



REFERENCE

Australia’s plant and plant product export legislation

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Introduction

The Department of Agriculture, Water and the Environment regulates exports of agricultural products. This assures our trading partners that Australian agricultural products meet import requirements. Efficient but effective regulation of exports is the cornerstone of Australia's reputation as an excellent source of reliable agricultural exports.

Terms used in this reference document are defined in Reference: [Plant export operations manual glossary](#).

Why are plant and plant product exports regulated?

Export regulation helps to expand and maintain markets and trade opportunities for Australian agricultural produce. It also provides our international trading partners with a high degree of confidence in the quality and hygiene of our agricultural and food exports, and that exports will meet the international trading partner's import requirements. In addition, regulation protects the agricultural and food export sectors from damage to its reputation that could result in lost or reduced markets. For example, it protects markets and public health by preventing the export of contaminated produce. Finally, regulation protects honest traders in the export industry from disreputable competitors.

Australia works with other nations through the World Trade Organization (WTO) and the Food and Agriculture Organisation (FAO) of the United Nations (UN) to facilitate trade while preventing the introduction and spread of pests and diseases. International agreements of particular importance are the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the International Plant Protection Convention (IPPC). Australia regulates its agricultural exports to give effect to these international principles, objectives and standards in Australia, and supports Australian government and agricultural industries to meet their international trade obligations.

Components of Australia's export regulation framework

Australia's export regulation framework is made up of three key components, which are described in greater detail below:

- Primary legislation – the Export Control Act 2020
- Secondary or subordinate legislation – the Export Control Rules
- Policy documents and instructional material.

Australian exports are regulated through Acts and commodity-specific Export Control Rules (see Figure 1). An Act is a piece of primary legislation, which has been passed by both Houses of Parliament and has received Royal Assent. The *Export Control Act 2020* (Act) is an example of a primary piece of legislation, which is administered by the department.

Secondary, delegated or subordinate legislation may also be made under an Act by a person to whom the Parliament has delegated power. The Export Control Rules are subordinate legislation to the Act and also regulate Australia's agricultural exports.

Export Control Rules are made by the Secretary of the Department of Agriculture, Water and the Environment. For plant and plant product exports the relevant Rules are the Export Control (Plants and Plant Products) Rules 2021 (Plant Rules). The Act and relevant commodity-specific Export Control Rules both apply to agricultural exports and must be read together.

Some Australian agricultural exports may also be regulated under other State, Territory or Commonwealth legislation that is not administered by the Department of Agriculture, Water and the Environment.

Export legislation is also supported by policy material that provides guidance on how to comply with legislative requirements.

The Export Control Act 2020

The Act provides the legislative basis to control the export of goods, particularly agricultural goods, and the authority for the assessment (inspection) and certification of these goods. The Act came into force on 28 March 2021 and was preceded by the *Export Control Act 1982*.

The object or purpose of the Act (set out at section 3 of the Act) are to ensure:

- exported goods meet the requirements of importing countries, as well as government and industry standards
- the movement of goods through the export supply chain can be tracked, where required – from production and processing to exporting, and if necessary, can be recalled.
- the integrity of goods is maintained
- exported goods have accurate trade descriptions
- exported goods comply with relevant international agreements.

The Act:

- provides the high-level toolbox for the regulation of commodities
- contains common export requirements and processes that exist across all regulated export commodities
- gives the Secretary of the Department of Agriculture, Water and the Environment the power to make Export Control Rules to regulate specific goods or matters.

The Act imposes penalties for individuals and corporations who have breached the requirements of the Act or relevant subordinate Plant Rule, which can include large fines and imprisonment where appropriate.

The Export Control Rules

There are several Export Control Rules made under the Act. The Export Control Rules are commodity-specific or relate specifically to fees and payments.

The Act provides the authority for the Secretary to make Export Control Rules that:

- are not inconsistent with the Act
- prescribe matters required or permitted by the Act
- are necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

These include provisions for:

- conditionally prohibiting the export of certain goods
- the imposition of fees for activities performed under the Act or Rules (for example those prescribed under the Export Control (Fees and Payments) Rule 2021 (Fees Rules))
- regulatory matters or requirements that are commodity specific (for example specific requirements for plant export registered establishments).

This approach of prescribing additional commodity specific requirements into subordinate legislation is more flexible and responsive to changes in importing country requirements and regulatory needs. This is because the requirements are more readily amended through subordinate legislation made by the Secretary rather than amending Act through Parliament.

The key Export Control Rules for the export of plants and plant products include the:

- the Plant Rules
- the Fees Rules.

Goods that are conditionally prohibited under the Act are prescribed goods. Examples of prescribed goods include fresh fruit and fresh vegetables. Other agricultural products that are prescribed under the Act are red, poultry and wild game meat, live animals, eggs, fish and milk, among other classes of goods.

Some goods may be prescribed and regulated under more than one Rule. For example, certain wood products may be regulated under both the Wood and Woodchips Rule and the Plant Rule.

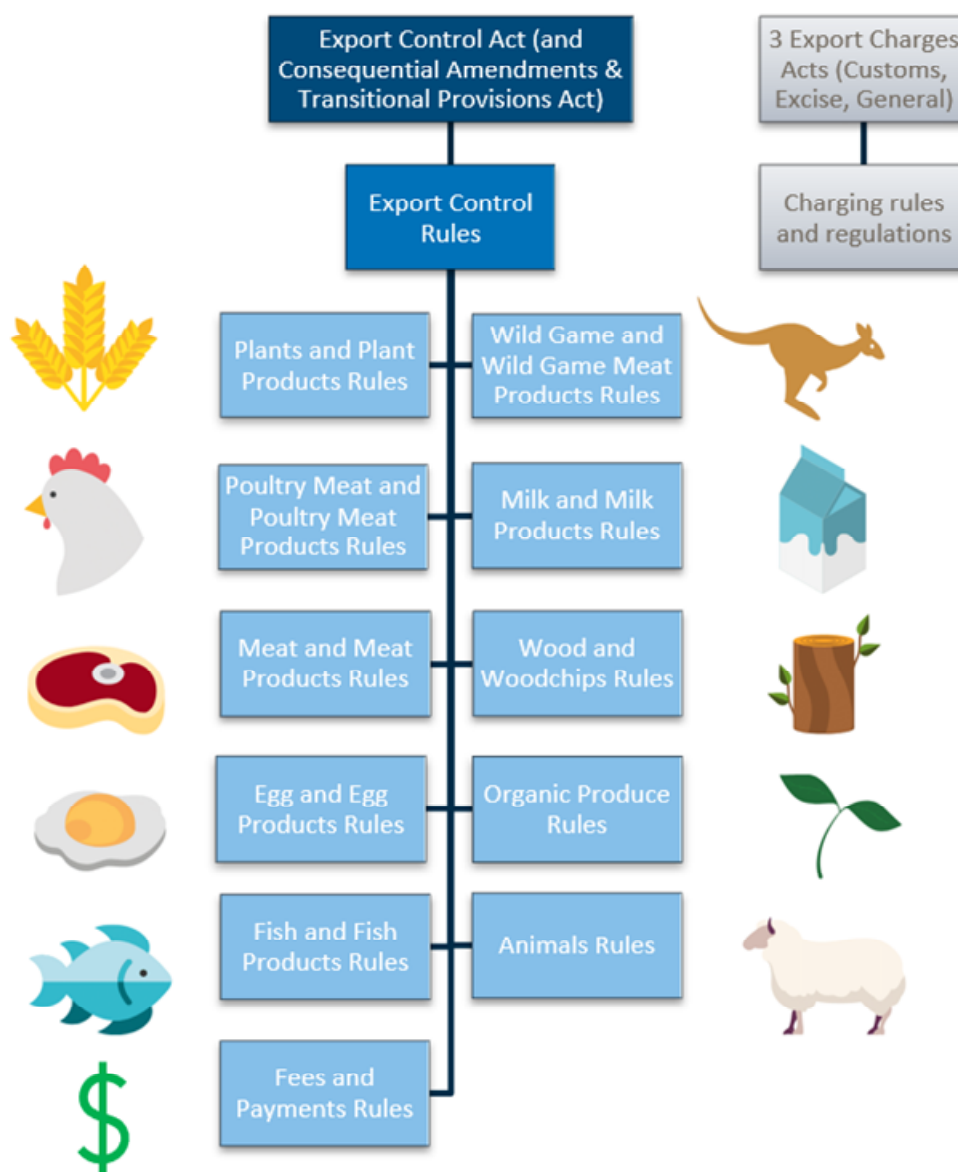


Figure 1. The framework for export legislation

Export Control (Plants and Plant Products) Rules 2021

The Plant Rules are made by the Secretary of the Department of Agriculture, Water and the Environment, under the authority of the Act. The Plant Rules:

- provide a simplified, flexible and outcomes-based legislative framework for the regulation of plant and plant product exports from Australia
- facilitate, enhance and sustain Australia’s exports by providing systems that ensure compliance with the IPPC obligations, overseas country requirements and any other relevant standards that enhance safety or improve market access

- improve efficiency and effectiveness in delivery of export certification services
- enable an effective and continued improvement to the regulation of the export certification and inspection system thereby reducing the cost of the department's services to export industries.

Regulating plant and plant product exports and certification

The Plant Rules applies to the export of the following prescribed plants and plant products:

- prescribed grain
- hay and straw
- fresh fruit
- fresh vegetables
- any other plants and plant products (not including narcotic goods under the *Customs Act 1901*) for which a phytosanitary certificate or phytosanitary certificate for re-export is required by an importing country authority.

The export of prescribed plants and plant products is prohibited unless exporters meet prescribed export conditions set out in Chapter 2 of the Plant Rules. Prescribed export conditions are:

- production and preparation of prescribed goods at an accredited property, where required under the [Accredited Properties Listing Scheme](#)
- preparation of the prescribed plants and plant products at a registered establishment
- submission of a notice of intention to export for the consignment
- for prescribed goods being exported in a bulk vessel, a valid bulk vessel approval
- have a valid export permit for the consignment

There are additional legislative requirements that exporters must meet to facilitate the issue of the export permit and government certificates, such as phytosanitary certificates, by the department. This includes:

- for a consignment being exported in containers - a valid container approval
- meeting the importing country requirements relevant to the consignment
- passing an inspection of the consignment conducted by an authorised officer.

Under the Act and the Plant Rules, phytosanitary certificates may also be issued for non-prescribed plants and plant products to facilitate meeting importing country requirements. The Act and Plant Rules specify the legislative requirements relevant for the issue of phytosanitary certificates for export and phytosanitary certificates for re-export. Non-prescribed plants and plant products include:

- plants or plant products being exported from Norfolk Island
- small consignments that are no more than 10 kilograms or litres
- plants and plant products that are narcotic goods under the *Customs Act 1901*, such as *Cannabis spp.* consignments.

To receive a phytosanitary certificate, plants or plant products must be inspected (undergo an assessment of goods) in accordance with Part 2 of Chapter 9 of the Act and the Plant Rules.

Chapter overview of the Act and Plant Rules

Chapter 1 deals with formal and preliminary matters and sets out the special meanings of words and phrases used in the Act and the Plant Rules.

Chapter 2 deals with matters relating to exporting goods. These include defining prescribed goods, prohibiting the export of certain goods unless conditions are met, and provisions to apply for exemptions. Chapter 2 also provides requirements for the issue of government certificates, including

the specific requirements for the issue of phytosanitary certificates for export and phytosanitary certificates for re-export.

Chapter 3 deals with matters relating to accredited properties. These include:

- requirements for accreditation
- conditions of accreditation
- application, renewal, variation, suspension and revocation of accreditation
- obligations of managers of accredited properties.

Chapter 4 deals with matters relating to registered establishments. These include:

- requirements for registration
- conditions of registration
- application, renewal, variation, suspension and revocation of registration
- obligations of occupiers of registered establishments.

Chapter 7 deals with matters relating to export permits. These include:

- conditions for the issue
- the period of effect of an export permit
- application, variation, suspension and revocation of an export permit.

Chapter 8 provides for other matters relating to export including:

- notices of intention to export
- trade descriptions and trade description requirements
- official marks.

Chapter 9 deals with matters relating to powers and officials. This includes:

- requirements of third party authorised officers, as well as provisions to vary, suspend and revoke authorisation
- obligations of third party authorised officers
- provisions for the conduct of audits and carrying out assessments of goods (inspection and supervision of treatment)
- powers and functions of the Secretary and authorised officers
- matters relating to bulk vessel approvals and container approvals
- decisions that may be made by the operation of a computer program.

Chapter 10 of the Act deals with matters relating to compliance and enforcement.

Chapter 11 deals with miscellaneous matters such as record-keeping, taking of samples, destructions of goods, relevant Commonwealth liabilities, and information on qualified marine surveyors and marine surveyor's certificates. Chapter 11 of the Act also includes the Secretary's Rule-making power.

Chapter 12 of the Plant Rules provides a scheme of transitional and savings provisions that will preserve the rights and liabilities under the former Orders (the old *Export Control (Plants and Plant Products) Orders 2011* and *Export Control (Plants and Plant Products—Norfolk Island) Order 2016*). Chapter 12 of the Plant Rules operates in conjunction with the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. Together these ensure that all accreditations, registrations, permits, certificates, inspection outcomes and approvals issued under the *Export Control Act 1982* continued to have effect with the new Act commenced on 28 March 2021.

Export Control (Fees and Payments) Rules 2021

The Fees Rules are made under the Act and set fees for the provision of services under the Act and the Export Control Rules. The Fees Rules establish laws concerning:

- types of services that attract fees, for example inspection, audit, and export documentation and certification services
- the fee rates applicable to the service provided
- who will be held responsible under the legislation for payment of applicable fees.

The department has developed charging guidelines in relation to the collection of fees for services. These can be found on the [department's website](#).

Not all services provided under the Act are covered by fees set by the Fees Rules. The export charges legislation also provides the legislative basis to impose charges for the export of plants and plant products. For example:

- charges for application and annual charges for the ongoing registration of registered establishments
- charges for the issue of export permits and government certificates
- annual charges for third party authorised officers.

The export charging legislation includes:

- *Export Charges (Imposition—General) Act 2015* and the Export Charges (Imposition—General) Regulation 2015
- *Export Charges (Collection) Act 2015* and the Export Charges (Collection) Regulation 2015
- *Export Charges (Imposition—Customs) Act 2015* and the Export Charges (Imposition—Customs) Regulation 2015
- *Export Charges (Imposition—Excise) Act 2015*.

Fees Rules and export charging legislation are underpinned by Cost Recovery Impact Statement processes. More information about the process for setting cost recovery fees and charges is available on the [department's website](#).

Other Export Control Rules

Other Export Control Rules under the Act that may apply in relation to plants or plant products being exported from Australia include:

- Export Control (Organic Goods) Rules 2021, where the exporter of the plant or plant product is seeking to export organic, biodynamic, ecological or similar products that require organic goods certification.
- Export Control (Wood and Woodchips) Rules 2021, where the exporter of the plant or plant product is seeking to export certain wood and woodchip products from Australia.

Further information in relation to these products is available through the [department's website](#).

Policy material

In addition to the export legislation, the Australia's export regulation framework also includes departmental policies and standards that provides guidance to the department and industry on how to comply with legislative requirements, and how to undertake regulatory roles.

Policy material includes the range of instructional material and standards that are available through the Plant Export Operations Manual, and also the Instructional Material Library for departmental staff. Policy material also includes departmental ICT systems such as the Export Documentation System (ExDoc) and the Plant Exports Management System (PEMS), as well as approved forms, records and templates.

Delegations, subdelegations and authorisations

There are different sources of power under the Act and the Plant Rules; delegations and subdelegations, approvals and authorisations. For the plant export regulatory framework only delegations and subdelegations, and authorisations are relevant.

Authorisations

Section 291 of the Act provides that the Secretary may authorise a person to be an authorised officer. The authorised officer's source of power is determined by the Secretary of the department (or a delegate of the Secretary) in an instrument of appointment.

An authorised officer may only exercise the functions and powers listed in their instrument of appointment. The instrument may also specify any additional conditions that the authorised officer must meet and the period of time the authorisation has effect; for example, two years.

Examples of authorised officer powers and functions that may be included in an instrument of appointment are set out below.

Assessment of goods

Requirements and authorised officer powers relating to the assessment of products are found in Part 2 of Chapter 9 of the Act and Plant Rules. Assessment of goods provisions underpin:

- plant and plant product inspection activities
- the supervision of phytosanitary treatments of plant or plant products, where necessary.

Part 2 of Chapter 9 also sets out the responsibilities of the exporters and clients presenting consignments to authorised officers for assessment.

Inspection and approval of containers

Authorised officer powers and requirements relating to the inspection and approval of containers are found in Part 6 of Chapter 9 of the Plant Rules. Part 6 provides for:

- issuing container approval
- revoking container approval.

Inspection and approval of bulk vessels

Authorised officer powers and requirements relating to the inspection and approval of bulk vessels are found in Part 5 of Chapter 9 of the Plant Rules. Part 5 provides for:

- issuing bulk vessel approval
- suspension of the bulk vessel approval
- lifting a suspension of the bulk vessel approval
- revocation of the bulk vessel approval.

Delegations and subdelegations

Section 288 allows the Secretary to delegate powers to a Senior Executive Service (SES) employee in the department. An SES employee may subdelegate some of these powers to Australian Public Service (APS) employees in the department or third party authorised officers. For example, the power to suspend a bulk vessel approval under the Plant Rules is subdelegated to a third party authorised officer with the bulk vessel job function and APS employees.

Some Secretary powers may not be delegated or subdelegated. Powers that must not be delegated or subdelegated are expressly listed in Section 288 of the Act and section 9-18 of the Plant Rules. For example:

- The Secretary's power to make Export Control Rules under the Act (section 432 of the Act) cannot be delegated to an SES employee.

- The Secretary's power to approve a form for an assessment record (paragraph 914(2)(c) of the Plant Rules) cannot be subdelegated to an APS employee or authorised officers.

As with authorisations, any Secretary powers that are subdelegated to an authorised officer will appear in their instrument of appointment.

Third party authorised officers

Provisions and powers of the export legislation that are relevant for plant export authorised officers are found throughout the Act and the Plant Rules, particularly Chapters 9 and 11.

Chapter 9 of the Act and Plant Rules includes provisions relevant to the regulation of authorised officers.

Chapter 9 sets out the requirements for the authorisation of Commonwealth, State and Territory government and third party authorised officers. For third party authorised officers of plants and plant products this includes:

- the need to complete specific training and qualification prior to authorisation
- being found to be a fit and proper person
- declaring and pecuniary or conflicts of interest.

Chapter 9 also sets out conditions of authorisation and the obligations of third party authorised officers. Obligations of authorised officers relating to record keeping are also found in Chapter 11. There may be civil or criminal penalties associated with not complying with these conditions and obligations.

Chapter 9 also provides provisions for the variation, suspension and revocation of a third party authorised officers authorisation.

How legislation is interpreted

The following principles must be followed when reading and applying legislation.

Definitions

When reading and interpreting legislation, the following principles should be taken into consideration when seeking to understand the meaning of terms:

- Specific definition of words that are specified in legislation must be applied where relevant in the legislation and are primarily found in Chapter 1 of the Act and the Rules.
- If a word or term has a special meaning for one particular provision then the definition will be located within that specific section of the legislation.
- Where a word is not defined in the legislation, words should be given their ordinary meaning as provided in the Macquarie Dictionary.
- The grammatical and simple meaning of a word should be used unless the use of the word leads to a meaningless or inconsistent application.
- Individual words must be read taking into the context they arise in and with the overall legislative purpose, intention and objectives in mind.

Inclusive and exclusive definitions

Some terms will be defined in legislation to have a set or exhaustive meaning and other terms may be defined to have a flexible or inclusive meaning.

When a term is defined to 'mean' a thing or matter, the definition is intended to be exhaustive.

For example:

- A bulk vessel means a vessel that is designed to be used to transport prescribed plants or plant products in bulk from Australian territory to a final overseas destination.

When a term is defined to 'include' a thing or matter, the definition is intended to broaden or not limit the meaning of the word or term, and to also include other similar things that are not listed.

For example:

- A flowpath (for plants and plant products) includes the places, and any bins or other receptacles or elements of a transport system, at an establishment that are used to store or carry the plants or plant products.

Structure

When reading any legislation, it is also important to remember that it has a particular structure. The Act and Rules are divided into consecutively numbered provisions that are known as sections, which form the basic organising unit for the material it contains.

Sections can be divided into subsections, paragraphs and sub-paragraphs.

If there are many sections to an Act, these are commonly grouped into chapters and parts according to their subject matter. There are 11 chapters in the Act. Where there are many distinct topic groupings within a part, the part is broken into a number of divisions. Descriptions are provided at the start of all chapters of the Act that describes what is contained within the chapter. Descriptive headings are used for all chapters, parts, divisions and sections that assist with readability and outline the scope of the sections they contain.

For example:

Section 103, contained in Division 2 of Part 6 of Chapter 3 of the Act, refers to the Grounds for revocation—overdue relevant Commonwealth liability.

The Act:

- Chapter 3 – Accredited Properties
 - Part 6 – Revocation of accreditation
 - Division 2 – Revocation by Secretary
 - Section 103 – Grounds for revocation – overdue relevant Commonwealth liability.

The chapters in the Act and the Rules are aligned and consistent for readability. Not every chapter will be relevant for each kind of good or included in every Rule. For example, Chapter 5 of the Act sets out requirements for Approved Arrangements, but the Plant Rules have no requirements for Approved Arrangements. So, there is no corresponding Chapter 5 of the Plant Rules.

Explanatory materials

Legislative instruments are always accompanied by a piece of explanatory material. The Act is accompanied by an Explanatory Memorandum and the Export Control Rules, such as the Plant Rules, are accompanied by an Explanatory Statement. These explanatory documents seek to explain what the provisions in a piece of legislation mean. They can be an invaluable tool to understanding why a law was enacted, what it was designed to achieve and what the legislation means.

The explanatory documents are available along with the legislation on the [Federal Register of Legislation](#).

Appeals and review of decisions

Many decisions made under the Act are 'reviewable decisions', particularly adverse decisions. This means that a person affected by the decision may apply to have the decision reviewed internally by the department or by the Administrative Appeals Tribunal. Some decisions under the Plant Rules are not reviewable decisions, including decisions relating government certificates, export permits,

assessments of goods, containers and bulk vessels. Legislative provisions relating to the review are captured in Part 2 of Chapter 11.

Regardless, of whether the decision may be reviewed or not it is essential that APS employees and AOs keep records of decisions, the reasons for the decision, and associated relevant documentation (see also [Defensible decision making for plant export authorised officers](#)) to ensure APS employees and AOs can demonstrate that at all times when exercising powers and functions under the Act they are doing so compliantly and in good faith.

AOs have legislative obligations under Part 1 of Chapter 11 of the Plant Rules to retain records of decisions and supporting documents for at least 2 years after the decision has been made.

Related material

- [Federal Register of Legislation](#)
- *Export Control Act 2020*
- *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*
- Export Control (Plants and Plant Products) Rules 2021
- Export Control (Organic Goods) Rules 2021
- Export Control (Wood and Woodchips) Rules 2021
- Export Control (Fees and Payments) Rules 2021
- Reference: *Defensible decision making for plant export authorised officers*
- Reference: *Plant Export Operations Manual glossary*
- [Plant Export Operations Manual](#)
- [Accredited Properties Listing Scheme](#)
- [Cost recovery fees and charges](#)
- The Department of Agriculture, Water and the Environment [website](#).

Contact

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Document information

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