection 6-6(2) requires daily reports and end of voyage reports for prescribed livestock exported by sea and end of journey reports for prescribed livestock exported by air to be given to the department as required by the ASEL.

The existing note explains that the Secretary may publish information given in the reports on the basis of section 6-44.

The new note explains that information given in those reports may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 8 of this Schedule which repeals section 6-44 (to which the previous note refers) and item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [7] – At the end of subsection 6-18(5)**

This item inserts a new note at the end of subsection 6-18(5) of the Animals Rules.

Subsection 6-18(5) requires a written report of each record made under subsection 6-18(3) or (4) (as the case requires) to be given to the Secretary, by electronic means, within 5 days after the end of the voyage. These records relate to periodical automatic measurements of the wet bulb temperature in various areas of a vessel exporting consignments of sheep during the northern summer.

The new note explains that information given in those reports may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [8] – Part 10 of Chapter 6**

This item repeals Part 10 of Chapter 6 of the Animals Rules. Section 6-44 is the only section in this Division.

Section 6-44 of the Animals Rules currently provides that the Secretary may publish information included in daily reports or end of voyage reports for prescribed livestock exported by sea or end of journey reports for prescribed livestock exported by air given to the department as required by the ASEL.

This section is repealed because new section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations (which includes information included in daily reports, end of voyage reports and end of journey reports). As such, section 6-44 is redundant and can be repealed.

**Item [9] – Subsection 9-5(5) (note)**

This item omits “Note” and substitutes “Note 1” in subsection 9-5(5) of the Animals Rules.

This item is consequential to item 10 of this Schedule which adds a new note under subsection 9-5(5) of the Animals Rules.

**Item [10] – At the end of subsection 9-5(5) (after the note)**

This item adds a new note at the end of subsection 9-5(5) of the Animals Rules.

Section 9-5 requires an auditor to make a written report (an audit report) after the auditor completes an audit or after the audit ends. Subsection 9-5(5) requires an auditor to give the audit report to the Secretary and a copy of the audit report to the relevant person for the audit.

The new note explains that information given in an audit report may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [11] – Paragraphs 9-20(1)(h) and 9-24(1)(h)**

This item omits “subsection 9-27(1)” and substitutes “section 9-27” in paragraphs 9-20(1)(h) and 9-24(1)(h) of the Animals Rules.

This item is consequential to items 12 and 15 of this Schedule which remove subsection 9-27(2) of the Animals Rules and consequently re-number subsection 9-27(1) to section 9-27. The references to subsection 9-27(1) in paragraphs 9-20(1)(h) and 9-24(1)(h) are re-numbered accordingly.

**Item [12] – Subsection 9-27(1)**

This item omits “(1)” from subsection 9-27(1) of the Animals Rules. This item is consequential to the amendment to remove subsection 9-27(2) in item 15 of this Schedule.

**Item [13] – Subsection 9-27(1) (note)**

This item omits “Note” and substitutes “Note 1” in subsection 9-5(5) of the Animals Rules.

This item is consequential to item 14 of this Schedule which adds a new note under subsection 9-27(1) of the Animals Rules.

**Item [14] – At the end of subsection 9-27(1) (after the note)**

This item adds a new note at the end of subsection 9-27(1) of the Animals Rules.

Subsection 9-27(1) requires an accredited veterinarian who is engaged to accompany prescribed livestock during their journey from Australia to their overseas destination in connection with an approved export program to give the Secretary written reports in accordance with the reporting requirements provided by the ASEL. This includes daily reports on the health and welfare of the livestock and conditions on board the vessel, and an end of voyage report that must be given within 5 days of completion of unloading at the final port of disembarkation.

The new note explains that information given in an audit report may be disclosed by certain persons for certain purposes (see section 11-17 (use and disclosure of relevant information relating to prescribed livestock etc.)). This item is consequential to item 18 of this Schedule which inserts new section 11-17 (to which the new note refers).

**Item [15] – Subsection 9-27(2)**

This item repeals subsection 9-27(2) of the Animals Rules.

Subsection 9-27(2) of the Animals Rules currently provides that the Secretary may publish information included in a daily report or end of voyage report given to the Secretary by an accredited veterinarian as required by subsection 9-27(1). Subsection 9-27(1) is described above at item 14 of this Schedule.

This section is repealed because new section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations (which includes information in daily reports and end of voyage reports). As such, subsection 9-27(2) is redundant and can be repealed.

**Item [16] – Section 9-48**

This item repeals section 9-48 of the Animals Rules.

Section 9-48 of the Animals Rules currently provides that the Secretary may publish information included in records and reports made by accredited veterinarians or authorised officers in relation to approved export programs. Division 7 of Part 3 of Chapter 9 of the Animals Rules provides that an accredited veterinarian who is engaged to carry out export operations in an approved export program that relates to prescribed livestock must keep certain records listed in that Division which relate to veterinary examinations, inspection, testing or treatment of prescribed livestock, and details in relation to samples taken, pre-export quarantine or isolation and whether they have been provided with copies of the relevant parts of the approved export program by the holder of the program.

This section is repealed because new section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations (which includes information in records and reports made by accredited veterinarians). As such, section 9-48 is redundant and can be repealed.

**Item [17] – Part 6 of Chapter 11 (heading)**

This item repeals the heading of Part 6 of Chapter 11 and substitutes it with a new heading “Part 6 – Information management”. This item is consequential to item 18 of this Schedule which adds section 11-17 relating to information management.

**Item [18] – At the end of Part 6 of Chapter 11**

This item adds new section 11-17 at the end of Part 6 of Chapter 11 of the Animals Rules. This section prescribes, for the purposes of section 397E of the Act, matters relating to the use or disclosure of relevant information of the kind prescribed in subsection 11-17(4) inserted by this item.

Section 397E of the Act authorises a person to use or disclose relevant information if they are included in a class of persons prescribed by rules made for the purposes of paragraph 397E(1)(a) or (2)(a), the use or disclosure is for a purpose prescribed by rules made for the purposes of paragraph 397E(1)(b) or (2)(b), the information is of a kind prescribed by rules made by for the purposes of paragraph 397E(1)(c) or (2)(c) and the use or disclosure complies with any conditions prescribed by rules made for the purposes of paragraph 397E(1)(d) or (2)(d) of the Act. Subsection 397E(1) of the Act deals with the use of relevant information, while subsection 397E(2) deals with the disclosure of relevant information.

New subsection 11-17(2) prescribes, for the purposes of paragraphs 397E(1)(a) and (2)(a) of the Act, the class of persons who may use or disclose the information. The Secretary and an SES employee, or acting SES employee, in the department are the classes of person prescribed. The power to use or disclose information for the purposes of this provision is limited to the Secretary and SES officers in the department. This ensures that a person with sufficient seniority and understanding of how and whether certain relevant information should be used or disclosed for prescribed purposes is responsible for the decision to make the information public, including by publishing it on the department’s website.

New subsection 11-17(3) prescribes, for the purposes of paragraphs 397E(1)(b) and (2)(b) of the Act, the purpose for which the information may be used or disclosed. The purpose of making the information available to the public (including by publishing it on the department’s website) for one or both of the following reasons is prescribed:

* to encourage compliance with the requirements of the Act by livestock exporters (noting that “Act” is defined in section 1-6 of the Animals Rules to include legislative instruments made under the Act and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the Act);
* to provide assurance to Australia’s trading partners regarding how the Department regulates export operations carried out in relation to prescribed livestock.

This provision limits the publication of the information to circumstances where the reason for publication is to encourage compliance with the requirements of the Act by livestock exporters and/or to provide assurance to Australia’s trading partners regarding how the Department regulates export operations carried out in relation to prescribed livestock.

Encouraging compliance with the requirements of the Act by livestock exporters may take the form of a combination of purposes including but not limited to enhancing knowledge about, and furthering the integrity of, the regulation of the livestock export industry. For example, this may include disclosing information about the requirements of the Act and rules, the various consequences of non-compliance with these requirements and the way that the regulatory scheme works in practice.

The Animals Rules define “prescribed livestock” to mean livestock that are prescribed goods under paragraph 2-1(1)(a) of the Animals Rules. Paragraph 2-1(1)(a) of the Animals Rules prescribes livestock for the purposes of subsection 28(1) of the Act, which allows the rules to prescribe kinds of goods for the purposes of the Act. The meaning of “export operations” is set out in section 16 of the Act and means, in relation to goods that are prescribed livestock:

* operations to export prescribed livestock;
* operations to produce, or prepare prescribed livestock for export (including, for example, breeding or carrying out husbandry activities in relation to livestock);
* operations (other than those listed above) in relation to prescribed livestock for export before they are exported (including, for example, transporting livestock or issuing an export permit for prescribed livestock);
* operations in relation to prescribed livestock that have been exported up until and including the point of slaughter (including, for example, monitoring the livestock during their journey to the importing country up until and including the point of slaughter);
* any other operations in relation to the export of prescribed livestock (including, for example, operations for the purpose of assuring the supply chain relating to the goods).

New subsection 11-17(4) prescribes, for the purposes of subsection 397E(1)(c) and (2)(c) of the Act, the kinds of relevant information that may be used or disclosed. The two kinds of information prescribed consist of information that relates to export operations carried out in relation to prescribed livestock, and information that relates to how the department regulates those export operations.

It is intended that this would cover the following kinds of information:

* information included in reports given to the department by an occupier of a registered establishment for operations to prepare prescribed livestock for export as required by the Australian Standards for the Export of Livestock (ASEL), for example, mortality reports;
* certain information, documents or periodical reports relating to export supply chain assurance operations (ESCAO) that are given to the Secretary by the holder of an approved arrangement for ESCAO;
* information included in daily reports and end of voyage reports for prescribed livestock exported by sea and end of journey reports for prescribed livestock exported by air given to the department as required by the ASEL;
* information included in records and reports made by accredited veterinarians or authorised officers in relation to approved export programs, which are programs approved under section 311 of the Act to be carried out by accredited veterinarians or authorised officers for the purpose of ensuring the health and welfare of eligible live animals (including livestock);
* any information generated by the department in relation to the above-mentioned reports, documents or information that has been given to the department – for example, notifiable mortality investigation reports and other compliance investigation reports;
* the outcomes of an investigation into a livestock export licence holder’s non-compliance or alleged non-compliance with an exporter supply chain assurance system (ESCAS);
* independent observer summary reports, relating to the observations of authorised officers appointed under section 291 of the Act who accompany voyages of livestock exported by sea to verify and report on the implementation of the exporter’s approved arrangement and approved export program, activities undertaken by the on-board accredited veterinarian or accredited stockperson (as relevant) and the exporter’s effectiveness at managing animal health and welfare;
* statements of reasons for significant regulatory decisions made under the Act or Animals Rules in relation to the occupier of a registered establishment, the holder of an approved arrangement or the holder of a livestock export licence, including for example:
  + a refusal of a notice of intention to export under section 8-6 of the Animals Rules;
  + a grant or refusal of an exemption to an exporter under section 54 of the Act; or
  + a decision to give a direction under section 222 of the Act; and
* incident reports relating to significant incidents during the export process for prescribed livestock where a regulated entity did not comply with the requirements of the Act, including in respect of animal welfare and importing country requirements.

New subsection 11-17(5) prescribes, for the purposes of paragraphs 372E(2)(d) of the Act, that a condition of the disclosure of the information is that either:

* the information does not include personal information about an individual; or
* any personal information about an individual included in the information is de-identified.

The terms “de-identified” and “personal information” are defined in section 12 of the Act to have the same meaning as in the *Privacy Act 1988* (the Privacy Act). Section 6 of the Privacy Act provides that “personal information” means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not. Section 6 of the Privacy Act provides that personal information is “de-identified” if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

New subsection 11-17(6) provides that this condition does not apply to the disclosure of the name of the holder of an export licence, the name of an occupier of a registered establishment or an export business. “Export business” is defined in section 12 of the Act to mean a business that carries out export operations in relation to a kind of goods.

New subsections 11-17(5) and (6) ensure that the disclosure of personal information is not permitted without first being de-identified, with the exception that the name of an export licence holder, occupier of a registered establishment or an export business can be disclosed. This would allow the name of a licence holder, occupier of a registered establishment or an export business to be disclosed regardless of whether they consist of a body corporate, individual person, partnership or unincorporated association.

The department’s practice is not to publish the name of natural persons who are participants in the livestock export industry, even if they are the holder of an export licence or named as the occupier of a registered establishment. Rather, the department’s practice is to publish the name of the associated export business if there is one. It is necessary to include this exception in subsection 11-17(6) in order to clarify that the names of businesses participating in the livestock export industry can be published in all cases, including where the licence holder, occupier of the registered establishment or export business is not a corporate entity (for example, if the business consists of an individual, unincorporated association or partnership) or where the exporter’s business name identifies an individual (for example, because an individual’s name is embedded in the name of the company). It is reasonable and proportionate to allow the disclosure of the name of an export business, export licence holder or occupier of a registered establishment because these entities have opted into the regulatory framework under the Act and are responsible for complying with export requirements and understanding their obligations as an exporter. It supports the reasons for publishing the information specified in new subsection 11-17(3), that is, ‘to encourage livestock exporters’ compliance with the Act and rules and provide assurance to Australia’s trading partners.

Subsection 11-17(7) provides, for the purposes of subsection 397E(3) of the Act, that the power of the Parliament to make laws with respect to trade and commerce with other countries and among the States is specified. This power is found in paragraph 51(i) of the Constitution.

Subsection 397E(3) of the Act requires rules made for the purposes of the section to specify the legislative power or powers of the Parliament in respect of which the rules are made. Subsection 11-17(7) fulfils this requirement.

The purpose of new section 11-17 is to consolidate provisions relating to the publication of export information into a single provision which aligns with the new information management provisions in Part 3 of Chapter 11 of the Act. New section 11-17 replaces provisions in the Animals Rules that currently provide for the publication of specific information and which are repealed by this Schedule, while placing further limits on the publication of this information by providing that any personal information must be de-identified (subject to the exception mentioned above). New section 11-17 also replaces section 3-1 of the Miscellaneous Rules which currently provides for the publication of de-identified export information generally.

As with the current provisions, the ability to publish information relating to the export of prescribed livestock supports the department’s regulatory activities by encouraging regulated entity compliance with Australian and importing country requirements, to assist in ensuring goods meet export requirements and maintaining overseas market access.

**Item [19] – At the end of appropriate position in Chapter 12**

This item adds new Part 10 to Chapter 12 providing for the application of the Amendment Rules. New section 12-41 is the only section in new Part 9 of Chapter 12 of the Animals Rules.

New section 12-41 provides that section 11-17, inserted by item 18 of this Schedule, applies in relation to the use or disclose of relevant information on or after the day on which this instrument commences, whether the information was obtained or generated before, on or after that day. This item clarifies that the amendments operate prospectively in relation to all relevant information regardless of when it was obtained or generated.

*Export Control (Miscellaneous) Rules 2021*

**Item [20] – Section 3-1**

This item repeals section 3-1 of the Miscellaneous Rules.

Section 3-1 currently provides that the Secretary may publish, or otherwise disclose, certain protected information if it does not include personal information about any individual, or all personal information about an individual included in the protected information is de-identified.

Amendments to improve the operation of information management provisions in the Act were made on 1 February 2024, with the commencement of relevant provisions in the *Export Control Amendment (Streamlining Administrative Processes) Act 2023* (SAP Act). This includes specific authorisations for the use and disclosure of information obtained or generated by a person in relation to activities undertaken in connection with the Act (“relevant information”). This includes authorisations to disclose relevant information by consent, as well as publicly available information, de-identified statistics and relevant information for the purposes of the Act.

New section 11-17 inserted by item 18 of this Schedule provides for the disclosure of information relating to livestock export operations. Together with the authorisations in Part 3 of Chapter 11 introduced by the SAP Act, section 3-1 is redundant and can be repealed.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

*Export Control Legislation Amendment (Information Management) Rules 2025*

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 (Information Management) Rules 2025* (the legislative instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control (Animals) Rules 2021*(the Animals Rules) and the *Export Control (Miscellaneous) Rules 2021* (the Miscellaneous Rules) to repeal provisions relating to the publication of information and replace these with a single provision in the Animals Rules made for the purposes of section 397E of the Act, which authorises the use and disclosure of relevant information in accordance with the rules.

The new provision prescribes classes of persons in the department who may use or disclose prescribed kinds of relevant information relating to export operations carried out in relation to prescribed livestock, for the purposes of making the information available to the public, including by publishing it on the department’s website. A condition on disclosure is that any personal information about an individual is de-identified, with the exception that the name of the holder of an export licence, an occupier of a registered establishment or an export business can be disclosed.

The legislative instrument provides that the classes of person in the department who may use or disclose the information is limited to the Secretary of the department and SES employees or acting SES employees in the department. The purpose for which the information may be used or disclosed is to make the information available to the public, including by publishing it on the department’s website, for one or both of the following reasons:

* to encourage compliance with the requirements of the Act by livestock exporters; and
* to provide assurance to Australia’s trading partners regarding how the Department regulates export operations carried out in relation to prescribed livestock.

The legislative instrument specifies the powers of the Parliament in respect of which the rules are made, as required by subsection 397E(3) of the Act.

**Human rights implications**

This legislative instrument may engage the right to the protection from arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Prohibition on arbitrary interference with privacy (Article 17 of the ICCPR)

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

New section 11-17 inserted by the legislative instrument prescribes classes of persons who may use or disclose certain kinds of relevant information under the Act for the purpose of making the information available to the public, including by publishing the information on the department’s website. The kind of information that can be published is information that relates to export operations carried out in relation to prescribed livestock and how the department regulates those operations. A condition on disclosure in new subsection 11-17(5) is that the information does not include any personal information about an individual, or any personal information about an individual has been de-identified. “De-identified” has the same meaning as in the Privacy Act, which provides that personal information is “de-identified” if the information is no longer about an identifiable individual or an individual who is reasonably identifiable. Subsection 11-17(6) provides that the condition in subsection 11-17(5) does not apply to the disclosure of the name of a holder of an export licence, an occupier of a registered establishment or an export business. If a licence holder or occupier of a registered establishment is an individual, the disclosure of this information may engage the prohibition on arbitrary interference with privacy.

In line with authorisations under Division 2 of Part 3 of Chapter 11 of the Act, the authorisation for the Secretary or SES officers to use or disclose relevant information implemented by the legislative instrument is clearly defined. The power to use or disclose information for the purposes of this provision is limited to the Secretary and SES officers in the department. This ensures that a person with sufficient seniority and understanding of how and whether certain relevant information should be used or disclosed for prescribed purposes is responsible for the decision to make the information public, including by publishing it on the department’s website.

The holder of an export licence or occupier of a registered establishment is frequently a business and as such, disclosure of their name would not normally constitute “personal information”. The department’s practice is not to publish the name of a participant in the livestock export industry who is a natural person. However, this exception has been included to put beyond doubt that the names of participants in the livestock export industry are not prevented from being published in a situation where the business consists of an individual or group of individuals, such as a partnership or an unincorporated association, rather than a corporate entity, or if the business name itself identifies an individual (for example because the name of an individual is embedded in the business name). Participants in the livestock export industry have the freedom to choose the way in which they operate their business and their business name, including whether or not any personal information is identifiable from their business structure or business name. The publication of the information is aimed at the legitimate objective of encouraging compliance with the requirements of the Act and rules by livestock exporters and providing assurance to Australia’s trading partners regarding how it regulates export operations. This assists with the department’s management and enforcement of the Act, and maintaining Australia’s overseas market access.

Holders of livestock export licences, occupiers of registered establishments and other export businesses (that is, businesses which carry out export operations in relation to a kind of goods) have ‘opted in’ to the regulatory framework under the Act. PJHCR Guidance indicates that whether a person has a reasonable expectation of privacy in the circumstances is relevant to the issue of determining whether a provision is permissible. An entity who is engaged in the business of exporting livestock from Australia should not expect their name to be confidential in a situation where publication is required to encourage compliance with the requirements of the Act and rules or provide assurance to Australia’s trading partners. For example, in accordance with the Australian Standards for the Export of Livestock (ASEL) exporters must notify the department when the voyage mortality rate for livestock exported by sea reaches the notifiable mortality level specified in the ASEL. The department subsequently publishes its notifiable mortality level investigation report on its website and outlines the actions the livestock exporter has been required to take for its next consignment.

The department maintains robust policies and procedures to protect any personal information which it holds, as documented in the department’s Privacy Policy at agriculture.gov.au/about/commitment/privacy. As part of these processes, personal information is held in accordance with the collection and security requirements of the Australian Privacy Principles, the department’s policies and procedures and the Australian Government Protective Security Policy Framework. Should personal information held by the department be subject to unauthorised access or disclosure, the department has procedures in place to assess the incident and mitigate any harm that may have been caused and considers the incident in accordance with its responsibilities under the Privacy Act and requirements under the Notifiable Data Breach Scheme to notify the Office of the Australian Information Commissioner of any potential eligible data breaches.

Other relevant departmental policies and procedures, which can be implemented on a case-by-case basis, include the following:

* application of additional restrictions, including via protective marking, to limit the clearance level for access of personal information;
* notifying particular affected parties of a particular disclosure or use, if appropriate;
* entering into agreements with other parties, which as noted above is required for certain authorisations, will set out use, handling and storage requirements of personal information; and
* ensuring the storage of personal information meets best practice protocols and is in line with Commonwealth record-keeping obligations.

Apart from permitting the name of an export licence holder, occupier of a registered establishment or export business to be disclosed for certain purposes, the amendment to the Animals Rules does not permit the publication or disclosure of personal information without first being de-identified, and to that extent does not engage the right to the protection from arbitrary interference with privacy.

This legislative instrument does not otherwise engage any of the applicable rights or freedoms.

To the extent that the rules limit the right to privacy, this limitation is reasonable, necessary and proportionate to achieving legitimate objectives and is consistent with the right to privacy in Article 17 of the ICCPR.

**Conclusion**

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

**Adam Phillip Fennessy PSM**

**Secretary of the Department of Agriculture, Fisheries and Forestry**