



Australian Government
Department of Agriculture
and Water Resources

Improving Australia's Export Legislation

*Exposure Draft Export Control Bill 2017:
Outline*



Introduction

Agriculture is a key part of the Australian economy, with around two-thirds of our agricultural products being exported each year. Export earnings from agricultural commodities generated an estimated \$48 billion in revenue in 2016–17 from trading partners including China, Indonesia, Japan, the United States of America, the Republic of Korea and New Zealand (ABARES 2017).

The existing legislative framework that enables agricultural exports (including fish, forestry, fibre and food products) was developed over 30 years ago to provide greater control over the inspection and certification of products being exported from Australia. The export-related provisions are included in 17 Acts (including the *Export Control Act 1982* and the *Australian Meat and Live-stock Industry Act 1997*) and more than 40 legislative instruments.

This framework continues to serve Australia well by enabling the export of agricultural products which meet importing country requirements. However, many of the legislative instruments that give effect to the existing framework are due to sunset (cease to be law) on 1 April 2020 in accordance with the *Legislation Act 2003* and must be reviewed before being either remade or repealed. This provides an opportunity to improve our legislation, should we wish to do so.

A review of the framework was undertaken in 2015 to ensure farmers and exporters are supported by contemporary and efficient legislation and our trading partners continue to have confidence in Australia's agricultural exports. As a result of stakeholder feedback, the Australian Government decided to improve the legislative framework to better support exporters and facilitate trade now and into the future.

No significant changes to export policy or the baseline of regulation will be made as a result of the implementation of the new legislative framework. The Export Control Bill 2017 (draft Bill) will provide a more consistent and clear framework that is responsive to emerging issues.

Like the existing framework, the draft Bill is designed to give authority to the Australian Government to continue to certify that goods for export meet importing country requirements. It will also continue to enable the Australian Government to ensure that the goods comply with government requirements, industry standards (if relevant) or other requirements relating to the goods. The draft Bill supports and gives effect to Australia's international obligations under the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), as does the current export legislation framework.

While the current legislative framework continues to serve Australia well and continues to provide for a strong basis for export certification, numerous amendments over the years have increased its complexity. As a consequence, some exporters find that the framework is difficult to understand and that its requirements are duplicative. For Government, aspects of the framework can be complex to administer and provides a limited range of compliance and enforcement tools.

The draft Bill provides the foundation for a strong legislative framework that enables the management of agricultural exports in a modern and clear manner and enhances Australia's capacity to gain, maintain and grow global market access for our exports into the future. It can be considered a 'tool box' of regulatory provisions available to Government to regulate agricultural exports. The draft Bill also enables the Secretary to make Export Control Rules (disallowable legislative instruments) to be developed in 2018. This is similar to the current framework which comprises Orders (disallowable legislative instruments) that outline commodity specific requirements.

This chapter-by-chapter summary of the draft Bill has been provided as a quick guide to assist stakeholders navigate the proposed legislation.

Chapter 1: Preliminary

The draft Bill seeks to ensure that goods that are exported:

- meet importing country requirements
- comply with government or industry standards or requirements
- are traceable and maintain integrity
- contain accurate trade descriptions
- give effect to Australia's rights and obligations under international agreements to which Australia is a party.

The draft Bill will allow for the regulation of the whole of the supply chain, if deemed necessary. It will apply in and outside Australia in relation to all Australian persons and bodies, in a way that is consistent with general principles of international law. For example, if a condition on an export licence applies outside Australia, enforcement action for a breach of that condition will be taken in Australia.

The draft Bill will also apply to regulate the export operations of foreign persons and bodies in Australia and, in limited circumstances, in the exclusive economic zone adjacent to Australia and on, or in, the continental shelf adjacent to Australia. The draft Bill will apply to an external Territory if, by legislative instruments (Export Control Rules), the application of the proposed legislation is extended to that Territory.

The draft Bill will provide a consolidated and comprehensive set of definitions to ensure that terminology is used consistently throughout the export regulatory control framework.

Chapter 2: Exporting goods

Part 1—Goods

The draft Bill will set out the goods that are prohibited absolutely from export (namely, split vetch). It will also give the Minister the power to temporarily prohibit the export of goods in emergency situations. The draft Bill will provide the Secretary with the power to prescribe which goods are prescribed goods and which may therefore be subject to the proposed export regulatory controls set out in the draft Bill. The draft Bill seeks to impose significant penalties for exporting prescribed goods that do not comply with the requirements of the proposed legislation, or goods that are subject to an absolute or temporary prohibition on export. Goods that are not prescribed goods are non-prescribed goods. The draft Bill will impose limited regulatory control on the export of non-prescribed goods, depending on importing country requirements. The draft Bill will also enable Export Control Rules to prescribe that particular goods are taken not to be prescribed goods in certain circumstances, where an importing country does not require it.

Part 2—Exemptions

A person will be able to apply for an exemption from all or from part of the proposed regulatory controls set out in the draft Bill. The bases for seeking an exemption will primarily replicate those which are set out in the *Export Control Act 1982*. The draft Bill will also enable a person to seek an exemption in relation to prescribed goods that are to be exported to a particular country where the importing country does not require some or all of the provisions of the proposed legislation to be complied with in relation to the goods.

The draft Bill will enable Export Control Rules to be made that prescribe the circumstances in which certain goods are not prescribed goods for the purposes of the proposed legislation (i.e. goods that are excluded from regulatory control). This may include, for example, small consignments (less than 10kgs or 10L) or commercial samples.

Part 3—Government certificates

Australia's trading partners may require a government certificate to be issued in relation to goods before they will allow the goods into their country. The draft Bill seeks to allow an issuing body (being the Secretary, a person or body covered by an approved arrangement that provides for the person or body to issue government certificates, or a specified person or body) to issue government certificates, which will provide assurance to trading partners that the goods covered by the certificates meet their requirements. These provisions will allow the issuing body to certify both prescribed goods and non-prescribed goods for which the department has oversight.

Chapter 3: Accredited properties

The Export Control Rules will specify when prescribed goods for export must have been sourced from an accredited property. The draft Bill will enable the Secretary to accredit a property to carry out export operations in relation to a kind of prescribed goods or a kind of goods from which prescribed goods are derived (e.g. cows that will be slaughtered for beef), and may specify the places to which the goods can be exported. Accredited properties will generally relate to the production of goods for export, and will generally apply at the beginning of the supply chain. The draft Bill will enable the making of Export Control Rules to prescribe specific requirements for accredited properties for different goods, if deemed necessary. An accredited property will generally have less associated regulatory requirements than a registered establishment (see Chapter 4, below). Once the Secretary has accredited a property, he or she can conduct audits and exercise a range of monitoring and enforcement powers. This will ensure that the property is, and remains, fit for the purpose of carrying out the export operations for which it is accredited.

Chapter 4: Registered establishments

The Export Control Rules will specify when prescribed goods for export must have been sourced from a registered establishment. The draft Bill will enable the Secretary to register an establishment to carry out export operations in relation to a kind of prescribed goods, if deemed necessary. Registered establishments generally relate to the preparation of prescribed goods, and will generally apply at the end of a supply chain. Registration of establishments will be the primary way the department will ensure that goods prepared for export meet importing country requirements, fulfil international trade obligations, and meet legislative requirements about the preparation of goods for export. The draft Bill will enable the making of Export Control Rules to prescribe specific requirements for registered establishments for different goods. Registered establishments are subject to audits and a range of monitoring and enforcement powers.

Chapter 5: Approved arrangements

The Export Control Rules will specify when, for which goods and for which export operations it is necessary to hold an approved arrangement. The draft Bill will enable the Secretary to approve an arrangement that provides for export operations to be carried out in relation to a kind of prescribed goods, if deemed necessary. Approved arrangements are agreements between the department and a person – the holder of the arrangement – about how the holder will meet legislative and importing country requirements. Approved arrangements will be able to apply to businesses that are engaged in the production or preparation of prescribed goods for export, to businesses that export prescribed goods, as well as to other businesses which perform functions on behalf of the department (such as the certification of goods) if required. The draft Bill will also enable the making of Export Control Rules to prescribe specific requirements for approved arrangements for different goods. Approved arrangements are subject to audits and a range of monitoring and enforcement powers.

Chapter 6: Export licences

The Export Control Rules will specify when it is necessary for a person to hold a licence to export prescribed goods or conduct other export operations. The draft Bill will enable the Secretary to grant an export licence that will authorise the holder to carry out a kind of export operations in relation to a kind of prescribed goods, if deemed necessary. Under the current Act, licences are used to authorise the export of certain classes of goods if the export is in accordance with the conditions or requirements of that licence. Under the provisions proposed by the draft Bill, licences may be applied to the export operations of any goods covered by the proposed legislation at any point in the supply chain, if required. The draft Bill will also enable the making of Export Control Rules to prescribe specific requirements for different goods in relation to the export of goods from Australia. Export licences are subject to audits and a range of monitoring and enforcement powers.

Chapter 7: Export permits

The draft Bill will enable the Secretary to issue export permits, which will provide permission to export prescribed goods from Australia. The Secretary will only be able to issue a permit once he or she is satisfied that the goods meet legislative and importing country requirements. The draft Bill will enable the making of Export Control Rules to prescribe conditions for export permits for different goods. The Secretary may also issue a permit subject to additional conditions. Export permits are subject to audits and a range of monitoring and enforcement powers.

Chapter 8: Other matters relating to export

Part 1—Notices of intention to export

The draft Bill will enable the making of Export Control Rules to specify when a notice of intention to export must be given to the Secretary by an exporter preparing goods for export. This will enable the department to determine inspection requirements.

Part 2—Trade descriptions

Accurate and complete trade descriptions are an integral part of ensuring the integrity of Australia's exports. The draft Bill proposes to prescribe significant penalties for altering or interfering with a trade description in certain circumstances, applying false trade descriptions to goods intended for export, and exporting goods with false trade descriptions.

Part 3—Official marks

The draft Bill seeks to establish official marks in order to provide trading partners with assurance as to the integrity of goods that are being exported. The draft Bill proposes to prescribe significant penalties for applying false, misleading or deceptive official marks, or engaging in conduct that results in an official mark being altered to be misleading or deceptive.

Part 4—Tariff rate quotas

The draft Bill will enable the making of Export Control Rules to make provision for, and in relation to, the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods. These provisions are similar to those contained in the existing legislation.

Chapter 9: Powers and officials

Part 1—Audits

The department uses audits to verify whether agricultural goods are being produced, prepared and exported in accordance with relevant legislative and importing country requirements. The draft Bill seeks to enable audits to be conducted by the department in relation to certain export operations. Audits will also be able to be used to ensure that a person who performs functions on behalf of the department, such as a third party authorised officer (see Part 4 of Chapter 9) or the holder of an approved arrangement, is complying with their obligations. Audits will be able to examine historical and ongoing compliance with the proposed legislation and importing country requirements.

Part 2—Assessment of goods

Under the current Act, the department uses assessments to verify whether goods proposed for export comply with relevant legislative and importing country requirements. The draft Bill seeks to enable an assessment to be carried out in certain circumstances. These assessments will typically occur once the goods have been finally prepared for export, to assist with obtaining an export permit or a government certificate.

Part 3—Powers of the Secretary

The draft Bill will allow the Secretary to delegate his or her powers or functions to senior officers in the department, or to authorised officers, to assist in the administration of the proposed framework.

The Minister will be able to direct the Secretary in relation to the Secretary's power to make Export Control Rules (see Part 6 of Chapter 11).

Part 4—Authorised officers

Under the current Act, authorised officers assist in providing assurance to trading partners of the effectiveness of export controls, and work to ensure consistency and quality within Australia's export chains. The draft Bill seeks to generally replicate the provisions relating to authorised officers in the current Act to enable authorised officers to inspect goods, conduct audits, issue certificates and give directions on how exported goods must be handled.

The draft Bill will enable departmental officials, state and territory officials and third party (i.e. non-government) authorised officers employed by a registered establishment or engaged on an individual basis to be authorised officers under the proposed legislation, where agreed by trading partners. The draft Bill ensures that all authorised officers have consistent obligations to ensure their independence and impartiality in carrying out their duties.

Part 5—Accredited veterinarians and approved export programs

Accredited veterinarians carry out a number of functions to ensure the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material throughout the export process. The draft Bill generally replicates the accredited veterinarian provisions under the current Act.

Chapter 10: Compliance and enforcement

The draft Bill seeks to apply the standard compliance and enforcement provisions in the *Regulatory Powers (Standard Provisions) Act 2014*. This will provide the department with a greater range of compliance and enforcement powers than those that are available under the current Act. The department will be able to use a range of modern enforcement tools to deal with non-compliance, including criminal and civil penalties, infringement notices, enforceable undertakings, injunctions, and administrative sanctions such as suspension or revocation. These

tools will allow the department to intervene and address non-compliance and its underlying causes in a more targeted manner.

The draft Bill will provide for a 'fit and proper person' test that will enable an assessment to be made about whether particular persons or companies involved in the export supply chain will, or are likely to, properly conduct their business. Whether an applicant is a fit and proper person could also be affected by the conduct and history of the applicant's associates.

Chapter 11: Miscellaneous

Part 1—Matters relating to applications

The draft Bill will provide for standard and consolidated provisions for applications to accredit a property, register an establishment, approve an arrangement, or grant an export licence. The proposed provisions also set out the powers that the Secretary will be able to exercise when dealing with an application.

Part 2—Review of decisions

The draft Bill will establish a two-stage review process for applications for the review of the merits of a decision made under the proposed legislation – firstly, internal review within the department, and secondly, review by the Administrative Appeals Tribunal. In general, administrative decisions that will be able to be made by the Secretary or authorised officers under the proposed legislation will be subject to merits review, unless there are specific reasons to justify the exclusion of merits review.

Part 3—Confidentiality of information

The draft Bill will allow for the use and disclosure, in accordance with the *Privacy Act 1988*, of protected information, including where that information is relevant to the department's other regulatory functions, such as under the *Biosecurity Act 2015*. The draft Bill proposes to prescribe significant penalties for persons who use or disclose the protected information other than as authorised under the draft Bill.

Part 4—Cost recovery

The draft Bill will replicate existing cost recovery arrangements, which allow the Commonwealth to recover costs for performing export services and undertaking export certification activities.

Part 5—Records

The draft Bill will enable the making of Export Control Rules to make provision for requirements to retain records, which is essential to the exercise of many export control activities, including audits, monitoring and enforcement, and being able to trace goods back through the supply chain.

Part 6—Miscellaneous

The draft Bill will include other miscellaneous provisions that relate to export operations regulated by the draft Bill, including, for example, the forfeiture and destruction of goods, compensation for damaged and destroyed goods or acquisition of property, and testing and sampling procedures. The draft Bill will also enable the Secretary to make disallowable legislative instruments that will be known as 'Export Control Rules'.

References

ABARES 2017, [Agricultural commodities: June quarter 2017](#), Australian Bureau of Agricultural Resource Economics and Sciences, Canberra.