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Export Meat Operational Guideline

8.1 Debt engagement



Purpose

This guideline sets out how the Department of Agriculture, Fisheries and Forestry (the department) will engage with regulated entities operating in the export meat, poultry, rabbit, ratite and wild game industries in relation to overdue Commonwealth liabilities (debts due to the Commonwealth).

Context

Failure to pay debts that are owed to the Commonwealth by users of its export systems could have an adverse impact on:

- the department's ability to efficiently and effectively manage its export programs
- the broader Australian community, as the Commonwealth cannot efficiently or effectively manage Commonwealth resources.

Legislative basis

Fees may be charged in relation to activities carried out by, or on behalf of the Commonwealth in the performance of functions or the exercise of powers under the *Export Control Act 2020* (the Act). The Export Control (Fees and Payments) Rules 2021 stipulate the legislative requirements for the payment of cost recovered charges.

Relevant Commonwealth liability means either:

- a cost-recovery charge that is due and payable
- a pecuniary penalty, or other liability for an amount, imposed by or under a prescribed agriculture law.

The department is required to pursue the recovery of debts owing to the Commonwealth under section 103(c) of the *Public Governance, Performance and Accountability Act 2013* and section 11 of the Public Governance, Performance and Accountability Rule 2014.

Where a relevant Commonwealth liability (debt owed) is more than 30 days overdue, the Act has provisions for the department to take regulatory action and the Commonwealth may also seek action through a relevant court to recover the debt. Outstanding Commonwealth liability may be an adverse consideration as part of a fit and proper person test under section 372 of the Act.

Principles

The department will actively engage with export meat, poultry, rabbit, ratite and wild game industry entities where overdue Commonwealth liability is identified through regulatory processes administered under the *Export Control Act 2020* and its associated rules¹.

Communication of Commonwealth liability

The department has several work areas that support entities in relation to payment of fees and charges to maintain export services. Information on the department's finance arrangements is available on the [Payments](#) webpage on the department's website.

If you have an account number with the department, you will be expected to post-pay after a service has been provided to you. After the service has been provided, you will receive a tax invoice from the department via your nominated communication method that lists the charges associated with the service(s) provided. You will have 28 calendar days from the invoice date to pay your tax invoice.

The department's Accounts Receivable and Debt Management (ARDM) team maintains debtor accounts and monitors non-payment and underpayments of invoices. The ARDM team will follow up on debts and will notify the debtor of outstanding charges incurred through monthly account statements.

The department will advise the debtor of an overdue debt through overdue reminder notices when the overdue debt is more than 3 days past the due date.

The monthly account statement and overdue reminder notice will be sent via the debtor's nominated communication method registered on the department's records. The *Electronic Transactions Act 1999* stipulates that information is readily available to the addressee where the information has been sent by electronic transmission (such as email).

Export Meat Program engagement

The Export Meat Program works closely with the department's ARDM team to monitor overdue Commonwealth liabilities and will engage with entities where potential regulatory impacts have been identified in relation to applications, approvals and provision of services. This will involve direct contact with people listed in management and control and will also include written and email communication in the form of prescribed notices.

Debts owed to the department may also impact in the department's consideration of fit and proper person tests when assessing applications (including new and renewal applications) for export licences and establishment registrations. The Export Meat Program may separately ask ARDM to contact an applicant where outstanding debt has been identified through this process.

¹ Export Control (Meat and Meat 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; Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021; Export Charges (Imposition—General) Regulations 2021; Export Charges (Imposition-Customs) Regulations 2021; Export Control (Fees and Payments) Rules 2021

Departmental response to overdue Commonwealth liability

The Act provides that a late payment fee may be incurred by an entity, should the department's payment terms and conditions not be met. The late payment fee is calculated daily, at a rate equal to 20% per annum, on the outstanding overdue balance.

The department will pursue overdue Commonwealth liability and may apply regulatory actions to:

- accredited properties
- export-registered establishments
- approved arrangements
- export documents
- export licences
- departmental services.

The impact of these regulatory actions may affect an entity's ability to continue with some or all of their export operations.

Outstanding Commonwealth liabilities will be identified through the 'fit and proper person' provisions provided for in the Act when the delegate/subdelegate is considering applications.

The fit and proper person test may also identify debt relating to associates of the individual/entity. Section 13 of the Act further specifies the definition of an 'associate'.

Disclosable outcomes may affect the individual/entity's application. Further information about the fit and proper person test can be found on the department's [Understanding the fit and proper person test](#) web page.

Entities should be aware that certain prior conduct or associations may impact the outcome of an application, potentially resulting in suspension, variation or revocation of a registration or other approval type.

Entities should also be aware that when the department is considering an application to approve a registered establishment, in addition to the fit and proper person test, they will also consider if all relevant Commonwealth liabilities of the occupier of the establishment, or relating to the establishment, have been paid or are taken to have been paid. If an establishment shuts down and sells the establishment to a new purchaser, this will likely be identified as part of the due diligence checks that are required.

Grounds for suspension – overdue relevant Commonwealth liability

Where entities have overdue relevant Commonwealth liability, the Act provides grounds for suspension of some or all of an entity's export operations.

Prior to the date the suspension is to start, a notification of intention to suspend will be issued to the entity. The notice will set out the reason for the intention to suspend and will include a timeframe allowing for procedural fairness, for the entity to provide any further information to advise the delegate's decision. Should a decision to suspend be made, a notification of suspension will be issued.

The notification of suspension will set out:

- which activities are to be suspended
- the reason for suspension
- when the suspension is to start and the period of suspension
- that if no further action is undertaken by the entity, that the delegate may consider formal revocation of some or all of the entity's export operations.

The period of suspension will be determined by the delegate (up to a maximum of 12 months).

The suspension may be lifted where the entity has repaid the overdue debt or has entered into an approved repayment plan with the department. The repayment plan must be approved by the department.

Where a suspension is to be lifted, the department will:

- advise the client through written notice
- advise the client of the date that they will receive departmental services or when export operations can commence.

Grounds for revocation – overdue relevant Commonwealth liability

If, within 90 days of the start of the suspension period, the relevant Commonwealth liability (debt owing) has not been paid, or a payment arrangement has not been entered into with the department to pay the relevant Commonwealth liability, the department may proceed to revocation.

Debtor response to overdue Commonwealth liability

Options for payment

To address overdue Commonwealth liability, export meat industry participants can:

- pay the debt in full. There are various payment options available which can be located on the ['How to pay'](#) section of the invoice
- enter into an agreed payment arrangement with the department (which will be monitored for ongoing adherence to the repayment commitment)
- request a deferral of the time for payment of debt due to financial hardship or any other exceptional circumstances.

More information on the department's finance arrangements can be found on the department's [Payments](#) webpage.

More detailed advice relating to the above options, and individual circumstances can be sought by contacting the department's Accounts Receivable and Debt Management team via ARHelpdesk@agriculture.gov.au or by calling 1800 647 531.

Payment of debt in full

Where the entity pays the debt in full, they must pay the overdue debt prior to payment of any current debt. If making a payment via electronic funds transfer (EFT), a remittance advice must be emailed to ARHelpdesk@agriculture.gov.au outlining the overdue invoice numbers being paid.

Where an entity pays the overdue debt in full, the department will confirm that the overdue debt has been paid.

Where regulatory action has commenced, the Export Meat Program will confirm that no regulatory action will be taken regarding that debt.

Repayment arrangement

Where an entity is seeking financial assistance to repay an overdue debt via a repayment arrangement, they must contact the department's ARDM team to discuss what repayment options are available. The entity must ensure that the repayment arrangement schedule is adhered to along with any payments of current charges.

When the department accepts the entities repayment proposal, the department's Accounts Receivable and Debt Management area will:

- request the proposed payment amount(s)
- request the proposed payment date(s)
- provide a Deed Acknowledging Debt and Undertaking to Pay (the Deed)
- provide a copy of the Deed if the delegate decides to approve the proposed payment by instalments on the entity's acceptance of the conditions in the Deed.
- continue to monitor the repayment schedule and payment of the instalments by the due date. In the event of any default, the total debt balance shall become due and payable to the department immediately.

Clients are required to contact the department when requesting financial hardship assistance. The department will assess eligibility based on the financial information provided by clients.

Clients will be required to provide evidence (by a statutory declaration or other means) sufficient to satisfy the delegate that it is reasonable for the debtor to repay the debt by way of instalments or at a deferred date.

Where regulatory action has commenced, the Export Meat Program will confirm that no regulatory action will be taken regarding that debt as long as the repayment plan is adhered to.

Request to release debt

The Secretary may remit or refund a cost-recovery charge in certain circumstances as outlined under section 405 of the Act.

Where the debtor wishes to make a submission to remit or refund a cost-recovery charge, they must submit a written application to ARDM and include the reason why the cost-recovery charge should be remitted or refunded.

Each request will be considered on its merits.

Action if debt is not paid

The Public Governance, Performance and Accountability Rule 2014 has regulatory provisions where overdue relevant Commonwealth liability is identified, and the Commonwealth may seek action through the relevant court to recover the debt.

Related material

The following related material is available on the internet:

- Webpage: [Export Control Act 2020](#)
- Webpage: [Export Control \(Meat and Meat Products\) Rules 2021](#)
- Webpage: [Export Control \(Wild Game Meat and Wild Game Meat Products\) Rules 2021](#)
- Webpage: [Export Control \(Poultry Meat and Poultry Meat Products\) Rules 2021](#)
- Webpage: [Export Control \(Rabbit and Ratite Meat and Rabbit and Ratite Meat Products\) Rules 2021](#)
- Webpage: [Export Charges \(Imposition—General\) Regulations 2021](#)
- Webpage: [Export Charges \(Imposition—Customs\) Regulations 2021](#)
- Webpage: [Export Control \(Fees and Payments\) Rules 2021](#)
- Webpage: [Public Governance, Performance and Accountability Act 2013](#)
- Webpage: [Public Governance, Performance and Accountability Rule 2014](#)
- Webpage: [Electronic Transactions Act 1999](#)

The following related material is available on the department's website:

- Webpage: [Payments](#)
- Webpage: [How to pay](#)
- PDF: [Outline of the Export Cost Recovery Framework – Improved agricultural export legislation](#)
- Webpage: [Cost recovery implementation statement: meat exports 2021–22](#)

Attachment 1: Relevant sections of the *Export Control Act 2020*

Components of the *Export Control Act 2020* that provide grounds for suspension or revocation are outlined below.

Grounds for suspension – overdue relevant Commonwealth liability

Components of the *Export Control Act 2020* that provide grounds for suspension include:

- accreditation of a property subsection 95(1)
- registration of an establishment subsection 128(1)
- an approved arrangement subsection 172(1)
- an export licence subsection 206(1).

Grounds for revocation – overdue relevant Commonwealth liability

Components of the *Export Control Act 2020* that provide grounds for revocation include:

- accreditation of a property subsection 103(1)
- registration of an establishment subsection 139(1)
- an approved arrangement subsection 180(1)
- an export licence subsection 213(1).

Fit and proper person test

The *Export Control Act 2020* section 372, 'Fit and proper person test', applies for the purposes of determining whether a person is a fit and proper person for the purposes of any of the following provisions:

- sections 112, 117, 120, 123, 127 and 138 (decisions in relation to registered establishments)
- sections 151, 156, 165, 171 and 179 (decisions in relation to approved arrangements)
- sections 191, 196, 201, 205 and 212 (decisions in relation to export licences)
- any other provision of this Act prescribed by the rules.